

# The Pitfalls of Missing Arbitration Clauses – *Pertamina International Marketing & Distribution Pte Ltd v P-H-O-E-N-I-X Petroleum Philippines, Inc.* [2024] SGHC(I) 19

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## INTRODUCTION

Complex commercial relationships will often have multiple contracts between the same or related parties, creating a network of related contracts. When disputes arise within these networks, there can be ambiguity as to what the relevant dispute mechanism is. This can spawn satellite disputes, and can even threaten the validity of any awards or judgments rendered in proceedings.

*Pertamina International Marketing & Distribution Pte Ltd v P-H-O-E-N-I-X Petroleum Philippines, Inc.* [2024] SGHC(I) 19 concerned the application by Pertamina to enforce an arbitration award made in its favour, as well as for a permanent anti-suit injunction in respect of court proceedings brought by Phoenix in the Philippines to resist enforcement of the award. The judgment dealt with issues of arbitrating under multiple contracts, some of which did not contain arbitration agreements, as well as the Singapore International Commercial Court’s (“SICC”) jurisdiction to grant a permanent anti-suit injunction. The case is a reminder that parties should always ensure their contracts contain a clear indication of their chosen dispute resolution mechanism.

## FACTUAL BACKGROUND

Pertamina is incorporated in Singapore. Phoenix is incorporated in the Philippines. The contractual relationship between Pertamina and Phoenix consisted of a Memorandum of Understanding (“MOU”), which contained an arbitration agreement providing for Singapore-seated, Singapore International Arbitration Centre (“SIAC”) arbitration, and a subsequent series of sale contracts for petroleum products. The sale contracts did not contain arbitration agreements.

When a dispute arose, it was referred to SIAC arbitration. However, it was the sale contracts, which did not contain arbitration agreements, that formed the subject matter

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of the SIAC arbitration. Phoenix objected to the jurisdiction of the tribunal at an early stage of the proceedings, and ceased to participate thereafter. The tribunal proceeded to hear the dispute without Phoenix's participation, and subsequently made its Final Award in favour of Pertamina, ordering that Phoenix and another third-party guarantor pay Pertamina over US\$ 140 million.

Two days after the SIAC registered and issued the Final Award in Pertamina's favour, Phoenix commenced proceedings in the Philippines seeking a declaration that the arbitration and the Final Award were void, as well as both temporary and permanent injunctions enjoining Pertamina from enforcing the Final Award. Pertamina subsequently applied for, and was granted, recognition of the award in Singapore.

Following much procedural maneuvering by both parties, the SICC ultimately had to decide: (i) Pertamina's application for a declaration that the Final Award was final and binding, as well as for a permanent anti-suit injunction against Phoenix preventing it from pursuing proceedings in the Philippines to challenge the award; and (ii) Phoenix's application to set aside the Court's order allowing Pertamina to enforce the Final Award against Phoenix in Singapore.

### ARBITRATING UNDER RELATED CONTRACTS

The main thrust of Phoenix's application to set aside the Court's order permitting Pertamina to enforce the Final Award was that there was no arbitration agreement between Phoenix and Pertamina in relation to the dispute in the SIAC arbitration. While Phoenix did not dispute the validity of the arbitration agreement in the MOU, it contended that the disputes under the individual sale contracts did not fall within the scope of the arbitration agreement in the MOU. Phoenix argued that the sale contracts did not contain any arbitration agreements, and the Final Award was therefore invalid.

The Court rejected Phoenix's application, finding that both common law jurisprudence and arbitral commentary support the presumption that parties are likely to have intended any dispute arising out of their commercial relationship to be decided by the same tribunal (also known as the *Fiona Trust* principle). The sale contracts themselves did not contain arbitration agreements, but the Court found that they came into existence pursuant to the parties' implementation of the MOU, which was effectively treated by the parties as an umbrella agreement for the parties' commercial relationship. Phoenix was unable to provide any evidence to displace the legal presumption of the parties' intention. The connectedness of the various sale contracts to the MOU therefore justified a finding that the arbitration agreement in the MOU extended to disputes arising from the sales contracts.

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**THE SICC MAY GRANT PERMANENT ANTI-SUIT INJUNCTIONS IN AID OF  
ARBITRATION**

Phoenix responded to Pertamina's application for a permanent anti-suit injunction by challenging the SICC's jurisdiction to grant that relief.

Phoenix brought its challenge on a reading of the section of the SICC Rules that permits the SICC to hear proceedings relating to commercial arbitration under the Singapore International Arbitration Act 1994 ("IAA"). Phoenix argued that since the power to apply for permanent anti-suit injunctions in support of arbitrations is not found in or derived from the IAA, the SICC has no jurisdiction to grant the injunction sought by Pertamina.

The Court resolved the issue by distinguishing between its jurisdiction to hear matters and its power to grant relief once jurisdiction had been established. Once the SICC had jurisdiction over a matter, it had all the powers of the Singapore High Court to grant relief, including a permanent anti-suit injunction in support of arbitration.

The Court then proceeded to grant the permanent anti-suit injunction in favour of Pertamina, finding that the active steps taken by Phoenix by commencing and pursuing proceedings in the Philippines to persuade the Philippines Courts that the arbitration and the Final Award were void were impermissible as a matter of Singapore law.

The Court's judgment is unsurprising in light of the pro-arbitration stance of the Singapore Courts. However, it also demonstrates the danger of omitting a dispute resolution clause. Even though Phoenix's attempts to frustrate the process ultimately failed, they caused significant delay to enforcement and wasted costs.

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