

Enforcement of Arbitral Awards – How Important is the Seat of Arbitration?

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Introduction

Resisting the recognition and enforcement of an arbitral award can be a challenging endeavour. There are limited grounds on which enforcement can be opposed, and the courts have thus far taken a pro-arbitration position of non-interference. However, in *ST Group Co., Ltd. & 2 Ors v Sanum Investments Limited* [2019] SGCA 65, the Singapore Court of Appeal demonstrated when it would refuse enforcement of an award in the context of a wrongly-seated arbitration.

The arbitration agreement between the parties in this case had specified the seat of arbitration as Macau. However, the actual arbitration was seated in Singapore instead. The Singapore High Court nonetheless allowed the enforcement of the award against most of the respondents in the arbitration, finding the error in seat to be a mere procedural irregularity.

The Court of Appeal reversed this aspect of the High Court's decision, holding that an award arising from a wrongly-seated arbitration should not be recognised or enforced because it is not in accordance with the parties' arbitration agreement. The decision highlights the importance of the correct seat of arbitration.

Francis Xavier SC and Edwin Tan of Rajah & Tann Singapore LLP were instructed counsel before the Court of Appeal, successfully resisting the enforcement of the arbitration award.

Brief Facts

The case involved an arbitration before the Singapore International Arbitration Centre ("**SIAC**"), which resulted in an Award in favour of the Claimant. The present question before the Court of Appeal was whether the Award should be enforced.

The Claimant in this case had entered into an arrangement with the Respondents for the establishment of a gaming business in Laos. The parties entered into a number of agreements, including one Master Agreement, which included a multi-tiered dispute resolution clause providing, *inter alia*, for arbitration in Macau. Notably, there was a disagreement over whether all the Respondents were in fact parties to the Master Agreement.

A dispute later arose between the parties. The Claimant initiated proceedings before the Organisation of Economic Dispute Resolution, and then the Vientiane courts, but was unsuccessful on both fronts.

The Claimant then commenced proceedings before SIAC. The Respondents objected to the SIAC arbitration, but the arbitration continued despite the objection. SIAC appointed a three-member Tribunal, which went on to issue an Award stating that it had the jurisdiction to determine the claims, and that the Respondents had breached their contractual obligations to the Claimant. The Tribunal thus awarded damages of US\$20 million against the Respondents.

The Claimant obtained leave of court to enforce the Award in Singapore. The Respondents applied to set aside the Leave Order, and was successful in respect of only one of the Respondents (the 4th Respondent), which the High Court Judge ("**Judge**") found not to be a party to the Master Agreement.

The Claimant appealed against the Judge's decision to set aside the Leave Order as against the 4th Respondent, while the Respondents appealed against the Judge's decision to affirm the Leave Order as against the other Respondents.

Holding of the Court of Appeal

The Court of Appeal dismissed the Claimant's appeal and allowed the Respondents' appeal, setting aside the Leave Order as against all the Respondents.

The Respondents' appeal

Under the Master Agreement, the correct seat of arbitration was found to be Macau, and the correct composition was found to be a one-member tribunal. The Court of Appeal thus had to consider the effect of the mistakes in the seat of arbitration and composition of tribunal, as the actual arbitration was conducted in Singapore before a three-member Tribunal.

The Judge had described these errors as "procedural irregularities" and found that, in the absence of any proven prejudice against the Respondents, the court ought to exercise its residual discretion to enforce the Award.

The Court of Appeal, however, took the position that once an arbitration is wrongly seated, in the absence of waiver of the wrong seat, any award that ensues should not be recognised and enforced. It would not be

necessary for the party who is resisting enforcement of such an award to demonstrate actual prejudice arising from the wrong seat.

The Court highlighted that the choice of an arbitral seat is one of the most important matters for parties to consider in an arbitration agreement because it determines the national law under whose auspices the arbitration shall be conducted. The law of the seat is also vital in governing significant issues relating to the conduct of an international arbitration and the validity and finality of the award resulting from the proceedings.

The Court considered the basic principle that arbitration is built on autonomy and free choice. Therefore, if an award arises from a wrongly-seated arbitration, it would not be the result of the arbitration that the parties had bargained for.

Here, the choice had been made to seat any arbitration in Macau. The Respondents had not waived that choice and had in fact objected to the SIAC arbitration. Accordingly, the Court allowed the Respondents' appeal and set aside the Leave Order.

The Claimant's appeal

Conversely, the Court of Appeal upheld the Judge's decision to set aside the Leave Order as against the 4th Respondent.

The Court agreed with the Judge that the dispute between the parties arose from the alleged breach of obligations in the Master Agreement, which contained the arbitration clause. However, the 4th Respondent was found not to be a party to the Master Agreement.

Since the 4th Respondent had not agreed to arbitration, it could not be said that the arbitration had been validly commenced against it. Therefore, the Award was not valid as against the 4th Respondent.

Concluding Remarks

This decision highlights the importance of observing the features of the arbitration as specified in the arbitration agreement. While the courts may have a policy of non-interference in respect of arbitral awards, they will not support the recognition and enforcement of an improperly conducted arbitration.

In this regard, the choice of seat can be seen to be a vital aspect of the arbitration. Parties to an arbitration should ensure strict compliance with the choice of seat. Further, parties to an arbitration agreement should be aware of the consequences and implications of having an arbitration seated in a particular jurisdiction, and should thus negotiate the choice of seat accordingly.

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