Singapore’s reluctance to set aside arbitration awards

Singapore’s judiciary is very supportive of arbitration, both domestic and international. [Coal & Oil Co LLC v GHCL Ltd](http://www.singaporelaw.sg/sglaw/laws-of-singapore/case-law/free-law/high-court-judgments/15939-coal-amp-oil-co-llc-v-ghclltd-2015-sghc-65) [2015] SGHC 65 is the latest of a string of cases where applications to set aside arbitration awards, on alleged breaches of natural justice, public policy and agreed procedures have been refused.

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Facts

Coal & Oil LLC (C&O) commenced arbitration proceedings against GHCL Limited under the 2007 Singapore International Arbitration Centre Rules (2007 SIAC Rules) on 22 May 2009. A sole arbitrator was appointed by the Singapore International Arbitration Centre (SIAC).

The oral hearing took place from 14 May to 17 May 2012. Final submissions were filed by 17 August 2012. On 5 July 2013, the parties first heard from the SIAC that the tribunal was in the process of drafting the award. The award was eventually issued on 14 March 2014, after a 19 month delay.

ApplicationC&O applied under the Singapore International Arbitration Act to set aside the award alleging that:

(a) The issuance of the award was in breach of parties' agreed procedure;

(b) The award was in conflict with the public policy of Singapore; and

(c) There was a breach of natural justice.

C&O argued:

1. The tribunal failed to comply with rule 27.1 of the 2007 SIAC Rules, *"…the Tribunal shall submit the draft award to the Registrar within 45 days from the date on which the Tribunal declares the proceedings closed…"*; and

2. The 19-month gap between the final submissions and the date of the award amounted to an *"inordinate delay"*.

Judgment

The judge, Steven Chong, refused C&O's application. This decision is consistent with the approach in other similar cases. As a preliminary point, Chong J observed that the court retains a discretion not to set an award aside - even when one of the prescribed grounds for setting aside has been made out.

C&O ran an innovative argument that the tribunal has a duty under rule 27.1 of the 2007 SIAC Rules to declare the proceedings closed, however this was rejected. It was held that the tribunal had the *power* to declare the close of proceedings under its wide case-management powers but there was no *duty* to do so.

Breach of agreed procedure

In order to succeed in a claim alleging that the procedural rules of arbitration had been breached, it must be a material breach serious enough to justify intervention by the court. This often requires proof of actual prejudice. C&O's complaint that the tribunal had failed to declare the proceedings closed was held to be insufficient. In Chong J's view, this failure is *"precisely the sort of arid procedural objection that would **not** occasion the setting aside of an award"*.

Interestingly, Chong J distinguished an earlier decision where the Singapore High Court did set aside an arbitration award. In *Ting Jang Chung John v Teo Hee Lai Building Constructions Pte Ltd* [2010] 2 ALR 625 (*John Ting*), the arbitration award was released one year and four months after the hearings had closed. The key distinction was that under the arbitration rules agreed by the parties, an award had to be released within 60 days of the close of hearing and the mandate of an arbitrator expired after the time limit for the release of an award has expired. This express time limit was not present in the 2007 SIAC Rules and therefore, there was no breach of any procedure under the 2007 SIAC Rules in the C&O case.

The text of the full judgment can be read here.

Public Policy

C&O argued that the act of a tribunal, which was contrary to the agreement of the parties, is against the public policy of Singapore*.* This was rejected by Chong J, who found the argument *"*deeply flawed". The concepts of *public interest* and *public policy* are not one and the same. A violation of public interest, such as the delay in the release of an award, does not, without more, constitute a violation of public policy, which involves only, "those acts which are so egregious that elementary notions of morality have been transgressed".

Natural Justice

The rules of natural justice, in simple terms, guarantee the right to be heard and ensure adjudicators must be unbiased and uninterested.

C&O argued:

1. the tribunal's failure to invite submissions to address the alleged breach of rule 27.1 amounted to a denial of its right to be heard; and

2. the *inordinate delay* of 19 months to issue the award was a procedural irregularity resulting in a breach of natural justice.

In order to set aside an arbitration award based on a breach of natural justice a party must prove:

(a) that a rule of natural justice was breached and how;

(b) in what way the breach was connected to making the award; and

(c) how the breach prejudiced its rights - this prejudice must relate to the outcome of the arbitration.

The judge found that C&O's *right to be heard* argument was flawed. There could not be any breach of rule 27.1 until after the award had been issued, therefore it could not be argued that C&O had been denied the right to make submissions *before* the award was issued. Furthermore, the 2007 SIAC Rules do not give the parties any right to a hearing in the event of an alleged breach of Rule 27.1.

As for the 19 month delay point. It was held that this did not affect the hearing or C&O making its submissions, nor did it show any bias on the part of the tribunal.

Conclusion

This case cements the attitude of the Singapore judiciary towards arbitration – intervention will only be made in extremely limited situations. Allegations of breaches of natural justice and public policy are taken very seriously and parties must meet high thresholds to satisfy the court. As a result, the number of awards which are successfully challenged and set aside are very few.