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DIFC Court of Appeal Rules on Setting Aside of Arbitral Award

Introduction

The Dubai International Financial Centre ("**DIFC**") Court is a popular choice of forum for the resolution of regional disputes. It handles a wide range of cases, which includes – given the international nature of the forum – cases involving issues of arbitration, shipping and international trade.

In *Lachesis v Lacrosse* [2021] DIFC CA 005 (parties names were anonymised for confidentiality reasons), the DIFC Court of Appeal considered an application to set aside an arbitral award on grounds of failure to observe arbitral procedure, incapacity, and unfair treatment. The Court of Appeal held against the Appellant, declining to set aside the award.

The Tribunal had earlier issued an arbitral award ("**Award**") in favour of the Respondent, rejecting the Appellant's claim. The Appellant sought to challenge the Award before the DIFC Court, where the Court of First Instance dismissed the Appellant's application. On appeal, the Court of Appeal upheld the Court of First Instance's decision.

The Respondent was successfully represented by V Bala and Dinesh Sabapathy of Rajah & Tann Singapore LLP before the Tribunal, the Court of First Instance and the Court of Appeal. The decision of the DIFC Court of First Instance may be accessed [here](#), and the decision of the DIFC Court of Appeal may be accessed [here](#).

The Arbitration Seated in the DIFC

The Appellant and the Respondent had entered into two Charterparties for the purpose of work on a project in an oil field. Disputes over the Charterparties subsequently arose, concerning non-payment of charter hire from the Appellant to the Respondent.

The Appellant submitted the disputes to arbitration, with the parties agreeing to consolidate the disputes under each Charterparty. The governing law was English law, the seat of the arbitration was the DIFC, and the arbitration was to be conducted under the rules of the Ladonna Centre ("**Ladonna Rules**") (the centre's name is also anonymised for confidentiality reasons).

Following the arbitral hearing, the Tribunal's conclusions were – across the board – in favour of the Respondent. The Award was thus issued in the Respondent's favour.

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Court of First Instance

The Appellant then applied to the DIFC Court of First Instance, seeking to set aside the Award on the following grounds:

- (a) **Signature** – The Award was not signed on every page by the Tribunal, contrary to a mandatory provision of the Ladonna Rules. The Appellant also contended that the signature page did not show any connection with the operative part of the award in that the connection between the page where the signatures of the arbitrators appeared and the rest of the award was not immediately apparent.
- (b) **Incapacity** – The Appellant alleged that its former solicitors did not have the capacity to change the applicable law of one of the Charterparties from UAE law to English law.
- (c) **Unfair treatment** – The Appellant complained of unfair and unequal treatment during the course of the arbitration hearing, and that it was unable to present its case before the Tribunal.

The Court of First Instance found against the Appellant on all the grounds of challenge, and thus declined to set aside the Award.

- (a) **Signature** – While the procedural inconsistency may have raised the discretion of the Court to set aside the Award, the Appellant had not shown why such discretion should be exercised. Further, the Appellant had waived its right to make an objection to the Award on this basis.
- (b) **Incapacity** – While an arbitral award may be set aside by the DIFC Court if a party to the arbitration was under some incapacity, this refers to the incapacity to conclude a binding agreement to arbitrate, and not the incapacity as to the right to agree to a different governing law as alleged by the Appellant.
- (c) **Unfair treatment** – The Appellant had not proven its case of unfair treatment or shown how the Award would have been different but for the alleged unfair treatment. The Court of First Instance also observed that the complaint was actually an attempt to have the merits of the Award reviewed.

Court of Appeal

The Court of Appeal upheld the decision of the Court of First Instance, largely agreeing with its reasoning.

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Signature

Under the DIFC Law No. 1 of 2008 ("**DIFC Arbitration Law**"), the DIFC Court may set aside an arbitral award if it comes within one of the specified grounds (which is in *pari materia* with the UNCITRAL Model Law on International Arbitration). If such grounds are proven, the Court has the discretion whether or not to set aside the award.

Here, the Court of Appeal found that the factors relating to discretion pointed overwhelmingly against setting aside the award. The fact that the Award was not signed on every page did not necessarily mean that the Award should be set aside. On the facts of the case, there was no sensible doubt that the Award was made and approved by the Tribunal as a whole. Further, there was no evidence of any prejudice caused to the Appellant resulting from the breach; the issue of the signatures in this case was formal and technical only.

The Appellant had also sought to introduce new facts to challenge the validity of the Award on the basis of the signatures, but the Court of Appeal held that it was too late to introduce new factual contentions.

Finally, the Court of Appeal held that the public policy of UAE for arbitral awards to be signed on every page was not engaged on the facts and that such public policy (even if established) did not mean that the Court should exercise its discretion to set aside the Award.

Incapacity

The Court of Appeal found that the Appellant's complaint related to a matter between the Appellant and its then-lawyer as to his authority to agree to the adoption of English law as the applicable law for one of the Charterparties. Any question of incapacity did not relate to the agreement to arbitrate, and thus fell outside of the ground on which an arbitral award could be set aside under the DIFC Arbitration Law.

Unfair treatment

The Court of Appeal highlighted that it would scrutinise challenges carefully to guard against arguments on the merits being dressed up as legitimate complaints of unfairness demonstrating a failure of natural justice. Mere trivial and inadvertent technical breaches of the requirement of a fair hearing, without substantive consequences, would not necessarily suffice to set an award aside.

Having reviewed the Appellant's submissions, the Court of Appeal found that the instances of alleged unfair treatment did not show that the Appellant was prevented from putting its claim, nor that there was any failure to treat the parties with equality, nor that there was any unfairness. The Court of Appeal instead found that the Appellant was seeking a re-run of the merits.

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Concluding Words

The DIFC Court's decision in this matter demonstrates an important point regarding the finality of arbitral awards – the merits of the dispute cannot be re-aired before a court in the guise of a challenge on the grounds of natural justice or procedural failure. The Court showed that it is aware of such attempts by losing disputants to side-step an unfavourable award by seeking a second shot in a different forum.

In this regard, the DIFC Court's position appears to be in line with the position taken by the Singapore Court, which has consistently adopted a pro-arbitration stance, declining to interfere in arbitral proceedings unless necessary.

For further queries, please feel free to contact our team below.

Contacts



V Bala
Partner, Shipping &
International Trade

T +65 6232 0383

bala@rajahtann.com



Dinesh Sabapathy
Senior Associate, Shipping &
International Trade

T +65 6232 0175

dinesh.sabapathy@rajahtann.com

Please feel free to also contact Knowledge and Risk Management at eOASIS@rajahtann.com

Our Regional Contacts

RAJAH & TANN | *Singapore*

Rajah & Tann Singapore LLP

T +65 6535 3600
sg.rajahtannasia.com

R&T SOK & HENG | *Cambodia*

R&T Sok & Heng Law Office

T +855 23 963 112 / 113
F +855 23 963 116
kh.rajahtannasia.com

RAJAH & TANN 立杰上海

SHANGHAI REPRESENTATIVE OFFICE | *China*

**Rajah & Tann Singapore LLP
Shanghai Representative Office**

T +86 21 6120 8818
F +86 21 6120 8820
cn.rajahtannasia.com

ASSEGAF HAMZAH & PARTNERS | *Indonesia*

Assegaf Hamzah & Partners

Jakarta Office

T +62 21 2555 7800
F +62 21 2555 7899

Surabaya Office

T +62 31 5116 4550
F +62 31 5116 4560
www.ahp.co.id

RAJAH & TANN | *Lao PDR*

Rajah & Tann (Laos) Co., Ltd.

T +856 21 454 239
F +856 21 285 261
la.rajahtannasia.com

CHRISTOPHER & LEE ONG | *Malaysia*

Christopher & Lee Ong

T +60 3 2273 1919
F +60 3 2273 8310
www.christopherleeong.com

RAJAH & TANN | *Myanmar*

Rajah & Tann Myanmar Company Limited

T +95 1 9345 343 / +95 1 9345 346
F +95 1 9345 348
mm.rajahtannasia.com

GATMAYTAN YAP PATACSIL

GUTIERREZ & PROTACIO (C&G LAW) | *Philippines*

Gatmaytan Yap Patacsil Gutierrez & Protacio (C&G Law)

T +632 8894 0377 to 79 / +632 8894 4931 to 32
F +632 8552 1977 to 78
www.cagatlaw.com

RAJAH & TANN | *Thailand*

R&T Asia (Thailand) Limited

T +66 2 656 1991
F +66 2 656 0833
th.rajahtannasia.com

RAJAH & TANN LCT LAWYERS | *Vietnam*

Rajah & Tann LCT Lawyers

Ho Chi Minh City Office

T +84 28 3821 2382 / +84 28 3821 2673
F +84 28 3520 8206

Hanoi Office

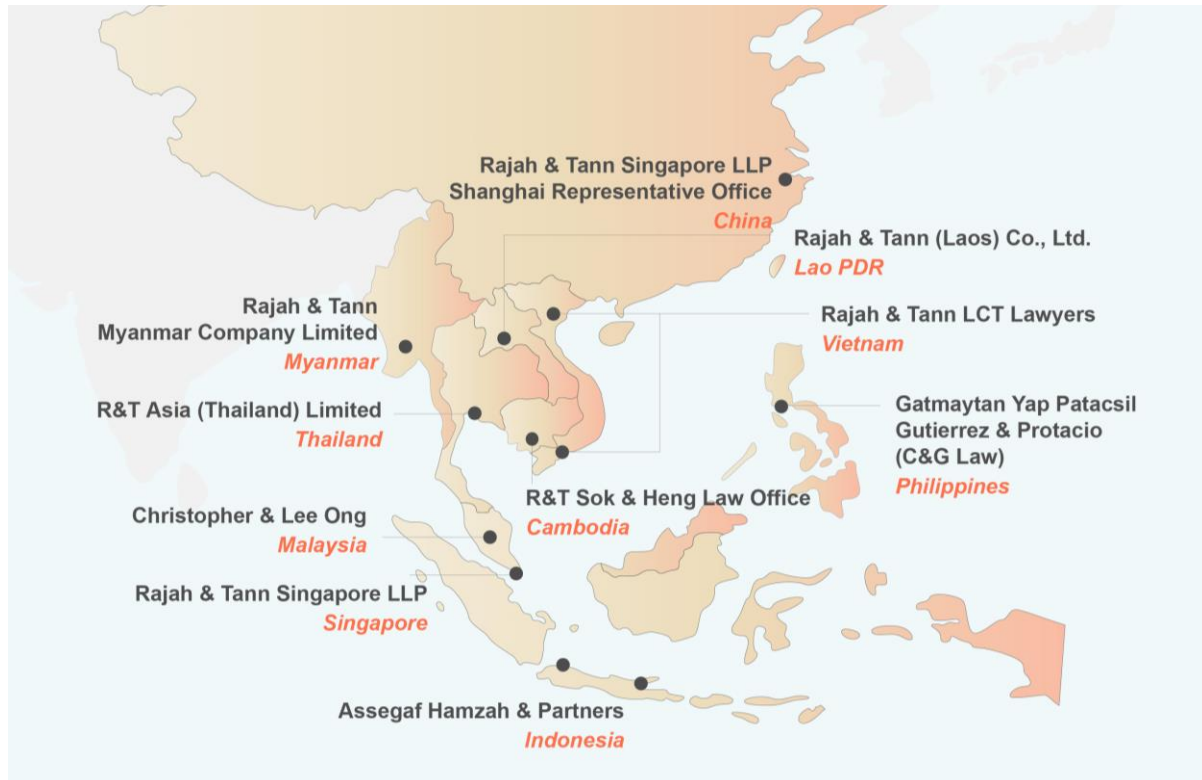
T +84 24 3267 6127
F +84 24 3267 6128
www.rajahtannlct.com

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