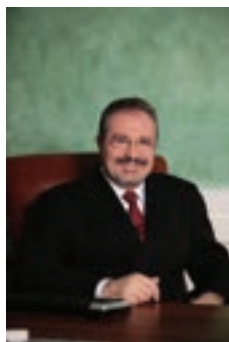




ENFORCEMENT OF DAB DECISIONS IN ARBITRATION

PART I

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Summary

1. The authors¹ wrote an article for the DBF² bulletin in September 2010 reporting on their success in a then ongoing ICC arbitration concerning the early enforcement of an interim-binding DAB Decision in their client's favour that had previously been given during the course of a disputed project;

2. They argued that considerable legal support for such interim enforcement among both arbitral tribunals and some domestic courts alike was at that time developing apace and, further, that a number of clear rules or practice points had emerged from the relevant decisions that could be used to increase the chances of success when seeking interim enforcement of DAB Decisions as early as possible in international arbitration or court proceedings;

3. Since late 2010 the well known series of *Persero* cases has progressed through the courts of Singapore, culminating in the recent second Singapore Court of Appeal judgment handed down on 27 May 2015. The authors acknowledge that, whilst often complex, these cases are, overall, extremely helpful in clarifying the law in this area. That is so not only from the point of view of the domestic law of Singapore but also by the significant focus of those judgments on the true meaning of the terms of Clause 20 of the FIDIC 1999 Red Book thereby helping to clarify the proper meaning of Clause 20 within an international framework;

4. The authors' own ongoing international arbitration practices have given rise to numerous cases on which they have worked since their last article which have demonstrated the often varied procedure now frequently being used by international arbitral tribunals, in particular, when considering the best manner in which to grant interim enforcement of DAB Decisions on an early basis, namely subject to the ability to have them altered, or even reversed, if necessary, upon a full hearing later in the substantive proceedings;

5. Part I of this article will deal with some of the more important issues on DAB Decision enforceability, particularly emerging from the *Persero* cases. Also included will be some warnings about potentially important points of procedure when seeking to maximise the chances of early DAB Decision enforcement;

6. Part II, which will be published in next month's DBF Bulletin, will focus on the authors' international arbitration experience applying for and obtaining such enforcement over the last 5 years. It is hoped that their experience, involving as it does a range of interesting and sometimes surprising approaches taken by international arbitral tribunals, will not only show that this important area of the law is becoming increasingly well-settled, but also that there are arguably almost as many variations of approach as there are applications to be made!

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2. The Dispute Board Federation, 14, rue du Rhone 1204 Geneva, Switzerland. www.dbfederation.org



INTRODUCTION

In September 2010, we published in this bulletin a by now well known article entitled '*Enforcement of a DAB Decision through an ICC Final Partial Award.*' It discussed and analysed developments in the enforcement of binding but not final Dispute Adjudication Board ("DAB") Decisions, particularly by reference to an ICC arbitration in which they had then recently been involved as co-counsel on a construction project let on largely standard 1999 FIDIC Red Book conditions. It will be remembered that in that case the arbitral tribunal found that binding but not final DAB Decisions *could* be enforced through a (Final Partial) Award. That result was achieved via bifurcated (i.e. split) proceedings which took place early in the arbitration as a form of summary procedure. Given that the premise of the enforcement of these DAB Decisions in a summary way in arbitration by partial, interim or even provisional awards is essentially *temporary* until the underlying dispute/s upon which the original DAB Decision was based can be finally heard and determined in arbitration, for the sake of simplicity we shall call that process "Interim Enforcement".

The Interim Enforcement approach has been widely espoused by us (and indeed by many other commentators) as a just and equitable solution to the perennial problem of delayed payment; particularly that suffered by parties in international disputes who are successful before a DAB but where there is no obvious legal structure in place for the enforcement of that Decision.³

This approach subsequently received high level judicial endorsement from the Singapore Court

of Appeal in the much discussed 2011 decision of *CRW Joint Operation v PT Perusahaan Gas Negara (Persero) TBK*⁴ ("*Persero CA [2011]*") which also suggested, albeit relatively fleetingly, an acceptance of the principle of summary-type enforcement by arbitration of binding but not final DAB Decisions⁵.

That judgment followed the first instance decision rendered in late 2010 by the Singapore High Court in *PT Perusahaan Gas Negara (Persero) TBK v CRW Joint Operation*⁶ ("*Persero HC (2010)*").

Particularly helpfully from the perspective of the timing of this present article, the Singapore Court of Appeal has very recently rendered yet another judgment in the *Persero* saga, *PT Perusahaan Gas Negara (Persero) TBK v CRW Joint Operation*⁷ ("*Persero CA [2015]*"). That judgment, by a strong majority comprised of Chief Justice Sundaresh Menon and Justice Quentin Loh (with Senior Judge Chan Sek Keong dissenting), clearly endorses the principle recognised in *Persero CA [2011]* - a binding but not final DAB Decision *is of itself* capable of enforcement through arbitration. Later in this article we shall return to *Persero CA [2015]* to comment on it in some detail and to see what it may actually mean in practice.

Since publishing our 2010 article, we have continued to represent clients in further international arbitrations involving Interim Enforcement applications. In Part II of this article, to be published next month in the DBF Bulletin, will also discuss some key issues arising from those cases in order to identify both pitfalls and advantages in this developing jurisprudence for clients and lawyers alike.

³ In most legal jurisdictions, DAB Decisions alone are not enforceable directly by Court proceedings as opposed to arbitral awards which are in many. That situation should, of course, be contrasted with that which subsists in those legal jurisdictions which have some form of domestic adjudication process available where the adjudicator's decision is able to be enforced through their domestic courts via statutory or equivalent legal recognition. Vide the adjudication regime set out in the UK's Housing Grants Construction and Regeneration Act 1996 (as amended)

⁴ [2011] 4 SLR 305

⁵ *Ibid.*, para.s 64-66.

⁶ [2010] 4 SLR 672

⁷ [2015] SGCA 30.

A close-up photograph of a person's hand holding a green pen with a silver tip, poised over a document. The document appears to be a contract or a technical drawing, with some text and lines visible. In the background, another person's hand is visible, suggesting a collaborative work environment. The lighting is soft, and the focus is on the hand and the pen.

PROBLEMS ARISING FROM THE WORDING OF CLAUSE 20
IN THE 1999 FIDIC RED BOOK STANDARD FORM OF CONTRACT

As those familiar with the topic will by now know *ad nauseum*, the enforceability of binding but not final DAB Decisions has been the subject of very considerable international debate. A certain amount of the legal uncertainty partially fuelling that debate originates from a perceived ‘gap’ in the wording of Sub-Clause 20.7. In particular, a DAB Decision that has not been disputed via either party filing a valid Notice of Dissatisfaction (“NoD”) within 28 days will become final **and** binding on the parties in accordance with the terms of Sub-Clause 20.4. A final **and** binding decision can then be enforced under Sub-Clause 20.7, which allows the aggrieved party to “...refer the failure [to comply with the DAB Decision] itself to arbitration” pursuant to Sub-Clause 20.6. So far, so clear.

The ‘binding but not final’ conundrum

However, upon the service of a NoD under Sub-Clause 20.4, a DAB Decision **remains binding** but becomes **non-final**. The parties are provided with an express entitlement then to proceed to arbitration to have any **underlying disputes** resolved (but, interestingly, are not forced to do so notwithstanding the existence of one or more NoDs). The problem, therefore, is that nowhere in Clause 20 is there an explicit mechanism for enforcing binding but not yet final DAB **Decisions**, as opposed to the **underlying disputes** contained within them which **are** expressly dealt with under the terms of Sub-Clause 20.6. As pointed out by Steve Mangan, if a party with an interim binding DAB Decision “...fails to comply with [it]..., the [Red Book] ... do[es] not expressly permit an aggrieved party to enforce the **decision** by referring the failure to arbitration, as it may do under Sub-Clause 20.7 of the Red Book in the case of a final and binding decision” (emphasis added).⁸

It is the failure of the FIDIC Red Book standard form wording to provide an explicit means to refer a binding but not final **decision**, as opposed to its underlying **disputes**, to arbitration that has been interpreted by commentators, tribunals and courts alike as impliedly limiting the parties’ ability to enforce such decisions.⁹

The supposed legal “gap”

However, there has also been strong criticism of what many see as an unduly restrictive interpretation of these important sub-clauses. Influential commentators, such as Christopher Seppälä, have argued that “courts and tribunals are ... going too far to suggest that, because Sub-Clause 20.7 does not refer to binding decisions of a DAB, a failure to comply with a binding decision may not be referred to arbitration.”¹⁰ Seppälä further clarifies that “Sub-Clause 20.7 should not be interpreted as implying that a failure to comply with a binding decision cannot be referred to arbitration.”¹¹ Whilst these comments are certainly helpful, particularly coming from one who has actually been involved in drafting the FIDIC standard form wording, they have not quelled the widespread speculation about the existence of a so-called legal “gap”.

This “gap” is generally conceived as a lacuna in the operation of Sub-Clause 20.7. However, rather than a true “gap” it may be more accurate to ascribe the confusion surrounding the enforceability of binding but not final DAB Decisions to a problem of interoperability between the respective Sub-Clauses comprising Clause 20. Indeed, as seen above, Sub-Clause 20.7 is reserved for decisions that have *already become binding and final*; it would therefore perhaps seem more accurate to focus on Sub-Clause 20.6 as the correct provision to apply when dealing with decisions that are *binding but not yet final*. Sub-Clause 20.6 provides:

Unless settled amicably, any dispute in respect of which the DAB’ Decision (if any) has not become final and binding shall be finally settled by international arbitration...The arbitrator(s) shall have the full power to open up, review and revise any certificate, determination, instruction, opinion or valuation of the Engineer, and any decision of the DAB relevant to the dispute.

⁸ Steve Mangan, ‘Notes from the FIDIC Users’ Conference, London, December 2011’, *Construction Law International*, vol. 7, No. 1, March 2012, p 34.

⁹ See for example: Taner Dedezade, ‘Mind the gap: analysis of cases and principles concerning the ability of ICC arbitral tribunals to enforce binding DAB Decisions under the 1999 FIDIC conditions of contract’, (2012) *IALR*, Vol. 15.

¹⁰ Christopher Seppälä, ‘Sub-Clause 20.7 of the FIDIC Red Book does not justify denying enforcement of a ‘binding’ DAB Decision’, *Construction Law International*, Vol. 6, No. 3, October 2011, p 20.

¹¹ *Ibid.*

It must be remembered that, according to the standard wording of Sub-Clause 20.4 in the 1999 FIDIC Red Book, a DAB Decision given thereunder “...shall be **binding** on both Parties, who **shall give effect to it** unless and until it shall be revised in an amicable settlement or an arbitration award ...” (emphasis added). Accordingly, this gives rise to the oft-referred to concept of an “interim binding” DAB Decision - being legally binding in the sense of being required to be complied with by the parties whilst they await the final determination of their respective legal rights and obligations through arbitration.

Sub-Clause 20.4 imposes two key obligations upon parties to any DAB process. First, that any resultant decisions shall be binding upon them. Second, that they shall give prompt effect to DAB Decisions. The use of the term “binding” for *all* DAB Decisions regardless of whether a NoD has been served must, if there is any real meaning in that term at all, denote the parties’ express agreement to comply with any DAB Decision regardless of whether a NoD has been served by either of them or both.

This has been expressed in other words thus:

‘...a temporarily or finally binding DAB Decision must be dealt with as a matter of legal fact, being binding on the parties according to Sub-Clause 20.4. In other words, according to Sub-Clause 20.4, the parties to the contract have promised each other to give effect to the DAB Decision, which is a contractual obligation governed by the proper law of the contract whether the DAB Decision is based on the proper law of the contract or on tort law.’¹²

Other commentators take a similar view; in circumstances where a party fails to give effect to a DAB Decision it will be in breach of contract irrespective of the existence of any NoDs. That is simply because a NoD is a precondition for a party seeking to have a DAB Decision *reviewed* in arbitration but does *not* have any bearing on the binding nature of that DAB Decision in the meantime. This view is supported by others involved in the drafting of the 1999 FIDIC Red Book such as Mangan, who states:

It had never been FIDIC’s intention to create a situation where the decision of a DAB could simply be ignored. Compliance was assumed and expected of the parties, failing which, enforcement should be available in the form of an arbitral award.¹³

“Disputes” vs “decisions” (sub-clauses 20.6 and 20.7 of the 1999 FIDIC Red Book)

We would argue that the legal debate is now largely settled on this point (i.e. the enforceability *per se* of an interim-binding DAB Decision), obviously generally in favour of Interim Enforcement. However, a point of ongoing contention is the legal consequence of the distinction made between **binding but not final** DAB Decisions referred to in Sub-Clause 20.6 and the **final and binding** DAB Decisions referred to in Sub-Clause 20.7. In short, Sub-Clause 20.6 seems to require any *disputes* (i.e. as opposed to *decisions*) that have not been settled amicably and have not become final and binding to be referred to arbitration for final resolution. However, Sub-Clause 20.7 by contrast provides that where a party has failed to comply with a final and binding DAB Decision, the “*failure itself*” can be referred to arbitration.

¹² FIDIC – A guide for Practitioners [2010] by Axel-Volmar Jaeger and Gotz-Sebastian Hok in 2010 at p 406.

¹³ Steve Mangan, ‘Notes from the FIDIC Users’ Conference, London, December 2011’, p 34.

Hence, in a sense, the scope of the resulting arbitrations is pre-defined by the express terms of these two significantly different sub-clauses in the 1999 FIDIC Red Book. To us, the key distinction is the use of the word “disputes” in Sub-Clause 20.6 as opposed to “decisions” in Sub-Clause 20.7. This implies that the *merits* of the former are required to be re-opened in order to be heard and determined but that only the *formalities* of the latter need be considered in any reference to arbitration. How else are disputes capable of being resolved **finally**? Conversely, DAB Decisions are exactly that – the consequence of a **(final and binding,** by the time Sub-Clause 20.7 applies) determination that has already taken place which a *fortiori* **do not need to be re-opened**. Accordingly, thereafter the only issue is whether those DAB Decisions are technically enforceable (e.g. in the sense of not suffering from any serious irregularity, etc).

To us, a natural legal result of this way of looking at the distinction is that an **interim-binding** DAB Decision can and ought to be enforced by an arbitral tribunal in the same manner as a **final and binding** decision, albeit as a preliminary-type issue in a bifurcated process in the case of the former. However, we also feel that the enforcement of an interim-binding DAB Decision through, *inter alia*, the Sub-Clause 20.6 process, is only capable of being done, in accordance with the terms of the 1999 FIDIC Red Book in any event, on a temporary or interim basis with the **merits** of the decision’s **underlying dispute/s at the same time being referred** to the (we believe) **same** arbitral tribunal to be heard and determined later in the arbitration process (i.e. at the main hearing dealing with substantive matters). As discussed below in connection with the *Persero* cases, aspects of this proposition may now be under some doubt. However, with respect, we still feel that it is likely to be the preferable position internationally when dealing with Interim Enforcement.

What is also important to remember is that any arbitral award granting interim enforcement of a final but not binding DAB Decision (i.e. whether it be partial, interim or provisional in nature) should, in our view, be able to be adjusted for in the Final Award later in that same arbitration should that become necessary.

This simply acknowledges the reality of any Interim Enforcement procedure; its results may potentially need to be modified, or even entirely reversed, in the event that the arbitral tribunal ultimately does not agree with the DAB after it has heard and determined all the merits of the underlying dispute/s in the full arbitration. Whilst an entire reversal of the DAB’s original decision is, fortunately, far from the norm on construction projects, our experience is that it is common for there to be derogations between DAB Decisions and Final Awards which can sometimes be significant. Indeed, that is to be expected given the usual summary nature of the DAB procedure which, philosophically at least, is intended to keep cash-flow moving on construction projects in exchange for an amount of legal flexibility. Justice is essentially served by greater scrutiny being achievable in arbitration which will, of course, usually involve a far more detailed examination of all the facts and the parties’ respective legal rights and obligations.

A return to the DAB?

It had for a long time been argued by those of the more pedantic persuasion that only after returning to the DAB itself for another decision concerning the fact of non compliance with one of its own earlier decisions under Sub-Clause 20.4 could the disappointed party be entitled to take the issue of that non compliance to arbitration - but not, in turn, before supposedly also having to pass (again) through the requirements of Sub-Clauses 20.4 [Obtaining Dispute Adjudication Board’s Decision], 20.5 [Amicable Settlement] and 20.6 [Referral of Disputes to Arbitration]! As ridiculous as this may seem, particularly given the terms of Sub-Clause 20.6 and how relatively fast international jurisprudence around Interim Enforcement has developed, this argument has in the authors’ own combined experience been used many times by recalcitrant parties on the losing end of DAB Decisions seeking simply to delay enforcement for as long as possible.

As we shall see in a moment, this position now seems finally to be dead.



THE PERSERO CASES

This important series of Singaporean cases has unfolded since 2009 as sort of legal soap opera – lengthy, with something for everyone including some nuggets of brilliance. A useful summary of the procedural background to each of the cases can be found on the Kluwer Arbitration Blog.¹⁴

Finally, the issue of the supposed need to return to the DAB (under Sub-Clause 20.4), effectively as a pre-condition to proceed to arbitration for any non compliance with an existing DAB Decision, has been squarely addressed and disposed of by the Court of Appeal in its latest judgment.¹⁵ In particular, the court cited with approval Christopher Seppälä's well known views that it was not necessary to re-invent the wheel in that respect¹⁶ and also endorsed FIDIC's own guidance on the matter, issued in April 2013, which states:

This Guidance Memorandum is designed to make explicit the intentions of FIDIC in relation to the enforcement of the DAB Decisions that are binding and not yet final, which is that in the case of failure to comply with these decisions, the failure itself should be capable of being referred to arbitration under Sub-Clause 20.6 [Arbitration], without Sub-Clause 20.4 [Obtaining Dispute Adjudication Board's Decision] and Sub-Clause 20.5 [Amicable Settlement] being applicable to the reference.¹⁷

The Court of Appeal put it thus:

To sum up our analysis at [83-[87] above, cl. 20.4 imposes a distinct contractual obligation on a paying party to comply promptly with a DAB Decision regardless of whether the decision is final and binding or merely binding but non-final, and this obligation is capable of being directly enforced by arbitration without the parties having to first go through the preliminary steps set out in cll 20.4 and 20.5...¹⁸

However, rather intriguingly, it is the *procedure* by which binding but not final DAB Decisions are actually dealt with by way of Interim Enforcement (albeit driven by the Court of Appeal's view that two separate legal rights arise from the issuance of a NoD¹⁹) that appears to have preoccupied the Singapore courts and caused the greatest degree of variation in the judgments in *Persero*. To the extent that the point has squarely been addressed, whilst the previous decisions, particularly the decision in *Persero* CA [2011], acknowledged the ability of the dissatisfied party to bring a claim for Interim Enforcement, they did so emphasising the need also to refer to the **same** arbitration the underlying dispute upon which the DAB Decision was based (albeit with the latter being likely to be heard and determined later in those proceedings).²⁰

¹⁴ S "Another (Unsuccessful) Challenge to the Finality of Interim Arbitral Awards in Singapore and Enforcing DAB Decisions on International Projects Under FIDIC", posted 14 June 2015 10:07PM PDT by Eugene Tan and Rupert Coldwell.

¹⁵ [2015] SGCA 30, para.s 64 – 69.

¹⁶ *Ibid.*, para. 65 in turn approving of the article by Seppälä, *op. Cit.*, note 9.

¹⁷ Guidance Memorandum for Users of the 1999 Red Book, issued 1 April 2013.

¹⁸ [2015] SGCA 30, para. 88.

¹⁹ *Ibid.*, p. 47, para. 83.

²⁰ [2011] 4 SLR 305, para.s 67-68.

The key development arising out of the latest *Persero* instalment, *Persero* CA [2015], is that now the “underlying dispute” - also usefully categorised by the Court of Appeal as the “Primary Dispute” concerning the merits underlying the DAB Decision, as opposed to the “Secondary Dispute” concerning the non-compliance with DAB Decision sought to be enforced - does **not** now have to be referred to arbitration at the same time or, it would seem, at all! The Court of Appeal puts it this way:

...Further, we consider that a tribunal would be entitled to make a final determination on the issue of prompt compliance alone if that is all it has been asked to rule on, as was the case in the 2009 Arbitration...²¹

It is true, however, that the Court of Appeal goes on immediately to deal with what we hitherto had thought was the correct position, namely:

...On the other hand, where both the dispute over the paying party’s non-compliance with a binding but not final DAB Decision as well as the dispute over the merits of that DAB Decision are put before the same tribunal, as was done in the 2011 Arbitration and, hence, in the case before us now, the tribunal can: (a) make an interim or partial award which finally disposes of the first issue (i.e. whether the paying party has to promptly comply with the DAB Decision); (b) then proceed to consider the second issue (i.e. the merits of the DAB Decision), which is a separate and conceptually distinct matter as we have already noted; and (c) subsequently, make a final determination of the underlying dispute between the parties...²²

What now?

What we appear to have now is a very liberal approach having been taken, in clear terms, by a strong majority judgment in Singapore’s Court of Appeal. This is essentially to the effect that a party can seek interim enforcement of a DAB Decision [made under the 1999 FIDIC Red Book] via arbitration without the need also to refer the underlying dispute to be heard and determined in the same arbitration or, as we read it, at all. One can imagine the joy experienced by the contractor in *Persero*, CRW, which has essentially been toiling in the legal system for 6 years to achieve just that result!

²¹ *Op cit.*, note 17.
²² *Ibid.*

A close-up photograph of a person's hands in a dark suit jacket, holding a black and silver pen over an open notebook. The scene is set against a blurred, light blue background. A dark blue horizontal banner is overlaid across the middle of the image, containing the text "SOME THOUGHTS" in white, uppercase letters. The pen is held in a tripod grip, and the notebook is open, with the pen tip resting on the page. The lighting is soft and even, highlighting the textures of the suit and the notebook.

SOME THOUGHTS

Whilst judicial support for Interim Enforcement is obviously greatly appreciated by users and supporters of the dispute board procedure on projects across the world, with the greatest of respect to the Court of Appeal it remains to be seen if its rather avant-garde approach on this potentially important point will prove popular elsewhere. Obviously, as it stands it is good law in Singapore and is likely to remain so for a long time given its very senior origin (and notwithstanding its lack of unanimity). No doubt that will be seen by many in the context of Singapore's continuing, and largely successful, development of its legal services sector involving international arbitration and its desire to be seen at the forefront of developments in this area.

In any event, it must also immediately be acknowledged that the Court of Appeal simultaneously endorsed the somewhat more traditional position of the putative claimant referring **all** of its disputes (i.e. both "Primary" and "Secondary", as described in *Persero* CA [2015]) to the same arbitration to be determined in the appropriate order.

However, we have to ask ourselves the question: why would anyone beyond the jurisdiction of Singapore want to take the risk of referring **only** the Secondary Dispute, namely the dispute about payment *per se*, to arbitration when there is a strong chance that many other legal systems will not interpret Clause 20 in the same manner and that Interim Enforcement will eventually be refused in the absence of the underlying dispute (the Primary Dispute) being referred to arbitration at the same time (as, we must remember, was the case for a long time in *Persero*, i.e. until the latest *Persero* CA [2015] decision was delivered in May 2015)?

At least until this potentially crucial point is clarified further, we strongly recommend that parties refer **all** of their disputes relating to , i.e. Primary and Secondary, when seeking Interim Enforcement from arbitral tribunals.

A short note about awards

The key thing to ensure is that a *sufficient amount of finality* is achieved with any arbitral award that is obtained at any stage of arbitral proceedings if, as is likely to be the case with Interim Enforcement, you are likely to find it necessary to seek to convert that into something enforceable by the Courts (i.e. a judgment). We see no reason why Interim Enforcement should not be achievable through either a "Partial" or "Interim" Award (as opposed to a provisional award which is generally seen as a more protecting or preserving instrument). It is important, however, to check the law of your anticipated place of enforcement to ensure a thorough understanding as to the vagaries of any preferences that the domestic courts of that jurisdiction might have when it comes to enforcing anything other than "Final" Awards.²³

Obviously, the arbitral tribunal can and should make a Final Award at the main hearing which proceeds to deal with the legal effect of the underlying dispute/s. That may involve effectively undoing some or all of the **legal effect** of an earlier award in the same arbitration giving interim effect to a binding but not final DAB Decision. "Oh, but *res judicata*" we hear some readers cry! Not at all. Why? Because any such award made earlier would solely be concerned with recognising the legal (i.e. essentially contractual) *enforceability* of the DAB Decision (described in *Persero* CA [2015] as the "Secondary Dispute") and not with the parties' respective entitlements flowing from the dispute/s underlying that decision (described in *Persero* CA [2015] as the "Primary Dispute").²⁴ Accordingly, there is nothing whatever preventing the arbitral tribunal from dealing with those entitlements later in the arbitration by way of a Final Award as that would be the *first* time, as a matter of law, that the arbitral tribunal had done so.

²³ This has been suggested to the authors to have been the case in Romania, at least prior to that country's adoption of the New Civil Code in 2011.

²⁴ [2015] SGCA 30, para.s 83-88.

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