

The Court of Appeal's take on Limitation laws in Hindustan Oil

Introduction

[Previously](#), we highlighted the High Court decision in Hindustan Oil on Limitation laws in the arbitration context. On 4 April 2023, the Court of Appeal affirmed the High Court decision in **Hindustan Oil Exploration Company Limited v Hardy Exploration & Production (India) Inc** [2023] MLJU 795, albeit with a slight variation.

The Court of Appeal decision

While arriving at the same conclusion, the Court of Appeal differed with the High Court chiefly on the following points:

Classification of Limitation laws

The High Court accepted the “*tribunal versus claim*” approach propounded by the **Singapore Court of Appeal case of BBA v BAZ** [2020] SGCA 5 which seeks to classify issues of Limitation as either a matter of “*admissibility*” or “*jurisdiction*” at the outset. Matters on admissibility are within the purview of the arbitral tribunal, while matters on jurisdiction, the Court. The High Court went on to hold that as limitation periods “*attacked*” a claim, it went towards admissibility and hence the Court has no jurisdiction to decide on the same.

The Court of Appeal, however, took a different view.

The Court of Appeal rejected the test in BBA, holding that the “pure determination” is whether issues of Limitation are procedural or substantive. The Court held that they are procedural in nature because time limitations are entirely disjointed and unaffected by the merits of the parties’ case — they are blind to the merits.

Thus, the Court of Appeal held that the law of the seat informs the Limitation laws, i.e., Malaysian Limitation laws, emanating from the seat, govern the arbitration. The arbitral tribunal was therefore correct in applying Malaysian Limitation laws to the dispute.

Arbitration Update

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Shearn Delamore & Co
7th Floor

Wisma Hamzah Kwong-Hing,
No 1, Leboh Ampang
50100, Kuala Lumpur, Malaysia

T: 603 2027 2727

F: 603 2078 5625

info@shearndelamore.com

www.shearndelamore.com

www.linkedin.com/company/shearn-delamore-&-co

Extent of curial intervention

While issues of Limitation are procedural, the elephant in the room is, does the Court have power to review an arbitral tribunal's decision or decision-making process in arriving at the applicable Limitation law?

In essence, the High Court said no, given that this is a question of law which the arbitral tribunal is entitled to rule on. Further, the High Court was resolute in holding that to set aside an arbitral award, a party can only rely on the grounds set out in section 37 of the Arbitration Act ("AA"), expressly rejecting the notion that section 30 of the AA (which provides that an arbitral tribunal shall decide the dispute according to the parties' chosen law) may be resorted to.

The Court of Appeal again took a different view. It held that the classification of "*question of law*" is unhelpful as it may have either a procedural or substantive connotation or both. While the Court is empowered to, as a matter of procedural law, intervene in the arbitral tribunal's decision-making process, it cannot review the arbitral tribunal's decision on the merits.

The Court of Appeal went on to hold that while section 37 of the AA contains an exhaustive list of grounds to set aside an arbitral award, that does not mean that matters beyond the precise words of the provisions cannot fall within the grounds under section 37 of the AA. Significantly, the Court of Appeal opined that section 30 of the AA may be read together with section 37 of the AA where the arbitral tribunal, for instance, mistakenly applies the substantive law as the procedural law, which would render the arbitral award procedurally impaired.

Conclusion

The Court of Appeal's decision is significant, not least because it seeks to establish a test on Limitation laws in the context of arbitration. The classification of procedural and substantive is also in line with our earlier case law by the same Court in **Sakapp Commodities (M) Sdn Bhd vs Cecil Abraham** [1998] 4 CLJ 81 where it was settled, albeit in the context of litigation, that issues of Limitation are procedural rather than substantive. Having said that, given the importance of limitation periods and the diverging approaches seen in other jurisdictions, an apex court decision on this matter is highly desirable.

This Arbitration Update is prepared by [Wong Wen Sheng](#) and Hardeep Kaur A/P Ragbir Singh.

For more information, please reach out to your usual contact from our [Arbitration Practice Group](#):

Shearn Delamore & CO.

<u>K. Shanti Mogan</u>	<u>shanti@shearndelamore.com</u>
<u>Datin Jeyanthini Kannaperan</u>	<u>jeanthini@shearndelamore.com</u>
<u>Rabindra S. Nathan</u>	<u>rabinra@shearndelamore.com</u>
<u>Rodney Gomez</u>	<u>rodney@shearndelamore.com</u>
<u>Dhinesh Bhaskaran</u>	<u>dhinesh@shearndelamore.com</u>
<u>Rajasingam Gothandapani</u>	<u>rajasingam@shearndelamore.com</u>
<u>Nad Segaram</u>	<u>nad@shearndelamore.com</u>
<u>Yee Mei Ken</u>	<u>mkyee@shearndelamore.com</u>
<u>Jimmy S.Y. Liew</u>	<u>jimmyliew@shearndelamore.com</u>
<u>Alexius Lee</u>	<u>alexius@shearndelamore.com</u>
<u>Lilien Wong</u>	<u>lilien.wong@shearndelamore.com</u>

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