

# Arbitration – different standards applicable than the courts but more than just ‘suits’ settling disputes



Written by SAM DORNE

In the realm of international commercial arbitration, the recent decision of the Singapore Court of Appeal (SGCA) in *CVV and others v CWB [2023] SGCA(I) 9* looks at the crucial difference in standards between the courts and arbitration, such as difference over the duty to give reasons, and the principle of minimal curial intervention when courts become involved in dealing with arbitral proceedings appeals against a background of making sure that natural justice is followed.

## The beginnings of the commercial dispute

The core of the dispute revolved around advisory agreements between 11 related entities in the fund management industry (the **Claimants**) and an advisory firm specialising in real estate investments (the **Respondent**). Alleged breaches of these agreements prompted the Claimants to initiate arbitration proceedings. The Respondent counterclaimed for outstanding advisory fees.

## Different standards

→ The Singapore Court of Appeal discussed how and why arbitrators are held to a different standard than judges.

## The tribunal's award and subsequent appeals

The arbitral tribunal issued its final award, dismissing all of the Claimants' claims and allowing the Respondent's counterclaims.

Unsatisfied with the outcome, the Claimants sought to set aside the award, alleging a breach of the rules of natural justice. However, both the Singapore International Commercial Court (SICC) and subsequently, the SGCA, upheld the award, emphasising the limited grounds for challenging arbitral awards and the principle of minimal curial intervention<sup>1</sup> in arbitration proceedings.

The SGCA held that:

- *Arbitration has emerged as a popular and attractive mode for the resolution of complex commercial disputes. One of the key virtues of arbitration is in the finality of the arbitral award;* and
- there were limited grounds of challenge *exhaustively prescribed under the International Arbitration Act 1994.*

The SGCA noted that one of the prescribed grounds of appeal is where a breach of the rules of natural justice has occurred in connection with the making of the award.

It noted however that:

*From a brief survey of Singapore cases, a significant majority of such applications have been unsuccessful because those challenges were found in*

*substance to have engaged the merits of the award. When a dissatisfied party relies on an alleged breach of the rules of natural justice, it is crucial to bear in mind that the typical grounds on which a litigant may challenge a judgment are quite different and distinct from those which apply in the context of an arbitral award. The failure to properly appreciate this vital distinction is usually the reason why the challenge is ultimately unsuccessful.*

The SGCA's decision to uphold the award highlighted a critical distinction between the standards applied to arbitrators and those applied to judges, and is underscored and can be summarised in several key points:

- **Distinct standards for arbitrators:** The SGCA emphasised that arbitrators are not held to the same standards as judges in court proceedings. While judges are required to provide detailed reasons for their decisions due to the principles of open justice and appellate review, arbitrators operate within a confidential framework, and their decisions are not subject to the same level of scrutiny. While courts entertain appeals based on errors of law or fact, arbitral awards are subject to more limited review, primarily concerning procedural fairness and the enforcement of public policy.

- **Minimal curial intervention:**

The SGCA reaffirmed the principle of minimal curial intervention in arbitration proceedings. Parties must accept the consequences of their choice of arbitrators, and awards will only be set aside on limited grounds, such as breaches of natural justice.

- **Arbitral tribunals' duty to give reasons:**

While the UNICITRAL Model Law on International Commercial Arbitration imposes a general duty on tribunals to give reasons, the extent of this obligation remains unsettled in Singapore law. Unlike court judgments, where detailed reasoning serves the interests of open justice and facilitates appellate review, arbitration proceedings prioritise confidentiality and finality.

Therefore, whilst there is a general duty on arbitral tribunals to give reasons for their decisions, the SGCA noted that there is ambiguity regarding whether a tribunal's failure to provide adequate reasons constitutes grounds for setting aside an award.

However, while a failure to provide adequate reasons may constitute an error of law, it does not automatically warrant setting aside the award. Instead, the focus remains on whether such a failure demonstrates a fundamental disregard for the

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1 Limiting the scope of judicial oversight, intervening only when absolutely necessary to safeguard rights or resolve disputes.

essential issues in the arbitration, indicative of a breach of natural justice.

- **Applicability of judicial standards:** The SGCA rejected the notion that standards applicable to judges in court decisions should guide arbitrators in determining the scope of their duty to give reasons. Arbitration proceedings operate under different considerations, and arbitrators are not bound by the same requirements as judges.

## Conclusion

The SGCA's decision in *CW and others v CWB* reinforces arbitral tribunals' autonomy and the arbitral award's finality. It highlights the importance of parties accepting the consequences of their choice of arbitration and underscores the limited grounds for challenging

arbitral awards.

As international commercial arbitration continues to play a crucial role in resolving cross-border disputes, it is imperative for stakeholders to understand the evolving legal landscape and the principles governing arbitration proceedings. The SGCA's decision

provides valuable insights into the standards applicable to arbitrators and the challenges associated with setting aside arbitral awards. Ultimately, clarity and consistency in the application of arbitration law are essential to ensuring the integrity and efficacy of the arbitration process.

## About the author

**Sam Dorne** works as a Knowledge Manager in The ADR Centre's Knowledge Management Team, working with NZDRC and NZIAC. He recently returned to NZ after nearly 19 years of living in the UK where he spent the last several years working as a civil litigation solicitor mainly dealing with the recoverability of legal costs and consumer claim cases. He has experience in advocacy, case management and legal drafting and had several cases go to the Court of Appeal in England.

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