

## Singapore High Court Considers Power to Grant Permanent Anti-Suit Injunction in Support of International Arbitrations

### Introduction

1. The power of the Singapore courts to grant a permanent anti-suit injunction in support of local and foreign international arbitrations was considered recently by the High Court in *R1 International Pte Ltd v Lonstroff AG* [2014] SGHC 69.
2. On the facts, the High Court found that there was no operative arbitration agreement and dismissed R1 International Pte Ltd's ("R1 International") application for a permanent injunction to restrain Lonstroff AG ("Lonstroff") from continuing with a law suit filed in the courts of Switzerland.
3. The High Court nevertheless made the following observations:
  - (i) In relation to international arbitrations in Singapore, the courts have the power to grant a permanent anti-suit injunction under the courts' general powers to grant an injunction (although *not* under sections 12 and 12A of the International Arbitration Act ("IAA")); and
  - (ii) In relation to foreign international arbitrations, the Court declined to express a concluded opinion. The Court remarked that it might be logical and consistent with the court's power under section 12A(2) read with section 12(1)(i) IAA( to issue interim anti-suit injunctions in aid of foreign international arbitrations) to hold that the courts also have the power under the more wide-ranging law in section 4(10) of the Civil Law Act ("CLA") to issue permanent anti-suit injunctions in such cases.

### Facts

4. R1 International, a Singapore company, supplied 5 separate orders of rubber to Lonstroff, a Swiss company.
5. The dispute arose from the second order after Lonstroff alleged that R1 International had breached the contract by

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supplying unsuitable rubber. Lonstroff then commenced legal proceedings against R1 International in Switzerland.

6. In turn, R1 International requested the Singapore Commodity Exchange (“SICOM”) to set up an arbitration tribunal. SICOM replied that it would only consider the request when it was confirmed that Swiss proceedings had been suspended and that both parties agreed to refer the dispute to it.
7. Hence, R1 International obtained an interim anti-suit injunction in Singapore preventing Lonstroff from continuing with the legal proceedings in Switzerland.
8. Lonstroff then applied to discharge this interim injunction while R1 International applied for the injunction to be made permanent, resulting in the current case.

### Threshold issue – did the contract contain an arbitration clause?

9. The Court first considered whether the contract for the second order of rubber contained an arbitration clause.
10. There were email negotiations between the parties for the second order of rubber before a confirmation email was sent to Lonstroff. In the confirmation email, there was no mention of or reference to arbitration. The order of rubber was then delivered to and accepted by Lonstroff.
11. Subsequently, an email on behalf of R1 International was sent to Lonstroff with a pre-signed sales contract backdated to before the delivery and acceptance of the second order of rubber.
12. The sales contract incorporated the arbitration clauses of the International Rubber Association Contract (“IRAC”) and an additional clause stipulating that the arbitration will be conducted in Singapore (“SICOM arbitration clause”).
13. Lonstroff never signed the contract. R1 International argued that the arbitration clauses had either been incorporated by trade custom or alternatively through a previous course of dealing.

14. The Court rejected both arguments.
15. In relation to incorporation by trade custom, the Court decided that R1 International failed to establish the alleged trade practice that the majority of international rubber traders concluded their contracts based on IRAC terms.
16. The Court noted that the SICOM arbitration clause was not even part of the standard IRAC terms and it would not have been enough for R1 International to prove a custom in the rubber trade to contract on IRAC terms.
17. As for incorporation through a previous course of dealing, the Court held that one prior transaction between the parties was insufficient to find a course of dealing.
18. Furthermore, there was no continuity in the transactions since the first order of rubber only included the IRAC terms while the second order included the IRAC terms *and* the additional SICOM arbitration clause.
19. The Court also noted that the sales contract was only sent *after* the order had been delivered and accepted by Lonstroff. In other words, the contract between the parties had been concluded and performed before Lonstroff was notified of the arbitration clauses.

### The Court's power to grant a permanent anti-suit injunction

20. Since no arbitration clause had been incorporated into the second order, there was no basis for the Court to grant a permanent anti-suit injunction or sustain the interim anti-suit injunction. This was sufficient to decide the matter.
21. The Court however went further to express the view that it had the power to grant a permanent anti-suit injunction in relation to international arbitrations conducted in Singapore. This power was derived from section 4(1) of the CLA and *not* from sections 12 or 12A of the IAA.
22. In relation to the IAA, the Court's view is that section 12 simply grants courts the power to grant injunctive relief only on an interim basis in support of international arbitrations in

Singapore while section 12A extends this power to international arbitrations held outside of Singapore. However, the provisions in the IAA did not abrogate the Court's more general power to grant permanent anti-suit injunctions, derived from section 4(1) of the CLA.

23. Therefore, where there is an arbitration agreement providing for international arbitration to be conducted in Singapore, the innocent party can seek a permanent anti-suit injunction under the courts' general powers to grant an injunction.
24. The Court left open the question of whether it had a similar power to grant a permanent anti-suit injunction in relation to international arbitrations held outside of Singapore. The Court declined to express a concluded opinion on this issue.
25. The Court also remarked that intervention through a permanent anti-suit injunction to support international arbitrations held overseas would likely require strong reasons – for example, where the forum in which the arbitration is to take place does not provide for effective interim measures in support of arbitration.