CONSTRUCTION & PROJECTS

Dispute Resolution and Performance Bonds in Construction Projects – Court Examines Dispute Resolution under PSSCOC and Validity of Bond Demands

Introduction

The importance of cashflow in the construction industry has dictated much of its legal framework, from the time-sensitive nature of the dispute resolution mechanisms to the common use of performance bonds as security against contractor default. In *SH Design & Build Pte Ltd v Jurong Port Pte Ltd and another* [2026] SGHC 159, the Singapore High Court provided insight on the operation of this framework, determining whether a Superintending Officer's ("**SO**") decision was validly rendered within the mandatory 30-day time limit so as to be final and binding, and whether a subsequent demand on a performance bond issued on the strength of that decision was therefore valid.

The contract in question incorporated the Public Sector Standard Conditions of Contract for Construction Works (Seventh Edition 2014) ("**PSSCOC**"), which prescribes a two-tiered dispute settlement mechanism: a reference to the SO for a decision within 30 days, followed by a right to arbitration if either party is dissatisfied with the SO's decision.

Here, the employer referred the question of liquidated damages to the SO and, on the basis of the SO's response, proceeded to call on a performance bond. The Court held that the SO's initial decision did not answer the question posed – the SO having found that he did not have the power to determine the issue – and that his later decision, issued in answer to a clarification request, was after the 30-day deadline and invalid. The premise of the bond demand thus fell away, and the Court declined to set aside the injunction restraining the call on the bond.

This decision provides valuable guidance on the framing of SO references, the importance of conforming with the timeline for SO decisions under the PSSCOC, and the requirements for a valid call on a performance bond. This Update gives a summary of the decision and highlights practical takeaways for contracting parties.

Brief Facts

The Applicant was engaged by the first respondent ("**R1**"), the operator of Jurong Port, as the main contractor under an agreement that incorporated the PSSCOC. As security, the Applicant furnished a performance bond issued by the second respondent ("**R2**"), an insurance company. The performance bond was a conditional guarantee requiring R1 to identify the specific contractual breach when making a demand.

Completion of several phases of the project was substantially delayed, and disputes arose as to whether the Applicant was entitled to extensions of time. The relevant procedural history is as follows:

1. On 6 August 2025, R1 made a reference to the SO ("**SO Reference**") under clause 35.1 of the PSSCOC, seeking a decision on the total quantum of liquidated damages payable by the Applicant. The SO responded on 5 September 2025 with a "*preliminary response*" ("**SO Decision**") stating that he lacked power under the PSSCOC to determine liquidated damages.

2. R1 wrote to the SO requesting that he clarify his decision ("**Clarification Request**"), following which the SO issued a "*clarification*" ("**SO Clarification**") on 6 October 2025 assessing liquidated damages at S$13,224,962.47.

3. R1 then issued a demand letter for the full performance bond sum ("**Demand Letter**"), relying on the SO Decision (as supplemented by the SO Clarification) as a final and binding determination under clause 35.1 of the PSSCOC.

4. The Applicant commenced court proceedings seeking an injunction restraining R1 and R2 from: (i) calling and paying on the performance bond respectively, pending arbitration of the dispute; or (ii) in the alternative, using any payment from the performance bond pending arbitration. The Applicant obtained an interim injunction pending determination of the entire application. R1 sought to set aside the interim injunction.

Holding of the High Court

The Court declined to set aside the interim injunction, holding that R2 was not obliged to make payment under the Demand Letter on the basis of either the SO Decision or the SO Clarification.

PSSCOC Dispute Settlement Regime

Clause 35 of the PSSCOC sets out the following dispute resolution mechanism for disputes in connection with or arising out of the contract or the execution of the relevant works:

1. Disputes between the employer and the contractor shall first be referred to the SO for his decision.

2. The SO shall give notice of his decision within 30 days of receiving the reference. Such decision shall be final and binding on the parties unless the dispute is referred to arbitration.

3. If either the employer or the contractor is dissatisfied with the decision of the SO, or if the SO fails to give notice of his decision within the 30-day period, then the employer or the contractor may refer the dispute to arbitration.

The Court noted that the intention behind clause 35.1 is to provide a fast-track dispute resolution mechanism so that an expedited decision may be obtained, allowing construction works to proceed without the undue delay that a drawn-out disagreement would cause.

The Court also clarified that the fast-track regime for progress payment claims under the Building and Construction Industry Security of Payment Act 2004 does not contradict the clause 35.1 framework in the PSSCOC. The latter has a wider application, being available for all manner of disputes (save for certain exceptions in clause 35.3 of disputes concerning termination, repudiation or abandonment), and is not just limited to progress payment claims.

Validity of the SO Decision

The Court found that, on its substance, the SO Decision did not actually answer the question posed — namely, the total quantum of liquidated damages — because the SO stated that he lacked power under the contract to determine that quantum. The SO Decision thus was not a decision that was final and binding on the parties. Pertinently, even though the SO called the SO Decision a "*preliminary response*", the Court considered that it had to look past such labels and it treated the SO Decision as a final one.

The Court left open the question of whether an SO could validly clarify, after the 30-day deadline, a decision made before the deadline if the clarification did not substantially change the decision. However, on the facts, the Court further found that the SO Clarification was not valid as a decision under clause 35.1 for the following reasons:

1. The SO Clarification was issued in response to a Clarification Request that was never copied to the Applicant, breaching natural justice and the requirement under clause 35.1(1) that a copy of the reference be sent to the other party.

2. The SO Clarification was issued roughly 60 days after the SO Reference, which was well outside the mandatory 30-day deadline. The Court was of the view that even a one-day delay would invalidate a late decision given the rigid nature of the deadline. In reaching this decision, the Court held that the SO Clarification was more than a mere clarification of the SO Decision; it in fact responded to the question posed in the SO Reference. Therefore, to the extent that it did so, it was invalid as it was given after the 30-day deadline.

Validity of the Bond Demand

Since the performance bond was a conditional bond, R1 was required to demonstrate a valid basis for its claim of breach on the part of the Applicant. However, the SO Decision did not determine the quantum of liquidated damages, and the SO Clarification was invalid. Therefore, the premise of the Demand Letter — that there was a decision by the SO pursuant to clause 35.1 on liquidated damages and it was binding on the Applicant — was false, rendering the demand on the performance bond invalid.

Key Takeaways

The Court's decision provides the following key lessons for parties seeking to call on a performance bond, and for parties dealing with disputes pursuant to the PSSCOC dispute resolution mechanism. Although this case concerned the 2014 edition of the PSSCOC, the latest 2020 edition of the PSSCOC is substantially similar in material respects.

1. **Ensure the SO reference is clear and answerable.** The question posed to the SO must be framed in a direct manner that allows the SO to provide a clear, substantive answer within 30 days (or the applicable timeline if a different contractual timeline applies). An overly broad or premature reference risks receiving an inadequate response from the SO, which in turn may then be insufficient basis for a call on a performance bond.

2. **Do not rely on post-deadline "*clarifications*"**. If the SO's decision within the 30-day window does not address the question posed, a subsequent clarification issued after the deadline will not cure the deficiency, as the clarification is made out of time. The employer cannot use such a clarification to support a bond demand. On balance, it may be better for the employer to issue a new reference to the SO.

3. **Verify that the bond demand meets the conditions of the bond instrument**. For conditional bonds, the demand must assert, and be substantiated by, the contractor's actual failure to fulfil its contractual obligations. A demand that rests on a flawed or invalid determination will likely be considered to not comply with the terms of the bond instrument. Even in the case of unconditional, on-demand bonds, a party making a call needs to ensure that it strictly complies with any procedural requirements stated in the bond for the call.

4. **Consider the type of bond carefully**. The distinction between on-demand bonds and conditional bonds is critical. For conditional bonds, the beneficiary bears a heavier burden of demonstrating entitlement to call on the bond, whereas on-demand bonds may only be restrained on grounds of fraud or (in Singapore) unconscionability. Therefore, it is in the interests of upstream parties such as employers to try and negotiate for unconditional, on-demand bonds, whereas downstream parties may wish to negotiate for conditional bonds instead.

5. **Bear in mind clause 35.3 exclusions**. The clause 35.1 mechanism does not apply to disputes concerning termination of a contractor's employment or repudiation or abandonment of the contract. Such disputes must be referred to arbitration instead. In this connection, contractors should bear in mind the 60-day time limit for commencing arbitration, running from the date of the notice of termination or act of repudiation or abandonment.

If you have any queries on the above, please reach out to our team set out on this page.

For regional Construction & Projects matters, please see Rajah & Tann Asia's Construction, Infrastructure & Projects Practice for more information.

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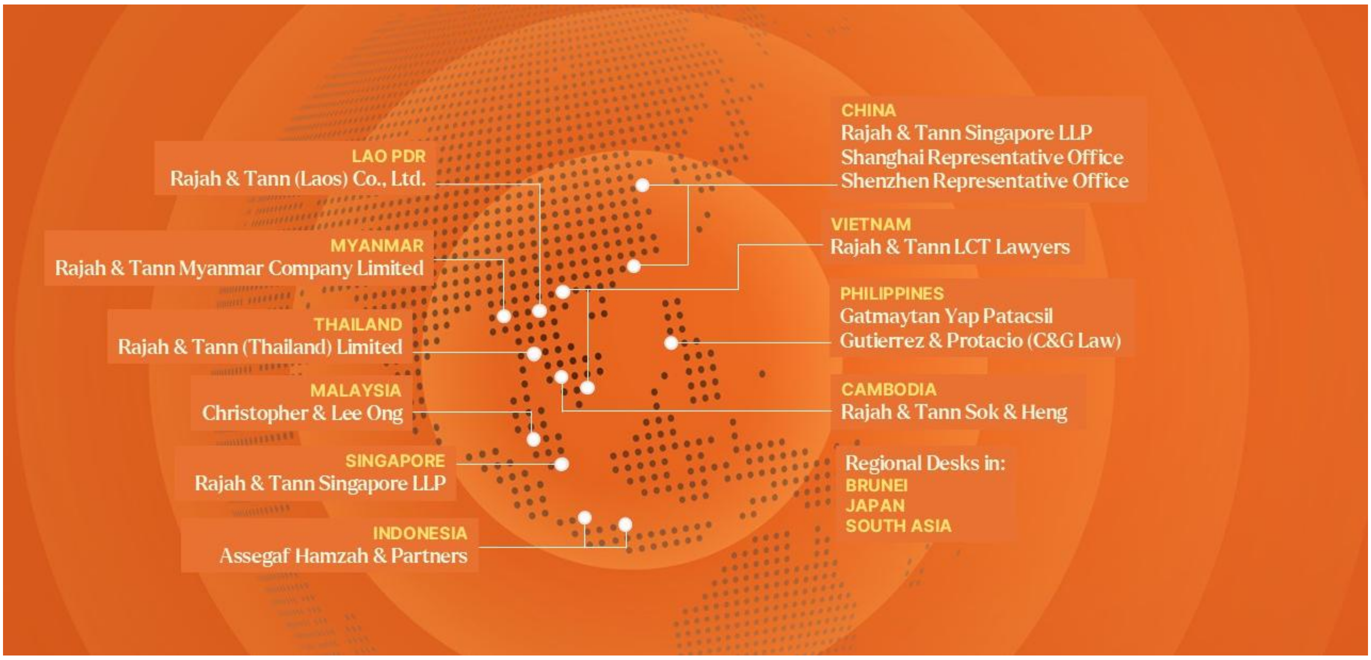

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