Kluwer Arbitration Blog

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Roger Alford (General Editor) (Notre Dame Law School), Crina Baltag (Managing Editor) (Stockholm University), and Monique Sasson · Saturday, March 8th, 2025

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The ITA Board of Reporters have reported on the following court decisions.

Government of the Republic of Lithuania v. Veolia Energie International S.A. and others, Supreme Court of Lithuania, e3K-3-214-403/2024, 18 November 2024

Vytautas Vaicekauskas, Motieka & Audzevi?ius, ITA Reporter for Lithuania

In November 2024, the Supreme Court of Lithuania annulled the decisions of the lower instance courts to stay a civil case due to ongoinging ICSID arbitration proceedings, establishing that the ICSID award would have no legal force in the EU and would not bind Lithuanian courts. The court emphasized the supremacy of EU law. Arguments that an SCC arbitration proceedings to which Lithuania is not a party were dismissed as well.

JP Srbijagas v. Arvi ir ko, UAB and Heimdal Enterprises Ltd., Supreme Court of Lithuania, 3K-3-41-823/2024, 08 February 2024

Vytautas Vaicekauskas, Motieka & Audzevi?ius, ITA Reporter for Lithuania

In February 2024, the Supreme Court of Lithuania uphled the decision of Lithuanian Court of Appeal, establishing that the ICC arbitration tribunal had the authority to extend the validity of an arbitration agreement to Arvi ir ko, UAB, even though Arvi ir ko, UAB had not signed the original arbitration agreement.

Litgrid AB v. Enersense AS and Enersense, UAB, Supreme Court of Lithuania, e3K-3-88-823/2024, 28 March 2024

Vytautas Vaicekauskas, Motieka & Audzevi?ius, ITA Reporter for Lithuania

In March 2024, the Supreme Court of Lithuania confirmed the decisions of the lower courts, emphasizing that disputes arising out of public procurement contracts are arbitrable, if they do not require a new procurement procedure. In this case, the court concluded that the dispute was related to the performance of the contracts, not their amendment and, thus, is arbitrable.

X v. Admiraal de Ruijter Ziekenhuis B.V., Supreme Court of the Netherlands, Nr. 20/00723, 28 May 2021

Richard Hansen, Linklaters LLP, ITA Reporter for the Netherlands

This Dutch Supreme Court decision regards revocation proceedings under Article 1068 DCCP. In upholding the Court of Appeals' revocation decision, the Supreme Court clarified that, when a revocation claim is simultaneously filed under all three grounds in Article 1068, the three-month time limit to initiate the proceedings can commence at different times for each of them, or at the same time, depending on the facts and circumstances. Here, the hospital was deemed to become aware of the fraud and forgery when it obtained the criminal file on 19 June 2017, meaning the 4 September 2017 writ of summons was timely.

Korbusiness B.V. v. [X] Belastingadviseur B.V., Court of Appeal of Amsterdam, Nr. 200.220.724/01, 19 November 2019

Richard Hansen, Linklaters LLP, ITA Reporter for the Netherlands

This Court of Appeals decision regards a setting aside claim. Korbusiness mainly argued a mandate violation (Article 1065(1)(c) DCCP), as the tribunal deemed the relevant partnership's 2013 profits to be zero after a lack of relevant documentation and consensus. The Court of Appeals rejected defences under Article 1048a DCCP (no failure to object in the arbitration as the relevant decision only appeared in the award) and the one-month limitation in the arbitration agreement's appeals provision (the present proceedings were a setting aside claim not an appeal). The Court of Appeals found no mandate violation and rejected the setting aside claim.

Stichting Amphia v. Defendant, Court of Appeal of Arnhem-Leeuwarden, Nr. 200.213.614, 08 October 2019

Richard Hansen, Linklaters LLP, ITA Reporter for the Netherlands

This decision rejects a setting aside claim under Articles 1065(1)(c) (mandate), (d) (reasoning) and (e) (public policy) DCCP. Although unclear whether the 'first' time limit (three months after the

award's sending) was met where the claim was instituted three months, two days after the award's date, the 'second' term (three months after serving the award with leave for enforcement) was in any event met. The Court also held that the award could not be set aside for an arbitrator's alleged lack of impartiality where the claimant knew of the relevant facts and could have challenged the arbitrator, but did not.

Stichting Intermaris v. Defendant, Supreme Court of the Netherlands, Nr. 19/01115, 08 November 2019

Richard Hansen, Linklaters LLP, ITA Reporter for the Netherlands

The Supreme Court answered prejudicial questions on whether, when assessing a petition for leave to enforce an arbitral award rendered against a consumer, the courts are obliged to sua sponte assess if rules of consumer law were complied with, including those on access to the courts (question 1) and extrajudicial collection costs (question 2). In short, question 1 – inter alia dealing with the requirement that a consumer be granted one month after the non-consumer invokes the arbitration clause to choose to bring the dispute before the courts anyway – was answered in the affirmative; question 2 was answered in the negative.

Seguro Social de Salud (ESSALUD) v. Corporacion Sensus S.A., Superior Court of Justice of Lima, Expediente No. 00094-2024-0-1866-SP-CO-01, Resolución No. 09/2024, 09 October 2024

Fernando Cantuarias Salaverry, Law School of Universidad del Pacìfico, ITA Reporter for Peru

The Commercial Chamber of the Superior Court of Justice of Lima states that a request for annulment against the decision of an emergency arbitrator is not admissible.

AA v. Cimpor – Indústria de Cimentos, S.A., Supreme Court of Justice of Portugal, 790/23.2YRLSB.S1, 14 November 2024

Iñaki Carrera, VdA Legal Partners, & José Miguel Júdice, Independent Arbitrator, ITA Reporters for Portugal

This decision is important for two reasons:

(1) There is still a tendency to apply Civil Procedural Code rules to domestic arbitration proceedings. However, both doctrine and case law almost unanimously agree that these rules do not apply unless previously agreed upon by the parties and the arbitral tribunal. The Supreme Court confirmed this understanding, emphasizing the autonomy of arbitration procedures.

(2) There is debate over whether the overall deadline for arbitration includes the time needed for clarifications and corrections of the award. The Supreme Court clarified that these additional time limits are not included in the overall deadline but are added on top of it.

Sacofa Sdn Bhd v. Super Sea Cable Networks Pte Ltd and another [2024] SGHC 54, Supreme Court of Singapore, High Court, Originating Application No. 1057 of 2023, 28 February 2024

Michael Hwang, Michael Hwang Chambers LLC, ITA Reporter for Singapore

This decision clarifies that the doctrine of transnational issue estoppel would not apply to prior enforcement court decisions on forum-neutral issues, e.g., jurisdictional challenge, citing primacy of the seat court under the New York Convention and the International Arbitration Act 1994. The court further reiterates the trite principle that the question of public policy is unique to each jurisdiction and is, therefore, a 'fact-sensitive' exercise best undertaken by the jurisdiction of which the public policy is in dispute.

DFL v. DFM [2024] SGHC 71, Supreme Court of Singapore, High Court, Originating Application No. 882 of 2022 (Summons No. 2625 of 2023), 15 March 2024

Michael Hwang, Michael Hwang Chambers LLC, ITA Reporter for Singapore

This decision suggests the possibility that a party may submit to a tribunal's jurisdiction for an interim relief application while reserving its right to challenge the tribunal's jurisdiction over the merits of the dispute. Further, contrary to the Singapore courts' usual favourable approach to inoperative/pathological arbitration agreements, this decision illustrates the courts' readiness to refuse enforcement of an award when the arbitration is conducted under a different set of rules that significantly differ from what was originally agreed upon, even if the original rules are now defunct.

Pertamina International Marketing & Distribution Pte Ltd v. P-H-O-E-N-I-X Petroleum Philippines, Inc (also known as Phoenix Petroleum Philippines, Inc) [2024] SGHC(I) 13, Singapore International Commercial Court (SICC), Originating Application No. 1 of 2024 (Summons Nos 8 and 10 of 2024), 26 April 2024

Michael Hwang, Michael Hwang Chambers LLC, ITA Reporter for Singapore

This decision affirms the jurisdiction of Singapore courts to grant an interim post-award anti-suit injunction, safeguarding their primacy as the supervisory court for hearing setting-aside applications and protecting the integrity of Singapore-seated arbitral awards. Further, this decision reminds parties that Singapore courts will not shy away from finding contempt and may, at their discretion, decline to hear parties until the contempt is fully addressed.

Swire Shipping Pte Ltd v. Ace Exim Pte Ltd [2024] SGHC 211, Supreme Court of Singapore, High Court, Originating Application No. 1280 of 2023, 16 August 2024

Michael Hwang, Michael Hwang Chambers LLC, ITA Reporter for Singapore

This case involved an application to set aside an arbitral award under Singapore's International Arbitration Act (IAA) and the UNCITRAL Model Law. The key issues were whether the arbitral

tribunal exceeded its jurisdiction and whether there was a breach of natural justice. The Singapore High Court, presided by Justice Mohan, dismissed the application, reiterating the high threshold for judicial intervention in arbitration. Despite recognizing the award as 'borderline unintelligible,' the court found no grounds for setting aside since all issues addressed in the award arose naturally from the main disputes and the parties had a reasonable opportunity to present their case.

Navayo International AG and another v. Ministry of Defence, Government of Indonesia [2024] SGHC(I) 10, Singapore International Commercial Court (SICC), Originating Summons No. 2 of 2023 (Summonses Nos 11, 589, 606 and 607 of 2023), 22 April 2024

Michael Hwang, Michael Hwang Chambers LLC, ITA Reporter for Singapore

In this significant decision, the Singapore International Commercial Court (SICC) addressed various procedural and substantive issues surrounding the enforcement of an arbitral award. The decision clarifies the circumstances under which enforcement orders may be set aside, particularly where fraud allegations are made. The court reaffirmed the principle that procedural deadlines for challenging enforcement orders must be strictly adhered to unless compelling reasons justify an extension. The court also provided guidance on the relationship between public policy considerations and enforcement of arbitral awards, emphasizing the importance of ensuring that allegations of fraud are substantively addressed in the appropriate forum.

DJO v. DJP and others [2024] SGHC(I) 24, Singapore International Commercial Court (SICC), Originating Application No. 8 of 2024, 15 August 2024

Michael Hwang, Michael Hwang Chambers LLC, ITA Reporter for Singapore

In this decision, the Singapore International Commercial Court (SICC) addressed an application to set aside an arbitral award under section 24(b) of the International Arbitration Act 1994 (2020 Rev Ed) (IAA) and the UNCITRAL Model Law. The claimant alleged breaches of natural justice and procedural irregularities, contending that the arbitral tribunal improperly relied on awards from parallel arbitrations. The court's analysis clarifies the principles governing arbitral independence, procedural propriety, and the threshold for setting aside awards in Singapore.

CVV v. CWB [2023] SGCA(I) 9, Supreme Court of Singapore, Court of Appeal, Civil Appeal No. 6 of 2023, 01 December 2023

Michael Hwang, Michael Hwang Chambers LLC, ITA Reporter for Singapore

In CVV v CWB [2023] SGCA(I) 9, the Singapore Court of Appeal (SGCA) upheld the Singapore International Commercial Court's (SICC) decision to reject an application seeking to set aside an arbitral award. This decision underscores the principle of minimal curial intervention in arbitration and the importance of respecting the autonomy of the arbitral tribunal.

X v. Y, Court of Cassation of Abu Dhabi, Cassation No. 586 of 2024 [Commercial], 08 July 2024

Malak Nasreddine & Khushboo Hashu Shahdadpuri, Al Tamimi & Company, ITA Reporters for the United Arab Emirates

This case involved an application before the Abu Dhabi Court of Cassation to challenge the Abu Dhabi Court of Appeal's decision to uphold the dismissal of the Appellants' action due to an arbitration clause. In its judgment, the Abu Dhabi Court of Cassation upheld the lower court's ruling, affirming the validity of the arbitration agreements despite the Appellants' claims that the abolition of the DIFC-LCIA renders the arbitration agreement impossible to enforce and that the signatories to the arbitration agreement lacked the required authority.

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