

Breach of Preconditions to Arbitration: A Question of Admissibility or Jurisdiction?

FEBRUARY 2026 | [SINGAPORE](#)



Introduction

Multi-tiered dispute resolution clauses are a common feature of commercial contracts. They generally require parties to attempt resolving the dispute amicably through negotiations or mediation, before referring the dispute to arbitration or litigation.

What happens when an arbitration is commenced even though the prior steps in the multi-tiered dispute resolution clause have yet to be satisfied?

In the recent decision in *DRO V DRP* [2025] SGHC 255 ("**DRO**"), the Singapore High Court ("**Court**") held, for the first time, that a failure to satisfy the preconditions to arbitration is a matter of admissibility, rather than jurisdiction. This is a departure from the Court of Appeal's approach in *International Research Corp PLC v Lufthansa Systems Asia Pacific Pte Ltd* [2014] 1 SLR 130 ("**Lufthansa**"), which had treated this defect as attacking the tribunal's jurisdiction.

The distinction between jurisdiction (*i.e.* the tribunal's power to hear the case) and admissibility (*i.e.* whether it is appropriate for the tribunal to hear the case) is significant because it determines who the ultimate arbiter is. The seat court has the power to decide on the tribunal's jurisdiction, but only the tribunal may decide issues of admissibility.

The respondent was successfully represented by [Avinash Pradhan](#) (Deputy Head) and Jasmine Thng (Senior Associate) from Rajah & Tann Singapore's [International Arbitration](#) Practice.

Background to the Dispute

Pursuant to a contract ("**Contract**"), the applicant had engaged the respondent and a third party (referred to in the judgment as "**Co A**") as contractors for a boiler and turbine package in Malaysia. The respondent and Co A were part of a consortium ("**Consortium**"), which was led by Co A and was an unincorporated association. The Contract defined the term "CONTRACTOR" as referring to the respondent and Co A "jointly and severally". Under the Contract, the respondent and Co A had distinct scopes of work; they were responsible for onshore and offshore works respectively. Each party was also to invoice the applicant directly for its respective scope of work.

The Contract contained the following dispute resolution clauses:

1. **Clause 25.1 ("Arbitration Clause"):** "All disputes ... which cannot be settled amicably shall be finally settled by arbitration in accordance with UNCITRAL Arbitration Rules ..."
2. **Clause 25.7:** "Notwithstanding the above, any dispute between the PARTIES shall, in first instance, be submitted by the PARTIES to their respective project management level for resolution, failing which the dispute shall then be referred to their respective senior management level."

Disputes arose under the Contract. The respondent commenced arbitration proceedings against the applicant for unpaid invoices and additional works. The applicant filed a challenge against the jurisdiction of the tribunal, which the tribunal dismissed. The applicant thereafter applied to the Court under section 10(3)(a) of the International Arbitration Act 1994 for a *de novo* review of the tribunal's ruling on jurisdiction, relying on the following two grounds:

1. that the respondent lacked *locus standi* to commence arbitration without joining Co A as a claimant ("**Locus Standi Ground**"); and
2. that the respondent had failed to comply with the preconditions to commencing arbitration under Clause 25.7 of the Contract ("**Pre-Arbitration Proceedings Ground**").

Decision of the High Court

Locus Standi Ground

The applicant contended that the Contract envisaged a two-party regime comprising the applicant and Co A, such that (i) the respondent was not a party to the Contract in its individual capacity; and (ii) both Co A and the respondent were required to act together in commencing arbitration against the applicant, regardless of the nature of the dispute.

The Court rejected the applicant's argument for the following reasons.

1. The definition of "CONTRACTOR" referred to the respondent and Co A "jointly and severally". This meant that the term "CONTRACTOR" could mean the respondent acting on its own, depending on the context.
2. In construing the arbitration clause, the Court concluded that arbitration clause may be invoked by Co A and the respondent jointly, or by Co A or the respondent acting alone – depending on the nature of the dispute.
3. In the present case, the respondent's claims in the arbitration were for payment for the onshore works it carried out. Under the Contract, the respondent was entitled to, on its own, invoice the applicant and receive payment. The Court therefore held that the dispute was between the applicant and the respondent only, such that the respondent had *locus standi* to commence the arbitration on its own.

Pre-Arbitration Proceedings Ground

The applicant further argued that:

1. the procedure in Clause 25.7, which required parties to convene a project level meeting and a senior management level meeting to discuss a dispute, was a condition precedent to commencing arbitration; and
2. the procedure in Clause 25.7 was not complied with, which barred the respondent from commencing arbitration.

The respondent's case was as follows:

1. The failure to comply with a condition precedent to arbitration goes to admissibility, and not the tribunal's jurisdiction.
2. Clause 25.7 was not a condition precedent to arbitration.
3. In any event, Clause 25.7 was complied with and/or waived by the applicant.

Admissibility versus jurisdiction

The first issue was whether the failure to comply with a condition precedent to arbitration was an issue of admissibility or jurisdiction.

As set out in our July 2023 article titled "[Breach of Preconditions to an Arbitration Agreement: A Matter of Jurisdiction or Admissibility?](#)", Singapore's legal position on this issue was previously unclear.

1. In favour of jurisdiction
 - In *Lufthansa*, the Court of Appeal found that the preconditions for arbitration had not been complied with and therefore held that the tribunal lacked jurisdiction. However, no submissions were made on the jurisdiction-admissibility distinction, so the Court did not consider whether such preconditions could be an admissibility issue.
2. In favour of admissibility
 - Two subsequent Court of Appeal cases considered and applied the jurisdiction-admissibility dichotomy, albeit in different contexts, in a manner which suggested that the satisfaction of arbitration preconditions went to admissibility. In fact, in *BTN and another v BTP and another* [2021] 1 SLR 276 ("*BTN*"), the Court of Appeal made *obiter* comments that "objections regarding preconditions to arbitration ... are matters of admissibility, not jurisdiction". This is also consistent with recent decisions by the English and Hong Kong courts, as well as leading commentary on international arbitration principles.

In *DRO*, the Court agreed with the respondent's position and held that a precondition to arbitration is a matter that goes to admissibility and not jurisdiction.

1. At the outset, the Court agreed with the respondent that the Court's treatment in *Lufthansa* as a matter going to jurisdiction rather than admissibility, was *obiter* and not binding on it.
2. As a matter of principle, treating arbitration preconditions as an admissibility issue was consistent with the distinction between jurisdiction (i.e. the power of the tribunal to hear a case) and admissibility (i.e. whether it is appropriate for the tribunal to hear it). This approach had also been approved by the Court of Appeal in *BTN*, albeit *obiter*, and was also in line with the general consensus in international arbitration.

Preconditions to arbitration, satisfaction and/or waiver

Furthermore, the Court held that Clause 25.7 was not a condition precedent to commencing arbitration, and that the applicant had in any event waived strict compliance with it.

1. Clear words are necessary to create a condition precedent. The Arbitration Clause made no reference to Clause 25.7, and the phrases "which cannot be settled amicably" (in the Arbitration Clause) and "[n]otwithstanding the above" (in Clause 25.7) were insufficiently clear to make compliance with Clause 25.7 a condition precedent to commencing arbitration.
2. Even if Clause 25.7 were a precondition to arbitration, the Court found on the facts that the applicant had waived strict compliance with it. The respondent had expressly requested holding a senior management level meeting pursuant to Clause 25.7. In response, the applicant had not challenged the invocation of Clause 25.7, and had instead agreed to, described the meeting as a "Top Management Meeting", and subsequently attended the meeting.

The Court therefore held that the Tribunal had jurisdiction with respect to the Arbitration, and dismissed the application with costs awarded to the respondent.

The applicant did not file an appeal against the Court's decision.

Concluding Remarks

The Court's decision in *DRO* is the first published Singapore judgment which clarifies that preconditions to arbitration are issues of admissibility, and not jurisdiction. This is in line with Singapore's approach of minimal curial intervention towards arbitration, which recognises that parties who contract to arbitrate their disputes generally intend for the various aspects of their dispute to be determined with finality before a single forum (i.e. the tribunal).

DRO also offers several practical takeaways:

1. **Multi-tiered dispute resolution clauses must be drafted carefully:** If parties intend to stipulate preconditions to commencement of arbitration (such as commercial negotiations or mediation), they should take pains to state this clearly. For example, they should state clearly (i) the individuals which must be present at each level of negotiations, and how long parties must attempt each stage of negotiations; and (ii) that the commencement of arbitration is subject to the satisfaction of these preconditions.
2. **Ensure compliance with multi-tiered dispute resolution procedure:** Parties who intend to commence arbitration should ensure that they closely comply with the procedure in the contractual dispute resolution provision. For example, where a party initiates negotiations, it may wish to expressly state that these negotiations are conducted pursuant to the multi-tiered dispute resolution procedure. Where initial steps of a pre-arbitration procedure have not been strictly complied with, acquiescence to proceeding with subsequent steps may be interpreted as waiving strict compliance with the multi-tiered dispute resolution procedure.

Overall, *DRO* provides welcome reassurance that Singapore courts will adopt a principled, pro-arbitration approach that emphasises the finality of arbitration while promoting efficiency and commercial common sense.

Visit [Arbitration Asia](#) for insights from our thought leaders across Asia concerning arbitration and other alternative dispute resolution mechanisms, ranging from legal and case law developments to market updates and many more.

Contacts

Avinash Pradhan

PARTNER, SINGAPORE | PARTNER, MALAYSIA

D +65 6232 0436

avinash.pradhan@rajahtann.com

Please feel free to contact the editorial team of *Arbitration Asia* at arbitrationasia@rajahtannasia.com, and follow us on LinkedIn [here](#).

Rajah & Tann Asia is a network of member firms with local legal practices in Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines, Singapore, Thailand, and Vietnam. Our Asian network also includes our regional offices in China as well as regional desks focused on Brunei, Japan, and South Asia. Member firms are independently constituted and regulated in accordance with relevant local requirements.

The contents of this article are owned by Rajah & Tann Asia together with each of its member firms and are subject to all relevant protection (including but not limited to copyright protection) under the laws of each of the countries where the member firm operates and, through international treaties, other countries. No part of this article may be reproduced, licensed, sold, published, transmitted, modified, adapted, publicly displayed, broadcast (including storage in any medium by electronic means whether or not transiently for any purpose save as permitted herein) without the prior written permission of Rajah & Tann Asia or its respective member firms.

Please note also that whilst the information in this article is correct to the best of our knowledge and belief at the time of writing, it is only intended to provide a general guide to the subject matter and should not be treated as legal advice or a substitute for specific professional advice for any particular course of action as such information may not suit your specific business and operational requirements. You should seek legal advice for your specific situation. In addition, the information in this article does not create any relationship, whether legally binding or otherwise. Rajah & Tann Asia and its member firms do not accept, and fully disclaim, responsibility for any loss or damage which may result from accessing or relying on the information in this article.