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Legal Update

When do funder-linked arbitrator connections justify a challenge? The Tata Power Co Ltd v Kleros Capital Partners Ltd and other matters [2026] SGHC(I) 15

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Tata challenged the appointment of 2 of the arbitrators before the Singapore International Commercial Court ("SICC") relying on non-disclosure by them of their connections to Kleros's third-party funder, Omni Bridgeway. The SICC dismissed the challenge holding that the non-disclosure did not give rise to apparent bias. The decision is significant, firstly because it addresses how apparent-bias analysis applies where arbitrators have other appointments in funded arbitrations, and secondly because it rejects the proposition that a funder is automatically to be treated as the funded party for disclosure purposes.

Brief facts and procedural context

Kleros commenced a SIAC arbitration against Tata arising out of two agreements. The tribunal comprised Prof Lawrence Boo as presiding arbitrator, Mr A K Ganguli SA and Mr Stuart Isaacs KC as co-arbitrators. The arbitration was bifurcated into liability and quantum phases. In the liability phase, the tribunal unanimously found Tata liable for breaches of the agreements. That liability award was not initially challenged.

After the tribunal had submitted a draft quantum award to SIAC, Tata filed a Notice of Challenge under the SIAC Rules challenging Prof Boo and Mr Isaacs. The challenge alleged, among other things, failures to disclose appointments in other arbitrations involving Omni Bridgeway, the third-party funder behind Kleros, and appointments in matters involving Kleros's counsel, Squire Patton Boggs. The SIAC Court dismissed the challenge, the quantum award was then issued, and Tata applied to court to challenge the appointments and to set aside the quantum and final awards on grounds including apparent bias.

By the time of the court hearing, Tata had narrowed its challenge. It relied on three points: Prof Boo's non-disclosure of a February 2022 ICSID arbitration involving an Omni Bridgeway-funded party; Prof Boo's alleged close personal and professional relationship with Mr Benjamin Hughes, a member of Omni Bridgeway's investment committee; and Mr Isaacs KC's non-disclosure of a March 2024 LCIA arbitration where Omni Bridgeway funded a party.

The court reaffirmed the objective test for apparent bias

The court applied the established Singapore test: whether a reasonable and fair-minded person observing the proceedings and knowing all the relevant facts would have a reasonable suspicion that a fair determination of the dispute was not possible. Any suspicion had to rest on objectively ascertainable facts and indicate a real possibility of bias, not one that was imagined or fanciful.

The court also said that where there is no apparent bias on the facts relied on, it is unnecessary to decide whether there was in fact a failure to disclose. The decision turned on whether the circumstances objectively justified a reasonable apprehension of bias, not simply on whether more disclosure would have been preferable.

Other funder-linked appointments did not, without more, show apparent bias

The court rejected Tata's complaint about the arbitrators' other appointments in unrelated arbitrations involving Omni Bridgeway-funded parties. It emphasised that none of those appointments had been made by Omni Bridgeway, any party to the arbitration, or counsel involved in it, and that the other arbitrations did not concern related issues or parties. Furthermore, that appointment of Mr Isaacs in the March 2024 LCIA arbitration post-dated both the Notice of Arbitration and the liability award.

This was not a case of repeat appointments or repeat instructions by the same party or law firm. The mere fact that Omni Bridgeway happened also to fund a party in those unrelated proceedings did not create apparent bias without more. The judgment therefore suggests that the existence of a common funder across unrelated matters is usually not a relevant factor in determining apparent bias.

Shared chambers links and Mr Hughes's role at Omni Bridgeway were insufficient

Tata also argued that Prof Boo should have disclosed his relationship with Mr Hughes, who had been a member of The Arbitration Chambers Singapore (of which Prof Boo was a founding member) and later Fountain Court Chambers (where both Prof Boo and Mr Hughes were door tenants), and who sat on Omni Bridgeway's investment committee. The court held that shared membership of those sets of chambers did not establish a close personal or professional relationship material to apparent bias.

A funder is not automatically the "party" for disclosure purposes

The clearest point on third-party funding is the court's rejection of Tata's submission that, because Kleros was funded, Omni Bridgeway should effectively be treated as the party for disclosure purposes. The court held that this depends on context and that adopting Tata's position would effectively require the court to pierce the corporate veil in every funded arbitration. It therefore disagreed that, in this case, the "party" to the arbitration for purposes of disclosure should be treated as Omni Bridgeway rather than Kleros.

That point is likely to be the most commercially significant aspect of the decision. It does not deny that funding relationships may matter in certain cases. It does, however, confirm that the relevance of a funder to disclosure and bias analysis is fact-sensitive rather than automatic.

Practical implications

For parties seeking to challenge the appointment of arbitrators in funded arbitrations, the case shows that non-disclosure of funder-linked matters will not by itself establish apparent bias. The court will ask whether the circumstances, viewed objectively and in context, show a real possibility that fair determination was not possible. Unrelated appointments, shared chambers affiliations, and a funder's economic interest were not enough here.

For funded parties, funders, counsel and arbitrators, the case confirms that third-party funding complicates disclosure analysis but does not collapse the distinction between funder and party. The practical takeaway is one of context, not formalism: funder involvement may be relevant, but the court will not assume that every funder-linked connection is disclosable in the same way as a direct party relationship or sufficient to ground a successful apparent-bias challenge.

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