KNOWLEDGE & INSIGHTS

Registration of Arbitral Awards in Malaysia – Only the Dispositive Section of the Arbitral Award is to be Registered

April 2020

INTRODUCTION

In *Siemens Industry Software Gmbh & Co Kg (Germany) (formerly known as Innotec Gmbh) v Jacob and Toralf Consulting Sdn Bhd (formerly known as Innotec Asia Pacific Sdn Bhd) (Malaysia) & Ors*[1], the Federal Court of Malaysia had the opportunity to address the following question of law:

> *"Whether for the purposes of an application made under Section 38 of the Arbitration Act 2005 and Order 69 Rule 8 of the Rules of the Federal Court 2012, the recognition and enforcement of an arbitration award by way of entry as a judgment of the High Court of Malaya ought to relate only to the disposition of the said award and not the entire award containing the reasoning, evidentiary and factual findings of the arbitral tribunal?"*

The decision of the Federal Court in ***Siemens Industry*** is instructive in that it address the following principal issue, namely, the notion of what precisely is to be entered as a judgment of the High Court of Malaya in so far as an application to register and enforce and arbitral award is concerned. The ancillary issue that the decision in ***Siemens Industry*** addresses is the extent to which confidentiality of the arbitral process is preserved in accordance with the provisions of the Arbitration Act 2005.

At the outset, disclosure is made that Tan Sri Dato' Cecil Abraham and Dato' Sunil Abraham appeared as counsel in the Federal Court for the successful party, Siemens Industry Gmbh & Co Kg (Germany).

THE BACKGROUND

Siemens Industry Software Gmbh & Co Kg (Germany) ("***Siemens***" or "***the Appellant***") on the one part and Jacob and Toralf Consulting Sdn Bhd, Mr. Jacob George, Mr. Thomas George, PEC Konsult Sdn Bhd as well as Mr. Toralf Mueller on the other part (hereinafter collectively referred to as "***the Respondents***") had entered into a settlement agreement where all the parties agreed to submit any disputes in relation to the settlement agreement to arbitration.

The arbitration clause contained in the settlement agreement read as follows:

[1] [2020] MLJU 363.

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> *"This Agreement shall be governed by and construed in accordance with Malaysian law. All disputes at all material time arising out of or in connection with the present Agreement shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce (ICC) by three arbitrators appointed in accordance with the said Rules. Language of the proceedings shall be English. The seat of the arbitration shall be Singapore."*

Notwithstanding the clear provisions of the agreement to arbitrate between the parties, the Respondents instituted proceedings before the High Court of Malaya at Kuala Lumpur by way of Suit No. S-22-129-2009 against Siemens and five others, alleging, inter-alia, that the Respondents were induced into entering the Settlement Agreement by reason of there being fraudulent misrepresentation on the part of Siemens and/or its representatives.

Siemens sought and obtained an order from the Court of Appeal of Malaysia dated 26th April 2011 to stay Suit No. S-22-129-2009 pending reference to arbitration. This Order of the Court of Appeal dated 26th April 2011 was upheld by the Federal Court of Malaysia.

Siemens then commenced arbitration proceeding under the ICC Rules in Singapore. During the arbitration proceedings, the Respondents filed a counterclaim premised on a cause of action in fraud, deception and misrepresentation. The Arbitral Tribunal ultimately held that the Respondent's Counterclaim was deemed withdrawn by reason of the Respondents' failure to provide the required advances.

The Arbitral Tribunal therefore only the determined the following claims put forward by Siemens:

(a) a declaration as to the validity and finality of the Settlement Agreement entered into between Siemens and the Respondents, and in the event of an opposite finding, the return to Siemens of the sum of EUR 3 million plus interests calculated from 8 August 2008;

(b) a declaration that this present Tribunal has sole jurisdiction to adjudicate on all disputes arising out of or in connection with the Settlement Agreement, and grant any reliefs, including reliefs sought by the Respondents in Kuala Lumpur Suit No. S-22-129-2009;

(c) a declaration as to the final and conclusive nature of the waiver of any claims of the Respondents under the Settlement Agreement, and their inability to assert any future claims, including the ones asserted under Kuala Lumpur Suit No. S-22-129-2009;

(d) a determination as to the absence of valid clause available to the Respondents in initiating proceedings under Suit 2009, and a further declaration for the Respondents to withdraw Kuala Lumpur Suit No. S-22-129-2009;

(e) a declaration to the effect that the Respondents jointly and severally bear the costs and expenses of (i) this arbitration, and (ii) Kuala Lumpur Suit No. S-22-129-2009, and respective appeals of Siemens plus interest; and

(f) dismissal of Respondents' counterclaim.

The arbitration proceeding was conducted in Singapore between 27th to 30th May 2014 and the Arbitral Award was delivered on 8th May 2015. The dispositive portion of the Arbitral Award reads as follows:

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(a) the Arbitral Tribunal concludes and holds that Siemens claim be dismissed in its entirety;

(b) the Arbitral Tribunal awards to the Respondents their costs of this arbitration, to be taxed pursuant to Section 21 of the Singapore International Arbitration Act, if not agreed;

(c) the Arbitral Tribunal also orders that the fees and expenses of the ICC and the Arbitral Tribunal be borne by Siemens; and

(d) all other claims and reliefs sought are hereby rejected.

HIGH COURT PROCEEDINGS

Having succeed in the arbitration proceedings, all the Respondents save for Mr. Toralf Mueller (i.e. the 5th Respondent) filed an application to register and enforce Part A to P of the Arbitral Award before the High Court of Malaya and not just the dispositive portion of the Arbitral Award contained in Part P at paragraphs 189 to 192 of the said award.

Madam Justice Khadijah Binti Idris in delivering the judgment of High Court of Malaya[2] held, inter-alia, that:

(a) the term "Award" is defined under Section 2 of the Arbitration Act, 2005 to mean the "*decision of the arbitral tribunal on the substance of the dispute*";

(b) the term "decision" has been defined to mean either:

I. according to the Concise Oxford Dictionary - "*a conclusion or resolution reached; settlement of a question, a formal judgment*"; and

II. according to Black's Law Dictionary - "A *judicial determination after consideration of the facts and the law; especially a ruling, order or judgment pronounced by a court when considering or disposing of a case.*"

(c) based on the above definitions, the term "decision" essentially means the final and ultimate conclusion or resolution, or settlement reached after due consideration given to the issue/question to be determined. Since the term relates to the final conclusion or resolution, it would not include the reasoning which led to the said conclusion or resolution;

(d) further, given that an award by an arbitral tribunal pursuant to an arbitration agreement is final and binding on the parties pursuant to Section 36 of the Arbitration Act 2005 and is immediately enforceable at the instant of the party in whose favour the award was made, Section 38 of the said Act is clearly a mechanism for the arbitral award to be made enforceable in the same manner as a judgment of the court, thereby granting the successful party access to the various execution

[2] The judgment of the High Court of Malaya is reported as *Jacob and Toralf Consulting Sdn Bhd & Ors v Siemens Industry Software GmbH & Co KG (Germany)* [2018] 1 LNS 460.

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mechanism provided for under the Rules of Court 2012, which includes, among others, writs of seizure and sale, garnishee proceedings and committal proceedings, to name but a few; and

(e) taking into account the purpose of Section 38 of the Arbitration Act 2005 and the mandatory formal requirement for an applicant to state to what extent the decision, which is the award, has been or has not been complied with, only the dispositive or operative part of the Award, which disposes of the arbitration, ought to be given due recognition as binding and enforceable by conferring it with the status and effect of a Judgment of the High Court of Malaya.

Ultimately, the High Court of Malaya held that

(a) the summary of findings sought to be registered by the Respondents could not possibly be executed within the execution mechanism currently provided for in the Rules of Court 2012;

(b) the function of the High Court of Malaya as an enforcing court is to give effect to the decision of the arbitral tribunal as manifested in the dispositive portion of the Arbitral Award and the High Court of Malaya ought to vigilantly guard against going behind matters which have been comprehensively dealt with in the course of the arbitration;

(c) the intention of the Respondents is clear in that the Respondents wished to rely upon the findings made by the Arbitral Tribunal against Siemens in litigating Kuala Lumpur Suit No. S-22-129-2009. In this regard, although the Respondents may possibly seek declaratory relief in respect of the summary of findings made by the Arbitral Tribunal, the pursuit of that course would necessarily and substantially relate to issues which have been comprehensively dealt with by the Arbitral Tribunal;

(d) accordingly, it is not the duty of the High Court of Malaya to recognise the summary of findings made by the Arbitral Tribunal as binding and enforceable as this would pave the way for the Respondents to re-open the issues which have been duly arbitrated;

(e) in any event, as stipulated in the Settlement Agreement, any disputes arising out of or in connection with the Settlement Agreement ought to be disposed by way of arbitration and not by way of a court process;

(f) arbitration is a private means of dispute resolution between disputing parties and due to the private nature of an arbitration, an arbitration award and the reasons which give rise to the final award may only be disclosed when it is reasonably necessary to establish or protect the legal right of a party to the arbitration proceedings as against a third party. The duty of parties to an arbitration proceedings to maintain the confidentiality of the arbitration proceedings, in particular the arbitration award and the reasons thereto, is a compelling ground for this court to decide against the Respondents; and

(g) the approach under the Reciprocal Enforcement of Judgments Act 1958 ("**REJA**") ought to be adopted for the purpose of determining the issue in the instant case. In this regard, REJA is concerned with the registration of the operative part of the judgment which refers to the decision of the relevant court for the payment of a certain sum of money, and is not concerned with the finding or reasoning made by the foreign court in arriving at such a decision.

The High Court of Malaya therefore only allowed the dispositive portion set out in Part P of the Arbitral Award to be registered and enforced as judgment of the High Court of Malaya.

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COURT OF APPEAL PROCEEDINGS

Dissatisfied with the decision of the High Court of Malaya, the 1st to 4th Respondents appealed to the Court of Appeal of Malaysia. The 5th Respondent filed an application to intervene in the appeal before the Court of Appeal. The 5th Respondent was granted leave to intervene in the proceedings before the Court of Appeal on 8th March 2018.

On 7th June 2018, the Court of Appeal allowed the 1st to 4th Respondents' appeal. Mr. Justice Harmindar Singh Dhaliwal JCA in delivering the written grounds of judgment of the Court of Appeal[3] held, inter-alia, as follows:

> *"[32] This brings us then to what we consider to be the crux of this whole appeal which is whether the entire award is capable of being registered to be recognised and enforced or whether it ought to be only the dispositive portions of the same. To recall, s. 38(1) of AA 2005, as set out earlier, states that an award shall be recognised as binding and be enforced by entry as a judgment in terms of the award or by action. Under s. 2 of AA 2005, "award" is defined as:*
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> > *a decision of the arbitral tribunal on the substance of the dispute and includes any final, interim or partial award and any award on costs or interest but does not include interlocutory orders.*
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> *[33] The appellants contended that a decision on the substance of the dispute includes the findings on the same and would therefore be a necessary portion of the award to be registered. In other words, the award must disclose the substance of the dispute. The respondent submitted, and which submission found favour with the learned JC, that a decision on the substance of the dispute must mean the final dispositive portion only.*
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> *[34] In this context, it is pertinent to observe that art. 25(2) of the ICC International Court of Arbitration Rules 1998, on which this arbitration was bound by, provides: "The Award shall state the reasons upon which it is based". This requirement is also found in our s. 33(3) AA 2005. Our attention was also drawn to Russel on Arbitration, (23rd edn) at pp. 6-028 where it is stated: "A reasoned award is one in which the tribunal sets out the reasons for its decision and these reasons form part of the award itself".*
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> *[35] The importance of making a reasoned award available to all parties is also explained in the Handbook on International Commercial Arbitration (1st edn, 2009) by Peter Ashford at p. 262:*
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> > *As ever, it must be borne in mind that the Award has three main purposes. First, to tell the parties what they must do. Second, to explain why the decision has been made, and third, that of consideration by an enforcing body or a Court of Appeal, this demands, not formality, but sufficient information to enable the award to stand on its own.*

[3] The judgment of the Court of Appeal is reported as *Jacob and Toralf Consulting Sdn Bhd & Ors v Siemens Industry Software Gmbh & Co KG (Germany); Toralf Mueller (Intervener)* [2019] 10 CLJ 281.

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[36] In Christopher Martin Boyd v. Deb Brata Das Gupta [2014] 9 CLJ 887, the Federal Court observed (at p. 897) that the enforcement of arbitration awards must be viewed in two parts. First is the registration of the arbitration award itself as a judgment of the court and secondly the enforcement or execution of such a judgment. Reverting to the instant appeal, it is therefore a fair argument that the purpose of the registration of an award is to enable the award to be enforced or challenged. We find merit in the argument that if only the dispositive part of the award is registered, the court tasked with enforcement will be deprived of the advantage of understanding the arbitrator or tribunal's reasoning.

[37] We are also persuaded that the bifurcation of the award, as suggested by the respondent, was not intended by Parliament as by virtue of s. 36 of AA 2005, the award may be relied upon by any party in any proceeding in any court. If it was the intention for only the dispositive part of the award to be registered, the statute would have provided so in clear terms.

[38] In our view, there is nothing in s. 38 of the AA 2005 or anywhere else in the same Act which allows for only part of the award to be registered except for s. 39(3) which allows for part of the award to be recognised and enforced where a decision is made on matters not submitted to arbitration. This applies where the decision is separable. This lends support to the proposition that if indeed it was the intention of the Legislature to allow for registration of only the dispositive part, it would have been clearly stated in terms similar to how it was provided in s. 39(3) for separable decisions.

[39] Now, the learned JC in arriving at her decision, by way of an analogical comparison, relied on the procedures that are applicable with the Reciprocal Enforcement of Judgments Act 1958 ("REJA"). We were also invited by learned counsel for the respondent in this appeal to consider drawing an analogy with s. 4 of REJA which has the effect of registering foreign judgments as a judgment of the High Court of Malaya for the purpose of enforcement of the same. It was submitted that under s. 2 of REJA, the definition of "judgment" includes a foreign arbitration award.

[40] After a careful perusal of the provisions of REJA, we were of the view that REJA only applies to foreign judgments and not arbitration awards. We note that the definition of "judgment" in s. 2 of REJA includes "an award in proceedings in an arbitration if the award has, pursuant to the law in force in the place where it was made, become enforceable in the same manner as a judgment given by a court in that place". It is our impression, therefore, that REJA does not deal with arbitration awards as submitted. It applies to awards which have become enforceable in a foreign country as a judgment of the court, usually after registration in accordance with the laws of that foreign country.

[41] We also do not think that ss. 3 and 4 of REJA, upon which much reliance was placed by the learned JC, provide any assistance as those provisions apply only to judgments given in the superior courts of reciprocating countries. It would have been more appropriate to rely on the provisions of AA 2005 which is not only recent legislation but specifically created to govern all matters relating to arbitration in Malaysia.

[42] Much reliance was also placed on English authorities to advance the proposition that only the material part of the award is to be registered. The cases cited in support were Enterprise Insurance Company Plc v. U-Drive Solutions (Gibraltar) Ltd And Another [2016] EWHC 1301 ("Enterprise Insurance "); Brake v. Patley Wood Farm LLP [2014] EWHC 4192 and Konkola Copper Mines v. U&M Mining Zambia Ltd [2014] EWHC 2374. However, our assessment of these cases shows no such

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proposition. Instead, the courts there were concerned with the issue of whether there was a final award, so as to provide the court with jurisdiction, as opposed to an interim or partial award or a procedural order. The courts there were also interpreting various provisions of the UK Arbitration Act 1996 and we were not advised as to whether our own AA 2005 had the same or similar provisions.

[43] What is pertinent though is that unlike our AA 2005, there is no statutory definition of an award in English arbitration law as was noted in the English cases cited earlier. In the English cases, reference is invariably made to Russel on Arbitration where, for example, in the case of Enterprise Insurance, supra, the following passage was cited with approval (at para. 36):

> *In principle an award is the final determination of a particular issue or claim in the arbitration. It may be contrasted with orders and directions which address the procedural mechanisms to be adopted in the reference.*

[44] So, whether an award is final or determinative of the claim or part of the claim and not an interim or partial word is not an issue in the instant appeal. Despite the forceful submissions of learned counsel for the respondent, we are not persuaded that the English cases provide the kind of guidance as submitted or, at least, not in the context of the issues confronting us."

The Court of Appeal set-aside the initial order of the High Court of Malaya and instead ordered that the entire Arbitral Award be registered as a judgment pursuant to Section 38 of the Arbitration Act 2005.

FEDERAL COURT PROCEEDINGS

Dissatisfied with the decision of the Court of Appeal, Siemens sought leave to appeal to the Federal Court of Malaysia, which was granted. On appeal, the Federal Court was tasked with determining a single question of law:

> "*Whether for the purposes of an application made under Section 38 of the Arbitration Act 2005 and Order 69 Rule 8 of the Rules of the Federal Court 2012, the recognition and enforcement of an arbitration award by way of entry as a judgment of the High Court of Malaya ought to relate only to the disposition of the said award and not the entire award containing the reasoning, evidentiary and factual findings of the arbitral tribunal*?"

In deciding this principal issue, Chief Justice Tengku Maimun Tuan Mat FCJ in delivering the grounds of judgment of the Federal Court held, inter-alia, that:

(a) if the intention of Parliament had been to register the findings as part of the decision of an arbitral tribunal then the definition of the term "award" in Section 2 of the Arbitration Act 2005 ought to read as "a decision of the arbitral tribunal **and** the substance of the dispute" as opposed to the current definition which read as "a decision of the arbitral tribunal **on** the substance of the dispute";

(b) whilst it is accepted that an arbitral tribunal should give reasons for the award, just like a court of law give reasons for every decision made, does not necessarily mean that the said reasons should be incorporated for purposes of registration under Section 38 of the Arbitration Act 2005. Section 38 of the Arbitration Act 2005 makes reference to the words "in terms of the award", which indicates that

it is not the entire arbitral award but rather the dispositive portion only which is to be registered as a judgment of the High Court of Malaya; and

(c) in the context of the present appeal, the entire Arbitral Award embodied Part A to Part P, which included, amongst other, the issues to be tried, the witness testimonies, the submission of the parties, the findings, the reasoning and analysis of the Arbitral Tribunal, which are not necessary for purposes of registration under Section 38 of the Arbitration Act 2005. The material part of the Arbitral Award capable of being registered, recognised and enforced as a judgment of the High Court of Malaya is the dispositive portion, namely, Part P of the Arbitral Award on its own.

The following passage from the written grounds of judgment of the Federal Court is instructive:

> "*[34] The award of the arbitral tribunal embodies the totality of the case before it which includes inter-alia, the relief sought, the issues to be tired, witness statements, submissions, summary of findings, costs and disposition. By analogy, this is similar to the grounds of judgment delivered by the courts, which are distinct and separate from the judgment or order itself. The dispositive award is the judgment whereas the entire award is the grounds of judgment. It defies logic that the whole award containing the findings and analysis of the arbitral tribunal of the evidence, which is akin to the grounds of judgment be considered as forming the terms of judgment to be registered as a judgment of the High Court. An analogy may also be drawn between the approach taken by the courts in dealing with an application under REJA and the approach that the courts ought to take in an application under Section 38 of the Arbitration Act 2005. Both REJA and Section 38 provide an avenue for the successful party to register the judgment in Malaysia as a judgment of the High Court.*"

The approach of the Federal Court in this instant appeal is consistent with the jurisprudence in other commonwealth jurisdictions as the following decisions of the courts in England & Wales, Australia and Singapore were expressly endorsed and adopted:

(a) *Caucedo Investments Inc and Another v Saipem* SPA [2013] EWHC 3375;

(b) *LR Aivonics Technologies Limited v The Federal Republic of Nigeria & Anor* [2016] EWHC 1761;

(c) *AED Oil Limited v Puffin* [2010] VSCA 37;

(d) *Electra Air Conditioning BV v Seeley International Pty Ltd* [2008] FCAFC 169; and

(e) *Denmark Skibstkeniske Konsulenter A/S Likvidation v Ultrapolis* 3000 [2010] SGHC 108.

In the context of this appeal, the Federal Court went on further to state that the Respondents insistence on the entire Arbitral Award being recognised and enforced as a judgment in order for it to be used in Kuala Lumpur Suit No. S-22-129-2009 was improper. Irrespective of the intention of the Respondents, the High Court of Malaya dealing with an application pursuant to Section 38 of the Arbitration Act 2005 is only an enforcement court and cannot be expected to allude to the merits of the Arbitral Tribunal's findings and analysis. The Federal Court did however state that there was nothing prohibiting the Respondents from relying on the findings of the Arbitral Tribunal in Kuala Lumpur Suit No. S-22-129-2009 despite the fact that the entire findings of the Arbitral Tribunal are not registered and/or enforced as a judgment of the High Court.

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In addressing the ancillary issue of confidentiality, the Federal Court concurred with the arguments put forward by Siemens that to register the entire Arbitral Award as a judgment of the High Court of Malaya and not just the dispositive portion would undermine the confidentiality of the arbitral process. To this end, at paragraphs 49 and 50 of its written grounds of judgment, the Federal Court expressly endorsed the following dicta contained in the written grounds of judgment of the High Court of Malaya in this very dispute:

> *"[96] Arbitration is a private means of dispute resolution between disputing parties and the award made binds parties who had consensually submitted to arbitration proceedings. Due to the private nature of an arbitration, it imposes certain implied obligation of confidentiality. In regard to confidentiality of the award, Russell on Arbitration states –*
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> > *The duty of confidence is qualified in relation to the award itself, when disclosure is reasonably necessary to establish or protect a party's legal rights as against a third party by founding a cause of action or a defence to a claim. In these circumstances disclosure of the award, including any reason given (but not the materials such as pleadings, witness statement, discovery etc. use to give rise to the award) will not be a breach of the duty of confidentiality*
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> *[97] In Insurance Company v. Lloyd's Syndicate [1994] C.L.C. 1303 the plaintiff applied to continue an injunction granted ex parte restraining the defendants from breaching the confidentiality of an arbitration award by disclosing it to third parties. The defendants obtained an arbitration award against the leading insurer, which was not binding on the following insurers, but the defendant wished to send the arbitration award to them on the basis it might persuade them to accept liability. The plaintiffs refused consent on the ground that the award and its reason was confidential and although they would not suffer any specific damage as a result of its disclosure, they were entitled to enforce that duty of confidence. The court granted the plaintiff's application. At the headnotes, Held –*
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> 1. *A party was only entitled to disclose an arbitration award to a third party if such disclosure was necessary to establish that party's legal right against the third party. Disclosure was not justified, and would be in breach of the implied term of confidentiality in the agreement to arbitrate, if disclosure would be merely helpful.*
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> *...*
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> *...*
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> *3. The duty of confidentiality was an implied negative covenant to maintain the essentially unquantifiable benefit of secrecy for both parties. It was not necessary to establish specify loss or damage to enforce such a covenant.*
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> *4. Although the court would exercise its discretion to refuse an injunction where hardship would be caused to the defendant by enforcement of the covenant, the defendant had failed to establish that hardship would result from the enforcement of the duty of confidentiality. Accordingly, the plaintiffs were entitled to a continuation of the injunction to restrain disclosure by the defendant of the arbitration award to the following reinsurers.*

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> *[98] It follows that an arbitration award and the reasons which gives rise to the final award may only be disclosed when it is reasonably necessary to establish or protect the legal right of a party to the arbitration proceedings as against third party. However, in the instant case there is no issue raised as to the necessity of disclosing the entire Final Award for purpose of protecting the right of either the Applicants of the Respondent. It is therefore imperative for parties to duly observe the confidentiality obligation relating to an arbitration award and reasons in order to preserve the confidential and private nature of an arbitration.*"

In conclusion, the Federal Court agreed with Siemens that the Court of Appeal erred in failing to distinguish between the role of a court of enforcement and the role of a court deciding on the merits of a claim. The Federal Court went on further to find that the Court of Appeal was wrong to conclude that there was any merit in the arguments put forward by the Respondents that if only the dispositive part of the Arbitral Award is to be registered, a court of law tasked with enforcement will be deprived of the advantage of understanding the Arbitral Tribunal's reasoning.

Ultimately, the Federal Court allowed Siemens' appeal and reversed the decision of the Court of Appeal. The Federal Court re-instated the order handed down by the High Court of Malaya that only the dispositive portion of the Arbitral Award ought to be given due recognition and deemed enforceable. In so doing, the Federal Court expressly answered the leave question in the affirmative.

COMMENTARY

In the context of commercial arbitration disputes as opposed to investment treaty disputes, the significance of the decision of the Federal Court in ***Siemens Industry*** are threefold:

(a) in so far as arbitral tribunals are concerned, there is a need to be cognisant that arbitral awards are clear in expressly prescribing the relief or orders handed down to ensure than any arbitral award handed down is capable of being properly enforced. To this end, it may be prudent to ensure that the dispositive portions in an arbitral award are clearly identified and demarcated. This is likely to assist the parties and the High Court of Malaya in the exercise of its role as an enforcement court under Section 38 of the Arbitration Act 2005;

(b) in so far as parties are concerned, the procedural aspects of how a court of enforcement will address an application made pursuant to Section 38 of the Arbitration Act 2005 has been made abundantly clear. Parties seeking to have an award registered, recognised and enforced will need to ensure that the orders sought before the High Court of Malaya are drafted in clear terms such that the dispositive portions of any arbitral award are properly captured in the relief sought by way of any originating summons filed pursuant to both Section 38 of the Arbitration Act 2005 read with Order 69 Rule 8 of the Rules of Court 2012 before the High Court of Malaya. The decision in ***Siemens Industry*** supplements the relatively recent decision of the Federal Court in *CTI Group Inc v International Bulk Carriers SPA*[4] by providing clarity as to how the national courts in Malaysia will properly enforce arbitral awards. The approach of the courts in Malaysia is consistent with the approach of other mature arbitral jurisdictions and reinforces Malaysia's position as an arbitration friendly jurisdiction; and

[4] [2017] 5 MLJ 314.

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(c) the notion of confidentiality of arbitral proceedings is further recognised and preserved by the courts in Malaysia. Whilst Section 41A of the Arbitration Act 2005 (as amended in 2018) was not specifically discussed in the written grounds of judgment of the Federal Court, the dicta of the Federal Court at paragraphs 49 and 50 of its written grounds of judgment amounts to a tacit endorsement and recognition of this recent amendment to the Arbitration Act 2005. It is pertinent to note that in respect of arbitration under the ICC Rules, arbitral awards issued post 1st January 2019 may be made public unless parties actively take steps to preserve confidentiality.

On a side note, the decision of the Federal Court in ***Siemens Industry*** is also important in that a signal has been sent to parties that the High Court of Malaya when sitting as an enforcement court, will not allow itself to be used as a conduit for parties seek to register and enforce an entire arbitral award for a collateral purpose.

CONTACTS

Dato' Sunil Abraham

PARTNER
sunil@cecilabraham.com

Aniz Ahmad Amirudin

PARTNER
aniz@cecilabraham.com