

# Projects & Pitfalls - Sports, Water, Energy & FIDIC

Kluwer Construction Blog

January 21, 2011

Mohan Pillay

Please refer to this post as: Mohan Pillay, 'Projects & Pitfalls - Sports, Water, Energy & FIDIC', Kluwer Construction Blog, January 21 2011, <http://kluwerconstructionblog.com/2011/01/21/projects-pitfalls-sports-water-energy-fidic/>

The inaugural Youth Olympic Games hosted by Singapore in August last year left a positive impression on Singapore's young guests. The fanfare would have been much bigger had the Singapore Sports Hub been available for the event.

At an estimated cost of S\$1.33 billion, the new Sports Hub will boast a 55,000-seater retractable roof stadium, a 6,000-capacity Indoor Aquatic Centre, a 3,000-capacity Multi-Purpose Arena and a Water Sports Centre.

Despite the tender being awarded by the Singapore government in 2008, the PPP project commenced construction only in September 2010 - the result of delays from the 2008-2009 global financial crisis and high construction costs. It is now expected to complete in 2014.

Other major infrastructure projects soon to get underway include the Tuas desalination plant, Singapore's second and largest such plant. Local water authority PUB closed its open tender late last year and the outcome of the tender is expected in first quarter 2011. The Tuas desalinated water plant is expected to complete by 2013.

This is already PUB's fourth Design, Build, Own and Operate (DBOO) project. The first three were desalination and recycled water projects. The purpose of such arrangements include helping local water companies build their track records towards eventually exporting such expertise overseas.

Another notable launch is Tuas Power's Tembusu Complex comprising a waste re-utilisation facility, a biomass-clean coal co-generation plant and a desalination plant, costing an estimated US\$1.5 billion.

The project has already garnered several local awards for innovation and research with part of the biomass-clean coal cogeneration plant's processes converting ash into synthetic aggregates for use in the construction industry.

## FIDIC Red Book - A hiccup?

In a rare decision, the Singapore High Court in PT Perusahaan Gas Negara ("PGN") v CRW Joint Operation ("CRW") [2010] 4 SLR 672 refused to uphold an ICC arbitration award arising from a contract using the FIDIC Red Book 1999 Edition.

Disputes between the parties over variation orders and payment requests were referred to a Dispute Adjudication Board (DAB) by the contract. The parties accepted several of the DAB's decisions, save one involving a disputed sum of over US\$17 million.

The DAB decision was referred to arbitration and the Tribunal upheld it in its award. When CRW applied to register the arbitration award in a Singapore court, PGN sought to set it aside.

The Singapore High Court set aside the award on the basis that the arbitration tribunal exceeded its powers in rendering a final award in contravention of the parties' agreement. The High Court interpreted the dispute resolution provisions in the FIDIC Red Book to mean that CRW was first required to refer the disputed DAB decision back to the DAB for review and confirmation, before involving arbitration.

Notably, the Court observed a possible gap in the 1999 FIDIC Red Book as it did not expressly allow a counter party's failure to comply with a DAB decision to be referred directly to arbitration.

This is a rare instance of the Singapore High Court setting aside an arbitral award. It highlights the importance of parties understanding the clauses in their contract, especially how the reference to arbitration is to be properly invoked.

Mohan R Pillay  
Partner & Joint Head of Office  
Pinsent Masons MPillay LLP  
Chartered Arbitrator  
Adj. Assoc. Prof., Faculty of Law, Nat. Univ. of Singapore  
Visiting Professor, Centre of Construction Law, King's College London  
16 Collyer Quay #22-02  
Singapore 049318  
E: [mohan.pillay@pinsentmasons.com](mailto:mohan.pillay@pinsentmasons.com)