Legal Update

Medipass & Anor v Erdenent Mining Corporation[1] - Arbitration Clauses, the Validation Principle, SIAC Misnomers, and Public Policy Enforcement

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The Singapore High Court addressed the following three issues of particular importance to international arbitration practitioners:

- The determination of the law of the arbitration agreement;
- The validity of the arbitration agreement when it references a non-existent arbitration institution;
- How public policy considerations (in particular allegations of criminality) engage with the enforcement of the award.

Background

The parties to this application were counterparties to a series of agreements in Mongolia concerning the operation and management of a hospital. The Applicants commenced arbitration against the Respondent in Singapore.

The Respondent challenged the Tribunal's jurisdiction. The Tribunal bifurcated the proceedings, with the first phase addressing jurisdiction and the second addressing the merits.

The Tribunal ruled in favour of the Applicants on both jurisdiction and the merits. The Applicants then obtained leave to enforce the Final Award, which the Respondent sought to set aside.

Jurisdiction

Governing Law Framework

The Respondent challenged the Tribunal's jurisdiction *inter alai* on the basis that the purported arbitration agreement referred disputes to the "International Arbitration Court of Singapore", which is not an existing arbitral institution.

The High Court held as follows:

a. Jurisdictional challenges are determined de novo[2].
b. The existence and interpretation of an arbitration agreement are determined by its governing law[3].
c. The governing law of the arbitration agreement is determined by the three-step approach affirmed by the Court of Appeal[4]:
   i. whether the parties expressly chose the governing law of the arbitration agreement;
   ii. in the absence of an express choice, whether the parties made an implied choice, with the law of the main contract as the starting point; and

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[1] [2026] SGHC 97
[2] *PT First Media v Astro* [2014] 1 SLR 372 at [164]
[3] *BCY v BCZ* [2017] 3 SLR 357 at [38]
[4] *Anupam Mittal v Westbridge Ventures II Investment Holdings* [2023] 1 SLR 349 ("*Anupam Mittal")* at [62] and [75].

iii. if neither an express nor an implied choice can be identified, the arbitration agreement is governed by the system of law with which it has the closest and most real connection.

Validation Principle. The Applicants relied on the "validation principle", arguing that if Mongolian law rendered the arbitration agreement invalid, that would undermine any inference that the parties intended Mongolian law to govern the agreement and instead supported an implied choice of Singapore law.

The High Court rejected that argument. In Singapore, the validation principle applies only where the parties were aware that the choice of governing law for the arbitration agreement could affect its validity[5]. There was no evidence that the parties had considered the governing law of the arbitration agreement, or appreciated its potential impact. The validation principle therefore did not apply.

Governing Law. As there was no express choice of law for either the arbitration agreement or the main contract, the Court had to identify the system of law with which the arbitration agreement had the closest and most real connection. The Court of Appeal in *Anupam Mittal* observed at [75] that, in such cases, the law of the seat will generally have the closest and most real connection because it governs the arbitral procedure. Here, Singapore was the only jurisdiction identified in the dispute resolution clause. The Court therefore agreed with the Tribunal that the arbitration agreement was governed by Singapore law.

Under Singapore law, the question was whether the parties had evinced a clear intention to resolve their disputes by arbitration. If that intention was sufficiently clear, minor drafting defects could be cured.

International Arbitration Court of Singapore. The Court held that this threshold was met. The only arbitral institution in Singapore whose name approximated the "International Arbitration Court of Singapore" was SIAC, which also includes a body known as the Court of Arbitration. In addition, three of the four key words in "International Arbitration Court of Singapore" mirrored the full name of SIAC, with "Court" replacing "Centre". Taken together, these features showed a sufficiently clear intention to arbitrate before SIAC. The arbitration agreement was therefore valid.

Enforcement and Public Policy

Having concluded that the arbitration agreement was valid and that the Tribunal had jurisdiction, the Court then turned to whether enforcement of the final award should nevertheless be refused on public policy grounds.

Two individuals who were directors of the Applicant and the Respondent respectively played significant roles in negotiating and implementing the Agreements. One is now being prosecuted in Mongolia for abuse of official position, unjustified enrichment, and money laundering. The other has fled Mongolia and is the subject of an Interpol Blue Notice[6]. The Respondent argued that enforcing the Final Award would effectively condone those alleged criminal acts and would therefore violate Singapore public policy.

Before the enforcing court could decide whether there was evidence sufficient to engage the public policy exception to enforcement, there was an antecedent question; to what extent could the enforcement court revisit the Tribunal's findings of fact and law?

In addressing that antecedent question, the Court reviewed the Singapore authorities and distilled two principles:[9]

a. The tribunal's findings of fact on alleged violations of public policy will ordinarily bind the parties. A party resisting enforcement on public policy grounds may therefore rely only on new evidence that was not before the tribunal.

[5] *BNA v BNB* [2020] 1 SLR 456 at [90]
[6] Blue Notices are issued by the General Secretariat of INTERPOL at the request of a member country's INTERPOL National Central Bureau and is a request to collect information about a person's identity, location or activities in relation to a criminal investigation.

b. The tribunal's findings of foreign law on the legality of the acts in question may be reopened only if there is palpable and indisputable illegality on the face of the award.

On the facts, the Tribunal had already concluded that the individuals had not breached the relevant Mongolian criminal statutes. It reached that conclusion with full awareness of the underlying allegations and considered them immaterial to the outcome. The Court found no new evidence capable of displacing the Tribunal's factual findings, and no palpable or indisputable illegality on the face of the award. The public policy challenge therefore failed.

Takeaways

The Court dismissed the application and upheld the Applicants' leave to enforce the Final Award. The decision offers three practical lessons. First, where parties have not chosen a governing law for the arbitration agreement, the law of the seat may be decisive in identifying the system with the closest and most real connection. Second, Singapore courts will seek to uphold arbitration agreements where the parties' intention to arbitrate is sufficiently clear, even if the clause contains an imperfect reference to the administering institution. Third, public policy objections to enforcement remain narrowly confined, particularly where the tribunal has already considered the underlying allegations and there is no genuinely new evidence or obvious illegality on the face of the award.

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