

Arbitration Alert

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**Singapore Court of Appeal re-affirms hybrid arbitration agreements**

In the recent decision of *Insigma Technology Co Ltd v Alstom Technology Ltd* [2009] SGCA 24, the Singapore Court of Appeal re-affirmed the validity of hybrid arbitration clauses where one arbitral institution would be required to apply the procedural rules of a different arbitral institution.

The clause that arose for consideration specified that:

“...Any and all such disputes shall be finally resolved by arbitration before the Singapore International Arbitration Centre [SIAC] in accordance with the Rules of the International Chamber of Commerce [ICC]...”.

In the High Court below, Judith Prakash J upheld the clause on the basis that:

- (a) there was in principle no objection to such a clause as the freedom to use hybrid arbitration clauses is inherent in the flexible nature of arbitration, and any inefficiency caused by such an arrangement would not render the clause invalid so long as the parties had agreed and intended for the arbitration to be conducted in such a manner; and
- (b) on the facts of the case, the SIAC had expressly confirmed that it would be able to follow the ICC rules, by substituting the appropriate corresponding actors to perform the functions of the ICC Secretariat, Secretary-General, and the court wherever necessary.

The Singapore Court of Appeal agreed entirely with the High Court's decision and made, *inter alia*, the following additional observations:

- (i) an arbitration agreement should be construed like any other commercial document, and in a manner so as to give effect to the intention of the parties;
- (ii) where parties had evinced a clear intention to settle the matter by arbitration, the courts would give effect to such an intention even if certain aspects of the agreement may be ambiguous, inconsistent, incomplete or lacking in certain particulars. This is so long as the arbitration can be carried out without prejudice to the rights of either party or result in an arbitration that is not within the contemplation of either party; and
- (iii) an exception to the above would be where the rules of arbitration adopted by the parties are contrary to any applicable policy considerations, which in the context of Singapore law, would generally mean rules of arbitration that were inconsistent with non-derogable provisions under the International Arbitration Act or the UNCITRAL Model Law on International Commercial Arbitration. However, no such contention was raised in this appeal.

A discussion of this case is also featured in the June 2009 issue of the Allen & Gledhill Legal Bulletin. Please [click here](#) to view this issue of the Legal Bulletin.

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Dinesh Dhillon  
Tel: +65 6890 7822  
E-mail: [dinesh.dhillon@allenandgledhill.com](mailto:dinesh.dhillon@allenandgledhill.com)

Edwin Tong  
Tel: +65 6890 7867  
E-mail: [edwin.tong@allenandgledhill.com](mailto:edwin.tong@allenandgledhill.com)

Yours faithfully  
**Allen & Gledhill LLP**  
Singapore

Allen & Gledhill LLP  
T +65 6890 7188 | F +65 6327 3800 | [publications@allenandgledhill.com](mailto:publications@allenandgledhill.com)  
One Marina Boulevard #28-00 Singapore 018989 | [www.allenandgledhill.com](http://www.allenandgledhill.com)

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