



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-ghcltd-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.

Published 18 May 2015

The information provided in this article is intended for general information only. While every effort has been made to ensure the accuracy of the information at the time of publication, no warranty or representation is made regarding its completeness or timeliness. The content in this article does not constitute professional advice, and any reliance on such information is strictly at your own risk. Gard AS, including its affiliated companies, agents and employees, shall not be held liable for any loss, expense, or damage of any kind whatsoever arising from reliance on the information provided, irrespective of whether it is sourced from Gard AS, its shareholders, correspondents, or other contributors.

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

The information provided in this article is intended for general information only. While every effort has been made to ensure the accuracy of the information, it is not intended to constitute an offer, recommendation, or any other form of financial advice. The content is not intended to be relied upon for any specific purpose. Gard AS, including its affiliated companies, agents and employees, shall not be held liable for any loss, expense, or damage of any kind incurred or arising from reliance on the information provided, irrespective of whether it is sourced from Gard AS, its shareholders, correspondents, or other contributors.

shareholders, correspondents, or other contributors.

~~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~~. 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.

The information provided in this article is intended for general information only. While every effort has been made to ensure the accuracy of the information at the time of publication, no warranty or representation is made regarding its completeness or timeliness. The content in this article does not constitute professional advice, and any reliance on such information is strictly at your own risk. Gard AS, including its affiliated companies, agents and employees, shall not be held liable for any loss, expense, or damage of any kind whatsoever arising from reliance on the information provided, irrespective of whether it is sourced from Gard AS, its shareholders, correspondents, or other contributors.