

Arbitration Alert

Dear Clients & Friends

Singapore High Court rules against arbitrability of insolvency claims

The case of *Petroprod Ltd (in official liquidation in the Cayman Islands and in compulsory liquidation in Singapore) v Larsen Oil and Gas Pte Ltd* [2010] SGHC 186 ("**Petroprod Ltd**") is significant as the Singapore High Court decided that claims which arise from avoidance provisions in Singapore insolvency laws are non-arbitrable as they exist for the benefit of the general body of creditors as a whole.

In *Petroprod Ltd*, the parties entered into a Management Agreement sometime in 2006 (the "**MA**"). The plaintiff was a company incorporated in the Cayman Islands. Under the MA, the defendant agreed to provide management services to the plaintiff. In addition, clause 18 of the MA provided for disputes which could not be resolved amicably between the parties to be "*resolved by arbitration in Singapore in accordance with the provisions of the Singapore Arbitration Act*".

Subsequently, the plaintiff was placed in official liquidation in the Cayman Islands and in compulsory liquidation in Singapore.

The plaintiff commenced the action against the defendant to avoid several transactions on the following bases:

- (1) Some payments from the plaintiff to the defendant amounted to unfair preferences or transactions at an undervalue within the meaning of sections 98 and 99 of the Bankruptcy Act read with section 329(1) of the Companies Act; and
- (2) Some payments from the plaintiff's subsidiaries to the defendant were made with the intent to defraud the plaintiff as a creditor of the subsidiaries pursuant to section 73B of the Conveyancing and Law of Property Act (the "**CLPA**").

In turn, the defendant contended that its dispute with the plaintiff ought to be referred to arbitration in accordance with the terms of the MA, and sought a stay of the court proceedings in favour of arbitration.

Arbitration at odds with purpose of avoidance provisions

In respect of the plaintiff's claims under the Bankruptcy Act and the Companies Act (the "**Acts**"), the court opined that the policy underlying the avoidance provisions in the Acts would be compromised if their enforcement were subject to private arrangements (including an agreement to arbitrate) between the company and an individual creditor as the rights created by the provisions exist for the benefit of the general body of creditors. The avoidance provisions protect against a diminution of the assets available to the general body of creditors by providing for the avoidance of a transaction which confers an unfair advantage on one party.

In this case, the court held that the claims under the Acts in relation to the payments made by the plaintiff to the defendant were not arbitrable.

The court then dealt with the plaintiff's claims under the CLPA. It acknowledged that whilst the plaintiff's claim in respect of the CLPA fell within the arbitration clause of the MA, there was likely to be a substantial overlap in the factual issues concerning the plaintiff's claims under the Acts and the CLPA.

In the circumstances, the court held that it would be preferable to consider all the plaintiff's claims in a similar forum so as to achieve a swift, economical and internally consistent settlement of all the disputes in question. The application for a stay in favour of arbitration was therefore denied.

Further information

Should you have any queries as to how this may affect your business, please do not hesitate to get in touch with your usual contact at Allen & Gledhill LLP or either of the following:

Dinesh Dhillon
Tel: +65 6890 7822
E-mail: dinesh.dhillon@allenandgledhill.com

Edwin Tong
Tel: +65 6890 7867
E-mail: edwin.tong@allenandgledhill.com

Yours faithfully
Allen & Gledhill LLP
Singapore

Allen & Gledhill LLP
T +65 6890 7188 | F +65 6327 3800 | publications@allenandgledhill.com
One Marina Boulevard #28-00 Singapore 018989 | www.allenandgledhill.com

This message is intended to highlight issues and not to be comprehensive, nor to provide legal advice.

If you do not wish to receive this update or other arbitration related electronic communications from Allen & Gledhill LLP, please let us know by e-mailing us at publications@allenandgledhill.com. You will receive one additional e-mail message confirming your removal. If you would like to add any of your colleagues onto our mailing list, please let us know via return e-mail.

Allen & Gledhill LLP (UEN/Registration No. T07LL0925F) is registered in Singapore under the Limited Liability Partnerships Act (Chapter 163A) with limited liability. A list of the Partners and their professional qualifications may be inspected at the address specified above.

CONFIDENTIALITY CAUTION: This message is intended only for the use of the individual or entity to whom it is addressed and is privileged and confidential. If you are not the intended recipient, please notify us immediately by return e-mail, delete this message and you should not disseminate, distribute or copy any information contained herein.