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4. ARBITRATION

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4.1 International arbitration activity remained strong in 2024, continuing the trend from 2023 when countries emerged from the effects of the COVID-19 pandemic and economic activity gained traction.

4.2 Key international arbitral institutions, such as the Singapore International Arbitration Centre ("SIAC"), International Chamber of Commerce International Court of Arbitration ("ICC") and the Hong Kong International Arbitration Centre ("HKIAC") all reported strong caseloads in 2024. Both the SIAC and ICC reported 625 and 841 new cases in 2024 respectively, representing a small decrease from the caseload figures reported in 2023.[1] While the HKIAC also reported a drop in the total number of new cases (which included domain names and mediation cases) filed with it in 2024, the institution received more arbitration cases in 2024 than in 2023.[2]

1 The Singapore International Arbitration Centre reported receiving 625 new case filings in 2024, compared to 663 new filings in 2023; of these new filings, 91% were international in nature, compared to 93% in 2023. See Singapore International Arbitration Centre, "SIAC Records Steady Growth" (25 March 2025) <https://siac.org.sg/siac-records-steady-growth> (accessed 27 August 2025). The International Chamber of Commerce announced 841 arbitration cases filed in 2024, a small decrease from the 890 new cases filed in 2023. See International Chamber of Commerce, "ICC Dispute Resolution Statistics: 2024" (24 June 2025) <https://iccwbo.org/news-publications/news/icc-dispute-resolution-statistics-2024/> (accessed 27 August 2025).

2 Hong Kong International Arbitration Centre, "HKIAC Releases Statistics for 2024" (20 February 2025) <https://www.hkiac.org/news/hkiac-releases-statistics-2024> (accessed 27 August 2025); Hong Kong International Arbitration Centre, "2024 Statistics" <https://www.hkiac.org/about-us/statistics> (accessed 27 August 2025).

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4.3 The London Court of International Arbitration ("LCIA") also saw a small decrease in the number of referrals to arbitration: there were 362 referrals in 2024, down from 377 referrals in 2023.[3] The LCIA also published its third costs and duration analysis in December 2024, covering all cases which reached a final award between 1 January 2017 and 12 May 2024. The study revealed the median LCIA arbitration lasts 20 months and LCIA arbitration costs (meaning the total of tribunal fees and institution administrative charges) are generally lower than the estimated median arbitration costs of the SIAC, ICC, HKIAC and the SCC Arbitration Institute.[4] This is a surprising finding, as the LCIA is perceived as being more costly than the Asian arbitral institutions.

4.4 Singapore continues to be one of the top arbitral seats in the world, with only 3% points separating it from top-ranked London in the 2025 International Arbitration Survey by the Queen Mary University of London.[5] London and Singapore are also the only arbitral seats ranked among the top five seats for each of the six regions[6] in which survey respondents principally practice or operate.

4.5 Against this backdrop, it is not surprising that the Singapore courts continued to hear, in 2024, many arbitration-related cases. Indeed, there was a significant increase in the number of arbitration-related judgments published in 2024, with the number of reported cases increasing from 30 in 2023 to 46 in 2024. As with previous years, the majority of the reported cases (25 judgments or 54%) concerned applications to set aside arbitral awards and related appeals. In addition, there were several

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Of the 352 new cases received, the Hong Kong International Arbitration Centre administered 249.

3 London Court of International Arbitration, "LCIA's 2024 Annual Casework Report" (3 July 2025) <https://www.lcia.org/News/lcias-2024-annual-casework-report.aspx> (accessed 27 August 2025); London Court of International Arbitration, "LCIA Annual Casework Report 2023" (31 May 2024) <https://www.lcia.org/News/lcia-news-annual-report-on-2023-lcia-court-and-african-users-c.aspx> (accessed 27 August 2025).

4 London Court of International Arbitration, "LCIA Releases Updated Costs and Duration Analysis 2024" (30 December 2024) <https://www.lcia.org/News/lcia-releases-updated-costs-and-duration-analysis-2024.aspx> (accessed 27 August 2025).

5 Queen Mary University of London, School of International Arbitration, "2025 International Arbitration Survey: 'The Path Forward: Realities and Opportunities in Arbitration'" (2025) <https://www.qmul.ac.uk/arbitration/research/2025-international-arbitration-survey/> (accessed 27 August 2025). See also White & Case, "Our Thinking: 2025 International Arbitration Survey" <https://www.whitecase.com/insight-our-thinking/2025-international-arbitration-survey> (accessed 27 August 2025).

6 The regions are North America, Europe, Middle East, Asia-Pacific, Caribbean/Latin America and Africa.

applications (and related appeals) to enforce arbitration agreements or for the grant of anti-suit injunctions.

I. Commencement of arbitration: extension of time

4.6 It is not uncommon for parties to agree – outside of any limitation period or time bar imposed by law – that arbitration proceedings must be commenced within a specific timeframe in the event of a dispute. Failure to comply with the prescribed timelines may then prohibit a putative claimant from pursuing its claims in arbitration. While the consequences of non-compliance with agreed timelines can be severe, this reflects the principle of party autonomy that undergirds the arbitration process.

4.7 Within the Singapore domestic arbitration framework, however, parties caught in the unfortunate situation of being barred from pursing their claim may have some recourse. Section 10 of the Arbitration Act 2001[7] ("AA") empowers the court to extend time for commencing arbitration proceedings "if it is of the opinion that in the circumstances of the case undue hardship would otherwise be caused".[8]

4.8 This provision was examined in *Lee Hui Chin v Chubb Insurance Singapore Ltd*.[9] Lee Hui Chin ("Mdm Lee") was the policy holder of two insurance policies issued by Chubb Insurance Singapore Ltd ("Chubb Insurance") with accidental death benefits; the insured person under both policies was Mdm Lee's husband ("Deceased"), who had passed away following a fall while cycling. The Deceased's attending doctors had determined that he passed away due to injuries sustained as a result of his fall; however, the death certificate issued on 10 April 2021 stated the cause of death as "coronary artery disease with pneumonia".

4.9 Both insurance policies provided for disputes relating to the policies to be resolved by arbitration at the SIAC and that proceedings had to be commenced three months from the day the parties were unable to settle the dispute.

4.10 Relying on the attending physician's statements as to the cause of the Deceased's death, Mdm Lee submitted claims under the policies to Chubb Insurance on 20 April 2021. Chubb Insurance rejected the claims on 19 August 2021, on the basis that the Deceased's death was due to sickness and not an accident.

7 2020 Rev Ed.
8 Arbitration Act 2001 (2020 Rev Ed) s 10(*a*).
9 [2024] SGHC 69.

4.11 In July 2022, letters of administration were granted to one Ms Teng, Mdm Lee's daughter, as administratrix of the Deceased's estate. Shortly thereafter, on 26 August 2022, the estate's solicitors wrote to Chubb Insurance enclosing a neurologist's report concerning the cause of the Deceased's death. In the course of reviewing the claims, Chubb Insurance agreed to extend the time bar for commencement of arbitration until 30 June 2023. Chubb Insurance later rejected the claims again on 30 December 2022.

4.12 On 10 February 2023, Ms Teng (in her capacity as administratrix of the Deceased's estate) commenced two SIAC arbitrations against Chubb Insurance in respect of the two policies. Chubb Insurance asserted in its responses to the notices of arbitration that Ms Teng had no *locus standi* under the insurance policies to commence the proceedings. Subsequently, after the SIAC Court of Arbitration ordered the two arbitrations to be consolidated and the arbitral tribunal constituted, Ms Teng applied to the tribunal to join Mdm Lee as co-claimant in the consolidated arbitration. The tribunal dismissed the joinder application on 27 July 2023 on the basis that Mdm Lee, as the policy holder, had the *locus standi* to commence arbitration proceedings under the two policies; the tribunal later allowed Chubb Insurance's early dismissal application on 15 September 2023 and dismissed the proceedings commenced by Ms Teng.

4.13 By this time, the extended deadline for the commencement of arbitration proceedings under the policies had lapsed. Mdm Lee therefore applied to the General Division of the High Court ("General Division") to extend the time for her to commence arbitration against Chubb Insurance.

4.14 The General Division allowed Mdm Lee's application. In coming to its decision, the court considered the following (non-exhaustive) factors: (a) the reasons for the delay in commencing the arbitration; (b) the duration of the delay in making the application for extension of time; (c) the value of the dispute; (d) whether the intended claim can be said to be obviously unsustainable such that granting an extension of time would be pointless; and (e) whether the respondent had taken any steps in reliance of the fact that the contractual limitation period had expired and, if so, the prejudice that would be suffered by the respondent if an extension was granted.[10] The court further noted that whether undue hardship was made out in a particular case depended on the specific facts.[11]

10 *Lee Hui Chin v Chubb Insurance Singapore Ltd* [2024] SGHC 69 at [19].
11 *Lee Hui Chin v Chubb Insurance Singapore Ltd* [2024] SGHC 69 at [18].

4.15 Having regard to the particular circumstances of the case, the court took the view that this was not a case where the applicant for the extension of time (*ie*, Mdm Lee) had sat idly by: (a) the arbitration had been commenced before the extended time bar, albeit in the name of the wrong claimant; (b) Mdm Lee had filed the s 10 AA application expeditiously; (c) the amount in dispute was significant; (d) it was not clear that the applicant's claims were obviously unsustainable; and (e) there was no evidence that Chubb Insurance had taken any step in reliance on the fact that the extended time bar had expired.[12]

4.16 While the court accepted Chubb Insurance's submissions that there was some delay on the part of Ms Teng's lawyers in applying to join Mdm Lee as a co-claimant in the consolidated SIAC arbitration and Mdm Lee could have commenced proceedings in her own name earlier,[13] it considered that there was "an element of hindsight in the respondent's submissions" and the tribunal for the consolidated arbitration was only appointed on 19 June 2023.[14] The court ultimately concluded that a refusal of the extension of time would result in hardship to Mdm Lee that was out of proportion to whatever fault was attributable to her.[15]

4.17 On the particular facts of this case, the decision of the General Division was undoubtedly correct and fair. A question that arises is whether the court would have come to a similar decision if the applicant was a corporate entity instead of an individual.

II. Enforcement of arbitration agreements

A. Stay of proceedings and case management stay

4.18 Where court proceedings have been commenced in breach of an arbitration agreement, the party not in breach may apply – both under the International Arbitration Act 1994[16] ("IAA") and the AA – to stay the court proceedings in favour of arbitration.[17] The key difference between the stay provisions in the IAA and the AA is that a stay under the IAA is mandatory, *ie*, the court has no discretion to refuse to grant a stay if the

12 *Lee Hui Chin v Chubb Insurance Singapore Ltd* [2024] SGHC 69 at [21]–[26].
13 *Lee Hui Chin v Chubb Insurance Singapore Ltd* [2024] SGHC 69 at [21]–[22].
14 *Lee Hui Chin v Chubb Insurance Singapore Ltd* [2024] SGHC 69 at [22].
15 *Lee Hui Chin v Chubb Insurance Singapore Ltd* [2024] SGHC 69 at [27].
16 2020 Rev Ed.
17 International Arbitration Act 1994 (2020 Rev Ed) s 6(2); Arbitration Act 2001 (2020 Rev Ed) s 6(2).

application is made in accordance with the IAA,[18] whereas the grant of a stay under the AA is at the discretion of the court.[19]

4.19 There were two reported decisions on stay of proceedings in 2024, both involving applications for stay under the AA. In *Star Engineering Pte Ltd v Pollisum Engineering Pte Ltd*,[20] Pollisum Engineering Pte Ltd ("Pollisum") had engaged Star Engineering Pte Ltd ("Star Engineering") as its contractor for a project at Senoko Way. The parties' contract was based on the REDAS Design and Build Conditions of Contract 2010, with agreed variations found in the particular conditions of contract ("Particular Conditions").

4.20 Pursuant to the terms of the contract, on 15 November 2019, Star Engineering provided to Pollisum an unconditional on-demand performance bond of $856,000 issued by Great Eastern General Insurance Ltd.

4.21 The contract and the performance bond contained different dispute resolution clauses: while the contract contained an arbitration clause, the performance bond provided for the exclusive jurisdiction of the Singapore courts. In addition, the parties agreed in the Particular Conditions that any dispute relating to a "call, demand, receipt, payment" in respect of the performance bond would also be subject to arbitration.

4.22 On 30 October 2023, Pollisum called on the performance bond on the basis that it had incurred rectification costs and other losses and expenses arising from Star Engineering's alleged breach of contract. On 4 November 2023, Star Engineering obtained interim injunctions from the General Division prohibiting the insurer from paying out, and Pollisum from receiving, any sums under the performance bond. Shortly thereafter, Pollisum applied to stay the court proceedings in favour of arbitration.

4.23 The General Division ordered the proceedings to be stayed,[21] holding that the dispute over the demand for payment under the performance bond fell within the scope of the arbitration agreement[22] and there was no "sufficient reason" to refuse a stay.[23] The court also ordered a case management stay in respect of the proceedings against the insurer as there was sufficient overlap in the parties to the court action and the

18 International Arbitration Act 1994 (2020 Rev Ed) s 6(2) read with s 6(1).
19 Arbitration Act 2001 (2020 Rev Ed) s 6(2).
20 [2024] SGHC 137.
21 *Star Engineering Pte Ltd v Pollisum Engineering Pte Ltd* [2024] SGHC 137.
22 *Star Engineering Pte Ltd v Pollisum Engineering Pte Ltd* [2024] SGHC 137 at [24].
23 *Star Engineering Pte Ltd v Pollisum Engineering Pte Ltd* [2024] SGHC 137 at [30]–[40].

putative arbitration[24] and there was a real risk of overlapping issues being ventilated before different fora among different parties if the court action were to proceed concurrently with the arbitration.[25]

4.24 The Court of Appeal affirmed the decision,[26] noting that the parties had agreed in the particular conditions that the performance bond was an unconditional on-demand bond and any payments thereunder could only be restrained in the event of fraud.[27] Therefore, if Star Engineering disagreed with the amounts claimed by Pollisum under the performance bond, such a dispute had to be resolved by arbitration between Star Engineering and Pollisum, and not by restraining Pollisum's call on the performance bond.[28]

4.25 On its part, Pollisum should have applied to set aside the interim injunctions if it believed that its demand on the performance bond was neither fraudulent nor unconscionable.[29] However, by seeking (and obtaining) a stay of the court action so as to refer the issue of its entitlement to call on the performance bond to arbitration, Pollisum had effectively "converted its position from that of a party holding an unconditional on-demand bond into something akin to that of a party holding a conditional bond payable only upon proof of its entitlement to receive payment thereunder".[30]

4.26 As a result of the position taken by Pollisum, there was no longer any live dispute involving the insurer, since any payment under the performance bond would be deferred until a final determination in the putative arbitration.[31] There was therefore no real risk of inconsistent findings between the court action and the putative arbitration and no basis for the substantive dispute between Pollisum and Star Engineering not to proceed to arbitration.[32]

4.27 This case illustrates the potential complexities at the intersection between unconditional on demand bonds and the underlying dispute resolution clause, and the importance of clearly distinguishing between

24 *Star Engineering Pte Ltd v Pollisum Engineering Pte Ltd* [2024] SGHC 137 at [49].
25 *Star Engineering Pte Ltd v Pollisum Engineering Pte Ltd* [2024] SGHC 137 at [50]–[52].
26 *Star Engineering Pte Ltd v Pollisum Engineering Pte Ltd* [2024] 1 SLR 1099.
27 *Star Engineering Pte Ltd v Pollisum Engineering Pte Ltd* [2024] 1 SLR 1099 at [10(d)].
28 *Star Engineering Pte Ltd v Pollisum Engineering Pte Ltd* [2024] 1 SLR 1099 at [10(e)] and [35].
29 *Star Engineering Pte Ltd v Pollisum Engineering Pte Ltd* [2024] 1 SLR 1099 at [36]–[38].
30 *Star Engineering Pte Ltd v Pollisum Engineering Pte Ltd* [2024] 1 SLR 1099 at [39].
31 *Star Engineering Pte Ltd v Pollisum Engineering Pte Ltd* [2024] 1 SLR 1099 at [40]–[41].
32 *Star Engineering Pte Ltd v Pollisum Engineering Pte Ltd* [2024] 1 SLR 1099 at [42].

disputes relating to substantive contractual rights and those arising from the entitlement to payment under a performance bond.

4.28 Another decision on the grant of a stay of proceedings under s 6 of the AA is *Crystal-Moveon Technologies Pte Ltd v Moveon Technologies Pte Ltd*.[33] Moveon Technologies Pte Ltd ("Moveon Technologies") was a joint venture ("JV") vehicle incorporated by Crystal-Moveon Technologies Pte Ltd ("Crystal-Moveon") and Zhejiang Crystal-Optech Co Ltd ("COC"). The JV parties entered into an equipment transfer agreement ("Transfer Agreement") under which Crystal-Moveon transferred some equipment to Moveon Technologies. The contract provided for disputes to be resolved by arbitration at the SIAC and for "matters not involved in this contract" to be resolved "by signing a written supplementary agreement".

4.29 Disputes arose which led to Crystal-Moveon commencing an action against Moveon Technologies in Singapore to recover various expenses that it had incurred on behalf of Moveon Technologies. Crystal-Moveon's claims included a claim for equipment costs which was not based on the Transfer Agreement ("Equipment Costs Claim"), but a separate agreement by Moveon Technologies to make payment. However, the list of equipment particularised in Crystal-Moveon's Equipment Costs Claim included claims relating to "AH Equipment", which had been transferred to Moveon Technologies under the Transfer Agreement.

4.30 Moveon Technologies applied to stay the court action in relation to the Equipment Costs Claim on the basis that the disputes fell within the scope of the arbitration clause in the Transfer Agreement. Alternatively, it sought a stay of the part of the Equipment Costs Claim relating to the AH Equipment.

4.31 The General Division upheld an assistant registrar's decision to deny the stay application. Applying the "generous approach" to the construction of the scope of arbitration agreements endorsed by the Court of Appeal in *Rals International Pte Ltd v Cassa di Risparmio di Parma e Piacenza SpA*,[34] the court held that the arbitration clause in the Transfer Agreement applied to the dispute relating to the transfer of the AH Equipment, even though the rest of Crystal-Moveon's Equipment Costs Claims were unrelated to the AH Equipment and the Transfer Agreement, and therefore not caught by the arbitration clause.

33 [2024] SGHC 72.
34 [2016] 5 SLR 455.

4.32 The court noted that the burden rested on Crystal-Moveon, as the party seeking to persuade the court to exercise its discretion to override the terms of the arbitration clause, to demonstrate "sufficient reason why the matter should not be referred to arbitration" pursuant to s 6(2)(*a*) of the AA.[35] In this regard, the General Division observed that it was undisputed that the claims relating to the AH Equipment and the broader Equipment Costs Claims all arose in connection with the JV between Crystal-Moveon and COC,[36] and were "in substance part of the same broader dispute and share a common theme".[37] In the circumstances, having regard to the common factual matrix and overlapping issues in respect of the AH Equipment claim and the remaining Equipment Costs Claims, there was a real risk of inconsistent findings and possibility of disrepute to the administration of justice should the claims proceed before two different fora.[38] There was therefore "sufficient reason" to refuse the grant of a stay.

B. Anti-suit injunctions

4.33 While an arbitration cannot be initiated or sustained absent an arbitration agreement, what happens when a party elects to disregard an arbitration agreement and commences proceedings in a different forum? The usual response is for the party not in breach to seek assistance from the courts to enforce the terms of the arbitration agreement.

4.34 *Asiana Airlines, Inc v Gate Gourmet Korea Co, Ltd*[39] is the latest in a series of disputes involving the Asian airline and a global catering solutions company. Gate Gourmet Korea Co, Ltd ("GGK") is a JV company formed by Asiana Airlines, Inc ("Asiana") and Gate Gourmet Switzerland GmbH ("GGS"). Both GGK and GGS are part of the Gate Gourmet group of companies.

4.35 Between 2016 and 2017, the parties entered into several contracts, including the JV agreement for the establishing of GGK and a catering agreement between GGK and Asiana under which GGK would provide catering and airline handling services to the airline for a 30-year period. Under the catering agreement, GGK paid an exclusivity fee to Asiana to

35 *Crystal-Moveon Technologies Pte Ltd v Moveon Technologies Pte Ltd* [2024] SGHC 72 at [41].
36 *Crystal-Moveon Technologies Pte Ltd v Moveon Technologies Pte Ltd* [2024] SGHC 72 at [49].
37 *Crystal-Moveon Technologies Pte Ltd v Moveon Technologies Pte Ltd* [2024] SGHC 72 at [50]–[51].
38 *Crystal-Moveon Technologies Pte Ltd v Moveon Technologies Pte Ltd* [2024] SGHC 72 at [53].
39 [2024] 2 SLR 279.

set off against Asiana's capital contribution towards the establishment of GGK.

4.36 Shortly after the catering agreement was entered into, disputes arose between GGK and Asiana in relation to the interpretation of the pricing mechanism for the catering services to be provided by GGK. This dispute was the subject of an ICC arbitration commenced in June 2019, and an award was issued in February 2021.[40]

4.37 It was subsequently revealed that both the JV agreement and the catering agreement were part of a "Package Deal" whereby Chairman Park Sam-Koo (the chief executive officer ("CEO") of Asiana and chairman of the Kumho Asiana Group) ("Chairman Park") planned to raise funds for his own benefit by selling Asiana's catering licence to the Gate Gourmet group in return for an investment in Kumho Corp Co Ltd.

4.38 Asiana's position was that it did not know about the Package Deal during negotiations for the JV agreement and the catering agreement; it only discovered the arrangement after Chairman Park was indicted in May 2021. The revelation of the Package Deal led Asiana to commence two civil suits in South Korea:

(a) In January 2022, Asiana commenced proceedings against GGK in the Incheon District Court for, amongst other things, a declaration that the catering agreement was null and void. Asiana contended in these proceedings that if the catering agreement was null and void pursuant to the Korean Civil Code, the arbitration agreement contained in the catering agreement would similarly be null and void ("Nullity Action").

(b) In October 2022, Asiana commenced proceedings against GGS and two Gate Gourmet Group CEOs[41] in the Seoul Southern District Court, alleging that the defendants were actively involved in Chairman Park's unlawful conduct in respect of the Package Deal and were therefore liable in tort under the Korean Civil Code ("Compensation Action").

40 Asiana was the unsuccessful party in the International Chamber of Commerce ("ICC") arbitration and sought to set aside the ICC award in Singapore. The setting aside was unsuccessful before both the Singapore International Commercial Court and the Court of Appeal: see *Asiana Airlines, Inc v Gate Gourmet Korea Co, Ltd* [2022] 4 SLR 158.

41 The CEOs are Christoph Schmitz and Xavier Rossinyol Espel, the current and former CEOs of the Gate Gourmet group: see *Asiana Airlines, Inc v Gate Gourmet Korea Co, Ltd* [2024] 2 SLR 279 at [6] and [17].

4.39 GGK, GGS and the two CEOs subsequently commenced proceedings in Singapore in June 2023 alleging, amongst other things, that the Compensation Action had been initiated in breach of the arbitration agreement in the JV agreement, while the commencement of the Nullity Action was similarly *prima facie* a breach of the arbitration agreement in the catering agreement. The Singapore International Commercial Court ("SICC") granted anti-suit injunctions ("ASIs") in respect of both the Nullity Action and the Compensation Action and against all the defendants in the Korean proceedings, on the basis that the Korean proceedings were *prima facie* in breach of the respective arbitration agreements. Asiana appealed.

4.40 One of the key issues before the Court of Appeal was whether a breach of an arbitration agreement can be relied upon to obtain an ASI to prevent court proceedings against non-parties to an arbitration agreement. In support of this aspect of its appeal, Asiana argued that: (a) the Compensation Action was primarily an action against the two CEOs for their active participation in Chairman Park's scheme and the inclusion of GGS in the Compensation Action was for vicarious liability only; and (b) the proceedings were not closely related to the formation or performance of the JV agreement within the meaning of the arbitration agreement in that contract.

4.41 The Court of Appeal dismissed Asiana's second argument, noting that under Korean law, arbitration agreements were generally broad enough to encompass disputes over non-contractual claims[42] and the arbitration clause in the JV agreement was in similarly broad terms to – in principle – cover claims against both the CEOs and GGS advanced in the Compensation Action.[43]

4.42 However, the Court of Appeal agreed that there was no basis for an ASI to be granted in respect of the claims made by Asiana against the two CEOs in the Compensation Action.[44] The court held that, in general, based on the doctrine of privity, an ASI would not be granted *vis-à-vis* non-parties to the arbitration agreement, unless: (a) the arbitration clause was intended to apply to the non-party; or (b) the court determined that the foreign proceedings had been brought against the non-party for ulterior reasons, for example, to circumvent the arbitration agreement,

42 *Asiana Airlines, Inc v Gate Gourmet Korea Co, Ltd* [2024] 2 SLR 279 at [53].
43 *Asiana Airlines, Inc v Gate Gourmet Korea Co, Ltd* [2024] 2 SLR 279 at [54].
44 *Asiana Airlines, Inc v Gate Gourmet Korea Co, Ltd* [2024] 2 SLR 279 at [101].

thereby making the foreign proceedings vexatious and oppressive to the parties to the arbitration clause.[45]

4.43 As the Court of Appeal was not persuaded that the Compensation Action against the two CEOs had the effect or purpose of frustrating or subverting the operation of the arbitration clause in the JV agreement, the ASI granted in respect of the claims against the two CEOs was set aside. The Court of Appeal, however, upheld the ASIs granted in respect of the Nullity Action and for the claims against GGS in the Compensation Action on the basis that those proceedings were in breach of the arbitration agreements in the JV agreement and the catering agreement.[46]

4.44 The Court of Appeal had another opportunity to consider the grant of an ASI in *COSCO Shipping Specialized Carriers Co, Ltd v PT OKI Pulp & Paper Mills*.[47] COSCO Shipping Specialized Carriers Co, Ltd ("COSCO China") was the owner of the vessel *Le Li* and the vessel was chartered to COSCO Shipping Specialized Carriers (Europe) BV ("COSCO Europe") under a contract of affreightment dated 6 April 2021 ("Head Charter"). The *Le Li* was sub-chartered by COSCO Europe to PT OKI Pulp & Paper Mills ("PT OKI"), an Indonesian manufacturer of paper products ("Sub-Charter").

4.45 On or about 31 May 2022, cargo was loaded on the *Le Li* at a port facility/jetty owned and operated by PT OKI. COSCO China issued nine bills of lading to PT OKI for the cargo, which was to be delivered to ports in China and South Korea. However, shortly after the *Le Li* left the jetty, the vessel made contact with a trestle bridge that connected the jetty to the mainland, resulting in part of the trestle bridge collapsing.

4.46 Arising from the allision, the following proceedings were initiated:

(a) 4 August 2022: COSCO China applied in Singapore under Pt 8 of the Merchant Shipping Act 1995[48] to limit its liability arising out of the allision. A limitation decree was granted on 5 October 2023.

(b) 26 October 2022: PT OKI commenced proceedings against COSCO China in the Indonesian courts seeking compensation for losses suffered. On the same day, COSCO

45 *Asiana Airlines, Inc v Gate Gourmet Korea Co, Ltd* [2024] 2 SLR 279 at [77], [84] and [89].

46 *Asiana Airlines, Inc v Gate Gourmet Korea Co, Ltd* [2024] 2 SLR 279 at [103] and [105].

47 [2024] 2 SLR 516.

48 2020 Rev Ed.

China commenced arbitration in Singapore against COSCO Europe under the Head Charter. In this arbitration, COSCO China sought, amongst other things, a declaration that it had not breached its obligations under the Head Charter, as well as various reliefs in respect of its liability arising out of the allision.

(c) 25 August 2023: COSCO China applied to the General Division for an ASI to enjoin PT OKI from pursuing the Indonesian proceedings. This application was heard as an *ex parte* application in September 2023 and dismissed on 27 December 2023. Further arguments were heard on 7 February 2024.

(d) 19 September 2023: COSCO China commenced an arbitration against PT OKI in Singapore pursuant to the arbitration agreements in the bills of lading ("BL arbitration clause"). In this arbitration, COSCO China sought similar declarations of non-liability and various reliefs in respect of its liabilities arising out of the allision.

4.47 The General Division denied COSCO China's application for an ASI.[49] The court took the view that PT OKI's claims in the Indonesian proceedings was a purely tortious claim and there was no meaningful causal connection between the tort claim and the legal relationship established under the bills of lading between COSCO China and PT OKI.[50] Moreover, COSCO China's putative defences did not demonstrate an intention that a claim of the sort brought by PT OKI should be resolved by arbitration.[51]

4.48 COSCO China appealed to the Court of Appeal and was successful. The Court of Appeal applied a two-stage test to ascertain the meaning of the words "arising out of and in connection with" as used in the BL arbitration clause. This involved, first, an assessment of the matters which may be raised in the foreign court proceedings by reviewing the parties' pleadings; and then, a determination of whether

49 *COSCO Shipping Specialized Carriers Co, Ltd v PT OKI Pulp & Paper Mills* [2024] SGHC 92.

50 *COSCO Shipping Specialized Carriers Co, Ltd v PT OKI Pulp & Paper Mills* [2024] SGHC 92 at [72] and [115].

51 *COSCO Shipping Specialized Carriers Co, Ltd v PT OKI Pulp & Paper Mills* [2024] SGHC 92 at [123]. While a portion of COSCO China's defences fell within the scope of the arbitration agreement, the court did not consider this to be sufficient to support a conclusion that the arbitration agreements in the bills of lading were intended for the resolution of PT OKI's principal claims in the Indonesian proceedings: at [130].

such matters fell within the scope and ambit of the arbitration clause.[52] The court found that PT OKI's tortious claims, COSCO China's contractual defence of negligent navigation and its cross-claim for breach of the safe port warranty all related to the question of what was the cause of the allision, and that the parties must have contemplated that a pure tort claim for damage to the trestle bridge caused during the performance of the contracts of carriage and the foreseeable lines of defence should be subject to the BL arbitration clause.[53] PT OKI was therefore in breach of the BL arbitration clause when it commenced the Indonesian proceedings and COSCO China was entitled to an ASI to address that breach.[54]

4.49 A related question concerning the right to seek an ASI to restrain proceedings involving non-parties to the arbitration agreement came up in *TrueCoin LLC v Techteryx, Ltd*.[55] TrueCoin LLC ("TrueCoin") and Techteryx, Ltd ("Techteryx") had entered into two agreements: a strategic alliance agreement under which TrueCoin agreed to sell its assets relating to its digital token business to Techteryx ("SAA") and a master services business pursuant to which TrueCoin would provide certain services relating to the digital token business to Techteryx ("MSA"). After the agreements were signed, TrueCoin and Techteryx issued a joint written instruction to release certain assets held in escrow. The instruction contained a dispute resolution clause providing for the non-exclusive jurisdiction of the Hong Kong courts.

4.50 Disputes arose between the parties which led to TrueCoin commencing two SIAC arbitrations against Techteryx pursuant to the arbitration clauses in the SAA and MSA. Shortly after the arbitrations were filed, Techteryx commenced an action in the Hong Kong courts against TrueCoin and other defendants for breaches of the SAA and MSA, as well as for misrepresentation. Techteryx argued in the Hong Kong action that the arbitration clauses in the SAA and MSA had been superseded by the jurisdiction clause in the joint written instruction.

4.51 TrueCoin applied to the Singapore courts for an ASI restraining Techteryx from continuing its action against TrueCoin in Hong Kong. The application was granted by the General Division, which took the view that on a *prima facie* basis, the arbitration agreements in the SAA

52 *COSCO Shipping Specialized Carriers Co, Ltd v PT OKI Pulp & Paper Mills* [2024] 2 SLR 516 at [68], [71]–[72], [88] and [93].
53 *COSCO Shipping Specialized Carriers Co, Ltd v PT OKI Pulp & Paper Mills* [2024] 2 SLR 516 at [102]–[103].
54 *COSCO Shipping Specialized Carriers Co, Ltd v PT OKI Pulp & Paper Mills* [2024] 2 SLR 516 at [114].
55 [2024] SGHC 296.

and MSA had not been superseded[56] and the dispute resolution clause in the joint written instruction represented a carve-out of certain disputes from the scope and ambit of the relevant arbitration agreements.[57]

4.52 Although Techteryx's Hong Kong action included claims for misrepresentation made against TrueCoin's CEO and manager, this was not sufficient reason to allow Techteryx to breach its agreement to arbitrate with TrueCoin.[58] The court was not persuaded by Techteryx's foreign fragmentation arguments, noting that its claims against TrueCoin in Hong Kong were *prima facie* subject to the arbitration agreements and would likely be stayed by the Hong Kong court "in due course",[59] and Techteryx could not circumvent its agreement to arbitrate with TrueCoin by simply alleging conspiracy between TrueCoin and non-parties to the arbitration agreement.[60] The court cautioned that:[61]

> … related disputes, only some of which fall within an arbitration agreement, cannot be decided by the same *court* without overriding the parties' agreement to arbitrate. Where such foreign court proceedings have been commenced *prima facie* in breach of an arbitration agreement, an ASI will be granted unless there are strong reasons not to … [emphasis in original]

4.53 The General Division concluded that as no strong reasons existed to override the parties' agreements to arbitrate, a permanent ASI restraining Techteryx from continuing to pursue the Hong Kong action against TrueCoin should be granted.

4.54 In *STS Seatoshore Group Pte Ltd v Wansa Commodities Pte Ltd*,[62] the General Division denied an application for a permanent ASI on the basis of the applicant's undue delay in seeking an ASI, which allowed the foreign court proceedings to progress to an advanced stage.

4.55 Wansa Commodities Pte Ltd ("Wansa") had engaged STS Seatoshore Group Pte Ltd ("STS") to provide barging and transportation services in the Republic of Guinea ("Guinea"). The affreightment contract provided for disputes to be resolved by arbitration under the rules of the Singapore Maritime Chamber of Arbitration ("SCMA"). Disputes subsequently arose between the parties which led Wansa and STS to commence multiple proceedings in Guinea and in Singapore:

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56 *TrueCoin LLC v Techteryx, Ltd* [2024] SGHC 296 at [65] and [84].
57 *TrueCoin LLC v Techteryx, Ltd* [2024] SGHC 296 at [78].
58 *TrueCoin LLC v Techteryx, Ltd* [2024] SGHC 296 at [90].
59 *TrueCoin LLC v Techteryx, Ltd* [2024] SGHC 296 at [89].
60 *TrueCoin LLC v Techteryx, Ltd* [2024] SGHC 296 at [90].
61 *TrueCoin LLC v Techteryx, Ltd* [2024] SGHC 296 at [104].
62 [2024] SGHC 266.

(a) In early April 2024, Wansa commenced an action in the Conakry courts of Guinea seeking specific performance of the affreightment contract. This was quickly followed by a second Guinea suit commenced by Wansa in late April 2024 to prohibit STS from working for any other company other than Wansa within the territorial waters of the Boffa region of Guinea.

(b) In May 2024, STS then commenced an SCMA arbitration against Wansa seeking damages for Wansa's breaches of the contract of affreightment. Later that month, Wansa commenced a third action in Guinea to stop STS from removing equipment out of Guinea for six months. This was followed by STS's action in Guinea to compel Wansa to perform the affreightment contract.

(c) In June 2024, Wansa made yet another application to the Guinea courts, this time seeking an order for immobilisation of STS's equipment in Guinea.

(d) On 3 July 2024, STS applied to the Singapore courts seeking a permanent ASI against Wansa. On the same day, STS also filed a summons in the Guinea courts seeking, inter alia, an order that Wansa pay outstanding sums under the affreightment contract.

(e) On 8 July 2024, Wansa applied to the Guinea courts seeking an order that Wansa be authorised to temporarily use certain equipment belonging to STS in Guinea.

4.56 Although STS had asserted in the Guinea proceedings commenced by Wansa that there was an arbitration clause between the parties, the Guinea courts maintained their jurisdiction over the dispute on the basis that STS had only raised the existence of the arbitration agreement after presenting arguments on merits to the Guinea courts.

4.57 In coming to its decision, the General Division applied the legal principles from *Sun Travels & Tours Pvt Ltd v Hilton International Manage (Maldives) Pvt Ltd*.[63] The court noted that that by the time STS filed its application for a permanent ASI and obtained the interim ASI, multiple sets of proceedings in Guinea had been heard and multiple Guinea judgments and court orders had been issued;[64] STS was itself

63 [2019] 1 SLR 732.

64 *STS Seatoshore Group Pte Ltd v Wansa Commodities Pte Ltd* [2024] SGHC 266 at [78].

responsible for commencing one set of proceedings in Guinea.[65] Further, the court in Conakry, Guinea, had issued a judgment concerning the merits of Wansa's claim under the affreightment contract and made substantive orders against STS.[66]

4.58 The court held that STS's undue delay in seeking the ASI allowed the Guinea court proceedings to progress substantially and a significant amount of the Guinea courts' time and costs would be wasted if a permanent ASI was granted.[67] The court was not persuaded by STS's submission that it had "no choice" but to "expeditiously" contest Wansa's earliest applications to the Guinea courts, finding that STS ought to have sought an ASI in Singapore when Wansa first initiated the Guinea proceedings[68] and could have done so while simultaneously defending itself in Guinea.[69]

4.59 The General Division also dismissed STS's application for an order to compel Wansa to participate in the SCMA arbitration, on the basis that neither the IAA nor the Model Law on International Commercial Arbitration[70] ("MAL") obliged Wansa to participate in the arbitration or empowered the court to impose a mandatory order on such terms.[71]

4.60 This case highlights the importance of responding to breaches of an arbitration agreement expeditiously, particularly where foreign court proceedings are progressing swiftly. While it may be costly to litigate on multiple fronts, the failure to do so could have significant repercussions including the loss of the right to resolve disputes through an agreed mechanism.

4.61 ASIs are usually sought prior to the commencement of an arbitration or in the course of arbitration proceedings. The SICC had to consider the more unusual situation of an ASI being sought post-award

65 *STS Seatoshore Group Pte Ltd v Wansa Commodities Pte Ltd* [2024] SGHC 266 at [81].
66 *STS Seatoshore Group Pte Ltd v Wansa Commodities Pte Ltd* [2024] SGHC 266 at [79].
67 *STS Seatoshore Group Pte Ltd v Wansa Commodities Pte Ltd* [2024] SGHC 266 at [81].
68 *STS Seatoshore Group Pte Ltd v Wansa Commodities Pte Ltd* [2024] SGHC 266 at [84].
69 *STS Seatoshore Group Pte Ltd v Wansa Commodities Pte Ltd* [2024] SGHC 266 at [85].
70 United Nations Commission on International Trade Law, UNCITRAL Model Law on International Commercial Arbitration (1985, amended 2006).
71 *STS Seatoshore Group Pte Ltd v Wansa Commodities Pte Ltd* [2024] SGHC 266 at [106] and [108].

in two cases involving *Pertamina International Marketing & Distribution Pte Ltd v P-H-O-E-N-I-X Petroleum Philippines, Inc*.[72]

4.62 Pertamina International Marketing & Distribution Pte Ltd ("Pertamina") and P-H-O-E-N-I-X Petroleum Philippines, Inc ("Phoenix") were both in the petroleum business, and arising from aligned strategic interests, they entered into a memorandum of understanding ("MOU") in November 2019 for the joint exploration, development and implementation of strategic partnership workstreams in the Philippines, Singapore and Indonesia.

4.63 Disputes arose between the parties due to Phoenix's non-payment for certain deliveries made by Pertamina. This led Pertamina to commence a SIAC arbitration against Phoenix seeking outstanding payments. Phoenix did not participate in this arbitration except to object – at a fairly late stage of the arbitration proceedings – to the tribunal's jurisdiction on the basis that there was no arbitration agreement between the parties.

4.64 A final award was issued by the tribunal. Phoenix then initiated proceedings in the Philippines to challenge the validity of the award and prevent its enforcement. Concurrently, Pertamina applied in Singapore to register and enforce the final award against Phoenix.

4.65 Against this backdrop, the parties filed the following applications at the SICC:

(a) Pertamina applied for a permanent ASI to restrain Phoenix continuing with the Philippines proceedings. An interim ASI was granted by the SICC on 18 January 2024, while service (through diplomatic means) of the permanent ASI application was still pending.

(b) Phoenix applied seeking, amongst other things, a declaration that the SICC should decline to exercise jurisdiction to hear Pertamina's application for a permanent ASI, or alternatively that the application be stayed pending disposal of the Philippines proceeding, and that the interim ASI granted against Phoenix be set aside.

4.66 The SICC held that although the papers for the permanent ASI application had not been formally served on Phoenix, the lack of

72 [2024] 5 SLR 28; *Pertamina International Marketing & Distribution Pte Ltd v P-H-O-E-N-I-X Petroleum Philippines, Inc* [2024] 6 SLR 105.

formal service was not fatal to the grant of an interim ASI.[73] The court observed that it "regularly issues interim orders before formal service of the originating process in an appropriate case".[74]

4.67 The court was also not persuaded that a stay of the permanent ASI application, or a discharge of the interim ASI, was warranted. While the parties were indeed in litigation in the Philippines, a final award had already been issued in the arbitration and Phoenix did not apply to set aside the award. In the circumstances, the Singapore court – being the supervisory court for the arbitration – was obliged to "protect the integrity of the [a]ward"; any attempts to attack the arbitration or the award are "illegitimate" under Singapore law and the Singapore courts "generally will grant appropriate injunctive relief to protect an award to restrain breaches of an arbitration agreement".[75]

4.68 The SICC therefore granted the permanent ASI sought by Pertamina.[76] The court noted that the grant of the permanent ASI did not, however, prohibit any "proper attempt" by Phoenix to resist recognition or enforcement of the award under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards[77] ("New York Convention") in the Philippines or elsewhere.[78]

C. Interplay between arbitration and insolvency

4.69 Most insolvency regimes contain a moratorium provision (whether automatic or upon application) prohibiting legal proceedings from being commenced or continued against the company in financial distress for a limited period of time. The moratorium period is intended to give the company some "breathing room" to find solutions to its financial difficulties.

4.70 The moratorium provisions are not absolute and a creditor may seek the court's permission to pursue its claims against the debtor.

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73 *Pertamina International Marketing & Distribution Pte Ltd v P-H-O-E-N-I-X Petroleum Philippines, Inc* [2024] 5 SLR 28 at [43].

74 *Pertamina International Marketing & Distribution Pte Ltd v P-H-O-E-N-I-X Petroleum Philippines, Inc* [2024] 5 SLR 28 at [43].

75 *Pertamina International Marketing & Distribution Pte Ltd v P-H-O-E-N-I-X Petroleum Philippines, Inc* [2024] 5 SLR 28 at [50].

76 *Pertamina International Marketing & Distribution Pte Ltd v P-H-O-E-N-I-X Petroleum Philippines, Inc* [2024] 6 SLR 105 at [72].

77 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (10 June 1958) 330 UNTS 38 (entered into force 7 June 1959).

78 *Pertamina International Marketing & Distribution Pte Ltd v P-H-O-E-N-I-X Petroleum Philippines, Inc* [2024] 5 SLR 28 at [73].

Re Sapura Fabrication Sdn Bhd[79] was one such case and concerned an application under Art 20(6) of the UNCITRAL Model Law on Cross-Border Insolvency[80] ("MIL") for a carve-out from the automatic stay arising under Art 20(1) of the MIL for an arbitration to proceed.

4.71 The Sapura Group (which Sapura Fabrication Sdn Bhd and Sapura Offshore Sdn Bhd were a part of) was in the business of providing global integrated oil and gas services and solutions. The group experienced financial problems from 2016 arising from an industry downturn, and which were compounded by the COVID-19 pandemic. In order to resolve its financial troubles, the Sapura Group sought to restructure its debts through individual schemes of arrangement in Malaysia. The Malaysian High Court granted a first reorganisation order on 10 March 2022 and the order was recognised by the Singapore courts on 25 January 2023. After the first reorganisation order lapsed, the Sapura Group applied for, and obtained, a second, then a third reorganisation order, which were similarly recognised by the Singapore courts.

4.72 Sapura Fabrication Sdn Bhd and Sapura Offshore Sdn Bhd ("Sapura Entities") had earlier entered into two contracts to provide certain construction-related services to "GAS", a non-party. GAS had given notice of termination of the contracts on the basis of, amongst other things, the second reorganisation order, and commenced arbitrations against the Sapura Entities in September 2023. In their responses to the notices of arbitration, the Sapura Entities contended that the second reorganisation order did not amount to an "insolvency event" under the contracts; even if the order did constitute an insolvency event, GAS was precluded from exercising its right to terminate the contracts due to waiver by election and/or estoppel.

4.73 GAS argued in its Art 20(6) application that: (a) its claims in the arbitrations did not fall within the scope of the Sapura Entities' schemes of arrangement; (b) the amendment of the cut-off dates in the proposed schemes of arrangement was done in bad faith to thwart GAS from proceeding to arbitration; (c) the proof of debt process was not appropriate to deal with its claims, which were factually involved and disputed by the Sapura Entities; and (d) allowing the arbitrations to proceed would not impede the achievement of the schemes, and would

79 [2024] SGHC 241.

80 United Nations Commission on International Trade Law, UNCITRAL Model Law on Cross-Border Insolvency (1997).

instead be in the interests of the Sapura Entities and their creditors as the schemes could be finalised without being impacted by GAS's claims.[81]

4.74 Applying the test set out in *Wang Aifeng v Sunmax Global Capital 1 Fund Pte Ltd*[82] ("*Wang Aifeng*") and which was endorsed by the Court of Appeal in *Ascentra Holdings, Inc v SPGK Pte Ltd*,[83] the General Division exercised its discretion to grant the carve-out sought by GAS. The court noted that the dispute between the Sapura Entities and GAS was complex and could not be adequately resolved within the proof of debt regime,[84] and there was nothing to show that GAS's claims were unsustainable, or that the other creditors of the Sapura Entities would be unduly prejudiced should the arbitrations be allowed to proceed.[85] However, to address the concern that GAS may gain an advantage over other creditors, the court imposed a condition that GAS be prohibited from taking any enforcement action in respect of any award that it may subsequently obtain against the Sapura Entities.[86]

4.75 The Sapura Entities appealed against the decision but the appeal was eventually withdrawn following a settlement reached by the parties. Nonetheless, the Court of Appeal issued a judgment upholding the decision of the General Division[87] and endorsing the test set out in *Wang Aifeng*.[88] The Court of Appeal held that when considering whether discretion ought to be exercised under Art 20(6) of the MIL, the complexity of the case and of the dispute is "the overriding consideration" which "directly engages the question whether the claim is of a type that ought to proceed by arbitration rather than the adjudication process".[89] In this connection, the court considered it clear that the claims in question were strongly disputed, involved substantial amounts and likely to

81 *Re Sapura Fabrication Sdn Bhd* [2024] SGHC 241 at [24]–[27].

82 [2023] 3 SLR 1604. In *Re Sapura Fabrication Sdn Bhd* [2024] SGHC 241 at [38], Goh Yihan JC identified the following facts as relevant considerations for the court's determination of whether to grant a carve-out from an insolvency law moratorium: (a) the timing of the application for permission; (b) the nature of the claim; (c) the existing remedies; (d) the merits of the claim; (e) the existence of prejudice to creditors or to the orderly administration of the liquidation; and (f) other miscellaneous factors, such as the potential of an avalanche of litigation being unleashed by the grant of permission, the proportionality of the cost of the proceeding to the debtor's resources and the views of the majority creditors.

83 [2024] 1 SLR 130 at [19].

84 *Re Sapura Fabrication Sdn Bhd* [2024] SGHC 241 at [41] and [47]–[48].

85 *Re Sapura Fabrication Sdn Bhd* [2024] SGHC 241 at [50] and [52].

86 *Re Sapura Fabrication Sdn Bhd* [2024] SGHC 241 at [56].

87 *Sapura Fabrication Sdn Bhd v GAS* [2025] 1 SLR 492.

88 *Sapura Fabrication Sdn Bhd v GAS* [2025] 1 SLR 492 at [6] and [67].

89 *Sapura Fabrication Sdn Bhd v GAS* [2025] 1 SLR 492 at [69].

engage significant factual disputes,[90] and the likely remedies would not be adequately addressed in the insolvency regime.[91]

4.76 The Court of Appeal, however, disagreed with the General Division's conclusion that the courts had a mandatory obligation to grant carve-outs under the MIL where an arbitration agreement was present.[92] The court clarified that its decision in *AnAn Group (Singapore) Pte Ltd v VTB Bank (Public Joint Stock Co)*[93] ("*AnAn*") did not stand for the proposition that the policy of enforcing arbitration agreements should trump the insolvency regime under all circumstances and, in any event, the facts in *AnAn* were distinguishable from the present case.[94]

4.77 The two *Sapura* judgments[95] have helpfully clarified the interplay between arbitration and insolvency proceedings, particularly in the context of carve-outs from the default moratorium against continuation (or initiation) of proceedings against an insolvent company.

III. The tribunal's jurisdiction

4.78 The tribunal's mandate or jurisdiction to determine parties' disputes stems from the parties' arbitration agreement. Most arbitration clauses are therefore drafted in broad terms and allow most disputes "arising out of or in connection with" the underlying contract to be resolved through arbitration.

4.79 However, ascertaining what falls within the scope of the arbitration clause may not always be a straightforward affair, and a tribunal may – after considering the parties' respective positions – eventually determine that it has no jurisdiction over the parties' claims. This was precisely the situation faced by parties in *Frontier Holdings Ltd v Petroleum Exploration (Pvt) Ltd*[96] ("*Frontier Holdings*").

4.80 Both Frontier Holdings Ltd ("Frontier", a company incorporated in Bermuda) and Petroleum Exploration (Pvt) Ltd ("PEL", a company incorporated in Pakistan) were in the business of oil and gas exploration and production. On or about 5 January 2006, the President of Pakistan

90 *Sapura Fabrication Sdn Bhd v GAS* [2025] 1 SLR 492 at [70] and [72].
91 *Sapura Fabrication Sdn Bhd v GAS* [2025] 1 SLR 492 at [79]–[80].
92 *Sapura Fabrication Sdn Bhd v GAS* [2025] 1 SLR 492 at [95].
93 [2020] 1 SLR 1158.
94 *Sapura Fabrication Sdn Bhd v GAS* [2025] 1 SLR 492 at [95]–[98].
95 *Re Sapura Fabrication Sdn Bhd* [2024] SGHC 241; *Sapura Fabrication Sdn Bhd v GAS* [2025] 1 SLR 492.
96 [2025] 3 SLR 1472.

granted to PEL concessions in two petroleum blocks in the north and south of the Badin District in Sidh, Pakistan, the terms of which were contained in two petroleum concession agreements ("PCAs").

4.81 Under the PCAs, PEL was awarded a 100% working interest in both the north and south Badin blocks and became a working interest owner ("WIO") in respect of each block. PEL was also allowed, under the PCAs, to assign or transfer its interests under the relevant concession agreements to a third party, subject to certain terms which included obtaining consent from the Pakistani Government. In addition, annexed to each PCA was a form of joint operating agreement ("JOA"), which defined the rights and obligations of WIOs and regulated the concession holder's operations.

4.82 Sometime in April 2006, PEL assigned 50% interest in each of the Badin blocks to Frontier. The assignment was effected through a farm-in-agreement ("FIA") and a deed of assignment ("Deed of Assignment"). In particular, the Deed of Assignment amended the original PCAs and JOAs to accommodate Frontier's acquisition of concession rights.

4.83 The various contractual documents contained different dispute resolution clauses:

> (a) The dispute resolution clause (Art 28) in the PCAs provided for disputes "arising out of or in connection with the terms of this Agreement or the Licence or any Lease" to be resolved by International Centre for Settlement of Investment Disputes ("ICSID") arbitration, and in the event the ICSID refused jurisdiction, then by arbitration under the ICC arbitration rules. This dispute resolution mechanism was only applicable to either disputes between foreign WIOs *inter se*, or between a foreign WIO ("FWIO") and the President of Pakistan; in the event of disputes involving only Pakistani WIOs ("PWIOs") or between a PWIO and the President of Pakistan, such disputes were to be resolved by arbitration in accordance with the Arbitration Act 1940 (Pakistan).[97]
>
> (b) Disputes not falling within Art 28 of the PCAs were to be resolved in accordance with the Pakistan Petroleum (Exploration and Production) Rules 2021. These rules provided, at Art 74, for disputes to be resolved by *ad hoc* arbitration in Pakistan in accordance with Pakistan law.[98]

97 *Frontier Holdings Ltd v Petroleum Exploration (Pvt) Ltd* [2025] 3 SLR 1472 at [18].
98 *Frontier Holdings Ltd v Petroleum Exploration (Pvt) Ltd* [2025] 3 SLR 1472 at [19].

(c) The JOAs contained an arbitration clause that referred back to Art 28 of the PCAs. Article 17 of the JOAs provided that "[a]ny dispute arising out of this [JOA] shall be dealt with mutatis mutandis in accordance with Article XXVIII of the [PCAs]".[99]

(d) Finally, the FIA contained at cl 17 an agreement for disputes to be referred to London-seated arbitration in accordance with the ICC arbitration rules.[100]

4.84 Disputes subsequently arose between Frontier and PEL when PEL sought to forfeit Frontier's interests in Badin north concession. Frontier disputed PEL's entitlement to carry out the forfeiture and commenced an ICC arbitration seeking various reliefs, including declaratory relief for breach of the JOA, damages and equitable compensation.

4.85 PEL argued in the arbitration that the ICC tribunal had no jurisdiction to determine disputes under the JOA because the JOA arbitration clause did not provide for ICC arbitration of disputes between Frontier (an FWIO) and PEL (a PWIO), and in the circumstances, pursuant to the default position under Art 29.6 of the PCAs, the dispute between Frontier and PEL should be resolved in accordance with the arbitration provisions in the Pakistan Petroleum (Exploration and Production) Rules 2021. A majority of the tribunal agreed with PEL and ruled that the tribunal had no jurisdiction to hear the dispute.[101]

4.86 Frontier applied to set aside the majority's negative jurisdiction ruling under s 10 of the IAA. The SICC allowed Frontier's application, holding that the majority had erred in declining jurisdiction and that the parties' intention was for disputes between Frontier and PEL to be resolved by ICC arbitration.

4.87 The court took the view that based on the terms and structure of the various contractual documents, it was envisaged "from the outset" that after PEL was granted the Badin concessions by the Pakistani Government, additional parties – whether Pakistani or foreign – could become parties to the JOAs and the PCAs.[102] While Art 28 of the PCAs did not address or deal with dispute between an FWIO and a PWIO, that article, when "viewed as a whole", showed "an intention that disputes involving FWIOs would be dealt with other than by

99 *Frontier Holdings Ltd v Petroleum Exploration (Pvt) Ltd* [2025] 3 SLR 1472 at [16].
100 *Frontier Holdings Ltd v Petroleum Exploration (Pvt) Ltd* [2025] 3 SLR 1472 at [21].
101 *Frontier Holdings Ltd v Petroleum Exploration (Pvt) Ltd* [2025] 3 SLR 1472 at [28]–[43].
102 *Frontier Holdings Ltd v Petroleum Exploration (Pvt) Ltd* [2025] 3 SLR 1472 at [106].

Pakistani arbitration";[103] this intention was reinforced by the inclusion of an ICC arbitration clause in the FIA.[104] Having ascertained the parties' intention, effect can then be given to this intention by substituting the relevant words in, particularly, Art 28.3 of the PCAs.[105]

4.88 The SICC's analysis, however, seems somewhat strained. Article 18.1 of the JOAs expressly states that the JOAs are "subject to" the PCAs, and in the event of any inconsistency between the JOAs and the PCAs, the JOAs "shall be regarded as modified to conform thereto and as so modified shall continue in full force and effect".[106] In the circumstances, to give effect to the terms of the JOAs by substituting words in the PCAs appears to be contrary to the express wording of the primacy clause.[107]

4.89 The court's decision in *Frontier Holdings* reflects one of the rare situations when Singapore parts ways with other Model Law jurisdictions. Article 16 of the MAL in its proper form provides for a review of the tribunal's decision on jurisdiction only if a tribunal upholds its own jurisdiction but not when the tribunal rules that it has no jurisdiction. The position changed in 2012 when the IAA was amended by adding a new provision (s 10 of the IAA) to allow *de novo* review of the tribunal's decision "at any stage of the proceedings" if the tribunal rules that "it has no jurisdiction".

4.90 In *Voltas Ltd v York International Pte Ltd*,[108] the Court of Appeal considered the question of when a tribunal's jurisdiction is terminated. Voltas Ltd ("Voltas") had purchased centrifugal chillers from York International Pte Ltd ("York") to be installed in a cooling plant that Voltas was constructing for Resorts World Sentosa ("RWS"). Disputes arose between the parties which were initially litigated and then submitted to *ad hoc* arbitration.

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103 *Frontier Holdings Ltd v Petroleum Exploration (Pvt) Ltd* [2025] 3 SLR 1472 at 104]–[105] and [109].

104 *Frontier Holdings Ltd v Petroleum Exploration (Pvt) Ltd* [2025] 3 SLR 1472 at [114].

105 *Frontier Holdings Ltd v Petroleum Exploration (Pvt) Ltd* [2025] 3 SLR 1472 at [109]. In arriving at his decision, the judge was particularly persuaded by the English Court of Appeal decision in *Hashwani v OMV Maurice Energy Ltd* [2015] EWCA Civ 1171 ("*Hashwani*"). *Hashwani* was described in the judgment as the "only decision which has directly dealt with Art 28 of the PCAs and Art 17 of the JOAs": at [53].

106 *Frontier Holdings Ltd v Petroleum Exploration (Pvt) Ltd* [2025] 3 SLR 1472 at [16].

107 See *Frontier Holdings Ltd v Petroleum Exploration (Pvt) Ltd* [2025] 3 SLR 1472 at [112], where the SICC took the view that once the parties' intention for Art 28 of the PCAs to operate in a particular manner was ascertained, there was no basis for Art 18 of the JOAs to be engaged.

108 [2024] 1 SLR 559.

4.91 York commenced arbitration in 2012 seeking outstanding payments for the centrifugal chillers; Voltas counterclaimed for damages arising from defective chillers, and the counterclaim included sums which represented costs incurred by RWS for installing additional chillers and removing failed motors from the cooling plant ("RWS Costs").

4.92 The sole arbitrator issued an award titled "Final Award" in August 2014 ("2014 Award"), in which York was found liable to Voltas for the RWS Costs. However, as Voltas did not, at the time the 2014 Award was issued, appear to have paid the RWS Costs to RWS, the arbitrator framed the orders in relation to the RWS Costs as being conditional upon Voltas making payment to RWS.

4.93 Voltas subsequently entered into a settlement agreement with RWS where the agreed settlement sum was less than the RWS Costs claimed in the arbitration. Voltas then sought payment of the RWS Costs from York; York refused to make payment on the basis that Voltas had not provided sufficient evidence that it had indeed paid the RWS Costs to RWS.

4.94 In August 2020, Voltas applied to the sole arbitrator for a further award to determine whether Voltas had paid the RWS Costs to RWS, the amount paid and the sums to be paid by York to Voltas. York objected to the application on the basis that the sole arbitrator was *functus officio* after having issued the 2014 Award. The sole arbitrator eventually decided in 2021 that he retained jurisdiction to issue a further award ("2021 Decision") and invited the parties to tender further submissions.

4.95 York applied under s 21(9) of the AA for the court to decide whether the sole arbitrator had jurisdiction to issue a further award in the arbitration. The General Division held that the 2014 Award was a final award and the sole arbitrator was *functus officio* after the 2014 Award was issued; he therefore had no jurisdiction to issue a further award.[109]

4.96 Voltas's appeal against the lower court's decision was dismissed by the Court of Appeal. The court held that the 2014 Award constituted a final award because it disposed of all the substantive issues in dispute between Voltas and York, and the sole arbitrator did not contemplate there to be any other issues left to be decided after the 2014 Award was issued.[110] Any reservation of jurisdiction must be made expressly and cannot be implied.[111] In any case, allowing an implied reservation of

109 *York International Pte Ltd v Voltas Ltd* [2024] 4 SLR 484.
110 *Voltas Ltd v York International Pte Ltd* [2024] 1 SLR 559 at [45]–[49].
111 *Voltas Ltd v York International Pte Ltd* [2024] 1 SLR 559 at [59].

jurisdiction would be inconsistent with the limited statutory exceptions to the termination of the tribunal's mandate following issuance of a final award.[112]

4.97 The Court of Appeal also confirmed that a "conditional" award can be a final award. Any issues relating to the performance or satisfaction of any condition imposed in the award "would fall within the remit of the enforcement court".[113] This is a helpful clarification by the Court of Appeal as there was previously uncertainty as to whether an award with conditions should be treated as a final award. This decision also emphasises the importance of ensuring that any reservation of jurisdiction by the tribunal must be clearly and expressly stated. It is also a timely reminder that parties should avoid seeking orders and tribunals should be careful in making awards with conditions or to subject them to contingent events. This is because awards once made (whether titled as final, interim or partial) takes on finality which prohibits the tribunal to "vary, amend, correct, review, add to or revoke"[114] the award.[115] As the court rightly held, the parties' recourse lies in setting it aside or resisting its enforcement at the proper curial forum.

IV. Recourse against awards: setting aside

4.98 Setting aside is the primary remedy for parties dissatisfied with the outcome of the arbitration. However, the grounds for setting aside are limited exclusively to those set out in Art 34 of the MAL, s 24 of the IAA or s 48 of the AA.

4.99 As with previous years, the most commonly relied upon grounds for a setting-aside application are Art 34(2)*(a)*(iii) ("the award deals with a dispute not contemplated by or not falling with the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration"); Art 34(2)*(a)*(iv) ("the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties"); and s 24(*b*) of the IAA ("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").

112 *Voltas Ltd v York International Pte Ltd* [2024] 1 SLR 559 at [60].
113 *Voltas Ltd v York International Pte Ltd* [2024] 1 SLR 559 at [63].
114 International Arbitration Act 1994 (2020 Rev Ed) s 19B(2).
115 Save for corrections of clerical or typographical errors under Art 33 of the United Nations Commission on International Trade Law, UNCITRAL Model Law on International Commercial Arbitration (1985, amended 2006).

4.100 Of the 25 reported cases relating to setting-aside applications in 2024, only three were successful: *DJO v DJP*[116] and *Vietnam Oil and Gas Group v Joint Stock Company (Power Machines – ZTL, LMZ, Electrosila Energomachexport)*[117] ("*Vietnam Oil*"). A third case, *Wan Sern Metal Industries Pte Ltd v Hua Tian Engineering Pte Ltd*[118] ("*Wan Sern*") was not successful before the General Division, but the award was later set aside by the Court of Appeal.[119]

A. Setting aside: breach of natural justice based on quality of award

4.101 *DJO v DJP*[120] is perhaps better known as the "cut-and-paste" case, where a final award was set aside because of the manner in which the tribunal had written the award. The dispute arose out of a contract for works relating to the Indian railway network operated by DJO. The contract was awarded to a consortium of companies (DJP and others) in 2015 and contained an arbitration clause providing for arbitration seated in Singapore and conducted under the ICC arbitration rules.

4.102 In 2020, the consortium sought an adjustment of the contract price due to an increase in the minimum wage as notified by the Indian Ministry of Labour. DJO rejected the request for adjustment and the consortium commenced an ICC arbitration against DJO on 16 December 2021. The ICC tribunal comprised three distinguished retired Indian judges and a final award in favour of the consortium was issued in November 2023.

4.103 Concurrently, DJO was also a respondent in two parallel arbitrations commenced by different consortia, but arising from similar issues relating to the Ministry of Labour's notification and the impact of the notification on works contracts involving the same railway network. The parallel arbitrations were seated in New Delhi and conducted under the rules of the International Centre of Alternative Dispute Resolution of New Delhi (collectively, the "Indian Arbitrations"). The presiding arbitrator in the ICC arbitration ("Presiding") was also the presiding arbitrator in both Indian Arbitrations, and final awards in the Indian Arbitrations were issued in August 2023.

116 [2024] SGHC(I) 24.
117 [2024] SGHC 244.
118 [2024] SGHC 112.
119 *Wan Sern Metal Industries Pte Ltd v Hua Tian Engineering Pte Ltd* [2025] 1 SLR 88.
120 [2024] SGHC(I) 24.

4.104 DJO applied to set aside the ICC award under s 24(*b*) of IAA and Arts 34(2)(*a*)(iv) and 34(2)(*b*)(ii) of the MAL. The SICC was clearly perturbed by the case, to the extent of describing it as an "unusual and troubling" one.[121]

4.105 At the outset, the court noted that the appointment of the Presiding in all three arbitrations did not in itself constitute grounds for setting aside, although such an arrangement "inevitably placed" the Presiding "in an invidious position" as he had to essentially – in respect of each arbitration – "start afresh with an open mind and not seek to influence his co-arbitrators or the proceedings in the [ICC] arbitration with any accumulated knowledge or opinions".[122]

4.106 However, it was clear that large parts of the ICC award were reproduced from one of the awards made in the Indian Arbitrations, and that the Presiding drew heavily on his previously acquired knowledge in the Indian Arbitrations and applied that knowledge to the writing of the ICC award.[123] Indeed, the ICC award contained references to submissions made in and authorities referred to in the Indian Arbitrations, lacked focus on the submissions made in the ICC arbitration and even made references to provisions not found in the contract underlying the ICC arbitration.[124] There were also critical errors in the ICC award, such as the use of the wrong *lex arbitri* to determine interest and costs,[125] which led the SICC to conclude that:[126]

> … the thinking and approach of the Tribunal was influenced and guided by events remote from those in the [ICC] Arbitration. It is not the fact that the Tribunal may have made an error of law in its approach (which would be irrelevant to a setting aside application), but the knowledge, reliance upon and adoption of the reasoning in the earlier awards that casts doubt on their independence of thought.

4.107 The SICC held that the ICC award was rendered in breach of justice and must be set aside. The court emphasised that the mere fact that parts of the ICC award were copied and pasted from an earlier award did not taint the award and render it liable to be set aside and that it was necessary to "look at the nature, the extent and the effect of the copying to determine whether the principles of natural justice are

121 *DJO v DJP* [2024] SGHC(I) 24 at [2].
122 *DJO v DJP* [2024] SGHC(I) 24 at [49].
123 *DJO v DJP* [2024] SGHC(I) 24 at [53] and [71].
124 *DJO v DJP* [2024] SGHC(I) 24 at [64], [67] and [69].
125 *DJO v DJP* [2024] SGHC(I) 24 at [74].
126 *DJO v DJP* [2024] SGHC(I) 24 at [74].

engaged".[127] Having undertaken a review of the ICC award, the SICC concluded that:[128]

> 114 … on considering the facts and circumstances of this case, the hypothetical fair-minded, informed and reasonable observer would undoubtedly have held such suspicions or apprehensions [that the arbitrator had approached the matter with a closed mind]. The Award did not rehearse the submissions actually made to the Tribunal, but attributed submissions made in the earlier arbitration – repeated almost verbatim – to counsel in the Arbitration. There can, to my mind, be no clearer indication to such an observer that [the Presiding] may have approached the matter with a closed mind. … The full facts of what went on in the Tribunal's deliberations and the preparations of the Award will not be known to such an observer, but based on what they can glean from reading the Award on its face against the background of what they would know, the suspicion or apprehension is a very real one. With regret, I conclude that the assertion of apparent bias against [the Presiding] is well-founded.
>
> 115 … In my judgment, it is abundantly clear from the facts which I have rehearsed at length that the Award was not the independent work of the Tribunal based solely on the material and submissions before them in the Arbitration. Where, in making its award, a tribunal draws heavily on facts and arguments in previous cases and does not clearly distinguish between those facts and arguments and those which are presented to them in the instant case and also fails to give the parties an opportunity to address it on the previous award, the right to a fair, independent and impartial award will be lost.

4.108 The consortium's appeal against the SICC decision was dismissed by the Court of Appeal.[129] In its decision, the Court of Appeal focused on the non-derogable "expectation of equality in arbitration" which extended not only to equal access to relevant material as between the parties and equal opportunity to respond to such material, but also equality of information as between members of the arbitral tribunal.[130] Where one arbitrator is not equally placed with his co-arbitrators, for example, by reason of having private access to additional information or material, "it may be said that the other arbitrators have not had an equal, fair and independent opportunity to discharge their adjudicative function and this may be found to have undermined the core expectation of the parties when they choose to resolve their disputes by arbitration".[131]

4.109 In the present case, there was an asymmetry of information both between the tribunal and the parties, and between tribunal members

127 *DJO v DJP* [2024] SGHC(I) 24 at [98].
128 *DJO v DJP* [2024] SGHC(I) 24 at [114]–[115].
129 *DJP v DJO* [2025] 1 SLR 576.
130 *DJP v DJO* [2025] 1 SLR 576 at [56]–[58].
131 *DJP v DJO* [2025] 1 SLR 576 at [60].

inter se, which compromised the integrity of the entire decision-making process in the arbitration.[132] The ICC award was therefore rendered in breach of natural justice and should be set aside.

4.110 It is not clear from the reported judgments whether the Presiding had disclosed his previous appointments in the Indian Arbitrations to the ICC. The Presiding's particular circumstances appear to fall squarely within Item 3.1.5 of the "Orange List" of the International Bar Association Guidelines on Conflicts of Interest in International Arbitration 2024, which obliges prospective arbitrators to disclose if he or she "currently serves, or has served within the past three years, as arbitrator or counsel in another arbitration on a related issue or matter involving one of the parties, or an affiliate of one of the parties". If the disclosure had been made and the parties did not object, then the parties (as well as the co-arbitrators) would have been aware of the Presiding's involvement in the Indian Arbitrations, and consequently the risks of asymmetric information.

4.111 This case also serves as strong reminder that while there may be benefits and efficiencies that come with appointing the same arbitrator(s) in different but related disputes, arbitrators must take care to ensure that they do not inadvertently import or conflate information from one arbitration with the other.

4.112 In *Swire Shipping Pte Ltd v Ace Exim Pte Ltd*[133] ("*Swire*"), Swire Shipping Pte Ltd ("Swire") had agreed to sell a ship to Ace Exim Pte Ltd ("Ace Exim") for scrap. The sale contract specified that if delivery of the ship cannot be effected at the agreed port, then the ship was to be delivered to either a safe and accessible berth as near to the agreed place of delivery as the ship may safely get to, or at the place where it was customary for vessels to wait. Ace Exim was obliged to take delivery of the ship upon receipt of Swire's notice of readiness ("NOR").

4.113 The agreed place of delivery in the contract was "1 safe anchorage at the Port of Alang, West Coast of India". However, at the time of delivery, Swire informed Ace Exim that the Port of Alang was not accessible due to COVID-19 measures imposed by the Indian Government. Ace Exim was consequently requested to designate an alternative place for delivery within 24 hours.

4.114 However, Ace Exim did not designate any alternative place. Swire therefore ordered the ship to proceed in the direction of the Port of Alang.

132 *DJP v DJO* [2025] 1 SLR 576 at [70]–[79] and [82]–[83].
133 [2024] 5 SLR 706.

The ship arrived at the mouth of the Gulf of Khambat on 24 March 2020 and Swire tendered its NOR.

4.115 Ace Exim rejected the NOR on the basis that the ship was not at the Port of Alang and was instead on the high seas. In any case, Ace Exim asserted that the contract was null and void under cl 19 as the COVID-19 measures made delivery of the ship impossible.

4.116 A dispute therefore arose between the parties as to whether the NOR had been validly tendered in accordance with the contract terms and whether Ace Exim was obliged to take delivery of the ship and complete the purchase. Ace Exim commenced an SCMA arbitration seeking to recover the deposit it had paid to Swire, while Swire counterclaimed for the balance of the purchase price payable to it.

4.117 The sole arbitrator issued a 386-page award in Ace Exim's favour, holding that the ship was not at a location that entitled Swire to validly tender the NOR. Swire applied to the General Division to set aside the award under s 24(*b*) of the IAA and Arts 34(2)(*a*)(ii) and 34(2)(*a*)(iii) of the MAL.

4.118 The setting-aside application was dismissed on the basis that the grounds relied upon by Swire were not made out. However, the court had strong words about the way in which the final award had been written, calling it "a thoroughly unhappy, maze-like combination of innumerable internal cross-references coupled with the indiscriminate use of sub-paragraphs and sub-sub-paragraphs", "convoluted" and "tortuous",[134] and noting that the award appeared to have been written with the "predominant aim" of avoiding a potential setting aside.[135] Nonetheless, the unintelligibility of an award is not *per se a* basis for setting aside the award, unless the unintelligibility directly implicates one of the exhaustive grounds for setting aside under the IAA or MAL.[136]

4.119 The court cautioned that:[137]

> There are two sides of the coin when it comes to minimal curial intervention in international commercial arbitration. From the parties' perspective, they must accept that the court will not rescue them from the consequences of their choice to resolve their dispute through arbitration, save in the limited circumstances set out in the IAA and the Model Law. But, on the flip side, from an arbitral tribunal's perspective, the fact that a court has not set aside an award

134 *Swire Shipping Pte Ltd v Ace Exim Pte Ltd* [2024] 5 SLR 706 at [30].
135 *Swire Shipping Pte Ltd v Ace Exim Pte Ltd* [2024] 5 SLR 706 at [136].
136 *Swire Shipping Pte Ltd v Ace Exim Pte Ltd* [2024] 5 SLR 706 at [30].
137 *Swire Shipping Pte Ltd v Ace Exim Pte Ltd* [2024] 5 SLR 706 at [132].

> should not be treated as an unqualified imprimatur of the quality of its award or reasons. Arbitral tribunals enjoy a measure of immunity from substantive challenge arising from the fact that parties to an arbitration do not have a right to a 'correct' decision from an arbitral tribunal, but merely one within the scope of their agreement to arbitration, and that is arrived at following a fair process. However, this immunity should not be seen as a licence to render awards that, while on their face seemingly comprehensive and detailed, are in reality a labyrinthine tome that would test even the most stout-hearted.

4.120 The admonitions in *Swire* are timely. Arbitration awards have become lengthier in recent years. For the most part, this is because disputes have become more complicated and additional narrative is necessary to fully inform, not just the parties themselves but also the courts and judges who see the award, of the correctness of the arbitral procedure and the reasons for the tribunal's ultimate decision. However, there has been an increase in over-inclusive awards, where each and every point – no matter how irrelevant or superficial – is addressed by the arbitrator in order to avoid a potential setting aside. When writing their award, arbitrators must ultimately be guided by the issues. There are various techniques available, such as the preparation of lists of issues or terms of reference (and revisiting the same at key milestones), which can be adopted to establish the scope of the issues to be determined.

B. Setting aside: breach of agreed arbitration procedure

4.121 Article 34(2)(*a*)(iv) of the MAL (as well as s 48(1)(*a*)(v) of the AA) allows an award to be set aside if the arbitration procedure applied in the arbitration does not accord with the party's agreement.

4.122 An interesting question on whether failure to abide by timelines for the issuance of an award constituted a breach of parties' agreed procedure came up in *Haide Building Materials Co Ltd v Ship Recycling Investments Inc*[138] ("*Haide Building Materials*").

4.123 Haide Building Materials Co Ltd ("Haide") had agreed to sell to Ship Recycling Investments Inc ("SRI") the *Winton T 128* for scrap. The vessel was delivered by Haide to the agreed delivery location but, upon inspection, SRI claimed that the vessel delivered did not meet contractual specifications and SRI would therefore only pay a lower price for the ship.

4.124 SRI later terminated the contract of sale on the basis of Haide's repudiatory breach and commenced an SCMA arbitration against Haide.

138 [2024] SGHC 222.

A two-member tribunal (permissible under the applicable SCMA rules) issued an award in favour of SRI and dismissed Haide's counterclaims.

4.125 Haide applied to set aside the award under s 24(*b*) of the IAA and Art 34(2)(*a*)(iv) of the MAL. One of the arguments made by Haide was that the tribunal had exceeded the applicable timelines for rendering its award, and this constituted a breach of the parties' agreed arbitral procedure which made the award liable to be set aside under Art 34(2)(*a*)(iv) of the MAL.

4.126 The setting-aside application was dismissed by the General Division. In respect of Haide's Art 34(2)(*a*)(iv) arguments, the court noted that while the award was indeed issued beyond the deadline stipulated in the SCMA's expedited procedure, Haide did not put forward any evidence or arguments as to how the delay in the release of the award may have altered the outcome of the tribunal's decision.[139] Further, Haide did not – in the course of the arbitration proceedings – raise any objection to the delay to the tribunal[140] and had consistently taken the position that it was willing and able to wait on the tribunal's decision despite the delay.

4.127 In the circumstances, the court held "it was not open for Haide to do a *volte-face* on this issue after it discovered that the Tribunal's decision was adverse to it".[141]

4.128 One wonders if the outcome of the setting aside would be different if Haide had put on record its dissatisfaction with the delay in the award and its objections to the tribunal's failure to deliver the award in accordance with the relevant arbitration rules. While most institutional rules grant some power to the tribunal or the administering institution to extend or vary prescribed timelines, there may be some scope to argue that the agreed arbitral procedure had been breached if: (a) the tribunal had been made aware of particular circumstances which required an award to be delivered by or before a specific date; (b) the tribunal agreed to deliver the award by that date; (c) the tribunal failed to do so; and (d) the party complaining about the delay did not waive its right to object to the late award delivery. Court decisions from other jurisdictions may suggest how these could be treated.[142]

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139 *Haide Building Materials Co Ltd v Ship Recycling Investments Inc* [2024] SGHC 222 at [131].

140 *Haide Building Materials Co Ltd v Ship Recycling Investments Inc* [2024] SGHC 222 at [132].

141 *Haide Building Materials Co Ltd v Ship Recycling Investments Inc* [2024] SGHC 222 at [140].

142 See, *eg*, *Ian MacDonald Library Services Ltd v PZ Resort Systems Inc* [1987] 14 BCLR (2d) 273; *NBCC Ltd v JG Engineering Pvt Ltd* [2010] (2) SCC 385; *Shyam*

(cont'd on the next page)

4.129 The Court of Appeal considered whether to allow an award to be set aside on the basis of, *inter alia,* breach of agreed procedure in *DBL v DBM*[143] ("*DBL*"). In this case, DBL had agreed to sell prime steel slabs to DBM for US$9m. The contract specified that the goods were to be loaded at "any Port from [the Kingdom of Saudi Arabia]" and provided for disputes to be resolved by Singapore-seated arbitration under the SCMA arbitration rules.

4.130 A dispute arose between the parties over where the goods had been loaded. DBM alleged that the goods were loaded in Bandar Abbas in Iran instead of the agreed loading port, and DBL was consequently in breach of the contract. DBM commenced arbitration seeking damages.

4.131 In the course of the arbitration, the tribunal issue an agreed hearing protocol which, amongst other things, expressly provided that demonstrative exhibits intended to be relied on by the parties must be disclosed by 14 October 2021. The merits hearing took place on 18 and 19 October 2021, and during the oral closing on the second hearing day, DBM gave a demonstration by entering data onto searoutes.com, a route planning and vessel tracking website to show that the vessel could not have been loaded in Iran. The data used by DBM for its demonstration had been extracted from a "Vessel Finder Port Movements Report"; this report had been adduced by DBL and purportedly showed the location of the vessel at various points in time.

4.132 DBM was successful in the arbitration. In particular, the tribunal found that goods were not likely to have been loaded at a Saudi Arabia port and were likely to have been loaded in Bandar Abbas in Iran. This constituted a breach of the contract and DBM was entitled to terminate the contract and claim damages.

4.133 DBL applied to set aside the award under s 24(*b*) of the IAA. It argued that there had been a breach of natural justice in the making of the award as the tribunal had allowed DBM to introduce evidence via the demonstration which DBL had no opportunity to respond to, and which contravened the agreed hearing protocol.

4.134 The General Division dismissed the setting-aside application and this decision was upheld by the Court of Appeal. The Court of Appeal noted that while the demonstration was presented at a late stage of the proceedings, this was before DBL's own oral closing, and

Telecom Ltd v Arm Ltd [2004] (3) ARBLR 146 (Delhi) and *Shyam Telecom Ltd v Arm Ltd* [2008] Law Suit (Del) 2464.

143 [2024] 1 SLR 660.

DBL neither objected to the use of the demonstration during its oral closing submissions, nor did DBL ask for more time to review the demonstration.[144] DBL's conduct therefore "suggested that it had no issue with the … Demonstration at the material time"[145] and its belated objection in the setting-aside application "was inexcusable and opportunistic".[146]

4.135 In *DGE v DGF*,[147] DGE was in the business of manufacturing materials used in the photovoltaic ("PV") industry, while DGF was responsible for procuring and supplying building materials to its group companies. The parties had entered into an agreement for the purchase of 50,000 PV modules for US$7.3m; a month later, the parties entered into a second PV modules sales contract for the purchase of an additional 450,000 PV modules for US$59.85m.

4.136 DGE delivered the PV modules to DGF in Country Z and DGF on-sold the PV Modules to two group companies. The PV modules were installed on the rooftops of residential houses built by the group companies in Country X. It was later discovered that the PV modules supplied and installed in Country X had developed cracks.

4.137 DGF commenced two arbitrations against DGE, and the arbitrations were bifurcated into a liability phase and a remedies phase. In respect of the liability phase, the tribunal found in favour of DGE, holding that 365,000 PV modules supplied by DGE were inherently defective.

4.138 DGE applied to set aside the partial award under Arts 34(2)(*a*)(i), 34(2)(*a*)(ii), 34(2)(*a*)(iii) and 34(2)(*a*)(iv) of the MAL and s 24(*b*) of the IAA. In particular, the procedural order by the tribunal expressly prohibited any party from advancing:[148]

> … any new factual allegations or any new legal arguments at the hearing that have not already been stated in the written submissions in accordance with the Procedural Timetable unless expressly permitted by the Tribunal on an application by the Party advancing such new allegation or arguments, made at least seven (7) days prior to the commencement of the hearing or, in exceptional circumstances, with leave of the Tribunal.

144 *DBL v DBM* [2024] 1 SLR 660 at [30].
145 *DBL v DBM* [2024] 1 SLR 660 at [31].
146 *DBL v DBM* [2024] 1 SLR 660 at [32].
147 [2024] SGHC 107.
148 *DGE v DGF* [2024] SGHC 107 at [123].

DGE argued that DGF had breached that agreed procedure by failing to set out its position on an issue relating to third-party warranty in the statement of claim.[149]

4.139 The court was not persuaded by this argument, holding that the procedure in question did not "automatically mandate that new matters may be raised only upon or with an attendant amendment in pleadings" and instead left it open to the tribunal to determine the terms on which it would permit a new matter to be raised, whether or not through a formal pleading amendment.[150] The court held that there was no breach of the agreed procedure as the tribunal had expressly directed parties to address the third-party warranty issue.[151] In addition, as the tribunal had given the parties reasonable opportunity to present their cases on the third-party warranty issue after it became live, there was no breach of the fair hearing rule.[152]

C. Setting aside: no notice of arbitration proceedings

4.140 *DEM v DEL*[153] concerned an application to set aside an arbitration award due to the lack of notice of the arbitration proceedings. DEL was a Singapore-incorporated company operating an enrichment centre under a franchise. Its sole director, Ms U, had purchased the franchise from DEM (an individual), one Ms Y and Company Z under a business purchase agreement ("BPA").

4.141 In addition to the BPA, the parties also entered into a shareholders agreement between DEL, Ms U and DEM, and an employment agreement between DEL and DEM. The BPA, shareholders agreement and the employment agreement all contained SIAC arbitration clauses. In addition, under the notice clauses in all three agreements, DEM's contact details were stated to be a Tampines flat ("Tampines address") and an e-mail address starting with "K" ("K E-mail Address").

4.142 Disputes arose between the parties due to DEM's alleged diversion of DEL's business and the discovery that the franchise business was generating significantly less revenue than expected based on DEM's previous representations.

149 *DGE v DGF* [2024] SGHC 107 at [122].
150 *DGE v DGF* [2024] SGHC 107 at [124].
151 *DGE v DGF* [2024] SGHC 107 at [125].
152 *DGE v DGF* [2024] SGHC 107 at [87]–[93].
153 [2025] 1 SLR 29. See also *DEM v DEL* [2024] SGHC 80.

4.143 DEL issued a notice of arbitration against DEM, Ms Y and Company Z in 2019 ("2019 Notice") under the BPA, the shareholders agreement and the employment agreement. The 2019 Notice was sent to DEM's contact details as set out in the agreements and it was not disputed that DEM received the 2019 Notice.

4.144 Following an unsuccessful application for consolidation under the Arbitration Rules of the Singapore International Arbitration Centre[154] ("SIAC Rules"), DEL informed the SIAC that it would only be proceeding with the arbitration under the BPA and withdrawing the arbitrations initiated under the shareholders agreement and the employment agreement. DEL then filed another notice of arbitration in August 2020 ("2020 Notice"), which was served on counsel for Ms Y and Company Z but not on DEM. The 2020 Notice was largely similar to the 2019 Notice, save that there were no claims made under the shareholders agreement and the employment agreement.

4.145 Ms Y and Company Z filed a response to the 2020 Notice, which was also not sent to DEM. However, when the SIAC responded to Ms Y and Company Z's responses, the institution noted that DEM had not been copied in recent correspondence and re-copied DEM in communications.

4.146 A subsequent e-mail sent by DEL's counsel to the SIAC concerning the next steps in the arbitration was copied to Ms Y and Company Z's counsel but had a misspelled version of the K E-mail Address in the "cc" field. The e-mail address error was corrected in a later e-mail sent in the same e-mail trail.

4.147 After the tribunal was constituted, the parties exchanged correspondence in relation to the conduct of the arbitration. DEM's correct e-mail address (*ie*, the K E-mail Address) was used in the correspondence, but DEM never responded. In the course of the arbitration, documents and correspondence were also sent to DEM by delivery to the Tampines address and by e-mail to the K E-mail Address.

4.148 DEL, Ms Y and Z Company eventually settled the disputes between them. DEL therefore discontinued its claims against these two respondents but continued with the arbitration in respect of DEM. DEM was notified of this development by both e-mail and registered post.

4.149 DEM continued not to participate in the arbitration and did not attend the merits hearing that was held on 8 September 2021. However,

154 6th Ed, 2016.

after the hearing was completed, the arbitrator received an *ex parte* e-mail purportedly sent from DEM, but the e-mail address and stated sender did not comprise any part of DEM's name ("J E-mail Address"). The sender claimed to be DEM and that he had no access to either the documents sent to the Tampines address or to the K E-mail Address, and requested that the arbitration documents be sent to the J E-mail Address. The sender also claimed that he only became aware of the arbitration proceedings through Ms Y.

4.150 The arbitrator notified DEL's counsel of the *ex parte* e-mail and DEL wrote to the J E-mail Address seeking to confirm that the sender was indeed DEM. However, there was no response to DEL's e-mail. DEL also obtained confirmation from Ms Y's counsel that Ms Y was not in communication with DEM.

4.151 DEL notified the tribunal of the lack of response from the J E-mail Address and Ms Y's lack of contact with DEM. The tribunal eventually issued its award in April 2023, in which DEM was found to be liable to DEL. In the award, the tribunal expressly recorded that she was satisfied that DEM had been provided ample notice of the arbitration proceedings, there was insufficient basis to conclude that the e-mail sent from the J E-mail Address was indeed from DEM, and there had been no response from the J E-mail Address to DEL's queries.

4.152 DEL obtained permission to enforce the award and for judgment to be entered in terms of the award. In the course of serving the enforcement order, DEM again purported to e-mail DEL's counsel from the J E-mail Address, noting that a final award had been made against him and that he was "neither reasonably informed nor given notice that the arbitration was ongoing",[155] and he "was not reasonably served with any documents filed in the Arbitration and the Final Award personally by [DEL] and/or SIAC".[156] In this e-mail, DEM provided an address in Tanjong Katong and DEL served the enforcement order on DEM at this address.

4.153 DEM applied to set aside the award contending, *inter alia*, that he was not given proper notice of the arbitration or the arbitrator's appointment (s 48(1)(*a*)(iii) of the AA) and that there had been a breach of natural justice or breach of the fair hearing rule because he did not have the opportunity to be heard due to the lack of notice (s 48(1)(*a*)(vii) of the AA). DEM also argued that the award was contrary to public policy because DEM did not have the opportunity to be heard and DEL's

155 *DEM v DEL* [2024] SGHC 80 at [56].
156 *DEM v DEL* [2024] SGHC 80 at [56].

"questionable behaviour … all but guaranteed [DEM's] absence from the arbitration"[157] (s 48(1)(*b*)(ii) of the AA).

4.154 The General Division dismissed the setting-aside application, holding that on the facts, DEM had been given proper notice of the arbitration and arbitration documents had been delivered to DEM by way of delivery to the Tampines address and/or the K E-mail Address.[158] DEM was not prevented from being heard or presenting his case. The court noted that DEM "(a) could continue to access the Tampines [a] ddress and the K E-mail Address, (b) could have given proper notification of a change of address, and/or (c) could have responded to the Arbitrator and [DEL's] e-mails sent in September 2021 to the J E-mail Address"[159] but did not do so.

4.155 DEM's appeal to the Court of Appeal failed.[160] The court found that DEM had actual notice of the arbitration based on his own evidence, as he had admitted as much in September 2021 when he e-mailed the arbitrator.[161] DEM also had deemed notice as the arbitration documents had been sent to the Tampines address and the K E-mail address, and DEL was contractually allowed to serve "any notice or communication" to DEM at these addresses,[162] and there was no evidence of non-receipt.[163]

4.156 In relation to DEM's contention that the arbitrator had failed to consider a particular issue, the Court of Appeal did not agree with the lower court that the issue was implicitly dealt with by the arbitrator. However, even if the arbitrator did not specifically address the issue, this did not constitute a breach of natural justice because the omission was a direct consequence of DEM's failure to participate in the arbitration.[164] In its analysis of this issue, the Court of Appeal noted that an *infra petita* challenge is "directed at the tribunal's failure to deal with a matter falling within the scope of the submission to the arbitral tribunal"[165] and that it is often seen as the flipside to an *ultra petita* challenge (*ie*, tribunal dealing with a matter outside of the scope of submission to arbitration). While both *infra* and *ultra petita* challenges have been dealt with under Art 34(2)(*a*)(iii) of the MAL, the Court of Appeal expressed the view that *infra petita* challenges ought to be rationalised as a separate and

157 *DEM v DEL* [2024] SGHC 80 at [58].
158 *DEM v DEL* [2024] SGHC 80 at [70]–[106] and [122].
159 *DEM v DEL* [2024] SGHC 80 at [127].
160 *DEM v DEL* [2025] SGCA 1.
161 *DEM v DEL* [2025] SGCA 1 at [32].
162 *DEM v DEL* [2025] SGCA 1 at [40].
163 *DEM v DEL* [2025] SGCA 1 at [45]–[51].
164 *DEM v DEL* [2025] SGCA 1 at [62].
165 *DEM v DEL* [2025] SGCA 1 at [52].

independent natural justice challenge.[166] Such an approach would be consistent with the more recent case law, and the relevant principles applicable to natural justice challenges would apply equally to *infra petita* challenges.[167]

D. Setting aside: award made in breach of public policy

4.157 The Court of Appeal had the opportunity to comment on the public policy ground for setting aside arbitration awards (*ie*, s 24(*a*) of the IAA) in *Reliance Infrastructure Ltd v Shanghai Electric Group Co Ltd*.[168]

4.158 Shanghai Electric Group Co Ltd ("Shanghai Electric") had commenced an SIAC arbitration against Reliance Infrastructure Ltd ("Reliance") pursuant to a parent company guarantee. Reliance had issued the guarantee to ensure performance by its subsidiary of a contract between that subsidiary and Shanghai Electric. A final award was issued in Shanghai Electric's favour and damages of US$146m were awarded against Reliance.

4.159 Reliance's setting-aside application was premised on s 24(*a*) of the IAA and Arts 32(2)(*a*)(i) and 34(2)(*b*)(ii) of the MAL. In its application, Reliance argued, *inter alia*, that the tribunal had no jurisdiction over the dispute as the guarantee (and its arbitration agreement) was invalid and Mr Agrawal did not have the necessary authority to execute the guarantee on behalf of Reliance, and consequently the award was tainted by fraud.

4.160 The SICC dismissed the setting-aside application,[169] holding that Reliance had actual knowledge of the facts underlying its right to object to the tribunal's jurisdiction during the arbitration proceedings.[170] Reliance, however, chose not to raise the objection during the arbitration, but made a "conscious choice" not to pursue the forgery allegation.[171] In the circumstances, Reliance had waived its right to raise forgery as a jurisdictional objection before the SICC.[172]

166 *DEM v DEL* [2025] SGCA 1 at [52].
167 *DEM v DEL* [2025] SGCA 1 at [58].
168 [2025] 1 SLR 1.
169 *Reliance Infrastructure Ltd v Shanghai Electric Group Co Ltd* [2024] SGHC(I) 3.
170 *Reliance Infrastructure Ltd v Shanghai Electric Group Co Ltd* [2024] SGHC(I) 3 at [69]–[73].
171 *Reliance Infrastructure Ltd v Shanghai Electric Group Co Ltd* [2024] SGHC(I) 3 at [76] and [81].
172 *Reliance Infrastructure Ltd v Shanghai Electric Group Co Ltd* [2024] SGHC(I) 3 at [82].

4.161 Reliance had similarly raised its right to object to the tribunal's jurisdiction based on Mr Agrawal's lack of authority when it failed to put in issue the tribunal's jurisdiction over the dispute during the arbitration despite having knowledge of the relevant facts.[173] While Reliance did put in issue Mr Agrawal's lack of authority to execute the guarantee and the validity of the guarantee, this did not impliedly put in issue that the arbitration agreement was also invalid.[174] Consequently as Reliance did not pursue its jurisdictional objection on the grounds of Mr Agrawal's want of authority to make an arbitration agreement during the arbitration itself, Reliance must be taken to have waived its right to challenge the award on the basis of want of authority.[175]

4.162 The Court of Appeal dismissed Reliance's appeal and upheld the SICC decision. The court agreed with the SICC that Reliance had been aware of the facts which may have raised suspicion as to the authenticity of the signature on the guarantee when it was before the tribunal.[176] Instead, Reliance expressly disclaimed reliance on any claim that the guarantee was forged; such a disclaimer was inconsistent with the reservation of right to challenge jurisdiction subsequently on the basis of alleged forgery and it was not open to Reliance to raise the forgery argument in the setting-aside application.[177]

4.163 The Court of Appeal observed that there was "nothing contrary to public policy in a party choosing to commit itself to a certain position, when it is not obliged to" and parties "are entitled to choose what issues they will take in an arbitration and if it turns out that it made a wrong tactical or strategic choice, that is entirely of its own making and does not in any way implicate public policy".[178] However:[179]

> The public policy exception is not meant to enable an unsuccessful party to an arbitration to completely undermine an award on grounds that it disavowed before the tribunal, or if it raises the issue, where the tribunal, having considered the matter, rejects the contention. If the contrary were true, then it would seem that an award could be challenged on public policy grounds where it was alleged by a party to an arbitration that a witness had lied to the tribunal. The Tribunal's finding of fact that the witness had not lied could subsequently

173 *Reliance Infrastructure Ltd v Shanghai Electric Group Co Ltd* [2024] SGHC(I) 3 at [83]–[84].
174 *Reliance Infrastructure Ltd v Shanghai Electric Group Co Ltd* [2024] SGHC(I) 3 at [84] and [86]–[87].
175 *Reliance Infrastructure Ltd v Shanghai Electric Group Co Ltd* [2024] SGHC(I) 3 at [94]–[95].
176 *Reliance Infrastructure Ltd v Shanghai Electric Group Co Ltd* [2025] 1 SLR 1 at [71].
177 *Reliance Infrastructure Ltd v Shanghai Electric Group Co Ltd* [2025] 1 SLR 1 at [72].
178 *Reliance Infrastructure Ltd v Shanghai Electric Group Co Ltd* [2025] 1 SLR 1 at [73].
179 *Reliance Infrastructure Ltd v Shanghai Electric Group Co Ltd* [2025] 1 SLR 1 at [74].

> be impugned on the basis that the question whether the witness had lied raised a public policy issue, namely that the Award rested upon perjured evidence. That is plainly incorrect.

4.164 *FIC Properties Sdn Bhd v PT Rajawali Capital International*[180] was another setting-aside application reliant on public policy grounds. The first and second respondent (collectively, the "Rajawalis") were part of the Rajawali Group while FIC Properties Sdn Bhd ("FIC") was a Malaysian company wholly owned by the Federal Land Development Authority of Malaysia ("FELDA"). FIC was the corporate vehicle through which FELDA pursued commercial dealings and FIC's purchases were financed through loans from GovCo, a Malaysian state-owned entity.

4.165 On 23 December 2016, the parties entered into a contract ("SPA") under which the Rajawalis agreed to sell to FIC a 37% stake in PT Egal High Plantations Tbk ("EHP"). Clause 7 of the SPA gave FIC a contractual right, during the agreed period, to sell the EHP shares back to the Rajawalis at the original contract price plus interest, and upon the occurrence of defined trigger events ("Put Option").

4.166 Disputes arose between the parties which led to two arbitrations being commenced:

> (a) The first arbitration was commenced by Rajawali Capital against FIC for a declaration that FIC's exercise of the Put Option on 11 January 2019 was invalid. The first tribunal found for PT Rajawali Capital International ("Rajawali Capital") in its award dated 11 August 2022 on the ground that FIC had acted unreasonably in denying the Rajawalis an extension of time which, if granted, would have precluded the relevant trigger event from happening. FIC could not rely on a trigger event precipitated by its own unreasonable conduct.
>
> (b) The second arbitration was later commenced by FIC against the Rajawalis for a declaration that FIC's exercise of the Put Option on 11 May 2022 was valid. The second tribunal found for FIC and declared the 2022 exercise to be valid, and the Rajawalis were ordered to specifically perform their obligations arising from the valid 2022 exercise ("Second Award").

4.167 FIC obtained leave to enforce the Second Award and also obtained a freezing order over the Rajawalis' assets in Singapore. The Rajawalis, in response, applied to set aside the enforcement order and the

180 [2024] SGHC(I) 33.

Second Award. The Rajawalis' setting-aside application was premised on three grounds, namely:

> (a) The making of the Second Award had been induced or affected by fraud, in that FIC had failed to disclose a lien over the EHP shares and the Second Award was therefore liable to be set aside pursuant to s 24(*a*) of the IAA. The enforcement order should also consequently be set aside for being contrary to Singapore public policy pursuant to s 31(4)(*b*) of the IAA.
>
> (b) The performance of the Second Award would be unlawful under Indonesian law. The award and its enforcement would therefore be contrary to public policy.
>
> (c) The second tribunal erred in rendering a decision that was inconsistent with common ground reached by FIC and the Rajawalis in the first arbitration, and had failed to properly consider arguments raised by the Rajawalis in the second arbitration.

4.168 The SICC dismissed the Rajawalis' application to set aside the Second Award and the enforcement order. The court found that it was impossible to say that FIC had intentionally concealed the existence of the lien in the second arbitration with a view to deceiving the second tribunal or the Rajawalis. Indeed, the existence of the lien was a matter of public information and had been specifically communicated to persons employed by or associated with the Rajawalis.[181]

4.169 There was also nothing inherently unlawful about the second tribunal's orders that FIC and the Rajawalis perform their respective obligations arising from a valid exercise of the Put Option.[182]

E. Other setting-aside cases reported in 2024

(1) Alleged bias of arbitrators

4.170 *CZT v CZU*[183] was an appeal against the SICC's dismissal of CZT's setting-aside application. CZU had entered into a contract with CZT for the purchase of a type of defence equipment. CZU had appointed a third-party contractor ("Contractor") to use the equipment to build certain products for CZU. CZU, CZT and the Contractor later entered

181 *FIC Properties Sdn Bhd v PT Rajawali Capital International* [2024] SGHC(I) 33 at [45].

182 *FIC Properties Sdn Bhd v PT Rajawali Capital International* [2024] SGHC(I) 33 at [61].

183 [2024] 2 SLR 216.

into a transfer agreement under which some rights of CZU under the contract were transferred to the Contractor.

4.171 Disputes arose with CZU alleging that there were defects in the defence equipment, which led CZU commencing court litigation in its home jurisdiction against CZT and the Contractor. CZU was partially successful against the Contractor but unsuccessful against CZT due to the arbitration clause in the contract.

4.172 CZU then commenced an ICC arbitration against CZT based on the arbitration clause in their contract. CZT denied the claims on the basis that the relevant warranty period had expired and that due to the transfer agreement, there was no relevant obligation upon which CZU's claim could be based.

4.173 The majority of the ICC tribunal found that CZT was liable to CZU for non-performance of its obligations under the contract due to the delivery of certain defective components. The dissenting arbitrator refused to sign the final award "in the light of his disagreement with the conclusions and reasoning of the other two arbitrators"[184] and in his dissenting opinion, accused the majority of "having 'engaged in serious procedural misconduct', 'continued misstating of the record', attempting 'to conceal the true ratio decidendi from the Parties', 'distortion of the deliberation history', lack of impartiality, and knowingly stating an incorrect reason for the Minority's refusal to sign the Final Award", and that the minority arbitrator had "lost any and all trust in the impartiality of [his] fellow arbitrators".[185]

4.174 CZT applied under s 24(*b*) of the IAA, Arts 34(2)(*a*)(ii), 34(2)(*a*)(iii) and 34(2)(*b*)(ii) of the MAL to set aside the final award. CZT relied significantly on the dissenting arbitrator's opinions *vis-à-vis* the majority to ground its arguments that natural justice had been breached in the making of the award.

4.175 CZT failed in its setting-aside application before the SICC. On appeal, the Court of Appeal upheld the SICC's earlier decision, holding that: (a) the majority did not overlook or fail to consider CZT's critical arguments and these arguments were instead fairly rejected;[186] (b) the majority did not base its conclusions on extraneous material;[187] and (c) if

184 See the Singapore International Commercial Court decision in *CZT v CZU* [2023] 5 SLR 241 at [17].

185 See the Singapore International Commercial Court decision in *CZT v CZU* [2023] 5 SLR 241 at [19].

186 *CZT v CZU* [2024] 2 SLR 216 at [72]–[80].

187 *CZT v CZU* [2024] 2 SLR 216 at [87] and [98].

a party chose not to put submissions on a particular point, no unfairness would arise in the tribunal "working through the consequences of the construction point and not returning to the parties for further submissions on a subject … which had already been the subject of argument".[188]

4.176 Dissenting opinions are, strictly speaking, not part of the award. Institutions do not normally scrutinise them. A dissenting opinion from a member of the tribunal is intended for a dissenting member to explain his own reason why he could not agree with the majority. While an honest assessment by members of the tribunal may differ, or views on certain issues whether legal or factual may diverge, a dissenting member should always bear in mind that any assertions of impropriety on the part of the majority must be sustained by evidence of such wrongdoing. It is disturbing when a dissenting opinion is crafted to intimidate the majority or to serve as fodder intended to enable the unsuccessful party to seek recourse against the award.

4.177 *DDI v DDJ*[189] was a setting-aside application involving allegations of bias (and rather soap operatic facts). DDI was the 50% shareholder and sole director of Company DA; DDJ was a businessman and sole director and shareholder of DDK. Company DA purportedly owned and managed a piece of celebrity-endorsed jewellery set with a lab-grown gem. DDK entered into a fractional ownership and transfer agreement ("2020 FOA") with DDI to purchase a 10% share of the jewellery. The 2020 FOA had a grading report for the gem and also referred to an online article which stated that the gem was mined in Ruritania.

4.178 The 2020 FOA was later superseded by two other FOAs signed in January 2021 ("2021 FOAs") which removed all references to the grading report and online article. DDK (the second respondent) paid DDI approximately $650,000 for the jewellery.

4.179 The parties then executed a sale and purchase agreement ("SPA") and an option agreement under which: (a) DDI would sell 47% of Company DA's shares to DDJ; (b) the 2020 and 2021 FOAs were terminated and the moneys originally paid by DDK under the FOAs would be treated as payment on behalf of DDJ under the SPA; (c) DDJ would pay DDI the balance amount of $2.339m for the acquisition of Company DA shares; and (d) DDI had the option to require DDJ to make payment of the balance by transferring cryptocurrency coins to DDI. The storage devices containing the cryptocurrency coins and security codes were stored in DDI's safe deposit box.

188 *CZT v CZU* [2024] 2 SLR 216 at [105].
189 [2024] SGHC 68.

4.180 One day after the SPA was completed, DDI exercised the option and transferred the cryptocurrency coins to himself. The coins were valued at $2m and DDI then commenced an SIAC arbitration (as agreed under the SPA) for the remaining $339,000 due under the SPA. DDJ and DDK counterclaimed for the return of the cryptocurrency coins, damages and a declaration that the SPA was void. They alleged, *inter alia*, that DDI had requested DDJ to hold Company DA shares temporarily because of conflict issues arising from a prospective sale of the jewellery to DDI's billionaire uncle. The coins were provided as security for the plan and not to be transferred without DDJ's consent.

4.181 A sole arbitrator was appointed by the SIAC and she issued a final award in April 2023 dismissing DDI's claims and allowing DDJ and DDK's counterclaims. Dissatisfied with the award, DDI applied to set aside the award under ss 48(1)(*a*)(iii), 48(1)(*a*)(iv) and 48(1)(*a*)(vii) of the AA, arguing that DDI had been prevented from effectively presenting his case during the arbitration due to the arbitrator's prejudgment or bias, the award was *ultra petita* and there had been a breach of the rules of natural justice (in particular, the fair hearing rule and the rule against bias) in connection with the making of the final award that prejudiced DDI.

4.182 The General Division dismissed the setting-aside application. In relation to the bias allegations, DDI argued that the arbitrator had predetermined material issues adversely against DDI and she had a preconceived and misguided view that DDI was selling synthetic gemstones to unwitting investors.[190] DDI contended that the arbitrator's bias was evident from, amongst other things, certain words that she had used to describe lab-grown gemstones,[191] her lack of interest in understanding his pricing methodology,[192] her interventions in DDI's expert's testimony[193] and her inability to "grasp" the concept of celebrity-endorsement and the effect of such endorsement on pricing.[194] Each of these arguments were dismissed by the General Division.[195] The court noted that an arbitrator asking questions in a leading manner at the hearing (instead of open questions) does not necessarily lead to a conclusion that the arbitrator was biased,[196] and when considering allegations of bias, the "crucial question" was whether the arbitrator's conduct "was such as to impair her ability to evaluate and weigh the

190 *DDI v DDJ* [2024] SGHC 68 at [85].
191 *DDI v DDJ* [2024] SGHC 68 at [88].
192 *DDI v DDJ* [2024] SGHC 68 at [90].
193 *DDI v DDJ* [2024] SGHC 68 at [91].
194 *DDI v DDJ* [2024] SGHC 68 at [92].
195 *DDI v DDJ* [2024] SGHC 68 at [94].
196 *DDI v DDJ* [2024] SGHC 68 at [107].

case presented by the parties".[197] The court concluded that the threshold was "a high one" and DDI's allegations were not sufficient to cross this threshold.[198]

(2) Conflicting arbitration clauses in related contracts

4.183 In *CNA v CNB*,[199] CNA applied to set aside two partial awards issued in an ICC arbitration commenced in 2017 ("2017 ICC Arbitration") on the basis that the ICC arbitration clause relied upon for the 2017 ICC Arbitration had been superseded by a later agreement ("2017 Agreement") providing for arbitration at the Shanghai International Arbitration Centre applying the law of the People's Republic of China ("SHIAC Arbitration Clause").

4.184 The SICC earlier dismissed the setting-aside application,[200] holding that the 2017 Agreement had been entered into by CNA even though CNA knew full well that CNB did not want that agreement executed. By executing that contract, CNA's conduct clearly preferred the interests of CND and CNE to the detriment of CNB, and constituted a breach of its fiduciary duty of loyalty to the joint interest of CNA and CNB. The question before the ICC tribunal was whether the 2017 ICC Arbitration had been terminated because of the execution of the 2017 Agreement. Once the tribunal held that the 2017 ICC Arbitration was not terminated, the ICC tribunal had the jurisdiction to proceed to determine the disputes that had been referred to it in the 2017 ICC Arbitration.

4.185 The Court of Appeal dismissed CNA's appeal, holding that the SICC was correct to find that CNA had breached its fiduciary duty to CNB by entering into the 2017 Agreement, and that the "haste and secrecy with which CNA acted in entering into the [2017 Agreement] in the circumstances found by the SICC indicated a purpose of supporting a jurisdictional objection to the 2017 ICC Arbitration".[201] In addition, the 2017 ICC Arbitration had already been commenced when the 2017 Agreement was signed, which raises the question of whether the language of the 2017 Agreement was sufficiently clear to affect arbitration proceedings that had already been commenced.[202]

197 *DDI v DDJ* [2024] SGHC 68 at [108].
198 *DDI v DDJ* [2024] SGHC 68 at [108].
199 [2024] SGCA(I) 2.
200 *CNA v CNB* [2023] 5 SLR 1.
201 *CNA v CNB* [2024] SGCA(I) 2 at [46].
202 *CNA v CNB* [2024] SGCA(I) 2 at [47].

(3) Setting aside of "early dismissal" award

4.186 The dispute in *DBO v DBP*[203] arose from a development project that was affected by movement and business activity restrictions during the COVID-19 pandemic. The appellants ("Borrowers") had entered into a facility agreement with four of the respondents ("Lenders"), and the facility was guaranteed by the third appellant and two other respondents ("Guarantors"). The loan was intended for the construction and development of a housing project, and the Borrowers had intended that their income from their mall business would go towards repayment of the loan.

4.187 The COVID-19 pandemic, however, affected the Borrowers' mall business and also impacted the sales of the units in the housing project. As a result, the Borrowers claimed that they were unable to repay the loan when it matured on 26 March 2021.

4.188 The Borrowers commenced an SIAC arbitration against, amongst others, the Lenders pursuant to the arbitration clause in the facility agreement. The Guarantors were joined to this arbitration by the Lenders. The Borrowers argued that the facility agreement and the accompanying security documents had been discharged by frustration because repayment of the loan was expressly provided to have come from the sale of units in the housing project, and the sales could not be performed due to the pandemic.

4.189 The tribunal issued a partial award in January 2023, further to an early dismissal application by the Lenders, holding that the Borrowers' pleaded case that the facility agreement had been discharged by frustration, at its highest, was manifestly without legal merit.

4.190 The Borrowers applied to set aside the partial award under s 24 of the IAA and Art 34(1) of the MAL. The Borrowers contended that the tribunal had breached the rules of natural justice and exceeded its jurisdiction because: (a) the tribunal failed to assume the existence of a collateral contract; (b) as the existence of a collateral contract was in dispute, the tribunal should not have decided that the case on collateral contract was manifestly without legal merit; and (c) the tribunal should not have decided that the doctrine of frustration did not apply when the applicability of that doctrine involved a legal controversy.

203 [2024] SGCA(I) 4.

4.191 The SICC dismissed the setting-aside application,[204] holding that the transcripts of the hearing did not support the arguments put forward by the Borrowers. The SICC decision was upheld on appeal. The Court of Appeal noted that it was clear from the hearing transcript that: (a) the existence of a collateral contract was assumed for the purposes of the early dismissal hearing;[205] (b) the parties understood the collateral contract was not an agreement that the loan would be repaid and served from the proceedings of the housing project and the mall business but an agreement that those proceeds be so used;[206] and (c) the Lenders' understanding was that repayment was not limited to the housing project and mall business proceedings and neither the Borrowers nor the tribunal challenged this understanding.[207] In the circumstances, the tribunal was correct that the Borrowers' case on their pleadings was insufficient to defeat the early dismissal application and the SICC's dismissal of the Borrowers' setting-aside application was correct.[208]

(4) Failure to address party's argument not necessarily meaning that tribunal failed to apply its mind to that argument

4.192 In *DHZ v DHY*,[209] DHZ was the main contractor for a project and had appointed DHY under four contracts for: (a) design, supply, delivery of certain goods ("Contract 9"); (b) design, manufacture, installation, testing and maintenance during the defects liability period for goods referred to as "TVFs" and "TVBs" ("Contract 24"); (c) supply and delivery of isolators ("Contract 27); and (d) design, manufacture, installation, testing and maintenance during the defects liability period for goods referred to as "MVFs" ("Contract 18").

4.193 DHY commenced an SIAC arbitration against DHZ for outstanding payments under the four contracts. DHZ denied the claims and counterclaimed for liquidated damages for delayed delivery under Contracts 18 and 24, and additional costs due to DHY's failure to comply with its obligations under the contracts in respect of defects rectification.

4.194 The arbitrator issued an award largely in favour of DHY and dismissed DHZ's counterclaims. DHZ then applied to set aside parts of the award under ss 48(1)(*a*)(vii) and 48(1)(*a*)(iv) of the AA, *ie*, the *ultra petita* ground and the breach of rules of natural justice ground.

204 *DBO v DBP* [2023] SGHC(I) 21.
205 *DBO v DBP* [2023] SGHC(I) 21 at [39].
206 *DBO v DBP* [2023] SGHC(I) 21 at [30].
207 *DBO v DBP* [2023] SGHC(I) 21 at [39].
208 *DBO v DBP* [2023] SGHC(I) 21 at [48]–[49].
209 [2024] SGHC 236.

4.195 The application was dismissed by the General Division, which took the view that the arbitrator had, in relation to each of the allegations asserted by DHZ, considered and applied her mind to DHZ's various arguments before coming to her decision. In addition, there was also no occasion that the arbitrator could be said to have exceeded her jurisdiction by determining a matter that was outside the dispute submitted to arbitration.

4.196 In respect of DHZ's submission that the arbitrator had failed to address a particular provision of the contract which had been specifically brought to the arbitrator's attention, the General Division agreed that the arbitrator did not expressly deal with this clause in the award.[210] However:[211]

> … the fact that an award fails to address one of the parties' arguments expressly does not, without more, mean that the tribunal failed to apply its mind to that argument. Further, an award will not be set aside on the ground that the tribunal failed to apply its mind to an essential issue arising from the parties' arguments unless such failure is a 'clear and virtually' inescapable inference from the award.

(5) Lack of connection between tribunal's reasoning and parties' cases

4.197 A final award was set aside in part in *Vietnam Oil*. The applicant ("VOGG") was the owner of a power plant in Vietnam while the respondent ("JSC") was the leading member of a consortium that undertook construction of the power plant. The project commenced in January 2015 and JSC subcontracted part of its scope of work to various subcontractors.

4.198 On 26 January 2018, the US Office of Foreign Assets Control placed JSC on the US sanctions list and, as a result, all US persons were prohibited from engaging in transactions involving JSC. As a result of the US sanctions, many of JSC's subcontractors suspended performance under various subcontracts. This led JSC to, on 5 February 2018, give notice to VOGG that the US sanctions amounted to a *force majeure* event pursuant to the terms of the contract.

4.199 On 28 November 2018, JSC gave VOGG notice of its intention to terminate the contract on the ground of *force majeure*. By this time, there were moneys due under the contract to JSC which had not been paid by VOGG. Sometime in January 2019, JSC demanded payment of

210 *DHZ v DHY* [2024] SGHC 236 at [79] and [82].
211 *DHZ v DHY* [2024] SGHC 236 at [82].

the outstanding moneys, failing which it would terminate the contract for non-payment.

4.200 VOGG did not make any payment and, on 28 January 2019, JSC issued notice of termination of the contract by reason of *force majeure*, with a termination date of 18 February 2019. Shortly thereafter, on 8 February 2019, JSC issued a second notice of termination relying on VOGG's payment default. This second notice of termination had a termination date of 22 February 2019.

4.201 JSC commenced an SIAC arbitration in August 2019 and obtained an award largely in its favour. JSC then applied for, and obtained, permission to enforce the award pursuant to s 19 of the IAA.

4.202 VOGG applied to set aside, *inter alia*, two findings in the award (one on liability and the other on damages) on the grounds of breach of natural justice and *ultra petita*. The General Division allowed the setting aside on the liability finding, holding that the tribunal's chain of reasoning had departed from and had no nexus to either party's cases.[212] The court emphasised that while tribunals did not have to stick strictly to the cases advanced by the parties, tribunals were obliged to give parties the opportunity to be heard on the approach that was being considered. A failure to do so could lead to a breach of the rules of natural justice, and make an award liable to be set aside under s 24(*b*) of the IAA or Art 32(2)(*a*)(ii) of the MAL.[213]

4.203 The General Division, however, considered that it was appropriate to suspend the setting aside and give the tribunal an opportunity to eliminate the grounds for setting aside.[214] In coming to this decision, the court appeared to have placed weight on the fact that if the liability finding was to be set aside, it would have necessitated setting aside many other consequential findings which were not challenged.[215]

212 *Vietnam Oil and Gas Group v Joint Stock Company (Power Machines – ZTL, LMZ, Electrosila Energomachexport)* [2024] SGHC 244 at [43].
213 *Vietnam Oil and Gas Group v Joint Stock Company (Power Machines – ZTL, LMZ, Electrosila Energomachexport)* [2024] SGHC 244 at [44].
214 *Vietnam Oil and Gas Group v Joint Stock Company (Power Machines – ZTL, LMZ, Electrosila Energomachexport)* [2024] SGHC 244 at [45]–[46].
215 *Vietnam Oil and Gas Group v Joint Stock Company (Power Machines – ZTL, LMZ, Electrosila Energomachexport)* [2024] SGHC 244 at [46].

F. Importance of raising objections timeously

4.204 In *DBL*,[216] the Court of Appeal emphasised the importance of raising objections, whether to jurisdiction or to improper procedure, at the material time and that a belated objection may be regarded by the courts as strategic or opportunistic.[217]

4.205 Similar comments were made by the General Division in *Siddiqsons Tin Plate Ltd v New Metallurgy Hi-Tech Group Co Ltd*.[218] Siddiqsons Tin Plate Ltd ("Siddiqsons") applied under s 24(*b*) of the IAA to set aside an SIAC arbitration award on the basis that the award had been made in breach of natural justice. Siddiqsons contended that the tribunal had failed to consider its arguments and denied its right to present and respond to the case, and cited a number of examples to support its submission. The General Division dismissed the setting-aside application, holding that its complaints whether taken individually or collectively "did not come close to meeting the high threshold for establishing a breach of natural justice".[219]

4.206 One of Siddiqsons's complaints was that the tribunal had failed to invite it to make and/or expand its submissions on a particular issue in this dispute. This complaint was rejected by the court, noting that the responsibility was on Siddiqsons (or its counsel) to raise an objection or seek leave to make further submissions, if it had something meaningful to say[220] and that:[221]

> It is not for the Tribunal to direct the parties on what submissions to make. That was the prerogative of Siddiqsons. The due process guarantee in Art 18 of the [MAL] is not intended to give a party insurance against its own failures or strategic choices that backfire. The courts will not allow setting aside applications to be abused by a party who, with the benefit of hindsight, wishes that it had presented its case in a different way or had taken certain strategic decisions differently.

216 The facts of this case are set out at paras 4.129–4.134 above.
217 *DBL v DBM* [2024] 1 SLR 660 at [31]–[32]; see para 4.134 above.
218 [2024] SGHC 272.
219 *Siddiqsons Tin Plate Ltd v New Metallurgy Hi-Tech Group Co Ltd* [2024] SGHC 272 at [29].
220 *Siddiqsons Tin Plate Ltd v New Metallurgy Hi-Tech Group Co Ltd* [2024] SGHC 272 at [32].
221 *Siddiqsons Tin Plate Ltd v New Metallurgy Hi-Tech Group Co Ltd* [2024] SGHC 272 at [52].

G. The "kitchen-sink" approach towards setting-aside applications

4.207 In recent years, there has been an increasing trend of setting-aside applicants relying on every conceivable ground and challenging every point or decision made by the arbitrator. This practice of taking every point in setting aside was highlighted by the Singapore courts in 2024, with Singapore judges taking the view that the practice is unhelpful to the court and unproductive.

4.208 In *Haide Building Materials*,[222] Haide applied to set aside an award in its entirety, and invoked multiple grounds to support its application.[223] Haide's application was ultimately dismissed but in the course of the judgment, the General Division raised concerns about the following "prevalent practice" in setting-aside applications:[224]

> 3 Before I turn to address the issues in this case, I register a concern at what has increasingly become a prevalent practice in setting aside applications of the challenge to an award. Aggrieved by the adverse (or, in their perception, *perverse*) outcome of the arbitration, challengers often adopt a blunderbuss approach to their grounds of challenge, throwing everything but the kitchen sink (and other the kitchen sink itself) at the award and the tribunal. I would suggest that such an approach is rarely productive, and oftentimes counterproductive as the court sees through such an approach. Further, by doing so the challenger may by its own hand render it nigh impossible both for itself and for the court to sift the wheat from the chaff.
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> …
>
> 162 In closing, I return to the point I made at the outset of these grounds on the importance of adopting a *discerning* approach when choosing to raise grounds of challenge against an arbitral award. Indeed, the *dicta* I have referred to at [3]–[4] above which discourage a kitchen-sink approach ought to apply with greater force to setting aside applications simply because the principle of minimal curial intervention already narrows both the grounds for challenge and prospects of a challenge bearing fruit. In the present application, the vast majority of objections taken by Haide towards the Award were clearly misconceived, unmeritorious and therefore dead in the water. Haide's approach of flinging any mud it could cobble together at the Award and the Tribunal in the hope that some of it would stick was to no avail as it betrayed Haide's real grievance of simply being unhappy that it had lost in the Arbitration. An aggrieved arbitrant may well take offence to an award with every fibre of its being. But a party who approaches a challenge to the award with such

222 The brief facts of this case are set out at paras 4.122–4.127 above.

223 See *Haide Building Materials Co Ltd v Ship Recycling Investments Inc* [2024] SGHC 222 at [26].

224 *Haide Building Materials Co Ltd v Ship Recycling Investments Inc* [2024] SGHC 222 at [3] and [162].

> a mindset almost invariably lapses into a strategy of launching the kitchen sink in its efforts to have it set aside. If it does so, that party runs the risk of the strategy being called out by the court for what it really is.
>
> [emphasis in original]

4.209 Similar comments were expressed by the General Division in *Wan Sern*.[225] The court described Wan Sern Metal Industries Pte Ltd's setting-aside application as having been presented in an "omnibus" fashion, where:[226]

> [T]he applicant … applied to set aside almost all of the decisions in the Award and on multiple grounds under the AA in respect of each. On some of those grounds, the applicant did not even present any arguments or submissions. This approach runs the risk of distracting the Court from the real issues in contention and failed to do proper justice to the applicant's submissions.

While *Wan Sern* was reversed on appeal, the lower court's comments about the approach towards setting-aside applications remain, respectfully, valid.

4.210 In the Ministry of Law's Public Consultation on the International Arbitration Act 1994 of Singapore,[227] feedback was sought on the question of whether separate costs principles should be applied in respect of unsuccessful setting-aside applications. This issue was raised following feedback that current costs principles in the Singapore courts "may not be sufficient to deter applicants from pursuing frivolous or unmeritorious applications, to delay proceedings and hinder a successful counterparty's attempts to enforce its rights under the arbitral award".[228] If this amendment eventually makes its way into the IAA (and the AA), it will likely also deter ill-considered "kitchen-sink" style of setting-aside applications, which will ultimately benefit parties, arbitrators and the courts.

4.211 *DKT v DKU*[229] arose from two term contracts between DKT and DKU for the provision of property and facilities management services. DKT was to repair certain cracks discovered in DKU's buildings but

225 The facts of this case are set out at paras 4.216–4.225 below.

226 *Wan Sern Metal Industries Pte Ltd v Hua Tian Engineering Pte Ltd* [2024] SGHC 112 at [89].

227 Ministry of Law, *Public Consultation on the International Arbitration Act 1994 of Singapore* (21 March 2025) <https://www.mlaw.gov.sg/public-consultation-on-the-international-arbitration-act-1994-of-singapore/> (accessed 27 August 2025).

228 Ministry of Law, *Public Consultation on the International Arbitration Act 1994 of Singapore* (21 March 2025) at para 6 <https://www.mlaw.gov.sg/files/Arbitration/IAA_Consultation_Paper.pdf> (accessed 27 August 2025).

229 [2025] 3 SLR 1660.

DKU claimed that the crack repair works were not completed or that the performance of the repair works was not in accordance with the parties' contracts. DKT denied DKU's allegations.

4.212 DKU commenced arbitration against DKT and obtained a partial award that DKT had breached the term contracts and DKU was entitled to reliance damages. DKT applied to set aside the partial award under s 48(1)(*a*)(vii) of the AA, arguing that the tribunal had breached the rules of natural justice by disregarding DKT's defences and evidence, not giving DKT the opportunity to address certain issues and failing to apply its mind to DKT's defences.

4.213 The General Division dismissed DKT's setting-aside application. DKT's appeal was dismissed by the Court of Appeal, which also criticised the appeal as being "baseless" and "nothing more than unmeritorious complaints because they were, in truth, directed at challenging the merits of the award, but presented under the guise of natural justice challenges in a vain attempt to come within the ambit of the limited grounds that exist to set aside an arbitral award".[230]

4.214 In view of the "an increasing tendency for disgruntled award debtors to abuse [the *infra petita*] ground of challenge on wholly unmeritorious grounds",[231] the Court of Appeal established a new four-stage test to be satisfied before an *infra petita* challenge can be mounted:[232]

> (a) First, the point being challenged must have been properly brought before the tribunal for its determination. A party who elects not to participate in the arbitration, failed to raise the point in question or otherwise elected to pursue a different strategy that was not ultimately successful, is not entitled to raise an *infra petita* challenge.
>
> (b) Second, the point being challenged must have been essential to the resolution of the dispute. This arises from the tribunal's duty only to deal with essential issues and is not obliged to deal with every issue raised.
>
> (c) Third, the tribunal must have completely failed to consider the point.

230 *DKT v DKU* [2025] 1 SLR 806 at [1].
231 *DKT v DKU* [2025] 1 SLR 806 at [7].
232 *DKT v DKU* [2025] 1 SLR 806 at [8].

(d) Fourth, even if the tribunal failed to consider an essential point before it, there must have been real or actual prejudice caused by the breach of natural justice.

4.215 This new test for *infra petita* challenges is timely and will hopefully reduce the number of unmeritorious setting-aside applications premised on this ground.

H. Particular issues in documents-only and expedited arbitrations

4.216 *Wan Sern* concerned an application to set aside a domestic award. Wan Sern Metal Industries Pte Ltd ("Wan Sern") was an aluminum subcontractor and Hua Tian Engineering Pte Ltd ("Hua Tian") was its labour subcontractor. On 15 July 2022, Wan Sern terminated the subcontract, alleging that Hua Tian was in repudiatory breach due to its failure to deploy a safety officer for the subcontract works and promptly or diligently rectify defects that had been identified. It was not disputed that by the time the notice of termination was issued, Hua Tian had substantially completed its work under the subcontract.

4.217 On 18 May 2022, prior to Wan Sern's termination of the subcontract, Hua Tian had lodged an adjudication application against Wan Sern under the Building and Construction Industry Security of Payment Act 2004[233] for non-payment of Hua Tian's April 2022 payment claim. In the adjudication determination, the adjudicator allowed the majority of Hua Tian's claims and rejected Wan Sern's claim for backcharges, resulting in an order that Wan Sern pay approximately $616,000 and costs to Hua Tian.

4.218 Wan Sern commenced an SIAC arbitration against Hua Tian in June 2022 pursuant to the arbitration clause in the subcontract. The parties agreed that the arbitration would be conducted on an expedited timetable and on a documents-only basis.

4.219 The sole arbitrator issued an award dismissing Wan Sern's claims and allowing most of Hua Tian's counterclaims. In particular, the arbitrator allowed Hua Tian's claim of $776,000 for balance value of the work done ("balance work claim"). This claim was not framed as a claim for expectation damages until Hua Tian filed its written submissions. However, Wan Sern did not object to the issue being raised belatedly and had responded to the issue in its reply written submissions.

233 2020 Rev Ed.

4.220 Wan Sern applied to set aside the award, arguing that the award dealt with matters outside the scope of the submission to reference (s 48(1)(*a*)(iv) of the AA), the arbitral procedure was not in accordance with the parties' agreement (s 48(1)(*a*)(v) of the AA) and that a breach of natural justice had occurred in the making of the award (s 48(1)(*a*)(vii) of the AA). The General Division dismissed the application entirely and, in relation to the balance work claim, held that the arbitrator's decision on the expectation damages issue did not depart from the parties' agreed procedure as r 20.4 of the SIAC Rules "does not prevent a tribunal from deciding on matters that are not expressly pleaded"[234] and that the expectation damages issue had been "clearly brought" to Wan Sern's attention and Wan Sern had "sufficient opportunity" to respond.[235]

4.221 Wan Sern appealed the lower court's decision and succeeded.[236] The Court of Appeal noted that by reason of the agreed expedited timelines adopted in the arbitration, there was "a lack of clarity as to the parties' positions, which the arbitrator failed to appreciate and so to resolve".[237] The court acknowledged that while pleadings "are not necessarily determinative in the same way of extent that they might be in court litigation",[238] the "continuous interaction" between the tribunal and the parties in the ordinary course of an arbitration "provide opportunities for the parties to adjust the parameters of their arguments where necessary or to raise objections to points being taken outside the ambit of their dispute"[239] and "is an important aspect of assessing fairness, because it ensures that the parties have had a reasonable opportunity to present their case, and to understand and respond to the case put against them".[240]

4.222 However, in a documents-only arbitration, the parties and the tribunal do not interact in the same manner or at the same level. This consequently raised the risk of misunderstanding in respect of the contours of the dispute or the points taken (or not taken) by

234 *Wan Sern Metal Industries Pte Ltd v Hua Tian Engineering Pte Ltd* [2024] SGHC 112 at [35].
235 *Wan Sern Metal Industries Pte Ltd v Hua Tian Engineering Pte Ltd* [2024] SGHC 112 at [35].
236 *Wan Sern Metal Industries Pte Ltd v Hua Tian Engineering Pte Ltd* [2025] 1 SLR 88.
237 *Wan Sern Metal Industries Pte Ltd v Hua Tian Engineering Pte Ltd* [2025] 1 SLR 88 at [5].
238 *Wan Sern Metal Industries Pte Ltd v Hua Tian Engineering Pte Ltd* [2025] 1 SLR 88 at [39].
239 *Wan Sern Metal Industries Pte Ltd v Hua Tian Engineering Pte Ltd* [2025] 1 SLR 88 at [40].
240 *Wan Sern Metal Industries Pte Ltd v Hua Tian Engineering Pte Ltd* [2025] 1 SLR 88 at [41].

a party.[241] The Court of Appeal therefore held that where the arbitration proceedings are conducted in an expedited manner and decided based on documents-only:[242]

> … pleadings provide a crucial anchor in ensuring that the tribunal is fully cognisant of the parties' cases. In our judgment, where the procedure in a case provides for pleadings, these play a significant role in expedited arbitrations, including documents-only arbitrations. In particular, they serve as the starting point of what issues parties have agreed to arbitrate; and they help in establishing whether the parties have engaged with or departed from those issues in their written submissions. They also assist the tribunal in understanding the true nature of the parties' arguments.

4.223 The Court of Appeal took the view that while Wan Sern did not object to the introduction of the unpleaded expectation damages issue, Wan Sern had made it clear in its reply written submissions that Hua Tian could not claim damages for work that was not completed.[243] Therefore, the arbitrator's decision to allow Hua Tian's balance work claim "demonstrated her failure to appreciate the precise point being taken",[244] and culminated in an award that had been made in breach of natural justice.[245] The award was therefore set aside.

4.224 The Court of Appeal's decision in *Wan Sern Metal Industries Pte Ltd v Hua Tian Engineering Pte Ltd*[246] highlights the challenges faced by an arbitrator in a documents-only proceeding, and the need to be attuned to nuances in the pleadings and submissions. However, the decision is also troubling as it places what seems to be a heavy burden on the tribunal to highlight and address deficiencies in the party's cases, even when the parties themselves do not raise any issue or complaint. The saying "you don't know what you don't know" comes to mind: absent any (articulated) objection by a party, the arbitrator may well not know that an issue has come up. The problem can potentially be exacerbated when parties, counsel and arbitrators come from different legal backgrounds and cultures, and who have different norms when it comes to expressing their discontent.

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241 *Wan Sern Metal Industries Pte Ltd v Hua Tian Engineering Pte Ltd* [2025] 1 SLR 88 at [41].

242 *Wan Sern Metal Industries Pte Ltd v Hua Tian Engineering Pte Ltd* [2025] 1 SLR 88 at [42].

243 *Wan Sern Metal Industries Pte Ltd v Hua Tian Engineering Pte Ltd* [2025] 1 SLR 88 at [32].

244 *Wan Sern Metal Industries Pte Ltd v Hua Tian Engineering Pte Ltd* [2025] 1 SLR 88 at [37]–[38].

245 *Wan Sern Metal Industries Pte Ltd v Hua Tian Engineering Pte Ltd* [2025] 1 SLR 88 at [46]–[47].

246 [2025] 1 SLR 88.

4.225 The decision also highlights a challenge faced by institutions when making appointments in cases conducted on expedited timelines. For many arbitral institutions, expedited timelines apply in cases that are typically lower in value[247] and it is not uncommon for first-time or less experienced individuals to be appointed as arbitrators in such cases (particularly when arbitrators' fees are calculated on an *ad valorem* basis). However, just because the amount in dispute is low, that does not mean that the dispute is a straightforward one. The timelines for delivery of an award in an expedited arbitration also add pressure on the arbitrator to conduct proceedings in a manner that affords the parties the opportunity to present their cases, but also enough time for the tribunal to properly write and deliver the award.

V. Recourse against awards: refusal of enforcement

4.226 Apart from applying to set aside the arbitral award, a dissatisfied arbitrant may also seek to persuade the court to refuse enforcement of the award. An application for refusal of enforcement must be filed in whichever jurisdiction the award is to be enforced in, and there is the possibility that one jurisdiction may enforce the award while another will refuse to do so.

A. Arbitration agreement providing for Dubai International Financial Centre and London Court of International Arbitration rules; transition provisions and effect on enforcement

4.227 *DFL v DFM*[248] concerned the enforcement of an award made in an arbitration under the rules of the Dubai International Financial Centre and London Court of International Arbitration ("DIFC-LCIA Rules").

4.228 In August 2018, DFL and DFM entered into a settlement agreement under which DFM would purchase DFL's shares in a company

247 For example, under r 5 of the Arbitration Rules of the Singapore International Arbitration Centre (6th Ed, 2016), expedited procedure was intended for cases where the amount in dispute did not exceed S$6m. Under the Arbitration Rules of the Singapore International Arbitration Centre (7th Ed, 2025), there is a cap of S$10m for expedited procedure (r 14) and a cap of S$1m for the new documents-only streamlined procedure (r 13). Under the International Chamber of Commerce Arbitration Rules 2021, the "Expedited Procedure Rules" or "EPP" apply to cases where the amount in dispute is below US$2m (for arbitration agreements concluded between 1 March 2017 and 1 January 2021) or US$3m (for arbitration agreements concluded on or after 1 January 2021).

248 [2024] SGHC 71.

in three instalments. Upon completion of the acquisition, DFM would gain full control over the company. It was contemplated that DFM would thereafter conclude a merger transaction involving (among others) the company acquired from DFL and E Ltd.

4.229 The settlement agreement contained an arbitration clause providing for disputes to be solved under the DIFC-LCIA Rules. The rules were administered by the Dubai International Financial Centre Arbitration Institution ("Institute") in a joint venture arrangement with the LCIA. However, the Institute was abolished in 2021 and its assets transferred to the Dubai International Arbitration Centre ("DIAC"). The DIFC-LCIA Rules also ceased to be operative.

4.230 After the abolition of the Institute, in March 2022, the DIAC and LCIA announced that: (a) the LCIA would administer all existing cases commenced and registered by the DIFC-LCIA on or before 20 March 2022; and (b) all arbitrations referring to the DIFC-LCIA Rules commenced on or after 21 March 2022 "shall be registered by the DIAC and administered directly by its administrative body in accordance with the respective rules of procedure of the DIAC".

4.231 On 2 April 2022, DFL commenced an arbitration against DFM and E Ltd under the Dubai International Arbitration Centre Rules 2022 ("DIAC Rules"), seeking payment of outstanding sums under the settlement agreement. In its answer to the request for arbitration, DFM reserved his rights in relation to the abolishment of the Institute and the DIFC-LCIA Rules, and denied liability on the ground that he was only obliged to pay DFL after DFM received payment pursuant to the merger transaction. E Ltd, in its answer, challenged the jurisdiction of any arbitral tribunal on the ground that it was not a party to the settlement agreement. E Ltd did not otherwise object to the conduct of the arbitration under the DIAC Rules.

4.232 The tribunal was constituted in July 2022. On 3 August 2022, DFL applied to the tribunal for interim relief, seeking a proprietary injunction against DFM and E Ltd over sums received by them under the merger transaction, as well as for a freezing order against DFM over his assets.

4.233 In November 2022, the tribunal issued a provisional award granting a proprietary injunction and freezing order against DFM only. DFL thereafter applied to enforce the provisional award in Singapore against DFM. The enforcement order was granted by the Singapore courts on 28 December 2022 and served on DFM.

4.234 DFM, upon being served, applied to set aside the enforcement order. In his setting-aside application, DFM argued that: (a) the

enforcement order should be set aside because the arbitration was conducted under the DIAC Rules and not the DIFC-LCIA Rules, the latter being what had been agreed by the parties; and (b) enforcement should be denied because of a pending jurisdictional objection in the main arbitration.

4.235 The General Division dismissed the setting-aside application, finding, *inter alia*, that DFM did not specifically raise any jurisdictional objections in his submission with respect to the interim relief application and had therefore demonstrated an "unequivocal, clear and consistent intention to submit to the tribunal's jurisdiction" in respect of the interim relief application.[249] The fact that DFM chose to contest the interim relief application on its merits without objecting to jurisdiction "could only mean" that in so far as the interim relief application was concerned, he was not relying on or was waiving the jurisdictional objections stated in his statement of defence.[250] Finally, in view of the court's finding that DFM had submitted to the tribunal's jurisdiction in respect of the interim relief application, there was no reason to refuse enforcement of the provisional award because a jurisdiction decision in respect of the main arbitration was still pending.[251]

4.236 On appeal,[252] the Court of Appeal considered that the sole issue in the appeal was whether DFM, having objected to the tribunal's jurisdiction to hear the arbitration, had submitted to its jurisdiction at least for the purposes of the interim relief application. The Court of Appeal held that on the facts, DFM had challenged the interim relief application on the merits and did not object to the tribunal's jurisdiction *vis-à-vis* the application. DFM must therefore be taken to have submitted to the tribunal's jurisdiction for the purpose of the interim relief application and waived his right to rely on s 31(2)(*e*) of the IAA in resisting enforcement.[253]

4.237 The court emphasised that it was not necessarily inconsistent for a party to submit to the tribunal's jurisdiction in respect of the interim relief application while still retaining his objection in respect of the main proceedings; this was because the standard to which an applicant must establish the relevant facts in an interim relief application was typically lower (usually a *prima facie* basis) from that required for the resolution of the substantive dispute.[254] Moreover, the procedural history of the arbitration showed that DFM had been content to proceed with the

249 *DFL v DFM* [2024] SGHC 71 at [36]–[39].
250 *DFL v DFM* [2024] SGHC 71 at [43].
251 *DFL v DFM* [2024] SGHC 71 at [51].
252 *DFM v DFL* [2024] 1 SLR 1283.
253 *DFM v DFL* [2024] 1 SLR 1283 at [37].
254 *DFM v DFL* [2024] 1 SLR 1283 at [39].

interim relief application hearing without raising any objection to the tribunal's jurisdiction. In the circumstances, it was impermissible for DFM to attack the provisional award at the enforcement stage on the basis that the tribunal had no jurisdiction to determine the interim relief application.[255]

B. Lack of notice of arbitration as basis for refusal of enforcement

4.238 In *Wang Bin v Zhong Sihui*,[256] Zhong Sihui ("Zhong") and her husband ("Lin") were joint signatories in a loan agreement with Wang Bin ("Wang"). Disputes arose and Wang commenced an arbitration under the auspices of the Shenzhen Court of International Arbitration ("SCIA") against, *inter alia*, Zhong and Lin. The SCIA tribunal found Lin and Zhong liable to repay the sum of RMB2.8m plus interest and costs.

4.239 Wang applied to enforce the award in Singapore against Zhong, who was a Singapore citizen and who allegedly had assets in Singapore. The enforcement order was obtained on 20 November 2023 after an *ex parte* application.

4.240 Zhong applied to set aside the enforcement order on the basis that she did not have proper notice of the arbitration proceedings (s 31(2)(*c*) of the IAA) and there was material non-disclosure of key facts in Wang's application for an enforcement order. She argued that she had no notice of the SCIA arbitration or an award made against her, as she had been residing in Singapore throughout the arbitration and the SMS/phone number to which the arbitration documents were served (permissible under the SCIA rules) was in her possession but only used by her children and helper. As such, she did not receive actual notice of the arbitration through SMS or phone. Zhong also claimed to have no contact with or given instructions to the lawyers who had purportedly represented her in the SCIA arbitration.

4.241 The General Division dismissed the setting-aside application, holding that on a balance of probabilities, Zhong had actual notice of the arbitration.[257] The court found Wang's evidence on service as "sufficiently cogent and consistent" while Zhong's evidence was "inconsistent and contradictory".[258] Further, even if Zhong was not aware of the original invocation of arbitration but only became aware of the arbitration when

255 *DFM v DFL* [2024] 1 SLR 1283 at [56]–[62].
256 [2024] SGHC 189.
257 *Wang Bin v Zhong Sihui* [2024] SGHC 189 at [40].
258 *Wang Bin v Zhong Sihui* [2024] SGHC 189 at [42] and [45].

later documents were sent to her, there was still time before the award was issued to raise objections.[259]

VI. Other cases of interest

A. Loss of arbitration confidentiality and implications on application for sealing order

4.242 *Karan Chandur Tilani v Maarten Hein Bernard Koedijk*[260] raises an interesting issue relating to arbitration confidentiality and the loss thereof. Following an unsuccessful application to the General Division to set aside an arbitration award,[261] Karan Chandur Tilani ("Tilani") (anonymised as "DDI" in the General Division decision) filed an appeal to the Court of Appeal on 1 April 2024. Pending the hearing of the appeal, Tilani applied on 21 July 2024 for information regarding the appeal and related applications not to be published and that the identities of the parties be anonymised in any published judgment ("Sealing Application"). The Sealing Application was premised on ss 56 and 57 of the AA read with O 34 r 3(1)(*h*) of the Rules of Court 2021, and/or the inherent jurisdiction of the court.

4.243 While the setting-aside proceedings before the General Division were sealed, Maarten Hein Bernard Koedijk ("Koedijk") ("DDJ" in the General Division decision) served a statutory demand on Tilani in respect of costs arising from the unsuccessful setting-aside application.

4.244 Tilani applied on 6 June 2024 to set aside the statutory declaration ("OSB Proceedings"). Tilani's affidavit filed in support of the OSB Proceedings included a full copy of the final award with no redactions, and no application was made to seal the case file in the OSB Proceedings although Tilani (who appeared in person) applied orally at the hearing of the OSB Proceedings to seal the case file. The oral application was rejected by the assistant registrar hearing the OSB Proceedings.

4.245 Tilani filed a registrar's appeal ("Registrar's Appeal") against the assistant registrar's decision in the OSB Proceedings on 5 July 2024. By this time, although Tilani was represented by counsel, no sealing application was made. The Registrar's Appeal was dismissed on 5 August 2024.

259 *Wang Bin v Zhong Sihui* [2024] SGHC 189 at [42].
260 [2024] 2 SLR 361.
261 See *DDI v DDJ* [2024] SGHC 68. The background facts are set out at paras 4.177 –4.182 above.

4.246 At the hearing of the Sealing Application before the Court of Appeal, Tilani argued that confidentiality of the arbitration remained intact and of paramount importance, and that there were no countervailing reasons of public interest in favour of open justice to be taken into consideration.[262] The respondents, however, argued that confidentiality of the arbitration had been lost because Tilani had disclosed the final award in the OSB Proceedings. In addition, the respondents asserted that there was a strong public interest in favour of open justice because the arbitrator had found Tilani to have defrauded Koedijk and other members of the public.[263]

4.247 The Court of Appeal dismissed the Sealing Application, holding that although the default position under s 56(1) of the AA was for the appeal against the setting-aside decision to be held in private,[264] the confidentiality of the arbitration had been compromised and as good as lost through the disclosure of the final award in the OSB Proceedings.[265] The Court of Appeal further noted that Tilani was represented at all material times in the appeal, but the Sealing Application was only filed slightly more than three months after the notice of appeal was filed. There was no explanation as to the delayed filing of the Sealing Application[266] and there was also no explanation why the final award was even disclosed in the OSB Proceedings.[267] Even after the assistant registrar in the OSB Proceedings informed Tilani that a formal application was required to seal the OSB Proceedings, Tilani made the conscious decision not to file the Sealing Application until later.[268] The Court of Appeal concluded that while the court had "inherent powers to make orders to protect a party's confidentiality despite information about the arbitration and the identities of the parties having entered the court record", Tilani failed to identify any basis for the court to exercise such powers except for the confidentiality of the arbitration itself, which was no longer intact.[269]

B. Service of enforcement order under State Immunity Act 1979

4.248 *Navayo International AG v Ministry of Defence, Government of Indonesia*[270] raises interesting issues relating to enforcement of an arbitral

262 *Karan Chandur Tilani v Maarten Hein Bernard Koedijk* [2024] 2 SLR 361 at [10].
263 *Karan Chandur Tilani v Maarten Hein Bernard Koedijk* [2024] 2 SLR 361 at [12].
264 *Karan Chandur Tilani v Maarten Hein Bernard Koedijk* [2024] 2 SLR 361 at [14].
265 *Karan Chandur Tilani v Maarten Hein Bernard Koedijk* [2024] 2 SLR 361 at [16] and [18]–[22].
266 *Karan Chandur Tilani v Maarten Hein Bernard Koedijk* [2024] 2 SLR 361 at [23].
267 *Karan Chandur Tilani v Maarten Hein Bernard Koedijk* [2024] 2 SLR 361 at [24].
268 *Karan Chandur Tilani v Maarten Hein Bernard Koedijk* [2024] 2 SLR 361 at [25].
269 *Karan Chandur Tilani v Maarten Hein Bernard Koedijk* [2024] 2 SLR 361 at [27].
270 [2024] 6 SLR 1.

award against a foreign government entity. The applicants were in the business of creating end-to-end secured communications systems and export credit insurance. They obtained an award in a Singapore-seated ICC arbitration against the Ministry of Defence of the Government of Indonesia ("MOD") for US$16m. The dispute in the arbitration concerned amounts invoiced by the first applicant to the MOD, with the second applicant claiming as assignee of the receivables under one of the invoices.

4.249 The applicants applied *ex parte* and obtained leave to enforce the award. The MOD applied to set aside the leave order and for the court file to be sealed. The MOD's setting-aside application was premised on s 31(4)(*b*) of the IAA (*ie*, enforcement of the award would be contrary to Singapore public policy) and contained allegations that there was fraud in respect of the supply contract, conduct of the arbitration and procurement of the award.

4.250 A preliminary issue arose as to whether the MOD's application to set aside the enforcement order was filed within time. After the plaintiffs obtained the enforcement order, and on the basis that the MOD was a "State" within the meaning of s 14 of the State Immunity Act 1979[271] ("SIA"), they requested on 21 February 2022 for the order to be "sent through the proper channels to Indonesia", for service on the MOD through "a Singapore consular authority in Indonesia". In this connection:

> (a) on 2 March 2022, the Singapore Supreme Court Registry forwarded the enforcement order to the Singapore Ministry of Foreign Affairs ("Singapore MFA");
>
> (b) on 14 February 2023, the Registry informed the plaintiffs that the Indonesian Ministry of Foreign Affairs ("KEMLU") had acknowledged receipt of the enforcement order on 26 April 2022 and had conveyed the enforcement order to the Supreme Court of Indonesia on 19 May 2022; and
>
> (c) the MOD's evidence was that the papers were served on the MOD by the Jakarta Distrct Court on 19 December 2022.

4.251 In relation to service of the enforcement order, the SICC held that the court's jurisdiction over a foreign State was conferred by s 11 of the SIA and service on a State was governed specifically by s 14 of the SIA. That section provided in mandatory terms that the writ or other document required to be served for instituting proceedings against a State must be served via transmission between the respective ministries

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of foreign affairs and that service was deemed to have been effected when the writ or document was received at the foreign State's ministry of foreign affairs.[272]

4.252 In the circumstances, pursuant to s 14 of the SIA, the enforcement order was served on the MOD upon receipt by KEMLU on 26 April 2022, and the MOD's application to set aside the enforcement order was filed out of time.[273] Nonetheless, the court has a wide discretion under O 3 r 4(1) of Rules of Court[274] to grant an extension of time for the setting-aside application,[275] and in considering whether an extension of time ought to be granted, the factors to be considered included the length of the delay, the reasons for the delay, the applicant's chances for success in the application for which the extension of time is sought and the likely prejudice to the other party should the extension be granted.[276] After analysing the factors, the SICC concluded that the extension of time to file the setting-aside application should not be granted.[277]

C. Enforcement of unless order not inconsistent with New York Convention

4.253 In *Wuhu Ruyi Xinbo Investment Partnership (Ltd Partnership) v Shandong Ruyi Technology Group Co, Ltd*,[278] the dispute between the parties centred around the rights to shares in a company held by ETS, the second respondent. Wuhu Ruyi Xinbo Investment Partnership (Ltd Partnership) ("Wuhu Ruyi") claimed that pursuant to a tripartite guarantee, ETS had pledged its entire shareholding of 40 million shares to Wuhu Ruyi as security for a debt owed by Shandong Ruyi Technology Group Co, Ltd ("Shandong") to Wuhu Ruyi. There were allegations that ETS had double-pledged 28 million out of the 40 million shares by offering the shares as security to back an issuance of bonds by ETS to bondholders ("Pledged Shares"). After ETS defaulted on the bonds, the bond trustee took possession of the Pledged Shares.

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272 *Navayo International AG v Ministry of Defence, Government of Indonesia* [2024] 6 SLR 1 at [99].

273 *Navayo International AG v Ministry of Defence, Government of Indonesia* [2024] 6 SLR 1 at [151].

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275 *Navayo International AG v Ministry of Defence, Government of Indonesia* [2024] 6 SLR 1 at [164].

276 *Navayo International AG v Ministry of Defence, Government of Indonesia* [2024] 6 SLR 1 at [153], citing *Bloomberry Resorts and Hotels Inc v Global Gaming Philippines LLC* [2021] 3 SLR 725.

277 *Navayo International AG v Ministry of Defence, Government of Indonesia* [2024] 6 SLR 1 at [232]–[236].

278 [2024] SGHC 308.

4.254 When Wuhu Ruyi found out about the bonds and the Pledged Shares, it obtained a transfer of ETS's remaining shares ("Remaining Shares").

4.255 The bond trustee obtained summary judgment in the English courts in respect of the debt owed by ETS. The trustee also challenged the transfer of the Remaining Shares on the ground that it constituted fraud on the creditors. ETS was also bankrupted in February 2023 and a curator (akin to a trustee in bankruptcy or liquidator) took over control of ETC.

4.256 In November 2022, Wuhu Ruyi commenced arbitration to address its rights to the Remaining Shares under the guarantee. The guarantee provided for disputes to be resolved by arbitration under the Jining Arbitration Centre ("JAC") but the arbitration was instead conducted under the Beihai Court of International Arbitration ("BCIA"). Wuhu Ruyi claimed that the parties had agreed to change the agreed arbitral institution from JAC to BCIA (which ETS disputed). An award was issued by the BCIA tribunal in Wuhu Ruyi's favour on 10 January 2023.

4.257 Wuhu Ruyi later applied *ex parte* and obtained an order to enforce the BCIA award against Shandong and ETS. ETS applied (through its curator) to set aside the enforcement order on various grounds, including arguments concerning the unenforceability of the arbitration agreement, invalidity of the award, the BCIA tribunal's lack of jurisdiction, and that the award was procured by fraud and its enforcement would be contrary to public policy. ETS's case was that the arbitration and the award had been concocted to allow Wuhu Ruyi to steal a march ahead of ETS's other creditors.

4.258 As part of ETS's setting-aside application, ETS applied for document production, which was granted by an assistant registrar. Due to Wuhu Ruyi's failure to comply with the document production order, ETS sought and obtained an unless orders against Wuhu Ruyi ("Unless Order"). ETS was, however, again dissatisfied with Wuhu Ruyi's purported compliance with the document production order and applied for an order that the consequences in the Unless Order take effect. The application was heard by the assistant registrar, who held that Wuhu Ruyi had breached the Unless Order and it was appropriate for the stated sanctions to take effect.

4.259 Wuhu Ruyi appealed and its appeal was dismissed by the General Division. In particular, the court rejected Wuhu Ruyi's argument that enforcement of the Unless Order (which had a striking-out sanction) against an award creditor in proceedings to enforce a New York Convention award was either contrary to the New

York Convention and/or Singapore's pro-arbitration policy,[279] finding the argument "creative" but unable to withstand scrutiny.[280]

4.260 The court noted that Art III of the New York Convention expressly subjected the enforcement of a "Convention Award" to the procedural rules of each "Contracting State". It was therefore clear that an award creditor must comply with the rules of a Contracting State – including domestic procedural rules of that Contracting State – if it chose to invoke the jurisdiction of that Contracting State to enforce a Convention Award.[281] The court cautioned that:[282]

> … an arbitral award obtained by an award creditor in a Convention country is not a golden ticket to immunity from being visited with the natural consequences of the creditor disregarding orders made by this court in the course of enforcement proceedings that are before it.

D. SICC transfer costs in the context of failed setting-aside application

4.261 Finally, the SICC dealt with costs arising out of an unsuccessful setting-aside application in *DBX v DBZ*.[283] The SICC had dismissed[284] DBX's and DBY's application to set aside two arbitration awards dated 18 February 2023. DBX and DBY had argued in the setting-aside application that there was no valid arbitration with DBZ, that they were not given proper notice of the arbitration proceedings and that the awards that were issued were contrary to Singapore public policy.

4.262 DBX and DBY were ordered to pay DBZ's costs following the failed setting-aside application and the SICC directed parties to file costs submissions. At the time the proceedings were transferred to the SICC, the costs regime under O 21 of the Rules of Court 2021 and Appendix G of the Supreme Court Practice Directions 2021 ("Costs Guidelines") apply to the assessment of pre-transfer costs, and the costs regime under O 22 of the Singapore International Commercial Court Rules 2021 apply to the assessment of post-transfer costs.

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279 *Wuhu Ruyi Xinbo Investment Partnership (Ltd Partnership) v Shandong Ruyi Technology Group Co, Ltd* [2024] SGHC 308 at [182].

280 *Wuhu Ruyi Xinbo Investment Partnership (Ltd Partnership) v Shandong Ruyi Technology Group Co, Ltd* [2024] SGHC 308 at [183].

281 *Wuhu Ruyi Xinbo Investment Partnership (Ltd Partnership) v Shandong Ruyi Technology Group Co, Ltd* [2024] SGHC 308 at [187]–[188] and [193].

282 *Wuhu Ruyi Xinbo Investment Partnership (Ltd Partnership) v Shandong Ruyi Technology Group Co, Ltd* [2024] SGHC 308 at [187]–[188] and [199].

283 [2024] SGHC(I) 5.

284 See *DBX v DBZ* [2024] 3 SLR 141.

4.263 DBZ quantified its claims as follows: $65,000 for pre-transfer legal costs, $115,000 for post-transfer costs and $7,000 as costs for the preparation of costs submissions, plus disbursements. DBX and DBY responded with $16,288 for pre-transfer costs and $45,000 for post-transfer costs and did not object to the claimed sums for the preparation of costs submissions and disbursements.

4.264 The SICC noted that the costs principle for pre-transfer costs was that the successful party was entitled to "a reasonable amount in respect of all costs reasonably incurred" pursuant to O 21 r 22(2) of the Rules of Court 2021 and the court would be guided by the factors in O 21 r 2(2) of the Rules of Court 2021 and by costs precedents and the Costs Guidelines.[285]

4.265 The court noted that the indicative range in the Costs Guidelines for a full day arbitration originating application was $13,000 to $40,000.[286] However, while DBZ sought an "uplift" from the range in the Costs Guidelines, it did not state what figure should be used as a starting point and its desired "uplift" was not supported by the cases it cited in support.[287] The SICC eventually awarded DBZ $22,000 in pre-transfer costs, noting that there were common setting-aside grounds in respect of each setting-aside application and that it was "difficult to see" "a great impact on the work prior to the transfer of the proceedings".[288]

4.266 As for post-transfer costs, the SICC reiterated that these were assessed subjectively, with the starting point of costs in fact incurred by the successful party, followed by an inquiry into whether those actual costs were proportionate and reasonable.[289] On this basis, the court awarded DBZ $115,000 in post-transfer costs, with no reduction applied as DBX and DBY did not discharge the burden of showing that the costs claimed were not proportionate or reasonable.[290]

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285 *DBX v DBZ* [2024] SGHC(I) 5 at [5]–[6].
286 *DBX v DBZ* [2024] SGHC(I) 5 at [7].
287 *DBX v DBZ* [2024] SGHC(I) 5 at [10].
288 *DBX v DBZ* [2024] SGHC(I) 5 at [12]–[13].
289 *DBX v DBZ* [2024] SGHC(I) 5 at [14].
290 *DBX v DBZ* [2024] SGHC(I) 5 at [17].