SQUIRE PATTON BOGGS

Joining Parties to Arbitration:

CJD v CJE [2021] SGHC 61

Singapore – March 2021

When can another party be joined to an existing arbitration? The question has significance for the cost of resolving a dispute and for avoiding multiple proceedings, particularly in corporate group contexts.

Consent to Arbitration Not Enough

In *CJD v CJE* [2021] SGHC 61, the Singapore High Court refused to join a company as a respondent to an arbitration even though that company had signed the contract containing the arbitration agreement. This was because the arbitration agreement did not expressly state that the parties agreed to be joined to arbitrations under the agreement by or against other parties.

This, in turn, was because of the wording of the joinder rule of the London Court of International Arbitration (LCIA) that governed the arbitration. That rule said that a party could be joined to an arbitration where it had "consented to such joinder in writing following the Commencement Date or (if earlier) in the Arbitration Agreement". The court held that the arbitration agreement had to permit joinder expressly if that was the ground relied upon, and that it was not enough for the new party merely to be party to the arbitration agreement.

It would likely not have been the same result if the arbitration had been governed by the rules of the Singapore International Arbitration Centre (SIAC), the Hong Kong International Arbitration Centre (HKIAC) or the International Chamber of Commerce (ICC). Those rules allow joinder where either the party to be joined is bound by the arbitration agreement, or all parties have consented. There is no requirement in those rules that the arbitration agreement include consent to being joined to arbitrations under that agreement.

Where the LCIA Rules are specified in an arbitration agreement, the High Court determined that parties to that arbitration agreement will not be able to be joined to an existing arbitration unless the arbitration agreement expressly permits joinder, or all parties consent, in writing, outside the arbitration agreement. It is highly unlikely that an arbitration agreement would descend into details such as joinder, and it might be that LCIA did not intend that consequence. If the arbitration agreement is silent, joinder will only be possible with the written consent of all, usually not lightly to be had.

The Significance of Joinder

Joining parties to an arbitration enables all issues and claims to be resolved in one arbitration, by the same tribunal, saving time and cost, and avoiding the possibility of conflicting outcomes in two or more arbitrations. Joinder can be particularly relevant where there are more than two parties to a transaction and the party sued blames another party. To save commencing a separate arbitration against that other party, the claimant might prefer to join it to the existing arbitration, and try to avoid the possibility of both respondents escaping liability.

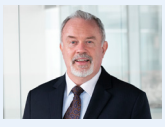
This can occur in any number of situations, but multiparty transactions are likely to arise in joint venture agreements, sales and procurement contracts for corporate groups, where one party guarantees performance by another, and in multilevel project contracts, to name a few. Respondents might prefer not to be joined where it would make it easier for the claimant to pursue them, or for the other respondent to make claims against them.

On the other hand, respondents might prefer to be joined in some situations where they have a claim for contribution or indemnity against the existing respondent that they could not raise in an arbitration between them and the claimant alone.

Message From the Case

If joinder is likely to be useful and the arbitration will be according to the LCIA rules, the contracting parties should consider expressly permitting joinder in their arbitration agreement. If, however, the arbitration agreement refers to the SIAC, HKIAC or ICC rules, all parties bound by the agreement might be joined to an arbitration, unless the arbitration agreement states otherwise.

Contacts



Cameron Ford
Partner, Singapore
M +65 9663 7440
E cameron.ford@squirepb.com

Chris Bloch
Senior Associate, Singapore
M +65 9663 3876
E christopher.bloch@squirepb.com

40941/03/21