

Can an Arbitral Award be Issued Against Minors?

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Introduction

When a dispute is submitted to arbitration, the basis of the tribunal's jurisdiction is the agreement of the parties. However, certain issues arise when one of the parties to the arbitration is a minor. Can a binding award be issued against a minor, and can it be enforced in the domestic courts?

In *BAZ v BBA and others* [2018] SGHC 275, the Singapore High Court was faced with a S\$720 million arbitral award which had been issued against – amongst others – a number of minors (the "**Minors**"). The Court considered the public policy issues behind enforcing an award against minors, and ultimately decided to set aside the award as against the Minors.

Notably, the Court held that the arbitral award would violate the protection given to minors in contractual relationships under Singapore law, and that it would shock the conscience and violate the basic notion of justice.

The Minors were successfully represented by Lee Eng Beng SC, Kelvin Poon, Alyssa Leong and Matthew Koh of Rajah & Tann Singapore LLP.

Brief Facts

This case involved a Share Sale and Purchase Agreement ("SSPA") under which the Buyers purchased shares in a company which were held by the Sellers. The SSPA contained an arbitration agreement.

The Buyers subsequently brought arbitration proceedings against the Sellers before the International Chamber of Commerce, alleging that the Sellers had concealed a report on regulatory transgressions. The majority of the Tribunal decided that the Sellers were jointly and severally liable in damages for the harm arising from the concealment and issued an Award against the Sellers for a sum of about S\$720 million.

However, five of the Sellers were – at the material time – minors. As the Award was a Singapore-seated award, the Minors (through their litigation representatives) applied to the Singapore court to set aside the Award as against them on the ground that the Award went against the public policy of Singapore.

Holding of the High Court

The Court held in favour of the Minors, setting aside the Award as against them.

While an arbitral award may be set aside or refused enforcement on the ground that it would go against the public policy of Singapore, the Court here highlighted that the public policy ground is very narrow in scope. The circumstances would have to be such that the enforcement of the award would "shock the conscience", be "clearly injurious to the public good" or violate "the forum's most basic notion of morality and justice".

In this case, the Minors were between three and eight years old when the SSPA was signed, and between eight and twelve years old during the arbitration. The SSPA had been entered into by their fathers on their behalf. The Minors were held by the Tribunal to be jointly and severally liable with the other defendants in the arbitration for the full extent of damages, interests, and costs.

The Court held that the principle of protecting the interests of minors in commercial transactions is part of the public policy in Singapore. Minors have limited capacity to enter into binding contracts, and the effect of the Award on the Minors would be to enforce the SSPA on them. This would violate the protection given to minors in contractual relationships under Singapore law.

Further, the Award imposed liability on the Minors for the fraudulent misrepresentation of their guardian or principal on matters which the Minors had no knowledge of. This violates the protection given to a minor under section 35(7) of the Civil Law Act, which protects a minor from liability for the procurement of a contract by fraudulent misrepresentation.

Finally, the Court held that the Award as against the Minors, which would saddle them with legal liability for an amount exceeding S\$720 million, shocks the conscience and violates Singapore's most basic notion of justice. The Court thus allowed the application to set aside the Award as against the Minors.

Concluding Remarks

This decision addresses some of the key issues involving minors and arbitral awards from the perspective of Singapore contract law and public policy. Parties entering into arbitration agreements or arbitral proceedings should be aware of the limits of enforceability of an award which imposes liability on a minor.

The decision also highlights the operation of public policy as a ground for setting aside an arbitral award or refusing its enforcement. A mere error of law or facts will not suffice, and there must be a demonstrable breach of public policy which crosses the high threshold required by the court.

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