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Key Legal Developments

1. **ARBITRATION: Singapore Court of Appeal lifts anti-enforcement injunction due to delay in application**

In *Sun Travels & Tours Pvt Ltd v Hilton International Manage (Maldives) Pvt Ltd* [2019] SGCA 10, the Court of Appeal lifted the anti-enforcement injunction that was initially granted by the High Court, on the basis of the respondent's delay in applying for the injunction.

In this case, the respondent ("Hilton") obtained two arbitral awards against the appellant ("Sun"). As Hilton was seeking the enforcement of the awards against Sun in the Maldives, Sun commenced action in the Maldivian courts to re-litigate the issues decided in the awards. Instead of immediately applying for anti-suit relief from the seat court (i.e. the Singapore court), Hilton sought to challenge the Maldivian action on jurisdictional grounds. However, Hilton failed in its jurisdictional challenge and the Maldivian court went on to issue a judgment awarding substantial damages to Sun. The Maldivian court's findings were the complete opposite of the arbitral tribunal's findings. Notwithstanding the Maldivian judgment, Hilton sought to enforce the awards again, but this was denied on account of the Maldivian judgment.

Against this background, Hilton applied for an anti-suit injunction before the Singapore High Court. The Singapore High Court found that the Maldivian action was already too far advanced to warrant an anti-suit injunction, and instead granted an anti-enforcement injunction to prevent Sun from relying on the Maldivian judgment.

Although the Court of Appeal agreed with the High Court's view that the Maldivian action was brought in breach of the arbitration agreements and amounted to vexatious and oppressive conduct on Sun's part, the dispute had been taken out of the hands of the Singapore courts due to Hilton's delay. The Court of Appeal held that the general rule is that an applicant seeking anti-suit relief has to do so without delay and the mere fact that the applicant was making jurisdictional objections in the foreign court does not excuse the delay in any way. In fact, to allow an applicant to make jurisdictional objections in the foreign court and then seek injunctive relief if the outcome was not in the applicant's favour would be the reverse of comity. Further, the Court of Appeal found that Hilton could and should have simultaneously sought injunctive relief from the Singapore court, and its failure to do so allowed the Maldivian proceedings to reach such an advanced stage.

The Court of Appeal also held that granting an anti-enforcement injunction is comparable to nullifying the foreign judgment, so there must be exceptional circumstances that warrant the injunction, over and above the usual requirements for granting an anti-suit injunction. Such exceptional circumstances include cases of fraud and cases where the applicant had no knowledge that the foreign judgment was being sought until after the foreign judgment was rendered. In this case, as there were no exceptional circumstances shown, the Court of Appeal lifted the anti-enforcement injunction.

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This decision serves as an important reminder to parties caught in parallel proceedings before arbitral tribunals and domestic courts, to apply for anti-suit relief promptly once it is aware of foreign proceedings brought in breach of the parties' arbitration agreement.

Case link: [*Sun Travels & Tours Pvt Ltd v Hilton International Manage \(Maldives\) Pvt Ltd* \[2019\] SGCA 10](#)

2. COMPLIANCE & INVESTIGATIONS: First Reading of the Criminal Procedure Code (Amendment) Bill and Criminal Law Reform Bill of 2019

On 11 February 2019, the Minister for Law tabled the Criminal Procedure Code (Amendment) Bill of 2019. Some key amendments that may be of note include:

- The provision of a statutory basis for removal of certain sensitive information from material to be disclosed by law enforcement agencies or the prosecution in the context of criminal cases. Sensitive information includes information which if disclosed, may prejudice public safety or order, be prejudicial to the interests of justice in a criminal case, or compromise the safety of any person or the operations of any law enforcement agency. The Bill also sets out a mechanism for resolving disputes concerning the removal of such sensitive information in court. Further, such sensitive information cannot be removed if the Prosecution intends to rely on that information as evidence, or where the law requires the sensitive information to be disclosed because such information would tend to strengthen the Defence's case.
- The conferring of powers on the Registrar or any Judge of the Supreme Court to shorten the timelines relating to the re-opening of concluded criminal cases.

You can read further details about these amendments [here](#).

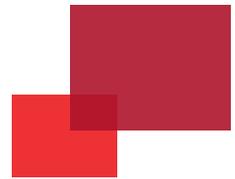
Separately, the Criminal Law Reform Bill was also tabled by the Minister for Home Affairs on 11 February 2019. Amongst others, this Bill introduces a new offence of fraud, which focuses on the dishonest or fraudulent intent to deceive, rather than the effect of the deception on the victim. This amendment is meant to address sophisticated deceptive schemes in which wrongful gain or loss was intended without an identifiable victim being deceived.

You can read further details about the Criminal Law Reform Bill [here](#).

3. CONSTRUCTION: Singapore High Court finds prior Adjudication Determination effectively superseded by subsequent Adjudication Determination

The High Court in *United Integrated Services Pte Ltd v Civil Tech Pte Ltd and another* [2019] SGHC 32 has confirmed that a sub-contractor under the Building and Construction Industry Security of Payment Act cannot "pick and choose" which adjudication determination ("AD") it wishes to enforce.

In this case, United Integrated Services Pte Ltd (the "Main Contractor") applied to stay the enforcement of an AD sought to be enforced by Civil Tech



Pte Ltd (the “Sub-Contractor”). The Main Contractor argued that the first AD had effectively been superseded by a second AD, which had already considered the findings made in the first AD. On the other hand, the Sub-Contractor argued that both ADs ought to be enforceable as each of them had "absolutely and conclusively determined the parties' rights", and it was therefore free to choose which AD it wished to enforce.

The High Court granted the stay. It reasoned that adjudication determinations are essentially cumulative because the subsequent adjudicator will consider the findings of the prior adjudicator, while making necessary adjustments to account for contemporaneous work done, damages, charges, and payments already made. Accordingly, parties should not be able to gain an unintended windfall by being able to enforce a previous AD, when the findings in this previous AD have already been considered and factored into a subsequent AD.

This case is a caution for contractors that have obtained a successful AD and intends to file a subsequent adjudication application for further works done.

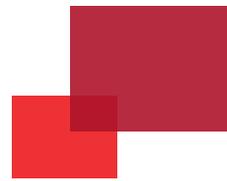
Case link: [United Integrated Services Pte Ltd v Civil Tech Pte Ltd and another \[2019\] SGHC 32](#)

4. CONSTRUCTION: Singapore High Court affirms waiver of rights to jurisdictional objections if not raised at earliest opportunity

The High Court in *Sito Construction Pte Ltd (trading as Afone International) v PBT Engineering Pte Ltd* [2019] SGHC 7 considered the recent Court of Appeal decisions in *Audi Construction Pte Ltd v Kian Hiap Construction Pte Ltd* [2018] 1 SLR 317 ("Audi Construction") and *Comfort Management Pte Ltd v OGSP Engineering Pte Ltd* [2018] 1 SLR 979 ("Comfort Management"), and has reaffirmed that parties are obliged to raise all objections, including jurisdictional objections, at the earliest opportunity where proceedings under the Building and Construction Industry Security of Payment Act are concerned. A party's failure to do so would effectively waive these objections.

This usually means that all objections must be included in a party's Payment Response. However, the High Court went even further to conclude that an objection can still be waived even if the Respondent could have included it in the Payment Response. In this case, the Respondent had argued that there was no contract between the parties, because the contract had been entered into with a sole proprietor, and not with the entity that was party to the AD (which had subsequently purchased the business from the sole proprietor). Notwithstanding the fact that the relevant change in particulars had only been lodged with ACRA after the Payment Claim was served, the High Court held that the Respondent had waived its right to raise this objection. This was because it had not raised this argument in its adjudication response and during the adjudication hearing itself even though it was aware of the change in sole proprietorship.

Case link: [Sito Construction Pte Ltd \(trading as Afone International\) v PBT Engineering Pte Ltd \[2019\] SGHC 7](#)



5. PRIVILEGE: Singapore High Court clarifies issues relating to privilege and in-house legal counsel

The High Court in *Asplenium Land Pte Ltd v Lam Chye Shing* [2019] SGHC 41 recently considered the provisions of the Evidence Act relating to legal professional privilege attaching to communications with in-house legal counsel. In this regard, the High Court made, amongst others, the following notable points:

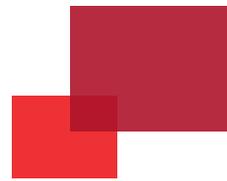
- Section 3(7)(a) of the Evidence Act defines "legal counsel" as a person employed to undertake the provision of legal advice, etc, and not as a person employed exclusively to undertake the provision of legal advice. Thus, even though the in-house legal counsel in question held the title of Director, Legal and Business Development and had a dual role in legal matters and business development, he nonetheless was able to fall within the scope of a "legal counsel" for the purposes of the Evidence Act.
- A person is considered a legal counsel for the purposes of the Evidence Act as long as he is an employee of the company employed to, inter alia, undertake the provision of legal advice. He may also be considered a legal counsel of more than one company, e.g. he may also be regarded as a legal counsel of the company to which he is seconded to on a part-time basis, even if this company is not a related company to his original employer.
- There is no requirement for an employee to be specifically authorised to communicate with the company's in-house legal counsel, for legal advice privilege to attach to such advice. This is in contrast to the position taken where communications with external lawyers are concerned.

Case link: [Asplenium Land Pte Ltd v Lam Chye Shing \[2019\] SGHC 41](#)

6. INSOLVENCY: Singapore Court of Appeal affirms a judgment creditor not a secured creditor by virtue of a garnishee order

In *SCK Serijadi Sdn Bhd v Artison Interior Pte Ltd* [2019] SGCA 05, the Appellant had obtained judgment against the Respondent, and commenced two sets of garnishee proceedings seeking to attach debts owed to the Respondent by a third-party. The Appellant then successfully obtained two garnishee orders nisi, which it served on the garnishee. Before the show cause hearing, however, the Respondent was placed under creditor's voluntary winding up. The Appellant thus filed an application to the High Court for leave to proceed with the garnishee proceedings and a declaration that it had become a secured creditor by virtue of an equitable charge created in its favour when it served a garnishee order nisi on the garnishee.

The Court of Appeal affirmed the High Court's dismissal of the Appellant's claims. It held that a judgment creditor who had obtained a garnishee order nisi was to be treated as an unsecured creditor, and absent exceptional circumstances, was not entitled to proceed with the incomplete attachment. The mere fact that the Appellant had effected service of the garnishee order



nisi could not justify the granting of leave; a high threshold of inequity will need to be shown to justify this.

Further, the Court of Appeal held that since the true effect of service of a garnishee order nisi is merely that it prevents the garnishee from dealing with the debt in a way that is inconsistent with the order, it does not create any security interest which would render the appellant a secured creditor.

Case link: [SCK Serijadi Sdn Bhd v Artison Interior Pte Ltd \[2019\] SGCA 05](#)

7. CONTRACTS: Breach of contract and trust by virtual currency exchange platform

In *B2C2 Ltd v Quoine Pte Ltd* [2019] SGHC(I) 03, the Plaintiff entered into seven trades where it sold a virtual currency for approximately 250 times the going rate. When the Chief Technology Officer of the Defendant discovered that these trades had been made, he considered this to be a technical glitch and unilaterally reversed the trades. The Plaintiff then commenced legal proceedings against the Defendant, alleging that the Defendant had no contractual right to unilaterally cancel the trades once the orders had been effected.

The SICC found the Defendant to be liable to the Plaintiff in breach of contract and breach of trust. This judgment is notable because it is one of the first judgments to apply common law principles (in particular, in the law of contract) in the realm of virtual currencies. For instance, the SICC held that the Defendants held virtual currency assets belonging to platform users such as the Plaintiff on trust for them. The SICC also considered the application of the law of mistake in the context of a computer program, and held that the operative state of mind is the knowledge and intention of the programmer of the program in issue when that program (or the relevant part of it) was written.

Case link: [B2C2 Ltd v Quoine Pte Ltd \[2019\] SGHC\(I\) 03](#)

Singapore Dispute Resolution Group Updates

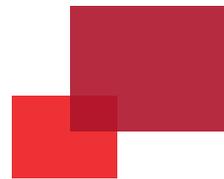
JTrust Asia Pte Ltd v Group Lease Holdings Pte Ltd and others [2019] SGHC 21

We successfully represented JTrust Asia Pte Ltd ("JTrust") in resisting a striking out application brought by two of the seven defendants. JTrust's claim against the defendants is in the tort of conspiracy, to defraud JTrust of its investments worth over USD 180 million.

Welcome to Local Principal, Ashish Chugh

Ashish joined the Dispute Resolution Practice Group in Singapore January 2019. In his past roles, he has focused on international commercial arbitration and cross-border commercial disputes, particularly arising in Asia.

He is qualified to practice law in England & Wales, India, New York and Singapore and has represented numerous parties with respect to disputes across a wide range of industries including aviation, commodities, construction,



hospitality, investment funds, office stationery, oil and gas, power and telecommunications.

Ashish has broad experience in the conduct of international arbitrations with seats in Dubai, Hong Kong, India, Kuala Lumpur, London, New York and Singapore under a variety of ad hoc and institutional arbitration rules. He also has considerable experience supervising, coordinating and managing complex court-based commercial litigation in a wide number of countries in the Asia Pacific region.

Ashish also speaks regularly on topical dispute resolution issues at conferences, events and in-house client seminars throughout Asia, and in particular India.

Clarence Ding, Senior Associate, appointed amicus curiae by High Court

Clarence Ding, Senior Associate in the Dispute Resolution Group, was appointed by the Singapore High Court as amicus curiae (friend of the court). Clarence was asked by the High Court to assist the Court in considering a sentencing framework for offences under Section 338(B) of the Penal Code where grievous hurt is caused by negligent riding of bicycles and personal mobility devices. We congratulate Clarence on his efforts to act as a trusted member of the court with his expert knowledge and experience.

Dispute Resolution Annual Legal Update 2019

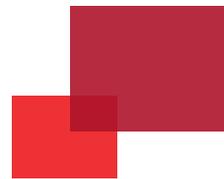
The Dispute Resolution team in Singapore hosted the Dispute Resolution Annual Legal Update at The Fullerton Hotel on 23 January. The conference focused on key developments and trends in the key areas of Corporate and Commercial Litigation; Employment Litigation; Compliance and Investigations; Restructuring and Insolvency; and International Arbitration.

Our speakers during the conference were Principals, **Nandakumar Ponniya**, **Celeste Ang**, **Tjen Wee Wong**, Local Principal, **Ashish Chugh**, along with Senior Associates, **Richard Allen**, **Clarence Ding** and **Zeming Liu**.

In addition, **Richard** led a panel discussion on “Recent and future trends in Dispute Resolution”. Guest speakers, **Delphine Ho**, SIAC, **Arvindran Manoosegaran**, IMF Bentham and **Graham Trace**, Barclays, joined the panel and provided unique insights from a third party, arbitral institution and in-house counsel’s perspectives.

Upcoming Events

Date	Initiative	Location
12 April 2019	Healthcare Cross-Border Investment Seminar	Sydney
25 April 2019	International Arbitration Seminar	Beijing
8 May 2019	2019 Tech Talk	Hong Kong



10 May 2019	2019 Tech Talk	Singapore
14 – 15 May 2019	Asia Pacific Energy Conference	Tokyo
10 – 14 June 2019	Holistic Compliance Roadshow	Beijing, Shanghai, Hong Kong

We will be sharing further details of the above events soon. In the meantime, please feel free to indicate your interest in attending any of the above events by contacting us [here](#).

Key Resources

- We are pleased to present the 2019 edition of the **Asia Pacific Dispute Resolution Guide**.

This new edition covers the following:

- Mediation as alternative method of dispute resolution in Vietnam
- Launch of e-Review System and amendment of Arbitration Act in Malaysia
- Japan's nullification of an award on the basis of arbitrator's failure to disclose conflict of interest
- MoA between Singapore International Arbitration Center and the China Economic and Trade Arbitration Commission to promote arbitration in a mode for settling disputes

You can download a PDF copy of the Guide [here](#).

- Our report, **The Year Ahead: Developments in Global Litigation and Arbitration in 2019**, is now available to read and download online. [Click here](#) for a copy of the report.

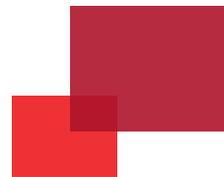
In this report, we have drawn on the expertise of our global dispute resolution team, consisting of over a thousand lawyers in 78 offices around the globe, to present the themes and developments we expect to see in the world of litigation and arbitration in 2019.

We identify three key underlying trends:

Innovation - Giving us new analysis tools which can assist case preparation and predict outcomes.

Competition - Leading to new international courts, and improved procedures from existing venues.

Co-operation - Working relationships between governments and between national courts hold the potential for a revolution in cross-border enforcement.



2019 is going to be a very interesting year!

- **Connected Compliance:** New research from Baker McKenzie proves that good compliance is good business. To protect and create value, companies need a more connected approach to compliance across teams, geographies and areas of responsibility. [Click here](#) to see the findings and to take a survey to find your own company's #connectedcompliance score.

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