Legal Update

Singapore court clarifies time limits for jurisdiction challenges and treatment of pre-arbitral steps – DSQ v DSR[1]

06 April 2026

A recent Singapore decision addresses two recurring and practically significant issues in international arbitration seated in Singapore. First, it clarifies the preclusive effect of Article 16(3) of the UNCITRAL Model Law on International Commercial Arbitration ("Model Law") ("Article 16") and section 10 of the International Arbitration Act 1994 ("Section 10") on belated jurisdictional challenges where a tribunal has already ruled on jurisdiction as a preliminary question. Secondly, it revisits the increasingly important distinction between jurisdiction and admissibility, in the specific context of alleged non-compliance with pre-arbitral procedural requirements.

The Case

The parties were Employer and Contractor under a design and build contract (the "Contract"). Differences arose between them, which were ultimately referred by the Contractor to arbitration (the "Arbitration"). The Arbitration culminated in an Award that awarded a sum of money to the Contractor. The Employer applied to court to set aside the Award because the Tribunal lacked jurisdiction.

The Employer contended that the Contractor had not followed that pre-arbitral procedure before commencing the Arbitration, and so the Tribunal had no jurisdiction[2]. The Tribunal had dealt with the Employer's jurisdictional objections as a preliminary question and had ruled in a Procedural Order that the pre-arbitral procedure had been followed, thus rejecting the Employer's jurisdictional objections.

In the Award, the Tribunal stated that the challenge to its jurisdiction was determined and rejected in the Procedural Order, but, as an alternate secondary position, stated that since the Employer had not pursued the jurisdiction point after the Procedural Order, it was abandoned and the Procedural Order and its reasons are to be treated as part of the Award.

The Employer's contention was that, by incorporating the Procedural Order into the Award, the Tribunal only *finally* determined the issue of jurisdiction in the Award, which meant that they were not precluded by the 30 days' timeline in Article 16[3] or Section 10[4] from challenging the determination.

The court had to address 2 related issues:

(a) Do Article 16 and Section 10 have a general preclusive effect on challenges to jurisdiction?
(b) Whether the alleged noncompliance with the pre-arbitration procedures go towards jurisdiction or admissibility.

[1] [2026] SGHC 67

[2] The contract was based on the FIDREC form and had a multi-tiered dispute clause that required disputes to be first referred to a Disputes Adjudication Board ("DAB"). The Contractor had referred some disputes to an existing DAB, but the DAB had refused to deal with them. The Employer's case was that the Contractor should have appointed new DAB to address the disputes. The Tribunal decided that the Contractor was correct to refer the disputes to the DAB and the court agreed with this finding.

[3] Article 16(3) Model Law requires that if the tribunal determines that it has jurisdiction as a preliminary question, a party must challenge that decision to the court within 30 days of receiving the notice.

[4] Similarly, by section 10(2) International Arbitration Act, if a tribunal rules as a preliminary question that it has jurisdiction, a challenge must be brought within 30 days of reeving notice of that decision.

Do Art 16(3) of the Model Law and s 10(3) of the IAA have general preclusive effect?

The Court reviewed the Singapore Court of Appeal decisions in *Rakna Arkshaka Lanka Ltd v Avant Garde Maritime Services ("Rakna")*[5] and *Republic of Korea v Mason Capital*[6] and concluded that Article 16 did have a general preclusive effect, but that such preclusive effect does not apply to a non-participating respondent who was not precluded from applying to set aside an award for lack of jurisdiction.

Accordingly, a participating party who had failed to challenge a preliminary ruling on jurisdiction within the prescribed 30-day period generally cannot thereafter raise the same jurisdictional challenge to set aside an award. As the Employer took part in the Arbitration it was not a "non-participating respondent". It follows that the Employer is precluded from seeking to set aside the Award for lack of jurisdiction.

Do the Employer's jurisdictional objections go towards jurisdiction or admissibility?

The Employer relied on the following passage from the Singapore Court of Appeal decision in *International Research Corp PLC v Lufthansa Systems Asia Pacific Pte Ltd* ("*Lufthansa*")[7] as authority for the proposition that non-compliance with pre-arbitral procedure goes towards a tribunal's jurisdiction.

"Given that the preconditions for arbitration set out in cl 37.2 had not been complied with, and given our view that they were conditions precedent, the agreement to arbitrate in cl 37.3 … could not be invoked. The Tribunal therefore did not have jurisdiction over the Appellant and its dispute with the Respondent." (At [63])

However, in the recent case of *DRO v DRP* ("*DRO*")[8], the General Division of the High Court did not regard *Lufthansa* to be binding authority on the distinction between admissibility and jurisdiction. The point was not argued in *Lufthansa* –instead, the court in *Lufthansa* proceeded on the uncontested premise that non-compliance with pre-arbitral procedure was a matter going to jurisdiction. Thus, the court in *DRO* concluded at [59] that *Lufthansa* was not binding authority that non-compliance with pre-arbitral procedure was a matter going to jurisdiction. The court went on to hold (at [60]–[63]) that non-compliance with pre-arbitral procedure should be treated as a matter of admissibility rather than jurisdiction. The court cited *BTN v BTP* ("*BTN*")[9], a decision of the Court of Appeal subsequent to *Lufthansa*. In *BTN*, the distinction between admissibility and jurisdiction was expressly discussed, and the court had decided that a tribunal's decision on the *res judicata* effect of a prior decision is a decision on admissibility, not jurisdiction.

The court agreed with the reasoning in *DRO* that a precondition to arbitration is a matter that goes to admissibility and not jurisdiction, for the following reasons:

(a) in principle, this is consistent with the distinction between jurisdiction (*i.e.*, the power of the tribunal to hear a case) and admissibility (*i.e.*, whether it is proper for the tribunal to hear it);
(b) this would be in line with the general consensus in international arbitration that preconditions to arbitration should be treated as matters of admissibility rather than jurisdiction, and there is no reason why Singapore should adopt a contrary position.

[5] [2019] 2 SLR 131
[6] [2025] 4 SLR 308
[7] [2014] 1 SLR 130
[8] [2025] SGHC 255
[9] [2021] 1 SLR 276

Conclusion

From a practical perspective, the case highlights several points for commercial parties:

(a) Jurisdictional objections must be taken early and decisively. If a tribunal rules against you on jurisdiction, the clock starts running immediately.
(b) Taking part while "keeping jurisdiction in reserve" is risky and may result in the objection being lost altogether.
(c) Pre-arbitral steps should be followed, but disputes over compliance will generally be resolved within the arbitration, not by the courts after the fact.

Thanks to its review of the current case law in Singapore, and its cogent explanation of the same, this decision helps to provide certainty on these 2 issues for practitioners and ensured that the position is Singapore is in keeping with the accepted position internationally.

For further information, contact:

S Suressh
Partner & Head, International Arbitration
Suressh@harryelias.com
+65 6361 9883

Poon Pui Yee
Partner
PuiYeePoon@harryelias.com
+65 6361 9875