

Foreign bodies
corporate appearing
without legal
representation in
Singapore
International
Commercial Court
matters?

*Offshoreworks Global (L) Ltd
v POSH Semco Pte Ltd [2020]
SGCA(I) 4*

30 September 2020

LEGAL
UPDATE

In this Update

The recent Court of Appeal case of *Offshoreworks Global (L) Ltd v POSH Semco Pte Ltd* [2020] SGCA(I) 4 clarifies that the prohibitions against corporate self-representation in O5 r6(2) and O12 r1(2) of the Rules of Court apply to matters heard by the Singapore International Commercial Court.

There is also no leave mechanism in the Rules of Court available to foreign bodies corporate appearing in these matters.

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INTRODUCTION

The recent Court of Appeal case of *Offshoreworks Global (L) Ltd v POSH Semco Pte Ltd* [2020] SGCA(I) 4 clarifies that the prohibitions against corporate self-representation in O5 r6(2) and O12 r1(2) of the Rules of Court (“**ROC**”) apply to matters heard by the Singapore International Commercial Court (“**SICC**”).

The leave mechanism in O1 r9(2) of the ROC is not available to foreign bodies corporate appearing in SICC matters.

This decision reveals a lacuna in the current legal regime governing corporate self-representation by foreign bodies corporate which may only be resolved by introduction of appropriate legislative amendments in the future.

BACKGROUND

The Respondent applied for:

- (i) summary judgment against the Appellant, a Malaysian registered body corporate, for the sum of S\$4,078,226.48 with interest and costs; and
- (ii) a declaration that a guarantee issued by the Appellant to the Respondent was an “on-demand performance guarantee” in SIC/Summons No 50 of 2019 (“**SUM 50**”).

THE HIGH COURT’S DECISION

The High Court Judge in SUM 50:

- (i) entered summary judgment in favour of the Respondent against the Appellant for the sum of USD3,306,446.50 with interest and costs (“**Summary Judgment**”); and
- (ii) granted the Appellant unconditional leave to defend the Respondent’s claim for the remaining amount of USD771,779.98.

The Appellant appealed to the Court of Appeal.

THE COURT OF APPEAL'S DECISION

As the Appellant, a Malaysian registered body corporate, appeared before the Court of Appeal without legal representation, the Court of Appeal addressed the preliminary issue of whether a foreign body corporate, must be represented by a solicitor in SICC matters.

KEYPOINT

The governing provisions provide that foreign bodies corporate in all proceedings before the SICC as well as in all appeals from the SICC must be represented by a solicitor

KEYPOINT

As the leave mechanism pursuant to O1 r9(2) of the ROC does not apply to foreign bodies corporate, this possible legal route for corporate self-representation is unavailable to a party which is a foreign body corporate

The Court of Appeal held that the present legal regime (*ie* the prohibitions against corporate self-representation in O5 r6(2) and O12 r1(2) of the ROC) applies to SICC matters and that the leave mechanism in O1 r9(2) of the ROC is not available to foreign bodies corporate appearing in SICC matters as a possible legal avenue for corporate self-representation with leave of court.

The Court of Appeal observed that there are limits to the manner in which the provisions of the ROC can be interpreted, and that while it is unfortunate that the present legal regime resulted in an outcome which was neither pragmatic nor desirable (as SICC matters almost always involve at least one party who is a foreign body corporate), the Court of Appeal could not effectively rewrite the relevant rules in order to achieve what it perceived would be a just and fair result.

KEYPOINT

This issue is a lacuna in the current legal regime governing corporate self-representation

The Court of Appeal was of the view that this issue is sufficiently significant to merit consideration for the introduction of appropriate legislative amendments in the future.

In any event, the Court of Appeal held that the Appellant's appeal ought to be dismissed on its merits.

The Court of Appeal dismissed the Appellant's appeal and affirmed the High Court judge's finding on the Summary Judgment.

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