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ENFORCEMENT OF ARBITRAL AWARDS IN SINGAPORE

Pitfalls and Strategies

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I. Overview

1 The United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958)[1] ("NY Convention") has come a long way in harmonising legal standards applicable to the enforcement of arbitral awards and in strengthening the enforceability of awards in over 150 contracting states. Notwithstanding that, an award creditor's road to achieving successful enforcement is not necessarily straightforward or easy, as avenues remain available to uncooperative (and deep-pocketed) award debtors to seek to frustrate enforcement efforts. As noted therefore by an eminent authority, "enforcement is the 'single most important challenge' facing arbitration today".[2]

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* The views expressed herein are the authors' and are not representative of the firm's.

1 (330 UNTS 3) (10 June 1958; entry into force 7 June 1959).

2 See Margaret Clare Ryan, "The Enforcement Challenge Under the Spotlight" *Global Arbitration Review* (31 October 2018), citing observations by Emmanuel Gaillard.

2 This article examines the enforcement landscape in Singapore. It first provides an overview of the legislative and procedural framework for the enforcement of awards in Singapore, before situating an award debtor's ability to resist enforcement within its wider "choice of remedies" in respect of an adverse award. It then considers potential pitfalls that award creditors should be wary of and offers strategies for award creditors to consider adopting in order to realise the fruits of their successful arbitration.

II. Legislative and procedural framework for enforcement in Singapore

3 The International Arbitration Act[3] ("IAA") provides for the enforcement in Singapore of awards rendered in international arbitrations[4] seated in Singapore (*ie*, "domestic international awards"[5]) under Part II of the IAA (specifically s 19[6]), as well as those rendered in international arbitrations seated elsewhere (*ie*, "foreign international awards") under Part III of the IAA (specifically s 29(1)[7]).

3 Cap 143A, 2002 Rev Ed.

4 Section 5(2) of the International Arbitration Act (Cap 143A, 2002 Rev Ed) provides for when an arbitration would be considered "international".

5 As referred to by the Court of Appeal in *PT First Media TBK v Astro Nusantara International BV* [2014] 1 SLR 372.

6 Section 19 of the International Arbitration Act (Cap 143A, 2002 Rev Ed) provides: "An award on an arbitration agreement may, by leave of the High Court or a Judge thereof, be enforced in the same manner as a judgment or an order to the same effect and, where leave is so given, judgment may be entered in terms of the award."

7 Section 29(1) of the International Arbitration Act (Cap 143A, 2002 Rev Ed) provides: "Subject to this Part, a foreign award may be enforced in a court either by action or in the same manner as an award of an arbitrator made in Singapore is enforceable under section 19."

4 An "award" is in this regard defined in s 2(1) of the IAA as "a decision of the arbitral tribunal[8] on the substance of the dispute and includes any interim, interlocutory or partial award but excludes any orders or directions made under section 12".[9] For purposes of enforcement under Part III of the IAA (*ie*, of foreign international awards), s 27(1) of the IAA defines an award as "ha[ving] the same meaning as in the [NY Convention], but also includes an order or a direction made or given by an arbitral tribunal in the course of an arbitration in respect of any of the matters set out in section 12(1)(*c*) to (*i*)" of the IAA.

5 Enforcement (under both Parts II and III of the IAA) is a two-stage process in Singapore. First, an *ex parte* application is filed by the award creditor for leave to enforce the award. This is to be supported by an affidavit satisfying the requirements of O 69A rr 6(1) and 6(1A) of the Rules of Court[10] ("ROC") (*ie*, it must, *inter alia*, (a) exhibit the arbitration agreement and the award, (b) state the name and the usual or last known place of business of the award creditor and debtor, and (c) state either that the award has not been complied with or the extent to which it has not been complied with at the date of the application). Where the formal requirements of O 69A rr 6(1) and 6(1A) are met, the court would make an order granting leave to enforce (typically, in a matter of days and without the need for an oral

8 In 2012, the Singapore Legislature amended the definition of "arbitral tribunal" in s 2(1) of the International Arbitration Act (Cap 143A, 2002 Rev Ed) ("IAA") to include "an emergency arbitrator appointed pursuant to the rules of arbitration agreed to or adopted by the parties including the rules of arbitration of an institution or organisation", making clear that emergency arbitrator orders would also benefit from the full enforcement regime under the IAA.

9 Note, however, that s 12(6) of the International Arbitration Act (Cap 143A, 2002 Rev Ed) separately provides that "[a]ll orders or directions made or given by an arbitral tribunal in the course of an arbitration shall, by leave of the High Court or a Judge thereof, be enforceable in the same manner as if they were orders made by a court and, where leave is so given, judgment may be entered in terms of the order or direction".

10 Cap 322, R 5, 2014 Rev Ed.

hearing), which the award creditor must then serve on the award debtor.[11]

6 Upon effective service, the clock starts to tick for the award debtor to take steps to challenge the enforcement order, if it so wishes. Pursuant to O 69A r 6(4) of the ROC, this must be done within 14 days after service or, if the order is served out of jurisdiction, within such other period as the court may fix. In the meantime, O 69A r 6(4) places an embargo on the enforcement of the award ("[w]ithin 14 days after service of the order or, if the order is to be served out of the jurisdiction, within such other period as the Court may fix, the debtor may apply to set aside the order *and the award shall not be enforced until after the expiration of that period* ..." [emphasis added]).

7 If the award debtor does not challenge the enforcement order within the stipulated timeframe, the award creditor may proceed to enter judgment-in-terms of award, which can then be executed against known assets of the award debtor in Singapore.

8 If, however, the award debtor does apply to set aside the enforcement order within time – based on one or more of the exhaustive grounds listed in ss 31(2) and 31(4) of the IAA in the case of a foreign international award[12] or, in the case of

11 Pursuant to O 69A r 6(2) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("ROC"), "[a]n order giving leave ... must be served on the debtor by delivering a copy to him personally or by sending a copy to him at his usual or last known place of abode or business or in such other manner as the Court may direct". Note in this regard O 69A r 6(3) of the ROC, which permits service of the enforcement order out of jurisdiction without leave and provides that O 11 rr 3, 4 and 6 shall apply in relation to such an order.

12 Sections 31(2) and 31(4) of the International Arbitration Act (Cap 143A, 2002 Rev Ed) list the following exhaustive grounds for non-enforcement of an award: (a) incapacity of a party; (b) invalidity of the arbitration agreement; (c) a party was not given proper notice of the appointment of the arbitrator or of the arbitration or was otherwise unable to present his case; (d) excess of jurisdiction; (e) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with parties' agreement; (f) the award has not yet become binding on the parties or has been set aside or suspended by the seat-court; (g) the subject matter of the dispute is not

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a domestic international award, under s 19 of the IAA read with Art 36 of the 1985 United Nations Commission on International Trade Law Model Law on International Commercial Arbitration[13] ("Model Law") – the proceedings move into a second *inter partes* phase. Award creditors should note in this regard that O 69A r 6(4) of the ROC provides for enforcement of the award to be further stayed in this event "until after the application is finally disposed of" (a potentially powerful delaying tactic for the award debtor as setting-aside proceedings can be lengthy, especially when an appeal is involved).

III. Award debtor's "choice of remedies"

9 The award debtor's ability to *resist* enforcement – by filing the application under O 69A r 6(4) after the award creditor obtains and serves the enforcement order – is but one of two broad "remedies" the award debtor has in respect of an unfavourable award; rather than passively waiting for the award creditor to take steps to enforce the award before seeking to *resist* such efforts ("passive remedy"), the award debtor may instead choose to *attack*, by proactively applying to set aside the award before the seat court ("active remedy").

10 Where the seat is Singapore, such an attack may be mounted by the award debtor (within three months from the date of the award[14]) based on one or more of the exhaustive

capable of settlement by arbitration under Singapore law; and (h) enforcement of the award would be contrary to Singapore public policy.

13 1985 United Nations Commission on International Trade Law Model Law on International Commercial Arbitration (UN Doc A/40/17 Annex I (21 June 1985)) ("Model Law"). In *PT First Media TBK v Astro Nusantara International BV* [2014] 1 SLR 372 at [84] and [99], the court confirmed that the same grounds for resisting enforcement under Art 36(1) of the Model Law are equally available to a party resisting enforcement under s 19 of the International Arbitration Act (Cap 143A, 2002 Rev Ed).

14 Pursuant to Art 34(3) of the Model Law and O 69A r 2(4) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed).

grounds listed in s 24 of the IAA[15] read with Art 34(2) of the Model Law,[16] which are similar to the grounds on which an award debtor may exercise its passive remedy to resist enforcement (which grounds the Singapore courts interpret restrictively, consistent with their pro-enforcement stance and philosophy of minimal curial intervention[17]).

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15 Section 24 of the International Arbitration Act (Cap 143A, 2002 Rev Ed) states:

> Notwithstanding Article 34(1) of the Model Law, the High Court may, in addition to the grounds set out in Article 34(2) of the Model Law, set aside the award of the arbitral tribunal if —
>
> (*a*) the making of the award was induced or affected by fraud or corruption; or
>
> (*b*) a breach of the rules of natural *justice* occurred in connection with the making of the award by which the rights of any party have been prejudiced.
>
> [emphasis added]

16 Article 34(2) of the Model Law lists the following setting-aside grounds: (a) incapacity of a party or invalidity of the arbitration agreement; (b) a party was not given proper notice of the appointment of an arbitrator or the arbitration or was otherwise unable to present his case; (c) excess of jurisdiction; (d) the composition of the tribunal or the arbitral procedure was not in accordance with the parties' agreement; (e) the subject matter of the dispute is not capable of settlement by arbitration under Singapore law; and (f) the award conflicts with Singapore public policy.

17 See, *eg*, *BLC v BLB* [2014] 4 SLR 79 at [51]–[53], where the Court of Appeal stated:

> It is now axiomatic that there will be minimal curial intervention in arbitral proceedings … [this] flows from 'the need to encourage finality in the arbitral process as well as the deemed acceptance by the parties to an arbitration of the attendant risks of having only *a very limited right of recourse to the courts*'.
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> …
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> [T]here is no right of recourse to the courts where an arbitrator has simply made an error of law and/or fact. *A fortiori*, the courts should guard against attempts by a disgruntled party to fault an arbitrator for failing to consider arguments or points which were never before him. The setting-aside application is not to be abused by a party who, with the benefit of hindsight, wished he had pleaded or presented his case in a different way before the arbitrator.
>
> [emphasis added]

See also *AKN v ALC* [2015] 3 SLR 488 at [37], where the Court of Appeal stated:

> [T]he courts do not and must not interfere in the merits of an arbitral award and, in the process, bail out parties who have made choices that

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11 The availability to award debtors of this "choice of remedies" in respect of both domestic and foreign international awards was described in *PT First Media TBK v Astro Nusantara International BV*[18] ("*Astro*") as "not just a facet of the Model Law enforcement regime" but "the *heart* of its entire design". In the light of this "choice", the award debtor in *Astro* who failed to file any appeal under s 10(3) of the IAA read with Art 16(3) of the Model Law against the tribunal's positive preliminary jurisdictional ruling was found *not* to have been precluded from subsequently resisting enforcement ("passive remedy") based on jurisdictional grounds; the court held in this regard that "parties that do not actively attack a domestic international award remain able to passively rely on defences to enforcement *absent any issues of waiver*" [emphasis added].[19]

12 As alluded to above, however, this "choice of remedies" is *not* unfettered – it is subject to issues of waiver. An award debtor in the position of that in *Astro* (who had failed to actively challenge the tribunal's preliminary jurisdictional ruling) furthermore loses its ability to apply to set aside the final award ("active remedy") on jurisdictional grounds later on.

13 The latter point was made by the court in *Astro* (albeit in *obiter dicta* and somewhat tentatively),[20] and was more recently

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they might come to regret, or offer them a second chance to canvass the merits of their respective cases. This important proscription is reflected in the policy of minimal curial intervention in arbitral proceedings, a mainstay of the Model Law and the IAA.

18 [2014] 1 SLR 372 at [65].

19 *PT First Media TBK v Astro Nusantara International BV* [2014] 1 SLR 372 at [71].

20 The court stated in *PT First Media TBK v Astro Nusantara International BV* [2014] 1 SLR 372 at [130] and [132]:

> [T]here is a policy of the Model Law to achieve certainty and finality in the seat of arbitration. This is further borne out by the strict timeline of 30 days imposed under both Arts 13(3) and 16(3) [of the Model Law], the design of which seems to be to precipitate an early determination on issues of composition and jurisdiction so that the arbitration can continue. *We would therefore be surprised if a party retained the right to bring an application to set aside a final award on the merits under Art 34 [of the Model Law] on a ground which they could have raised via other active*

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confirmed in *Rakna Arakshaka Lanka Ltd v Avant Garde Maritime Services (Pte) Ltd*,[21] where the High Court held that an award debtor who refused to participate in the arbitration (including the hearing leading up to the tribunal's positive jurisdictional ruling) cannot raise jurisdictional objections in support of a subsequent application to set aside the final award. To allow the award debtor to do so would run contrary to the policy of ensuring certainty and finality of awards; as the High Court observed:[22]

> Where the arbitral tribunal chooses to decide jurisdiction as a preliminary question or issue, then *all the considerations of finality, certainty, practicality, cost, preventing dilatory tactics and settling the position at an early stage at the seat militate against allowing a respondent to reserve its objections to the last minute and indulge in tactics which result in immense delays and cost.*
>
> RALL [*ie*, the award debtor] stayed away from the arbitration, did not file a response, did not nominate an arbitrator, refused to pay any fees, did not file a statement of defence and then raised a jurisdictional challenge by way of a terse letter and absented itself from the preliminary meeting, refused to file any submissions in support of its stand and allowed the arbitration to proceed without participation. *Why should a party in RALL's position be entitled to take up a challenge to jurisdiction at the seat in blatant disregard of Art 16 [of the Model Law] and the policy reasons behind the 30-day time limit? This amounts, in my view, to an abuse of process.* It allows a party to wait till the opposing party goes through the whole arbitral process, obtains an

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> *remedies before the supervising court at an earlier stage when the arbitration process was still ongoing …*
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> …
>
> Parties who elect not to challenge the tribunal's preliminary ruling on its jurisdiction are not thereby precluded from relying on its passive remedy to resist recognition and enforcement on the grounds set out in Art 36(1) [of the Model Law]. That having been said, *we are of the tentative view, as noted above, that the position might not be the same in relation to whether such a party may raise such a ground to initiate setting aside proceedings under Art 34 [of the Model Law].*

[emphasis added]

21 [2018] SGHC 78.

22 *Rakna Arakshaka Lanka Ltd v Avant Garde Maritime Services (Pte) Ltd* [2018] SGHC 78 at [71]–[72].

award, only to be met by a setting aside application at the seat on the ground of a lack of jurisdiction.

[emphasis added]

IV. Potential pitfalls and strategies for award creditors

14 Notwithstanding the Singapore courts' pro-enforcement stance (which, as mentioned above, informs its policy of minimal curial intervention), award creditors should still pay close attention to certain legal, procedural and practical issues in enforcement, so as not to provide award debtors with ready ammunition which can be used to resist enforcement. We turn, in this regard, to consider the potential pitfalls which award creditors should be aware of, and the strategies which can be adopted to enhance the chances of enforcement.

A. Duty to disclose all relevant facts

15 As stated above,[23] an application for leave to enforce an arbitral award may be made *ex parte*. In this regard, it is trite that the applicant in an *ex parte* application has a duty to disclose all matters within its knowledge which may be material (even if they may be prejudicial to the applicant).[24] An award debtor may, where such a duty is fallen short of, rely on the same as a ground for setting aside the enforcement order (*eg*, under O 32 r 6 of the ROC, which provides that "[t]he Court may set aside an order made ex parte").

16 An award creditor should therefore take care in drafting its affidavit to be filed in support of any such *ex parte* application, including when apprising the court as to whether or not the award has been complied with (pursuant to O 69A r 6(1)(*c*) of the ROC), and should also consider whether to disclose the possible grounds which it knows may be raised by the award debtor to

23 See para 5 above.

24 The content and scope of this duty was extensively discussed in *The "Vasiliy Golovnin"* [2008] 4 SLR(R) 994 at [83]–[105].

resist enforcement (*eg*, if an award debtor had refused to participate in the arbitration on grounds that the tribunal lacked jurisdiction).

B. Premature execution of assets

17 As stated above,[25] an award cannot be enforced in Singapore until the time stipulated for the filing of an application to set aside an enforcement order (which *only* starts to run from the time of service of the order) has passed and if no such application has been filed. An award creditor should thus ensure that the enforcement order has been properly and validly served on the award debtor as that would determine when execution of assets may legitimately commence in Singapore.

18 In this regard, if the order has to be served out of jurisdiction, care should be taken to ensure that service is carried out not only in accordance with the Singapore procedural rules (such as O 11 rr 3, 4 and 6 read with O 69A r 6(3) of the ROC), but also in accordance with the laws of the country where the order is to be served (O 11 r 3(3) of the ROC). It may otherwise be open to the award debtor to argue that the order has *not* been served and so time has not started to run for any execution to take place, or to apply to set aside the purported service of the order – all of which may serve to delay the execution process.

C. Limitation and time-bar issues

19 An award creditor must also be alive to potential time bars to its claims. First, and somewhat less thorny, is s 6(1)(*c*) of the Limitation Act[26] which provides that actions to enforce an award must be brought within six years from the date on which the cause of action accrued (*ie*, from the date on which the award was rendered).

25 See paras 6–7 above.

26 Cap 163, 1996 Rev Ed.

20 Second, and possibly thornier, are potential time bars that may accrue in respect of the *underlying claims* in the arbitration as the setting-aside proceedings trudge along before the curial court. An award creditor should in this regard consider early if there is a need to seek an extension of time under s 8A(2) of the IAA before "the High Court". Section 8A(2) reads:

> The *High Court* may order that in computing the time prescribed by the Limitation Act or the Foreign Limitation Periods Act 2012 for the commencement of proceedings (including arbitral proceedings) in respect of a dispute which was the subject-matter of —
>
> (*a*) an award which the High Court orders to be set aside or declares to be of no effect; or
>
> (*b*) the affected part of an award which the High Court orders to be set aside in part or declares to be in part of no effect,
>
> *the period between the commencement of the arbitration and the date of the order referred to in paragraph* (a) *or* (b) *shall be excluded.*
>
> [emphasis added]

21 This issue came to the fore in *AKN v ALC*[27] ("*AKN-2016*"), where *following* the Court of Appeal's setting aside of the award of damages on grounds of breach of natural justice in *AKN v ALC*[28] ("*AKN-2015*") (by which time the award creditors' underlying claims were already time-barred), the award creditors sought an extension of time under s 8A(2) of the IAA from the Court of Appeal with a view to pursuing compensation for their alleged loss via a fresh arbitration against the (former) award debtors.

22 That application was refused, with the Court of Appeal noting that the use of the words "High Court" in s 8A(2) of the IAA (*cf*, other provisions of the IAA, *eg*, ss 6 and 7, where the more general word "court" is used) suggested that relief thereunder was only available where an application has been made in the first instance to the High Court. As the award

27 [2016] 1 SLR 966.

28 [2015] 3 SLR 488.

creditors in that case filed no such application to the High Court prior to their direct application to the Court of Appeal, no extension under s 8A(2) could be granted.[29]

D. Setting-aside proceedings as delay tactics

23 It should not come as a surprise that a deep-pocketed award debtor faced with a substantial award may seek to place various obstacles in the way of enforcement, including by availing itself of the avenues of setting aside the award or enforcement order, and the associated "reprieves" under the IAA (*eg*, the stay of enforcement triggered upon the mounting of an enforcement challenge under O 69A r 4 of the ROC, or the possibility of an adjournment of Singapore enforcement proceedings under s 31(5)(*a*) of the IAA[30] – which gives statutory effect to Art VI of the NY Convention – pending the disposal of a foreign setting-aside action).

24 As demonstrated in *Man Diesel Turbo SE v I.M. Skaugen Marine Services Pte Ltd*[31] ("*Man Diesel*"), which concerned a foreign international award made in the Danish Institute of Arbitration, the Singapore courts are well alive to potential abuses by award debtors and will act to guard against the same.

25 The award debtor in *Man Diesel* sought an order "stay[ing] and/or adjourn[ing]" enforcement proceedings

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29 See *AKN v ALC* [2016] 1 SLR 966 at [64]–[67].

30 Section 31(5) of the International Arbitration Act (Cap 143A, 2002 Rev Ed) states:

> Where, in any proceedings in which the enforcement of a foreign award is sought by virtue of this Part, the court is satisfied that an application for the setting aside or for the suspension of the award has been made to a competent authority of the country in which, or under the law of which, the award was made, the court may —
>
> (*a*) if the court considers it proper to do so, adjourn the proceedings or, as the case may be, so much of the proceedings as relates to the award; and
>
> (*b*) on the application of the party seeking to enforce the award, order the other party to give suitable security.

31 [2018] SGHC 132.

(under s 31(5)(*a*) of the IAA) in Singapore pending the determination of a setting-aside application filed in the Danish court. In rejecting that request, the High Court noted that "the concern most often voiced is the award debtor's deployment of any one or both of the two remedies as purely a delaying tactic when there is no valid reason to challenge the foreign award in the seat-court or to resist enforcement of the same in other jurisdictions".[32] It is thus "incumbent" on the award debtor to justify its adjournment application and in doing so, "show, from the strength of his arguments, that he is demonstrably pursuing a meritorious application in the seat-court" so that the Singapore court may be satisfied that the foreign setting-aside action is pursued in good faith (and not, *eg*, to derail or frustrate enforcement in Singapore) and is not devoid of a properly arguable basis (which would delay enforcement in Singapore for no good reason).[33] Taking into account, *inter alia*, its view that the Danish setting-aside action lacked merit (even on a preliminary assessment), the fact that the Danish proceedings could take many years, and evidence of dissipation of assets by the award debtor, the High Court ultimately refused to set aside the enforcement order and to grant adjournment of the enforcement pending the Danish setting-aside action.

26 An award creditor is therefore not defenceless when faced with tactical manoeuvres by the award debtor. In the context of a grant of adjournment under s 31(5)(*a*) of the IAA, the award creditor may additionally seek comfort by applying for an order requiring the award debtor to provide suitable security (pursuant to s 31(5)(*b*) of the IAA[34]). More generally, an award creditor may

32 *Man Diesel Turbo SE v I.M. Skaugen Marine Services Pte Ltd* [2018] SGHC 132 at [42].

33 *Man Diesel Turbo SE v I.M. Skaugen Marine Services Pte Ltd* [2018] SGHC 132 at [46]–[47].

34 The court may adjourn an application to refuse the enforcement proceedings with or without security to be furnished. In considering whether to order the giving of security under s 31(5)(*b*) of the International Arbitration Act (Cap 143A, 2002 Rev Ed), the court will take into account the length of delay an adjournment would cause, which may have a consequential prejudicial effect on the award creditor as assets amenable to enforcement may

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also press the court for shorter timelines to dispose of the setting-aside application where, *eg*, there is a possibility of a dissipation of assets, and hence an urgency for the application to be disposed of. In the meantime, it is also open to the award creditor to apply for relevant interim relief (such as freezing orders) from the Singapore courts.[35]

E. Option of requesting for remission to tribunal (as alternative to setting aside)

27 Where the award debtor mounts an active attack on the award by way of a setting-aside application, Art 34(4) of the Model Law[36] provides the award creditor with the option of requesting that the court make an order remitting certain issues to the tribunal, who may then take action which "in the arbitral tribunal's opinion will eliminate the grounds for setting aside" (*eg*, the tribunal may explicitly consider and address arguments which it has allegedly failed to consider).

28 Award creditors should note, however, that such a request must be made *before* the issuance of any setting-aside order. Once an award has been set aside, no further "remission" of issues to the tribunal is possible and any such request would be too late, as confirmed in *AKN-2016*:[37]

> [I]t is evident that to avail itself of this power, the court must be satisfied that it is appropriate to suspend the setting aside proceedings in order to give the tribunal an opportunity to take

diminish or be dissipated in the meantime (see *Man Diesel Turbo SE v I.M. Skaugen Marine Services Pte Ltd* [2018] SGHC 132 at [45] and [48]).

35 See, *eg*, *Strandore Invest A/S v Soh Kim Wat* [2010] SGHC 151 and *AYK v AYM* [2015] SGHC 329, where worldwide Mareva injunctions were granted in aid of the enforcement of arbitral awards.

36 Article 34(4) of the Model Law states:

> The court, when asked to set aside an award, may, *where* appropriate and *so requested by a party, suspend* the setting aside proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the arbitral tribunal's opinion will eliminate the grounds for setting aside. [emphasis added]

37 *AKN v ALC* [2016] 1 SLR 966 at [25], [28] and [34].

> such steps as may be required to eliminate the grounds for setting aside. *This is plainly a curative provision which enables the court, faced with the fact there has been some defect which could result in the award being set aside, to take a course that might forestall that consequence.*
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> ...
>
> [T]he 'explicit intent' of Art 34(4) was that remission was conceived as *an* alternative *to setting aside* ...
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> ...
>
> [T]he court has no power to remit an award after it has been set aside. Not only is this founded on the plain words of Art 34(4), but it also accords with good sense. Remission is a curative option that is available to the court in certain circumstances where it considers that it may be possible to *avoid setting aside* the award.
>
> [emphasis added]

F. Other practical considerations

29 Apart from the legal and procedural issues concerning enforcement highlighted above, award creditors should also undertake thorough due diligence regarding the existence of assets and recoverability. This would enable them to make important strategic decisions as to whether to apply for freezing and/or other protective relief (pre-arbitration, during the arbitration, or post-arbitration), as well as where they should commence enforcement proceedings. In deciding where enforcement should be sought, award creditors should take into account, *inter alia*, the attitude of the courts of each relevant jurisdiction towards enforcement and the risk of issue estoppel being applied to bar enforcement, the availability of reprieve in each relevant jurisdiction (such as the possibility of requesting suitable security from the award debtor, *eg*, pursuant to s 31(5)(*b*) of the IAA discussed above[38]), the length and potential delay in proceedings, and costs of legal representation.

38 See para 26 above.

V. Conclusion

30 An award which cannot be enforced is of little significance. It is important therefore for users to pay attention to legal and practical enforcement strategies, and to do so from as early as the time when an arbitration is contemplated. This would include keeping track of:

(a) pre-arbitration (and throughout the entire process): the (potential) award debtor's assets and whether they are being dissipated, and if so, to apply for freezing and/or other protective orders early;

(b) during the arbitration: the grounds for setting aside an award or refusing enforcement (so as ensure that the arbitration process does not suffer from deficiencies which could be a potential ground for setting aside in the seat-court or for refusing enforcement);

(c) post-arbitration: the various potential pitfalls when undertaking enforcement of an award.

31 If this is done, and bearing in mind the pro-arbitration or enforcement stance of the Singapore courts, it is not too much of a pipe dream that the path to enforcement could indeed lead to the proverbial pot of gold at the end of the rainbow.