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One Arbitration Agreement to Rule Them All

Singapore International Commercial Court finds that an arbitration clause in a memorandum of understanding applies to individual sale contracts with no dispute resolution clause but which were nonetheless concluded pursuant to the parties' understanding

15 August 2024

LEGAL UPDATE



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In *Pertamina International Marketing & Distribution Pte Ltd v P-H-O-E-N-I-X Petroleum Philippines, Inc (also known as Phoenix Petroleum Philippines, Inc) and another matter* [2024] SGHC(I) 19, the Singapore International Commercial Court found that an arbitration clause in a memorandum of understanding applies to individual sale contracts with no dispute resolution clause but which were nonetheless concluded pursuant to the parties' understanding.

This update discusses the decision and the practical considerations for parties in long-term commercial relationships under a framework or 'umbrella' agreement.

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INTRODUCTION

In *Pertamina International Marketing & Distribution Pte Ltd v P-H-O-E-N-I-X Petroleum Philippines, Inc (also known as Phoenix Petroleum Philippines, Inc) and another matter* [2024] SGHC(I) 19, the Singapore International Commercial Court found that an arbitration clause in a memorandum of understanding applies to individual sale contracts with no dispute resolution clause but which were nonetheless concluded pursuant to the parties' understanding.

This update discusses the Singapore courts' analysis and the practical considerations for parties in long-term commercial relationships who are likely to enter into multiple individual contracts under a framework or 'umbrella' agreement.

RELEVANT BACKGROUND

Pertamina and Phoenix were two active players in the petroleum market who wanted to establish a long-term strategic partnership through the execution of an MOU. The MOU was an 'umbrella' agreement which identified several workstreams for the parties to collaborate on, including the "*regional trading of downstream petroleum products*" ("**Workstream 1**").

Following the MOU, the parties commenced the trading of petroleum products as contemplated under Workstream 1. Pertamina supplied a total of seven shipments of petroleum products to Phoenix after a tender process where various suppliers (including Pertamina) submitted bids for Phoenix's consideration. The parties confirmed the commercial terms for these seven shipments through emails, which constituted binding contracts separate from the MOU ("**Sale Contracts**").

The MOU provided for any "*dispute arising out of or in connection with* [the MOU]" to be resolved by SIAC arbitration. In contrast, the Sale Contracts did not contain any arbitration clause or alternative dispute resolution mechanism.

Disputes eventually arose between the parties because Phoenix failed to make payment of outstanding amounts owed to Pertamina under the Sale Contracts. Pertamina commenced SIAC arbitration against Phoenix to recover these outstanding amounts, which Phoenix declined to participate in on the basis that there was no binding arbitration agreement between the parties under the Sale Contracts.

The tribunal proceeded to hear the dispute in spite of Phoenix's jurisdictional objection and made an arbitral award in Pertamina's favour ("**Award**"). Thereafter, the parties engaged in various court actions in both the Philippines and Singapore, including:

(a) Phoenix's application in the Philippines for a declaration that the SIAC arbitration proceedings and the Award were void;

(b) Pertamina's successful application in Singapore to register and enforce the Award ("**Enforcement Order**"); and

(c) Phoenix's application before the SICC to set aside the Enforcement Order and Pertamina's cross-application for a declaration that the Award was valid and binding, along with an anti-suit injunction against Pertamina (collectively, "**Setting Aside Application**").

This update discusses the SICC's decision in the Setting Aside Application.

SINGAPORE INTERNATIONAL COMMERCIAL COURT'S DECISION

The SICC dismissed the Setting Aside Application and held that the disputes under the Sale Contracts fell within the scope of the arbitration agreement contained in the MOU.

In arriving at its decision, the SICC bore the following considerations in mind:

(a) There is a presumption that parties in multi-contract relationships intend to have a one-stop adjudication, such that any disputes arising out of the relationship into which they have entered are to be decided by the same tribunal.

(b) As the Sale Contracts came into existence pursuant to the parties' implementation of the projects as defined in the MOU, the parties' disputes under the Sale Contracts can be said to be connected with the MOU and therefore governed by its arbitration agreement.

(c) The fact that the Sale Contracts themselves are silent on the applicable dispute resolution mechanism is readily understandable from a commercial perspective. Parties who have already included an arbitration clause in their framework or 'umbrella' agreement may not see the need to 're-agree' a term and instead focus their efforts on negotiating the key commercial or operative elements of the relevant transaction.

The SICC also held that it had the power to grant an anti-suit injunction against Phoenix and exercised its discretion to do so accordingly.

COMMENTARY

The SICC's decision is a welcome reminder of the pro-arbitration stance of the Singapore courts. Even though the Sale Contracts themselves did not contain an arbitration agreement, the SICC was prepared to interpret the arbitration clause in the MOU expansively such that it also governed disputes arising out of contracts which were concluded to implement the MOU.

The SICC's decision also demonstrated the commercial practicality of the Singapore courts in recognising that parties negotiating multiple and/or repeat transactions in long-term strategic partnerships typically focus on the commercial terms of the deal, instead of seeking to 're-agree' a dispute resolution clause which had already been expressly stated in the parties' existing framework or 'umbrella' agreement.

That said, parties in such long-term commercial relationships should nonetheless be careful not to assume that each and every contract they conclude will be governed by the same arbitration agreement as in their framework or 'umbrella' agreement. As highlighted above, one of the key factors underpinning the SICC's decision was the "*natural inference*" that the Sale Contracts came into existence "*pursuant to the parties' implementation of the Projects* [Workstream 1] *as defined in the MOU*". The SICC may not necessarily have reached the same conclusion if the parties' dispute arose from other projects or workstreams which were less closely connected to the MOU.

To avoid any potential dispute over the applicable dispute resolution forum, it would be advisable for parties in multi-contract relationships to include an arbitration clause in each individual contract or, at the very least, expressly refer to the arbitration clause in the parties' existing framework or 'umbrella' agreement (if any). Conversely, if parties intend for disputes arising out of a specific transaction to be adjudicated differently from other transactions in their existing framework, they should also explicitly state the alternative dispute resolution mechanism when concluding the relevant contract.

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If you have any questions or comments on this article, please contact:



Mahesh Rai
Deputy Head, Construction & Engineering
Director, Dispute Resolution

T: +65 6531 2584
E: mahesh.rai@drewnapier.com



Samuel Soo
Senior Associate, Dispute Resolution

T: +65 6531 2576
E: samuel.soo@drewnapier.com

Drew & Napier LLC
10 Collyer Quay
#10-01 Ocean Financial Centre
Singapore 049315

www.drewnapier.com

T : +65 6535 0733
T : +65 9726 0573 (After Hours)
F : +65 6535 4906

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