

Exposing Confidentiality of Tribunal's Deliberations

The Singapore International Commercial Court ("SICC") recently declined an order requiring the Tribunal to disclose its deliberations. It was held that interests of justice of the case do not outweigh the policy reasons for protecting the confidentiality of deliberations (see **CZT v CZU** [2023] SGHC(I) 11).

This case underlines the high threshold required to be met by an applicant seeking the production of a tribunal's records. It also highlights the willingness of the courts to intervene if the allegations of impartiality are "*very serious in nature*" and have "*real prospects of succeeding*".

In this case, the plaintiff contracted with the defendant to deliver certain items that included materials, machinery and equipment. The defendant asserted that the plaintiff had breached its contractual obligations as certain components of the items delivered were found to be defective. As such, the defendant commenced arbitral proceedings against the plaintiff under the International Commercial Court Rules.

In finding that the plaintiff was liable to the defendant for damages, interests and costs, the Tribunal, by majority, held that the items delivered were indeed defective. The dissenting Arbitrator did not sign the final award and launched a scathing attack against the majority, accusing the majority of, amongst others, "*lack of impartiality*" and that he had "*lost any and all trust in the impartiality of [his] fellow arbitrators*".

Aggrieved with the award rendered by the majority, the plaintiff applied to set aside the final award. Pursuant thereto, the plaintiff wrote to the members of the Tribunal to request disclosure of their records of deliberations. This request was turned down by the Tribunal. It is against this backdrop that the plaintiff filed three applications, in which it seeks the production of the records of deliberations from the members of the Tribunal. The plaintiff's applications were dismissed by the SICC.

The SICC held that while the default position would be that arbitrators' records are confidential due to policy reasons and are therefore protected against protection orders, it was noted that such protection is not absolute.

Arbitration Update

AUGUST 2023

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However, the SICC emphasised that exceptions are to be found in the “*very rarest of cases*” and that the facts and the circumstances of the case “*must be so compelling*” for the exceptions to be engaged. According to the SICC, a case involving allegations of corruption would be an example of a situation that would be serious enough to fall within the exception of the protection of confidentiality of deliberations.

On the facts and circumstances of the case, the plaintiff failed to persuade the SICC that the case falls within the exceptions of the protection of confidentiality for disclosure of the Tribunal’s records of deliberations. Particularly, in respect of the allegation of lack of impartiality that was raised as a ground in support of the plaintiff’s applications, the SICC was of the view that such an allegation was purely the dissenting Arbitrator’s “*impression*”.

It bears significance that the SICC has affirmed the general understanding within the arbitral community that arbitral proceedings are confidential. There is no provision in the Singapore International Arbitration Act addressing confidentiality of arbitrations. It will be interesting to see how the courts in our jurisdiction would deal with a similar situation within the context of section 41A of the **Arbitration Act 2005**.

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