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APPEALS ON QUESTIONS OF LAW IN INTERNATIONAL ARBITRATION – A COMPARATIVE PERSPECTIVE FROM NEW YORK

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This article discusses the proposed amendments to the Singapore International Arbitration Act (Cap 143A, 2002 Rev Ed) to allow for appeals based on a question of law, in comparison and contrast to the doctrine of manifest disregard of law as applied in New York.

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1 The Ministry of Law, responding to feedback from the profession and as part of its periodic legislative review, held a public consultation from 26 June 2019 to 21 August 2019 on proposals to amend the Singapore International Arbitration Act[2] ("IAA"). The proposed amendments include an opt-in mechanism to allow parties to appeal, with leave of court, questions of law raised in international arbitral awards. As proposed, the High Court would

1 Any comments contained in this article should not be taken as the views of any of the offices of Herbert Smith Freehills, nor any of the clients, partners, associates, employees or entities associated with the firm.

2 Cap 143A, 2002 Rev Ed. See Ministry of Law, "Consultation Paper on Proposed Amendments to the International Arbitration Act" (26 June 2019), <https://www.mlaw.gov.sg/news/public-consultations/public-consultation-on-international-arbitration-act> (accessed 27 May 2020).

have the power to confirm, vary, remit for reconsideration by the tribunal, or set aside the award in whole or in part.

2 As the consultation paper notes, the opt-in mechanism (in contrast to the opt-out mechanism under s 49 of the domestic Arbitration Act[3] ("AA")) is intended to "enhance party autonomy and [the parties'] ability to exercise control as well as designate with greater precision the degree of finality they expect. This will allow parties, who prefer court supervision on matters of law to make a deliberate choice for supervision while preserving the finality of arbitration for parties who prefer not to have appeals".[4]

3 This article briefly discusses the proposed amendment and provides a comparative perspective based on the doctrine of manifest disregard of the law, as applied by the courts in New York in considering challenges to arbitral awards. Two recent cases in the Second Circuit may provide helpful reference points in striking the correct balance between the public interests of correctness of questions of law and finality in arbitration.

I. Leave to appeal questions of law proposed in Singapore

4 The first point to note is that the proposed amendment to the IAA would allow parties to opt in to appeal on questions of law arising out of an international arbitral award seated in Singapore, in contrast to s 49 of the AA, which requires the parties to opt out of the right to appeal on questions of law. Thus, absent specific agreement by the parties, the default position would be the status quo, where no appeal is permitted in respect of international arbitrations governed by the IAA. The proposed amendment does not contemplate leave to appeal on questions of law without the consent of all parties. Accordingly, it preserves party autonomy while increasing parties' options for judicial recourse. Should this amendment be adopted, it may not be surprising to observe parties

3 Cap 10, 2002 Rev Ed.

4 Ministry of Law, "Consultation Paper on Proposed Amendments to the International Arbitration Act" (26 June 2019), at para 12 <https://www.mlaw.gov.sg/news/public-consultations/public-consultation-on-international-arbitration-act> (accessed 27 May 2020).

that value the expeditious and final resolution of their disputes stating, for the avoidance of doubt, that they do not consent to appeals on questions of law. Any such observable changes in the drafting of arbitration clauses designating Singapore as the seat could provide real-time feedback on the potential reception of commercial parties to the prospect of obtaining leave to appeal on questions of law without consent, a possibility raised for consultation in the February 2020 SAL Law Reform Committee's Report.[5]

5 Second, the court would allow an appeal only if the question would substantially affect the rights of a party, and the tribunal made a legal determination which on the basis of the tribunal's own findings of fact was either obviously wrong or open to serious doubt. If a legal determination is only open to serious doubt, an appellant must further demonstrate that the question is one of general public importance.

6 The draft text currently being considered by the Ministry of Law reads as follows:[6]

> Leave to appeal may be given only if the High Court is satisfied that —
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> a. the determination of the question will substantially affect the rights of one or more of the parties;
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> b. the question is one that the arbitral tribunal was asked to determine;
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> c. on the basis of the findings of fact in the award —
>
> i. the decision of the arbitral tribunal on the question is obviously wrong; or
>
> ii. the question is one of general public importance and the decision of the arbitral tribunal is at least open to serious doubt; and

5 Law Reform Committee, Singapore Academy of Law, *Report on the Right of Appeal against International Arbitration Awards on Questions of Law* (February 2020) at para 7.2.

6 Ministry of Law, *Consultation Paper on Proposed Amendments to the International Arbitration Act* (26 June 2019) at para 12 <https://www.mlaw.gov.sg/news/public-consultations/public-consultation-on-international-arbitration-act> (accessed 27 May 2020).

> d. despite the agreement of the parties to resolve the matter by arbitration, it is just and proper in all the circumstances for the High Court to determine the question.

7 As the consultation paper notes, this proposed clause "mirrors the rubric" of s 49 of the AA. Thus, upon opting in, parties to an arbitration governed by the IAA would be subject to the same standard to obtain leave to appeal on a question of law. In this regard, the High Court has interpreted s 49 of the AA restrictively, clarifying in *Ahong Construction (S) Pte Ltd v United Boulevard Pte Ltd*[7] ("*Ahong Construction*"):

> If the point of law is settled and not something novel and it is contended that the arbitrator made an error in the application of the law there lies no appeal against that error for there is no question of law which calls for an opinion of the court.

8 This proposal reflects concerns expressed in recent years as to the potential stifling of the development of mercantile law, by virtue of the private and often confidential nature of international arbitration.[8] It also reflects the courts' confidence in Singapore's reputation as an arbitration-friendly seat, in contrast to the recommendation of the SAL Law Reform Committee in 1993 that allowing appeals on questions of law would allow "too much curial intervention in international disputes and is out of line with international developments, especially in view of the Model Law".[9]

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7 [1993] 2 SLR(R) 208 at [7]; affirmed by the Singapore Court of Appeal in *Northern Elevator Manufacturing Sdn Bhd v United Engineers (Singapore) Pte Ltd* [2004] 2 SLR(R) 494.

8 See, *eg*, Professor Sir Bernard Rix, "Confidentiality in International Arbitration: Virtue or Vice?", Jones Day Professorship of Commercial Law Lecture at SMU (12 March 2015) (commenting that the "movement underground, into arbitration, means that the certainty, predictability, but also the helpful analysis, development and even creativity of the common law in these areas is in danger of being stultified"); The Right Hon The Lord Thomas of Cwmgiedd, Lord Chief Justice of England and Wales, "Developing Commercial Law through the Courts: Rebalancing the Relationship between the Courts and Arbitration", The Bailii Lecture 2016 (9 March 2016) ("As arbitration clauses are widespread in some sectors of economic activity, there has been a serious impediment to the development of the common law by the courts in the UK …").

9 Law Reform Committee, Singapore Academy of Law, *Report on Review of Arbitration Laws* (August 1993) at paras 22–23.

9 The SAL Law Reform Committee's report likewise considers that "appeals against arbitral decisions on questions of law with respect to international arbitration will also aid the development of mercantile law,"[10] suggesting that "not offering even a limited right of appeal may in fact adversely affect Singapore's popularity as an arbitration venue".[11] By this measure, the proposed amendment would be a legislative innovation that enhances the appeal of Singapore as a seat of arbitration — and "destination for international commercial dispute resolution" — in a complementary manner to the establishment of the Singapore International Commercial Court.[12] By offering recourse to the courts for appeals on questions of law, the proposed amendment would provide parties who nonetheless have agreed to arbitrate disputes with access to the judicial expertise of the Bench, to the mutual benefit of such parties[13] and Singapore's standing as a leading jurisdiction for commercial law. In particular, the limited provision for questions of law of public importance to be determined by the courts (as opposed to errors in applying settled points of law, per

10 Law Reform Committee, Singapore Academy of Law, *Report on the Right of Appeal against International Arbitration Awards on Questions of Law* (February 2020) at para 2.37.

11 Law Reform Committee, Singapore Academy of Law, *Report on the Right of Appeal against International Arbitration Awards on Questions of Law* (February 2020) at para 2.35.

12 Singapore International Commercial Court website, <https://www.sicc.gov.sg/> (accessed 7 May 2020).

13 Parties who choose to opt in are likely to be those willing to invest additional cost and effort in ensuring the correctness of the award. See Law Reform Committee, Singapore Academy of Law, *Report on the Right of Appeal against International Arbitration Awards on Questions of Law* (February 2020) at para 2.31: "In a survey conducted by the Cornell–Pepperdine/Straus Institute of in-house counsel in Fortune 1000 companies, one of the most frequently cited reasons for not utilising arbitration was that 'there is hardly an effective way to appeal awards'", citing Thomas J Stipanowich & J Ryan Lamare, "Living with ADR: Evolving Perceptions and Use of Mediation, Arbitration, and Conflict Management in Fortune 1000 Corporations" (2014) 19 Harv Negotiation L Rev 1 at 53.

Ahong Construction[14]) would also serve the policy of facilitating the development of the common law in Singapore.[15]

II. The doctrine of manifest disregard of the law in New York

10 In comparison, the doctrine of manifest disregard of the law has been the subject of debate among courts and commentators in the US, and examined in the context of whether this doctrine could undermine the appeal of New York as a seat of arbitration.[16]

11 As recognised and applied by courts in the Second Circuit, the doctrine holds that an arbitral award may be vacated for manifest disregard of the law, "only in 'those exceedingly rare instances where some egregious impropriety on the part of the arbitrators is apparent'".[17] Such impropriety requires "more than error or misunderstanding with respect to the law", and the award should be enforced as long as "there is a barely colorable justification for the outcome reached".[18] This doctrine, which has been characterised in the Second Circuit as a "judicial gloss on the specific grounds for vacatur enumerated in section 10 of the FAA

14 *Ahong Construction (S) Pte Ltd v United Boulevard Pte Ltd* [1993] 2 SLR(R) 208 at [7].

15 Law Reform Committee, Singapore Academy of Law, *Report on the Right of Appeal against International Arbitration Awards on Questions of Law* (February 2020) at paras 4.6–4.8, noting the definition of a question of law as established in the case law. The report also proposes that "question of law" be clarified to include both questions of Singapore law and international law (at paras 4.3–4.5).

16 New York City Bar Committee on International Commercial Disputes, "The 'Manifest Disregard of Law' Doctrine and International Arbitration in New York" (2012) at p 1 <https://www2.nycbar.org/pdf/report/uploads/20072344-ManifestDisregardofLaw--DoctrineandInternationalArbitrationinNewYork.pdf> (accessed 27 May 2020).

17 *Stolt-Nielsen SA v AnimalFeeds Int'l Corp*, 548 F 3d 85 at 91–92 (2d Cir, 2008) (rev'd and remanded sub nom *Stolt-Nielsen SA v AnimalFeeds Int'l Corp*, 559 US 662 (2010)); *Duferco Int'l Steel Trading v T Klaveness Shipping A/S*, 333 F 3d 383 at 389 (2d Cir, 2003); see also *Westerbeke Corp v Daihatsu Motor Co, Ltd* 304 F 3d 200 at 208 (2d Cir, 2002).

18 *T.Co Metals, LLC v Dempsey Pipe & Supply, Inc* 592 F 3d 329 at 339 (2d Cir, 2010), noting further that, "[w]ith respect to contract interpretation, this standard essentially bars review of whether an arbitrator misconstrued a contract".

[US Federal Arbitration Act],"[19] has been discussed in relation to both domestic and international arbitral awards.[20]

12 The controversy over the doctrine may in part be attributed to its cryptic origins in the 1953 case of *Wilko v Swan*, where the US Supreme Court stated that "the interpretations of the law by the arbitrators *in contrast to manifest disregard* are not subject, in the federal courts, to judicial review for error in interpretation" [emphasis added].[21] This dictum raised the question of whether manifest disregard of the law is an additional common-law ground for *vacatur*, a shorthand reference to existing grounds under the FAA, or something else.

13 More than 50 years later, in *Hall Street Associates, LLC v Mattel, Inc*, the US Supreme Court held, in addressing the issue of whether parties may by contract supplement the grounds for vacating an arbitral award under the FAA, that "the text compels a reading of the §§10 and 11 categories as exclusive".[22] The court explained:[23]

> Instead of fighting the text, it makes more sense to see the three provisions, §§9–11, as substantiating a national policy favoring arbitration with just the limited review needed to maintain arbitration's essential virtue of resolving disputes straightaway. Any other reading opens the door to the full-bore legal and evidentiary appeals that can 'rende[r] informal arbitration merely a prelude to a more cumbersome and time-consuming judicial review process,' ... and bring arbitration theory to grief in post-arbitration process.

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19 *Stolt-Nielsen SA v AnimalFeeds Int'l Corp*, 548 F 3d 85 at 94 (2d Cir, 2008), rev'd on other grounds, 559 US 662 (2010). Under the Federal Arbitration Act (9 USC § 10 (1925)), the four statutory grounds for vacating an arbitration award are: (a) the award was "procured by corruption, fraud, or undue means"; (b) "evident partiality or corruption" of the arbitrators; (c) the arbitrators were guilty of prejudicial misconduct during the course of the hearing; and (d) the arbitrators "exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made".

20 See Victoria R Orlowski, "FAA Section 10 Applications to Vacate an Award (Including 'Manifest Disregard')", in *International Arbitration in the United States* (Laurence Shore *et al* eds) (Wolters Kluwer, 2017) at pp 503–504.

21 *Wilko v Swan* 346 US 427 at 436 (1953). See Jonathan J Tompkins "'Manifest Disregard of the Law': The Continuing Evolution of an Historically Ambiguous Vacatur Standard" (2018) 12(2) *Dispute Resolution International* 145 at 147.

22 *Hall Street Associates, LLC v Mattel, Inc* 552 US 576 at 586 (2008).

23 *Hall Street Associates, LLC v Mattel, Inc* 552 US 576 at 588 (2008).

However, the Supreme Court did not reach the issue of whether—or how—the doctrine of manifest disregard may apply.[24] Given that the phrase "manifest disregard" does not appear in the grounds for *vacatur* enumerated in the FAA, the nature and applicability of this doctrine remain an open question, resulting in a split among the US Circuit Courts of Appeals.[25]

14 As discussed in further detail below, the doctrine of manifest disregard of the law is appreciably different from the proposal under consideration by the Ministry of Law — to appeal, for the purposes of obtaining clarity from the courts, novel questions of law that are of general public importance and would serve to facilitate the development of the common law. Nonetheless, the doctrine of manifest disregard is ultimately rooted in public policy — that of ensuring proper adjudicatory process while deferring significantly to the arbitral tribunal.

24 *Hall Street Associates, LLC v Mattel, Inc* 552 US 576 at 585 (2008), acknowledging "the vagueness of *Wilko's* phrasing. Maybe the term 'manifest disregard' was meant to name a new ground for review, but maybe it merely referred to the §10 grounds collectively, rather than adding to them … Or, as some courts have thought, 'manifest disregard' may have been shorthand for §10(a)(3) or §10(a)(4), the paragraphs authorizing vacatur when the arbitrators were 'guilty of misconduct' or 'exceeded their powers.' We, when speaking as a Court, have merely taken the *Wilko* language as we found it, without embellishment … and now that its meaning is implicated, we see no reason to accord it the significance that Hall Street urges".

25 For a fuller discussion on the split among the US Circuit Courts of Appeals, see Jonathan J Tompkins "'Manifest Disregard of the Law': The Continuing Evolution of an Historically Ambiguous Vacatur Standard" (2018) 12(2) *Dispute Resolution International* 145; Victoria R Orlowski, "FAA Section 10 Applications to Vacate an Award (Including "Manifest Disregard")" in *International Arbitration in the United States* (Laurence Shore *et al* eds) (Wolters Kluwer, 2017) at pp 528–532; New York City Bar Committee on International Commercial Disputes, "The "Manifest Disregard of Law" Doctrine and International Arbitration in New York" (2012) at pp 11–12 <https://www2.nycbar.org/pdf/report/uploads/20072344-ManifestDisregardofLaw--DoctrineandInternationalArbitrationinNewYork.pdf> (accessed 27 May 2020).

III. Elements of manifest disregard compared to the standard for leave to appeal questions of law

15 The Second Circuit has recognised three components to the application of the manifest disregard standard:[26]

> First, we must consider whether the law that was allegedly ignored was clear, and in fact explicitly applicable to the matter before the arbitrators. An arbitrator obviously cannot be said to disregard a law that is unclear or not clearly applicable. Thus, misapplication of an ambiguous law does not constitute manifest disregard.
>
> Second, ... we must find that the law was in fact improperly applied, leading to an erroneous outcome ... Even where explanation for an award is deficient or non-existent, we will confirm it if a justifiable ground for the decision can be inferred from the facts of the case.
>
> Third, ... we look to a subjective element, that is, the knowledge actually possessed by the arbitrators. In order to intentionally disregard the law, the arbitrator must have known of its existence, and its applicability to the problem before him.

16 As the Second Circuit has made clear, the standard for finding a "manifest disregard of law" is extremely high — it is "by design, exceedingly difficult to satisfy".[27] In particular, the third element of subjective, intentional disregard, which would be necessary to satisfy the requirement of egregious impropriety, is in contrast to the objective standard for appeals on questions of

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26 *T.Co Metals, LLC v. Dempsey Pipe & Supply, Inc* 592 F 3d 329 at 339 (2d Cir, 2010); see also *OldCastle Precast, Inc v Liberty Mut Ins Co* 16 Civ 1914 (NSR); 2019 WL 1171564, at *7 (SDNY, March 12, 2019); quoting *Duferco Int'l Steel Trading v T Klaveness Shipping A/S* 333 F 3d 383 at 390 (2d Cir, 2003).

27 There is a well-established line of jurisprudence in the Second Circuit setting a high bar to establish manifest disregard. See, *eg*, *Duferco Int'l Steel Trading v T Klaveness Shipping A/S*, 333 F 3d 383 at 391 (2d Cir, 2003), stating that vacating an arbitral award was "a step we very seldom take" and "[t]he error must be so palpably evident as to be readily perceived as such by the average person qualified to serve as an arbitrator"; *Goldman Sachs Execution & Clearing, LP v Official Unsecured Creditors' Comm of Bayou Grp* 491 Fed Appx 201 at 204 (2d Cir, 2012), finding that the court "cannot conclude that the arbitrators manifestly disregarded the law in applying the legal principles" where the law revealed "considerable uncertainty"; and *STMicroelectronics, NV v Credit Suisse Sec (USA) LLC* 648 F 3d 68 at 78 (2d Cir, 2011), stating that the court "will not vacate an award because of 'a simple error in law or a failure by the arbitrators to understand or apply it' but only when a party clearly demonstrates 'that the panel intentionally defied the law'".

law in Singapore under the proposed sub-sections (c)(i) and (c)(ii) as set out in para 6 above.

17 A recent case in the Southern District of New York illustrates the potential implications of continuing to recognise a doctrine that may not have been intended to widen the scope for *vacatur* of arbitral awards. In *Crédit Agricole v Black Diamond* ("*Crédit Agricole*"), the magistrate judge (sitting in place of the district judge by consent of the parties) vacated an amended award on the grounds of manifest disregard, confirming instead the original award rendered by the arbitral tribunal.[28] The court found that the tribunal, while purporting to amend the award to correct a computational error of interest, had instead changed its approach in calculating damages, which, being a legal question, it acknowledged it was not permitted to do. Having found that the tribunal thus acted in excess of its powers, the court further found that the tribunal "also exhibited manifest disregard of the law prohibiting the arbitration panel from acting as it did".[29]

18 This case is an anomaly in the well-established jurisprudence of the Second Circuit declining to set aside awards on the ground of manifest disregard.[30] In particular, the court's conclusion that the tribunal acted in manifest disregard of the law is somewhat surprising, as the conduct of the arbitral tribunal did not appear to display the level of egregiousness that the US Supreme Court and Second Circuit have reiterated must be demonstrated to meet the high bar of setting aside for manifest disregard of the law.[31] Indeed, the court made no such finding of impropriety, much less egregious

28 *Crédit Agricole Corporate and Investment Bank v Black Diamond Capital Management, LLC* No 1:18-CV-07620 (SDNY, March 22, 2019).

29 *Crédit Agricole Corporate and Investment Bank v. Black Diamond Capital Management, LLC*, No 1:18-CV-07620 (SDNY, March 22, 2019) at *9.

30 *Cf Daesang Corp v. Nutrasweet Co* 58 NYS 3d 873, 2017 NY Slip Op 50646(U), reversed on appeal: *Daesang Corp v. NutraSweet Company* 85 NYS 3d 6 at 17–19 (27 September 2018); see also New York City Bar Committee on International Commercial Disputes, "The 'Manifest Disregard of Law' Doctrine and International Arbitration in New York" (2012) at pp 2–11 <https://www2.nycbar.org/pdf/report/uploads/20072344-ManifestDisregardofLaw--DoctrineandInternationalArbitrationinNewYork.pdf> (accessed 27 May 2020).

31 *Hall Street Assocs, LLC v Mattel, Inc,* 552 US 576 at 586 (2008) (requiring an "egregious [departure] from the parties' agreed-upon arbitration"); *Duferco Int'l Steel Trading v T Klaveness Shipping A/S* 333 F 3d 383 at 389 (2d Cir, 2003).

impropriety. It was also arguably unnecessary for the court to reach the question of manifest disregard, having found that the tribunal exceeded its powers contrary to §10(a)(4) of the FAA.[32] Given that the court confirmed the original final award (awarding damages of approximately $39m) in setting aside the amended award (for approximately $37m), the monetary and procedural impact of the court's decision may not have had a significant impact on the parties' interests — which may explain why the notice of appeal was subsequently withdrawn.[33] However, the court's reasoning appears to adopt a standard for demonstrating manifest disregard that was significantly lower than that repeatedly emphasised in the relevant jurisprudence.

19 Even where the court refrains from vacating an award on the grounds of manifest disregard, it may inadvertently interfere in the arbitral process in a manner that undermines the pro-arbitration policy underlying the FAA. In *Weiss v Sallie Mae*,[34] the district court had found that the award was issued in manifest disregard of the law. On appeal, the Second Circuit found that the arbitrator ignored an unambiguous general release provision in a settlement agreement, but because the arbitrator did not give reasons for his mutually exclusive determinations, the court could not determine whether the district court's decision was proper.[35] Accordingly, the Second Circuit remanded to the district court "with instructions to require the arbitrator to clarify whether he intended to deem the class notice sufficient and, if determined to be sufficient, to construe the general release in the first instance and vacate or modify the award as necessary".[36] As commentators have pointed out, this decision is problematic in potentially undermining both the finality of arbitrations and the doctrine of *functus officio*.[37]

32 *Crédit Agricole Corporate and Investment Bank v Black Diamond Capital Management, LLC,* No 1:18-CV-07620 (SDNY, March 22, 2019) at *8.

33 *Crédit Agricole Corporate and Investment Bank v Black Diamond Capital Management, LLC* No 1:18-CV-07620 (mandate of the US Court of Appeals for the Second Circuit, 10 January 2020, ECF No 40).

34 939 F 3d 105 (2d Cir, 2019).

35 *Weiss v Sallie Mae, Inc*, 939 F 3d 105 at 107 and 110 (2d Cir, 2019).

36 *Weiss v Sallie Mae, Inc*, 939 F 3d 105 at 107 (2d Cir, 2019).

37 J P Duffy IV & Philip Danziger, "Is Manifest Disregard Alive and Well in the Second Circuit?: A Remand to Find Out" *Kluwer Arbitration Blog* (12 November 2019).

Ironically, in remanding to the arbitrator as the Second Circuit instructed the district court to do, the courts would effectively be directing arbitrators to reconsider and correct any errors of law, which, as the court in *Crédit Agricole* correctly recognised, an arbitral tribunal generally is not permitted to do once it has issued a final award.[38]

20 These recent cases sound a note of caution that may be worth heeding in the context of the proposed amendments to the IAA — notwithstanding the absence of a subjective element in the standard for leave to appeal questions of law, or the important distinguishing factor that appeals on questions of law under the proposed amendment (unlike the application of the doctrine of manifest disregard) would have to be (a) by consent of the parties; and (b) with leave of court. In particular, in view of the proposed amendment permitting the court to "remit the award to the arbitral tribunal, in whole or in part, for reconsideration in the light of the High Court's determination", it bears reiterating that this remedy should be very sparingly granted, and carefully weighed against the public policies served by finality and the doctrine of *functus officio*.

21 In this regard, the additional element under the proposed amendment is also apposite, and appropriately underscores the importance of respecting the parties' autonomy in choosing to resolve their disputes by arbitration: "despite the agreement of the parties to resolve the matter by arbitration, it is just and proper in all the circumstances for the High Court to determine the question". Thus, even if the plaintiff succeeds in demonstrating pursuant to the proposed amendment that the arbitrator's decision was "obviously wrong", this provision serves as a useful reminder to the Singapore courts in exercising their discretion to grant or deny leave to appeal questions of law arising from international arbitrations seated in Singapore.

38 *Crédit Agricole Corporate and Investment Bank v Black Diamond Capital Management, LLC* No 1:18-CV-07620 (SDNY, March 22, 2019) at *9.

IV. Conclusion

22 The Singapore and New York courts' policy of minimal curial intervention is an important factor in the desirability of both jurisdictions as a seat of arbitration. In addition, distinguishing features such as the proposed option for appeals on questions of law may be adopted to better serve the evolving needs of sophisticated commercial parties. Similarly, the courts' treatment of a doctrine that may affect the finality of arbitral awards will also signal how arbitration-friendly those courts are in practice. As the two recent New York cases discussed above illustrate, there are important interests with respect to efficiency and finality of arbitral awards, to be weighed in balance with ensuring the correct application and development of substantive law. When it comes to choosing a seat of arbitration, however, the predictability of the approach adopted by the courts may be even more influential than the availability of doctrines or remedies peculiar to a specific jurisdiction (to the extent these are not inconsistent with the New York Convention[39]). Consequently, legislative and judicial innovations should be undertaken with a view to preserving the coherence and consistency in the courts' analysis of the applicable principles and standards.

39 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (330 UNTS 3) (10 June 1958; entry into force 7 June 1959).