The Asia-Pacific Arbitration Review

2025

Singapore: Significant developments and decisions

The Asia-Pacific Arbitration Review

2025

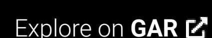
The Asia-Pacific Arbitration Review 2025 contains insight and thought leadership from 50-plus pre-eminent practitioners from the region. It provides an invaluable retrospective on what has been happening in some of Asia-Pacific's more interesting seats.

This edition also contains think pieces on private equity, investor state arbitration, mining valuation, and energy disputes.

All articles come complete with footnotes and relevant statistics.

Generated: May 22, 2024

The information contained in this report is indicative only. Law Business Research is not responsible for any actions (or lack thereof) taken as a result of relying on or in any way using information contained in this report and in no event shall be liable for any damages resulting from reliance on or use of this information. Copyright 2006 - 2024 Law Business Research



Singapore: Significant developments and decisions

Chou Sean Yu and **Lim Wei Lee**
WongPartnership LLP

Summary

IN SUMMARY
DISCUSSION POINTS
REFERENCED IN THIS ARTICLE
PUBLIC CONSULTATION ON DRAFT 7TH EDITION OF SIAC RULES
MEMORANDA OF UNDERSTANDING BETWEEN SIAC AND OTHER INSTITUTIONS
CASE LAW

IN SUMMARY

This article summarises the key developments and decisions on international arbitration from Singapore between March 2023 and February 2024.

DISCUSSION POINTS

- Public consultation on draft 7th edition of SIAC Rules
- Memoranda of understanding between SIAC and other institutions
- Case law

REFERENCED IN THIS ARTICLE

- Proposed changes to the SIAC Rules
- Significant judgments handed down by the Singapore courts in relation to international arbitration
- *The Republic of India v Deutsche Telekom AG* [2023] SGCA(I) 4
- *CZT v CZU* [2023] SGHC(I) 11
- *The Republic of India v Deutsche Telekom AG* [2023] SGCA(I) 10
- *DBX and another v DBZ* [2023] SGHC(I) 18
- *CVV and others v CWB* [2023] SGCA(I) 9
- *DBO and others v DBP and others* [2023] SGHC(I) 21

PUBLIC CONSULTATION ON DRAFT 7TH EDITION OF SIAC RULES

On 22 August 2023, the SIAC commenced a public consultation on the draft of the 7th edition of the SIAC Rules (Rules). The consultation closed on 21 November 2024 and its outcome is pending.

The new Rules seek to enhance the user experience and raise the bar on efficiency, expedition and cost effectiveness. Some of the key proposed changes include:

- a new streamlined procedure to provide quicker and lower-cost dispute resolution for claims up to S$1 million. Under this procedure, claims will, among other things, be heard by a sole arbitrator and decided on the basis of written submissions (with no document production or fact or expert witness evidence) and the final award will be issued within three months of the date of the tribunal's constitution;
- a new preliminary determination procedure, which will permit parties to apply for preliminary determination of issues. Under this procedure, the tribunal must, unless the registrar extends the deadline, make a decision within 45 days of the date that the application is filed;
- an increased claims cap of S$10 million for the expedited procedure, which will expand the number of users and types of disputes that can benefit from this procedure;

- amendments to accelerate emergency arbitration proceedings; among other things, by allowing an emergency arbitration application to be filed prior to the notice of arbitration, reducing the time frame to challenge an emergency arbitrator from two days to 24 hours, and reducing the timeline for making the award from 14 days to 10 days from the date of the emergency arbitrator's appointment;
- changes to the procedure for the commencement of arbitration and constitution of the tribunal. For example, it will be enough to provide only a description of the contract and arbitration agreement; a copy of the contract and the arbitration agreement need not be furnished together with the notice of arbitration. Parties will also no longer need to nominate an arbitrator in the notice of arbitration and the response to the notice of arbitration; it will suffice to provide any comment as to the number of arbitrators and procedure for the constitution of the tribunal;
- provisions to streamline consolidation and joinder to facilitate the hearing of multi-contract and multi-party disputes before the same tribunal. For instance, a new provision will permit the consolidation of two or more pending arbitrations 'under SIAC's administration'. The grounds for consolidation will also be expanded to include a situation where the arbitration agreements are 'compatible' and 'a common question of law or fact arises out of or in connection with all the arbitrations'. In addition, it will be possible for two or more arbitrations to be 'coordinated in cases where a common question of law or fact arises' and be heard together and aligned procedurally, with the tribunal issuing separate awards in each arbitration;
- provisions on third-party funding. For instance, requiring a party to disclose the existence of any funding agreement and the identity of the third-party funder; and
- the incorporation of SIAC Gateway, the SIAC's new digital case management system, which centralises case documents on an electronic platform.

MEMORANDA OF UNDERSTANDING BETWEEN SIAC AND OTHER INSTITUTIONS

The SIAC entered into several memoranda of understanding with the following arbitral institutions and law schools to promote international arbitration as the preferred method of dispute resolution for international disputes:

- the Silicon Valley Arbitration & Mediation Center, United States of America (15 March 2023);
- the Arbitration and Mediation Centre of the Ecuadorian American Chamber of Commerce of Quito, Ecuador (9 June 2023);
- the Arbitration Centre of the Quito Chamber of Commerce, Ecuador (13 June 2023);
- the Law School of Tsinghua University, China (13 November 2023);
- the Center for Analysis and Dispute Resolution of Pontificia Universidad Cátolica del Perú, Peru (5 December 2023);
- the National Law School of India University, Bangalore (5 January 2024); and
- the Bahrain Chamber for Dispute Resolution (21 February 2024).

CASE LAW

Below is a summary of some of the more significant judgments released between March 2023 and February 2024:

- In *The Republic of India v Deutsche Telekom AG* [2023] SGCA(I) 4, the Court of Appeal declined to grant orders to protect the privacy of arbitration-related court proceedings where the confidentiality of the arbitration had already been lost.
- In *CZT v CZU* [2023] SGHC(I) 11, the Singapore International Commercial Court (SICC) held that records of arbitrators' deliberations are confidential, and should be protected against production orders except in the very rarest of cases where there is a compelling case that the interests of justice outweigh well-recognised policy reasons for such records' confidentiality.
- In *The Republic of India v Deutsche Telekom AG* [2023] SGCA(I) 10, the Court of Appeal held that the doctrine of transnational issue estoppel applies in international commercial arbitration. The majority of the court, in ***obiter***, also considered that where the enforcement court is not precluded by transnational issue estoppel from considering an issue going to the validity of an arbitral award, it may nonetheless be appropriate for the enforcement court to grant primacy to a prior decision of the seat court.
- In *DBX and another v DBZ* [2023] SGHC(I) 18, the SICC declined to set aside two SIAC awards on the basis that the application, which was brought within three months from the date of receipt of the tribunal's unilateral corrections to the awards but beyond three months from the date of receipt of the award, was time-barred. The SICC held that the arbitral tribunal's unilateral correction to award does not enlarge the three-month time frame to file an application to set aside an arbitral award.
- In *CVV and others v CWB* [2023] SGCA(I) 9, in upholding the SICC's refusal to set aside an arbitral award for, among other things, a breach of the rules of natural justice, the Court of Appeal observed that arbitrators are not held to the same standards as judges of a court in giving reasons for their decision.
- In *DBO and others v DBP and others* [2023] SGHC(I) 21, the SICC held that there was no breach of natural justice where an arbitral tribunal dismissed a party's case summarily pursuant to Rule 29 of the SIAC Rules without a full-fledged hearing on the evidence.

Privacy Orders Denied Where Confidentiality Of Arbitration Was Already Lost

In *The Republic of India v Deutsche Telekom AG* [2023] SGCA(I) 4, the Court of Appeal declined to grant orders to protect the privacy of arbitration-related court proceedings where the confidentiality of the arbitration had already been lost, as such privacy orders are meant to protect the confidentiality of the arbitration itself.

Deutsche Telekom AG (DT) obtained leave to enforce in Singapore the final award in its favour arising out of an arbitration against India. India applied to set aside the leave order, but the SICC dismissed its application. In the SICC proceedings, the parties agreed to a consent order for various measures to protect the privacy of the proceedings.

India then appealed to the Court of Appeal against the SICC's decision and applied, under sections 22 and 23 of the International Arbitration Act (IAA) read with Order 16, Rule 9(1), of the SICC Rules 2021 and the inherent powers of the court, for similar privacy orders.

India accepted that some information relating to the arbitration had already been published online, but contended that the confidentiality of the arbitration had not been entirely lost; there was information that had not entered into the public domain. India also claimed that it would suffer prejudice if the privacy orders were not granted, as certain information relating to the arbitration had already been misused by third parties to paint India in a negative light.

DT contended that the privacy orders sought would serve no real purpose as information on the arbitration and related proceedings was already in the public domain. DT also argued that the previous consent order was irrelevant because of the extent of information that had been disclosed and in the public domain since that order was in place.

The Court of Appeal dismissed India's application. The Court noted that the general rule is that the making of privacy orders is a departure from the basic principle of open justice and should be the exception rather than the norm. Although sections 22 and 23 of the IAA provided such an exception, the purpose of those provisions is to protect the confidentiality of the arbitration itself.

In this case, there had already been multiple disclosures of considerable information relating to the arbitration and related enforcement proceedings, both in Singapore and abroad. The Court accordingly found that the confidentiality of the arbitration had been lost; consequently, there was no basis for maintaining the confidentiality of the enforcement proceedings in Singapore.

Records Of Arbitrators' Deliberations Are Confidential And Not Subject To Production Except In 'rarest Of Cases'

In ***CZT v CZU*** [2023] SGHC(I) 11, the SICC held that records of arbitrators' deliberations are confidential and should be protected against production orders except in the very rarest of cases, where there is a compelling case that the interests of justice outweigh well-recognised policy reasons for the confidentiality of such records.

A 2-1 majority of the tribunal (Majority) issued an award in favour of the defendant. The award was not signed by the dissenting member of the tribunal (Minority), who in a written opinion (Dissent) accused the Majority, among other things, of having 'engaged in serious procedural misconduct', attempting 'to conceal the true ***ratio decidendi*** from the [p]arties' and lack of impartiality.

The plaintiff sought to set aside the award and applied for production of the records of deliberations from all three members of the tribunal (Discovery Applications) in support of its setting-aside application.

Dismissing the Discovery Applications, the SICC held that the confidentiality of deliberations, such as the confidentiality of arbitration proceedings, exists as an implied obligation in law, founded on the following policy reasons:

- confidentiality is a necessary prerequisite for frank discussion, and not the mere cautious exchange of selected views, between the arbitrators;
- freedom from outside scrutiny enables arbitrators to reflect on the evidence without restriction and, where so inclined, to change these conclusions on further reflection without fear of criticism or need for explanation;
- the tribunal's duty to keep deliberations confidential protects it from outside influence; and

- keeping deliberations confidential minimises unmeritorious satellite litigation, (ie, spurious annulment or enforcement challenges).

The SICC therefore noted that it would only be in the 'very rarest of cases', where there is a compelling case in the interests of justice that overcomes these policy reasons, that an exception to the default position on confidentiality of deliberations would be made. This would require allegations that are very serious in nature and have real prospects of succeeding. However, where the challenge is to the 'essential process' (eg, where there is a complaint that a co-arbitrator has been excluded from deliberations) rather than the ***substance*** of the deliberations, the protection of confidentiality of deliberations does not apply because such process issues do not involve an arbitrator's thought processes or reasons for their decision and those parts of the records of deliberations do not have to be disclosed.

Here, the SICC found that the none of the exceptions to the rule protecting confidentiality of deliberations applied. The plaintiff's contentions that the Majority had: (1) decided a key liability issue on grounds not contained in the final award; and (2) tried to conceal its true reasons for the final award by making material changes to an earlier iteration of the award, were insufficient to constitute an exception. Further, while a lack of impartiality could arguably constitute an exception, the plaintiff failed to prove that this allegation had real prospects of succeeding.

Doctrine Of Transnational Issue Estoppel Applies In Arbitration; Primacy Principle Provisionally Endorsed

In *The Republic of India v Deutsche Telekom AG* [2023] SGCA(I) 10, the Court of Appeal held that the doctrine of transnational issue estoppel applies in international commercial arbitration. The majority of the court (Majority), in ***obiter***, also considered that where the enforcement court is not precluded by transnational issue estoppel from considering an issue going to the validity of an arbitral award, it may nonetheless be appropriate for the enforcement court to grant primacy to a prior decision of the seat court (the Primacy Principle).

DT commenced arbitration against India, contending that India's annulment of an agreement violated a bilateral investment treaty between India and Germany. The arbitration was seated in Geneva, Switzerland.

The tribunal dismissed India's objections to jurisdiction and issued an interim award on jurisdiction and liability in DT's favour. India applied to the seat court, the Federal Supreme Court of Switzerland (Swiss Federal Supreme Court), to set aside the interim award primarily on the ground that the tribunal lacked jurisdiction over the dispute (Swiss Setting-aside Application). The Swiss Federal Supreme Court dismissed the Swiss Setting-aside Application. Thereafter, the tribunal rendered its final award on quantum, which the Civil Court of Geneva certified as enforceable and legally binding.

DT then obtained leave to enforce the final award against India in Singapore. India applied to set aside the leave order on the same grounds relied on in the Swiss Setting-aside Application (Grounds for Resisting Enforcement).

India's application was dismissed by the SICC, which found, among other things, that the Swiss Federal Supreme Court's decision on the Swiss Setting-aside Application (Swiss

Setting-aside Decision) had ***res judicata*** effect that barred India from relitigating the same points. India appealed to the Court of Appeal.

Dismissing the appeal, the Court of Appeal held that the doctrine of transnational issue estoppel applies in the context of international commercial arbitration. As the Court noted, Singapore law already recognises the principles of transnational issue estoppel, and it should be applied by a Singapore enforcement court in determining whether preclusive effect should be accorded to a seat court's decision on the validity of an arbitral award.

The Court of Appeal cautioned that judgments from a foreign legal system should be interpreted with due consideration to determine:

- what precisely was decided by the foreign court and whether the specific issue said to be the subject matter of an issue estoppel was a necessary, as opposed to a merely collateral, part of the foreign judgment;
- whether the foreign court's decision on that specific issue was final and conclusive; and
- whether the party against whom the estoppel is invoked had the opportunity to raise that specific issue.

The Court further observed that there will be exceptions to the application of transnational issue estoppel (eg, transnational issue estoppel should not arise in relation to any issue that the court of the forum ought to determine for itself under its own law such as questions of public policy of the enforcement court).

In the present case, as the Grounds for Resisting Enforcement had been previously considered and dismissed by the seat court, the Court of Appeal held that India was precluded from re-litigating the same matters.

The Majority also, in ***obiter***, commented that where transnational issue estoppel does not apply, or where a party wishes or chooses to invoke the Primacy Principle for any reason, it may rely on a prior decision of the seat court, and the Singapore enforcement court should accord that decision primacy by treating it as presumptively determinative of matters dealt with in the judgment pertaining to the validity of the award. The onus then shifts to the other side to establish a sufficient basis to persuade the enforcement court to come to a different view. Exceptional circumstances might warrant a departure from the Primacy Principle, some of which might include:

- public policy considerations applicable in the jurisdiction of the enforcement court;
- serious procedural deficiencies in the decision-making of the seat court;
- where upholding the seat court's decision would be repugnant to fundamental notions of what the enforcement court considers just; or
- where it appears to the enforcement court that the seat court's decision was plainly wrong.

Arbitral Tribunal's Unilateral Correction To Award Does Not Enlarge The Three-month Time Limit To File An Application To Set Aside An Arbitral Award

In *DBX and another v DBZ* [2023] SGHC(I) 18, the SICC declined to set aside two SIAC awards on the basis that the application, which was brought within three months of the date of

receipt of the tribunal's unilateral corrections to the awards but beyond three months from the date of receipt of the award, was time-barred.

In this case, the tribunal issued awards dated 18 February 2023 in favour of the respondents, and which were received by the applicants on 6 March 2023. The tribunal then, on its own initiative, issued corrections to both awards; those corrections were received by the parties on 20 March 2023.

The applicants applied to the SICC to set aside the awards on 19 June 2023, which was within three months of the date of receipt of the corrected award, but after three months from the receipt of the original award.

The respondent contended that this application was brought out of time, as Singapore law (which incorporates article 34 of the Model Law), stipulates a strict three-month time bar from the date of receipt of the award, and that time limit was not extended under article 34(3) of the Model Law as the corrections were made on the tribunal's own initiative, and not pursuant to a party's request.

The applicants contended, amongst other things, that the reference to an award under article 34(3) of the Model Law meant 'the award ***as corrected'*** because, among other things, the UNCITRAL Rules (article 38(3)) and the SIAC Rules (Rule 33.1), which governed the two arbitrations, provide that a correction shall form part of the award.

The SICC disagreed with the applicants' position and dismissed the application. It explained that:

- First, references in the UNCITRAL Rules and SIAC Rules that a correction constitutes a part of the award do not alter the deadline for recourse against the award. As a tribunal is *functus officio* after rendering its final award, and a correction necessarily postdates the final award, these provisions in the rules merely operate to prevent the correction from becoming *ultra vires* or a nullity. The ultimate status of an award must be determined by the Model Law and not on the arbitration rules.
- Second, references to an 'award' in the relevant provisions of the Model Law means the original award, and not 'the award as corrected'. The Model Law itself supports the conceptual distinction between an award and a correction: for example, in the context of article 33 of the Model Law, which permits the making of requests to the tribunal 'within thirty days of receipt of the award', an award cannot mean 'the award as corrected', or this would enable an infinite cycle of requests to the tribunal for correction, interpretation or an additional award.
- Third, this would cause no injustice: a correction on the tribunal's own initiative under article 33(2) of the Model Law is limited to 'errors in computation, any clerical or typographical errors or any errors of similar nature' and is usually uncontroversial; even if issued after the commencement of the three-month time frame, such a correction is unlikely to impede or vary a party's decision to challenge the award.

Arbitrators Are Held To Different Standard In Providing Reasoned Decision

In *CVV and others v CWB* [2023] SGCA(I) 9, in upholding the SICC's refusal to set aside an arbitral award for, among other things, a breach of the rules of natural justice, the Court of Appeal observed that arbitrators are not held to the same standards as judges of a court in giving reasons for their decision.

The claimants filed an application to set aside an award made against them on the basis that the tribunal had breached the rules of natural justice. The SICC dismissed the claimants' setting aside application.

The claimants then appealed the SICC's decision on the narrower basis that the tribunal had breached the fair hearing rule by failing to apply its mind and/or to give reasons for its decision on essential issues in the award.

The Court of Appeal dismissed the claimants' appeal. The Court found that there was no breach of the rules of natural justice and there were no grounds on which to set aside the award.

In its decision, the Court of Appeal observed that although article 31(2) of the Model Law imposes on a tribunal the 'general duty to give reasons', it is not settled under Singapore law: (1) whether a tribunal's failure to give reasons is, in itself, a ground for setting aside an award, and (2) what the content of the tribunal's duty to give reasons is.

The Court of Appeal noted that the scope of a tribunal's duty to give reasons differs from that of a judge's, and it is accordingly inappropriate to apply standards applicable to judges in court decisions to tribunals in arbitral awards. The Court of Appeal explained that different considerations are at play in a court case as opposed to an arbitration. For instance, in court cases, there is a need for open justice and to set out the court's reasons in detail, because a review by the appellate court would involve a re-examination of the merits. In contrast, arbitration proceedings are confidential in nature and not subject to a review of the merits at the setting-aside or enforcement stage.

However, the Court of Appeal decided not to resolve these two issues conclusively because the claimants' appeal was based on a breach of the rules of natural justice, rather than the tribunal's alleged failure to give reasons. The claimants relied on the tribunal's failure to give reasons as demonstrative of the fact that the tribunal must have failed to apply its mind. In that regard, the Court of Appeal noted that the inadequate provision of reasons is, without more, a mere error of law and therefore incapable of sustaining a challenge against the award. Where a failure to give reasons is relied on to contend that the tribunal failed to apply its mind, the tribunal's omission to give reasons must be so grave or glaring as to lead to the inescapable inference that it did not even attempt to understand the essential issues in the arbitration.

No Breach Of Natural Justice Where An Arbitral Tribunal Summarily Dismisses A Party's Case Without A Full-fledged Evidentiary Hearing

In ***DBO and others v DBP and others*** [2023] SGHC(I) 21, the SICC held that there was no breach of natural justice where an arbitral tribunal dismissed a party's case summarily pursuant to Rule 29 of the SIAC Rules without a full-fledged hearing on the evidence.

The dispute in the arbitration under SIAC Rules arose out of a facility agreement under which the applicants were the borrowers and guarantors and the respondents were the lenders and their agents. In the arbitration, the applicants argued that they were not obliged to repay the loan because the facility agreement had been frustrated in the context of the covid-19 pandemic.

The respondents brought an early dismissal application under Rule 29.1 of the SIAC Rules, seeking a summary dismissal of the applicants' claim and defence that the facility agreement had been discharged by frustration. At the hearing of the application, the

applicants sought to include a pleading that there was a collateral contract between the parties to the effect that the funds for repaying the loan under the facility agreement would come only from certain specific sources of funds (collateral contract). Although the tribunal permitted the applicants to introduce this pleading, it eventually found that the collateral contract could not be made out on the facts relied upon by the applicants. The tribunal concluded that the facility agreement had not been discharged by frustration and issued a partial award in favour of the respondents.

The applicants filed an application to set aside the partial award, alleging that the tribunal had breached natural justice and deprived them of their right to present their case, by summarily dismissing their case based on frustration on the basis that the collateral contract did not exist, although the existence of the collateral contract was a 'critical disputed fact'.

The SICC dismissed the setting aside application, finding that 'the factual premises supporting the existence of the alleged Collateral Contract were distinct from the existence of the Collateral Contract itself'. The Court further explained that the tribunal was bound to assume the existence of the facts asserted by the applicants in support of the collateral contract, but it was not bound to assume that the collateral contract existed.

The Court further noted that even if the 'manifestly without legal merit' threshold under Rule 29.1 of the SIAC Rules had required the tribunal to assume that the collateral contract existed, the tribunal's failure to do so would have been an error of law, and not a breach of natural justice.

Chou Sean Yu seanyu.chou@wongpartnership.com
Lim Wei Lee weilee.lim@wongpartnership.com

12 Marina Boulevard Level 28, Marina Bay Financial Centre Tower 3, 018982, Singapore

https://www.wongpartnership.com/

Read more from this firm on GAR