

# Singapore High Court confirms it has the inherent power to seal court files to preserve confidentiality in related arbitration proceedings

A Singapore High Court judge has ruled, in *BBW v BBX and others* [2016] SGHC 190, that Singapore courts have the inherent power to grant orders to seal court files in the interests of preserving the confidentiality of related arbitration proceedings. The decision clarifies the legal basis for sealing orders, as well as the scope of section 23 of the International Arbitration Act (IAA), which grants the Court a statutory power to make directions on the publication of information relating to "*proceedings under the [IAA]*".

## Background facts

BBW commenced the proceedings in the Singapore High Court (the Suit) to enforce an indemnity agreement against the Defendants. Pursuant to the indemnity agreement, the first Defendant had agreed to indemnify the Plaintiff against all liability, loss or damage incurred in connection with an arbitration in the Singapore International Arbitration Centre (SIAC) (the Arbitration).

## The application for a sealing order

The Plaintiff applied to the Singapore High Court for an order to seal the court file as he intended to disclose and rely on documents and information relating to the Arbitration for the purposes of the Suit.

Ordinarily, persons who are not party to a court proceeding can make an application to the Court to inspect the case file, as such documents form part of the public record. The sealing order sought to prevent third parties from inspecting the case file and obtaining documents filed in the Suit.

The Plaintiff's application for the sealing order was made on two alternative grounds:

- First, the application was made under section 23 of the IAA, which provides, amongst other things, that a Court hearing "*proceedings under the [IAA]* shall, on the application of any party to the proceedings, give directions as to whether any and, if so, what information relating to the proceedings may be published". Section 23 of the IAA was relied upon in an earlier Singapore High Court decision, *AZT v AZV and others* [2012] 3 SLR 794, where a sealing order was granted because the litigation involved an arbitral award.
- The alternative basis for the application was the inherent jurisdiction or power of the Court.

## The granting of the sealing order

The High Court judge granted the sealing order on the basis that the Court had the inherent power to grant

## Key issues

- The Singapore Courts have the inherent power to grant sealing orders
- Section 23 of the IAA applies only to proceedings commenced pursuant to specific provisions of the IAA
- Important area of law given the intersection of litigation and international arbitration

such orders in the interest of the administration of justice. Given the width of the Court's inherent powers, they could be exercised for the preservation of confidentiality in arbitration.

In coming to his decision, the High Court judge considered that sealing orders are an accepted part of Singapore civil procedure, and that the Courts must necessarily have the inherent power to grant them, given that there is otherwise no general statutory basis for such orders.

The High Court judge also observed that the public policy of keeping arbitrations confidential applied in the present case, and that there was no reason to compromise the confidentiality of the related Arbitration.

Importantly, the judge clarified the scope and effect of section 23 of the IAA. According to the judge, section 23 of the IAA is confined to "proceedings under the [IAA]", i.e. proceedings under specific provisions of the IAA, including, for example, section 6(1) (stay of proceedings) and section 12A (interim measures).

The proceedings in *BBW v BBX* were

not commenced pursuant to specific provisions of the IAA. For that reason, the High Court judge held that the sealing order could only have been granted under the Court's inherent powers, and not under the IAA.

### Conclusion

Sealing orders for the preservation of confidentiality in arbitration are becoming more important, given the increase in arbitration-related litigation and court proceedings.

The decision in *BBW v BBX* provides useful clarification of what was previously an ambiguous area of the law, as well as a starting point for

development of further jurisprudence. One key issue in this regard is the degree of the connection between the litigation and the confidential arbitration proceedings required before a sealing order will be granted under the inherent powers of the Court. It remains to be seen how the case law in this area develops.

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