

Arbitration Alert

Dear Clients & Friends

Singapore Court of Appeal clarifies applicable law when SIAC Rules adopted

The Singapore Court of Appeal in *Navigator Investment Services Ltd v Acclaim Insurance Brokers Pte Ltd* [2009] SGCA 45 recently clarified whether adopting the Singapore International Arbitration Centre (SIAC) Rules in an arbitration agreement meant that the parties intended to apply the International Arbitration Act (“IAA”). In addition, the court also dealt with the issue of whether pre-action interrogatories and/or discovery could be ordered in arbitration proceedings.

Facts

Navigator Investment Services Ltd (“**Navigator**”) entered into a Distributorship Agreement with Acclaim Insurance Brokers Pte Ltd (“**Acclaim**”), whereby Acclaim was appointed as a distributor of Navigator’s investment products. This agreement contained an arbitration clause providing that any arbitration would be resolved in accordance with the “Arbitration Rules of the [SIAC] for the time being in force”. Subsequently, Acclaim sought pre-action discovery of certain documents, as well as pre-action interrogatories of certain information from Navigator, in order to assess whether it had a viable claim in conspiracy against Navigator and other individuals, and to determine who the conspirators were. Navigator in turn sought, *inter alia*, a declaration that Acclaim should arbitrate the dispute and the application for pre-action discovery and pre-action interrogatories. Navigator also later commenced arbitration proceedings seeking declarations to the same effect.

IAA to be used

As a starting point, the Court of Appeal referred to Rule 32 of the SIAC Rules 2007 which states that the “law of the arbitration shall be the [IAA]”. In the court’s view, the reference to the SIAC Rules meant that the parties had agreed to the application of the IAA to their dispute.

Pre-action discovery allowed

The court rejected Navigator’s application for a declaration that Acclaim should arbitrate the dispute and the application for pre-action discovery and pre-action interrogatories. As Acclaim’s action was made in the context of multi-party proceedings, there appeared to be

“... no reason why the court’s power to grant pre-action discovery or pre-action interrogatories should be curtailed, although this power will be exercised sparingly and only (we hasten to add) where valid reasons can be shown”.

In this connection, the court opined that pre-action discovery may be important in helping a party determine whether it has a viable cause of action against the other party to the arbitration agreement, or against a third party.

Facilitation of arbitration

The Court of Appeal was quick to add, however, that this did not mean that Acclaim’s application for pre-action discovery and interrogatories would be granted - Acclaim still needed to satisfy the requisite thresholds in order for its application to succeed. In addition, it was noted that the

approach of the courts was to facilitate and promote arbitration wherever possible between commercial parties. Any application (including an application for pre-action discovery and/or pre-action interrogatories) would be carefully scrutinised to ensure that the arbitration process was not being circumvented or otherwise undermined.

Comment

This decision demonstrates that whilst the policy of the Singapore courts is to promote arbitration whenever possible, this does not deter the courts from granting applications for pre-action discovery and interrogatories even if an arbitration agreement exists between the parties. However, as the Court of Appeal opined, the Singapore courts will scrutinise such applications carefully to ensure that the arbitration process is not being circumvented or undermined.

Further information

Should you have any queries as to how this may affect your business, please do not hesitate to get in touch with your usual contact at Allen & Gledhill LLP or either of the following:

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