

Insight: Construction

November 2014

Singapore: The Second *Persero* Case*

A judgment of July 16, 2014 of the Singapore High Court enforcing a "binding" but not "final" decision of a dispute adjudication board under the FIDIC Conditions of Contract for Construction 1999 (the so-called "Red Book") is to be welcomed.**

PT Perusahaan Gas Negara (Persero) TBK v CRW Joint Operation (Indonesia) emphasises the importance, when interpreting the FIDIC disputes clause, of giving effect to its intention to facilitate the cash flow of contractors, and denies that failure to comply with a "binding" but not "final" decision of a dispute adjudication board is to be interpreted as giving rise to a dispute separate from the one underlying the dispute adjudication board decision itself.

Known as *Persero II*, the new case is a successor to an earlier one between the same parties (*Persero I*). In *Persero I*, CRW Joint Operation had begun in 2009 an ICC arbitration against another Indonesian company, PT Perusahaan Gas Negara (*Persero*) TBK, for the sole purpose of giving prompt effect to a "binding" but not "final" decision of a dispute adjudication board. The arbitral tribunal had granted in 2009 the relief sought by CRW but the Singapore courts set aside its final award in 2011, holding that the arbitral tribunal was not entitled to enforce such a decision by way of a final award without addressing the merits in the same arbitration.

As a result, CRW Joint Operation began thereafter in 2011 a second ICC arbitration against PT Perusahaan Gas Negara (*Persero II*), requesting an interim award to enforce the same "binding," but not "final," decision of the dispute adjudication board as in *Persero I*, as well as a final award on the merits of the claims underlying the dispute adjudication board's decision.

A majority of the arbitrators upheld CRW's request and ordered PT Perusahaan Gas Negara, by an interim award, to pay the amount of the dispute adjudication board decision. The latter company then applied to have the award set aside.



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* A detailed article on this case entitled "Singapore Contributes to a Better Understanding of the FIDIC Disputes Clause: The Second *Persero* Case" will be published in the January 2015 issue of *The International Construction Law Review*. An adapted version of the condensed article herein was published in the November 10, 2014 issue of *Global Arbitration Review*.

** A "binding" dispute adjudication board decision is one with which a party has expressed dissatisfaction within 28 days of its being rendered, whereas a "final and binding" decision is one with which neither party has expressed dissatisfaction within that period.

Alerts

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Christopher Seppälä, partner at White & Case in Paris, reports on a judgment of July 16, 2014 of the Singapore High Court enforcing a "binding" but not "final" decision of a dispute adjudication board under the FIDIC Conditions of Contract for Construction 1999 (the so-called "Red Book"). He says it is to be welcomed as it will facilitate the cash flow of contractors in the construction industry.

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