



# The Asia-Pacific Arbitration Review

2025

**The rise of arbitration in the  
Asia-Pacific region**

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# The rise of arbitration in the Asia-Pacific region

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## Summary

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## IN SUMMARY

Arbitral hubs and institutions in Asia have reached new heights in terms of their growth and popularity, achieving stellar global rankings and an ever-growing number of case filings. Arbitration's popularity in Asia has been augmented by the generally pro-arbitration stance taken by the countries in the region. This article examines recent developments in Singapore and other parts of Asia, tracking the continued growth and overall maturation of Asia's arbitration scene.

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## DISCUSSION POINTS

- Growing profile of arbitral seats and institutions in Asia
  - Steps taken by local arbitral institutions to enhance and update their rules to compete with international arbitral institutions
  - Pro-arbitration stance of jurisdictions across the region, including support for the arbitral process and the enforcement of arbitral awards
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## REFERENCED IN THIS ARTICLE

- *BBA and others v BAZ and another appeal*
  - *BTN and another v BTP and another*
  - *Bloomerry Resorts and Hotels Inc and another v Global Gaming Philippines LLC and another*
  - *CAJ and another v CAI and another appeal*
  - *CKG v CKH, CNX v CNY and CVG v CVH*
  - *International Research Corp v Lufthansa Systems Asia Pacific Pte Ltd and another*
  - *National Oilwell Varco Norway AS v Keppel FELS Ltd*
  - *Phoenixfin Pte Ltd and others v Convexity Ltd*
  - *The 'Navios Koyo'*
  - *Westbridge Ventures II Investment Holdings v Anupam Mittal*
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## INTRODUCTION

Arbitral hubs and institutions in Asia have reached new heights in terms of their growth and popularity. In the 2021 Queen Mary University of London and White & Case International Arbitration Survey (the 2021 QMUL Survey),<sup>[1]</sup> Singapore and Hong Kong ranked first and third, respectively, as the most popular arbitral seats in the world. This marks a first for Singapore, which shares its position with London – a global powerhouse in the field. Singapore was also named the most preferred seat in the Asia-Pacific region and, along with Hong Kong, ranked in the top five most preferred seats in all regions.

According to the 2021 QMUL Survey, three of the five most preferred arbitral institutions in the world are located in Asia; namely, the Singapore International Arbitration Centre (SIAC), the Hong Kong International Arbitration Centre, and the China International Economic and Trade

Arbitration Commission, which ranked second, third and fifth, respectively. The 2021 QMUL Survey highlighted a noticeable growth in the percentage of respondents selecting SIAC and the Hong Kong International Arbitration Centre, with SIAC ranking as the most preferred institution in the Asia-Pacific region. This also marks the China International Economic and Trade Arbitration Commission's debut on the list of the top five most preferred arbitral institutions in the world. The results of the 2021 QMUL Survey are supported by the findings of the 2022 Queen Mary University of London and Pinsent Masons Energy Arbitration Survey,<sup>[2]</sup> in which Singapore was named the second most popular seat for international energy arbitration. In particular, the 2022 survey highlighted that Singapore continues to be popular for parties resolving disputes related to the Indian subcontinent.

The steady growth of Asia's arbitration scene reflects the increased willingness of Asian and other international parties to resolve their disputes within the region. It also demonstrates the distinction of the region's seats and institutions, and their strong reputations around the globe. The pro-arbitration stance taken by jurisdictions in the region has greatly enhanced the standing of arbitration at home and beyond, creating a healthy ecosystem that continues to thrive.

## MODEL LAW ON INTERNATIONAL COMMERCIAL ARBITRATION

The United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration (the Model Law) was designed to assist states in reforming and modernising their laws on arbitral procedure to take into account the particular features and needs of international commercial arbitration. This is to achieve uniformity of the laws of arbitral procedures across jurisdictions. The Model Law provides guidelines in its articles 34, 35 and 36 on the setting aside and enforcement of arbitral awards.

Legislation based on the Model Law has been adopted in 74 states, with two Asian states – South Korea and Myanmar – adopting it as recently as 2016. Although there are countries in the region (eg, Indonesia) that have yet to adopt the Model Law, these countries nevertheless typically enact domestic legislation that broadly tracks the Model Law's provisions in relation to enforcement.

## SINGAPORE

Singapore is a Model Law country that has enacted local legislation – the International Arbitration Act (IAA) – to give effect to the Model Law. The principle of minimising judicial interference and a pro-arbitration philosophy strongly influence the Singaporean judicial approach in applying the IAA.

### Time Limits And Fraud

A recent example is *Bloomberry Resorts and Hotels Inc and another v Global Gaming Philippines LLC and another (Bloomberry)*,<sup>[3]</sup> where the Singapore Court of Appeal examined the relationship between article 34(3) of the Model Law and section 24 of the IAA. In *Bloomberry*, the plaintiffs applied to set aside a partial award rendered in a Singapore-seated arbitration governed by the UNCITRAL Arbitration Rules 2010. The partial award on liability was issued on 20 September 2016. In the application to set aside the award, the plaintiffs referred to evidence of fraud or corruption, which they claimed was not discoverable until months after the partial award had been rendered. The plaintiffs' position was that the fraud allegations amounted to procedural fraud, constituting grounds for setting aside and a bar to the enforcement of the partial award. The application to set aside the award had been

commenced out of time (ie, after the expiry of the three-month time limit set forth in article 34(3) of the Model Law) and the permissible time limit to set aside the order granting leave to enforce the partial award in Singapore had also expired.

To overcome the time limit, the plaintiffs sought to argue that, first, the three-month time limit stipulated in article 34(3) of the Model Law ought to be extendable in cases of fraud and especially in cases where the fraud is discovered only after the expiry of the time limit. In this regard, the plaintiffs argued that the phrase 'may not' in article 34(3) should be construed as importing a discretion to extend time.<sup>[4]</sup> Second, the plaintiffs argued that, even if the time limit in article 34(3) was absolute, section 24 of the IAA comprises a separate regime for setting aside and is not subject to the time limit prescribed in article 34(3). This is because section 24 does not set out a time limit and instead provides two additional grounds for setting aside 'notwithstanding Article 34(1) of the Model Law'.<sup>[5]</sup>

The Singapore Court of Appeal disagreed. First, in relation to the time limit in article 34(3) of the Model Law, the Court of Appeal affirmed prior decisions made by the Singapore courts, holding that the clear terms of article 34(3) along with the material relating to the discussions among the drafters of the Model Law showed that there was to be no extension of the time limit even in cases of fraud.<sup>[6]</sup> Second, the Court of Appeal agreed with the finding of the judge that the three-month time limit also applies to section 24 of the IAA.<sup>[7]</sup> In particular, the phrase 'notwithstanding Article 34(1) of the Model Law' did not introduce a distinct remedy unconstrained by the limitations in article 34 – rather, it simply introduced new grounds for setting aside (apart from those set out in article 34) to which the article 34 time limit would similarly apply.<sup>[8]</sup> Parties seeking to set aside an arbitral award must be mindful of this and ensure that any challenges to a Singapore arbitration award are brought promptly and within three months.

### Arbitrability And Applicable Law

The Singapore Court of Appeal in *Anupam Mittal v Westbridge Ventures II Investments Holdings (Anupam Mittal)*<sup>[9]</sup> addressed the previously unanswered question of whether the law of the seat or the law of the arbitration agreement would apply in determining the issue of subject matter arbitrability at the pre-award stage.

The proceedings in *Westbridge Ventures II Investment Holdings v Anupam Mittal (-Westbridge)*<sup>[10]</sup> before the High Court of Singapore concerned a dispute between the shareholders of a company incorporated in India. The arbitration agreement between the shareholders was governed by Indian law, while Singapore was designated the seat of arbitration. The defendant in *Westbridge* commenced court proceedings against the plaintiff in Mumbai, India, alleging minority shareholder oppression and mismanagement. In response, the plaintiff sought an anti-suit injunction in the Singapore courts against the Mumbai proceedings, relying primarily on the arbitration agreement between the parties.

The defendant opposed the injunction on the basis that, under Indian law, disputes relating to minority oppression and mismanagement are non-arbitrable, and it is Indian law (ie, the law of the arbitration agreement) that would apply to determine the arbitrability of the dispute. The plaintiff, on the other hand, argued that the applicable law should be Singapore law as the law of the seat. Unlike in India, it is well established that, in Singapore, minority oppression disputes are arbitrable.

At first instance, the High Court held that the law of the seat (Singapore law) would apply as 'subject matter arbitrability, when raised at the pre-award stage before the seat court, is

essentially an issue of jurisdiction'.<sup>[11]</sup> The High Court consequently granted a permanent injunction against the defendant commencing court proceedings in India.

The Court of Appeal in *Anupam Mittal* upheld the permanent injunction, but disagreed with the High Court's finding in *Westbridge* that the law of the seat should always prevail. The Court of Appeal instead found that the courts should ask:

- first, whether the dispute is arbitrable under the governing law of the arbitration agreement and, if not, the courts should refuse to allow the arbitration to proceed as it would violate international public policy; and
- second, even if the dispute is arbitrable under the governing law, the court must look at Singapore law as the law of the seat and, where the dispute is not arbitrable under Singapore law, the dispute is not arbitrable.

The Court of Appeal opined that there was no express or implied choice of law of the arbitration agreement, such that the law of the seat of arbitration (Singapore law) applied. As the dispute in *Anupam Mittal* was arbitrable under Singapore law, the Court of Appeal found that the injunction had been properly granted. Crucially, the Court of Appeal noted that the definition of 'public policy' in the IAA was not limited to domestic public policy and that disputes should not proceed to arbitration in Singapore if contrary to any foreign public policy that is relevant to the arbitration agreement.

### Preconditions To Arbitration

A party failing to comply with preconditions to arbitration may affect either the jurisdiction of the tribunal to hear the dispute or the admissibility of the dispute. The distinction is significant in the context of a party's recourse to an unfavourable ruling; subject to different national laws, generally only rulings on jurisdiction are subject to appeal and setting aside.

The position in Singapore following the Court of Appeal's ruling in *International Research Corp v Lufthansa Systems Asia Pacific Pte Ltd and another (International Research Corp)*<sup>[12]</sup> is that non-compliance with preconditions to arbitration affect the tribunal's jurisdiction. At first instance,<sup>[13]</sup> the High Court held that, where parties consented to arbitration only on the condition that the parties must first attempt mediation, the tribunal does not have jurisdiction until mediation has been attempted.<sup>[14]</sup> At appeal, the Court of Appeal in *International Research Corp* agreed that, where parties had clearly contracted for a specific set of dispute resolution procedures as preconditions for arbitration, those preconditions must be fulfilled. The Court of Appeal consequently decided that parties had not substantially complied with the preconditions and the tribunal did not have jurisdiction over the dispute.

Other commonwealth jurisdictions have taken a different position. In the United Kingdom, the High Court of England and Wales in *Republic of Sierra Leone v SL Mining*<sup>[15]</sup> found that parties' failure to comply with a mandatory three-month amicable settlement period rendered the tribunal without jurisdiction. The decision in this case was subsequently affirmed in *NWA and another v NVF and others*,<sup>[16]</sup> where the High Court of England and Wales found that the tribunal was best placed to determine the consequences of parties' failure to comply with a mandatory mediation procedure. This favoured a finding that non-compliance was an issue of admissibility as this intention could not be frustrated by a party's refusal to mediate. Similarly, the Hong Kong Court of Appeal in *C v D*<sup>[17]</sup> found that the question as to a party's compliance with the multi-tier dispute resolution clause went to the matter of admissibility as the objection was not that the substantive claim could never

be referred to arbitration, but that the reference to arbitration was premature, such that the objection was directed at the claim and not the tribunal.

The decisions in *Republic of Sierra Leone v SL Mining* and *C v D* cited the recent Singapore cases of *BBA and others v BAZ and another appeal (BBA)*<sup>[18]</sup> and *BTN and another v BTP and another (BTN)*<sup>[19]</sup> as indicative of the Singaporean position that non-compliance with preconditions to arbitration relate to admissibility and not jurisdiction. *BBA* and *BTN* expressly endorsed Jan Paulsson's tribunal versus claim test<sup>[20]</sup> for distinguishing between objections as to jurisdiction and admissibility to find that issues of res judicata and statutory time are decisions in relation to admissibility, not jurisdiction. While neither *BBA* and *BTN* relate to contractual preconditions to arbitration, the Court of Appeal in *BTN* commented in passing that objections relating to compliance with preconditions to arbitration were similarly matters of admissibility.<sup>[21]</sup> Importantly, neither *BBA* nor *BTN* made reference to *International Research Corp*.

Following these recent developments in other commonwealth jurisdictions, it remains to be seen whether *International Research Corp* will be subject to challenge in the future.

### Setting Aside Awards

Under Singapore law, the scope for judicial intervention in arbitration proceedings is narrowly circumscribed. As observed in the Singapore Court of Appeal case of *CAJ and another v CAI and another appeal (CAJ)*,<sup>[22]</sup> over the past 20 years, only approximately 20 per cent of applications to set aside arbitral awards have been allowed,<sup>[23]</sup> which attests to the Singapore courts' commitment to the principle of minimal curial intervention.

However, in exceptional cases, the Singapore courts have exercised their power to set aside arbitral awards. One such case is *CAJ*, where the Court of Appeal partially set aside an arbitral award on the basis that the tribunal had decided on an issue that was not raised by one party until the very last moment, without giving the counterparty an adequate opportunity to respond.

In *CAJ*, the respondent (ie, claimant) had, in the arbitration proceedings, sought liquidated damages from the appellant for a delay in the construction of a polycrystalline silicon plant. After an eight-day oral hearing, the appellant (ie, defendant) raised a previously unargued defence in their written closing submissions. Despite objections from the respondent, the tribunal allowed the defence, substantially reducing the damages payable from the appellant to the respondent.

The respondent subsequently applied to the Singapore courts to set aside the tribunal's decision to allow the defence while maintaining the rest of the award. In allowing the application, the Court of Appeal held that the tribunal had exceeded its jurisdiction by ruling on the defence in spite of the fact that the impugned defence did not feature anywhere except in the appellant's written closing submissions.<sup>[24]</sup> The Court of Appeal held that it should have thus been 'plain and obvious' to the tribunal that, until then, the respondent had no prior notice that it had to deal with the said defence and the defence could not possibly have fallen within the scope of the parties' submission to arbitration.<sup>[25]</sup>

The Court of Appeal also held that there was a breach of natural justice, as the respondent had not been given a fair and reasonable opportunity to respond to the impugned defence. While the appellant had raised some facts and evidence in relation to the defence during the arbitration, given that the defence was not at issue in any meaningful way during the

arbitration, the respondent still could not be considered to have had reasonable notice that it was necessary to engage with the said facts and evidence.<sup>[26]</sup> This materially prejudiced the respondent's rights because, if the respondent had been given the opportunity to lead further evidence, test the appellants' evidence and tender further legal submissions, it could have reasonably made a difference to the tribunal's determination.<sup>[27]</sup>

The case of *Phoenixfin Pte Ltd and others v Convexity Ltd (Phoenixfin)*<sup>[28]</sup> involved an arbitrator who had, earlier on in the arbitration, dismissed the defendant's application to amend its pleadings to introduce a new issue. However, during an oral reply hearing following the evidential hearing, the arbitrator unilaterally considered that the said issue was to be determined as part of the arbitration and set a further hearing on the matter. The plaintiff maintained that, as the issue had not been pleaded, it was not part of the issues to be determined by the arbitrator and refused to produce its witnesses at the further hearing. The arbitrator subsequently dismissed the plaintiff's claim on the basis of its findings on that issue.

In its judgment, the Court of Appeal held that, while pleadings in arbitration proceedings are not determinative in the same way that they might be in court litigation,<sup>[29]</sup> they are important for factual issues or for issues that are a mix of fact and law.<sup>[30]</sup> This is because, for such issues, a party needs to be able to question the evidence produced in support of the issue, as well as have the chance to itself introduce relevant rebuttal evidence. To do this, it is imperative for there to be clarity and precision regarding what issue is being raised and what evidence will be relied on to support it – pleadings, in such situations, would assume a more significant role in determining whether a party has been afforded natural justice during the arbitration proceedings.<sup>[31]</sup>

Accordingly, in *Phoenixfin*, the Court of Appeal held that the arbitrator was not entitled to make a finding on the issue in question, which was a matter of mixed fact and law. This was because the issue had not been pleaded and no evidence on it had been led by the defendants. The plaintiff did not have an opportunity to adequately respond to the defendant's case because no case had ever been established.<sup>[32]</sup>

It is clear from the above cases that the Singapore courts are sensitive to the question of whether the parties to arbitration proceedings have been afforded their right to a fair hearing and will not hesitate to intervene in cases where that right has been denied. Where possible, however, the Singapore courts have continued to take a pro-arbitration approach by remitting the issue back to the arbitral tribunal for it to eliminate the grounds for setting aside. A recent example of this is *CKG v CKH (CKG)*,<sup>[33]</sup> where the Singapore International Commercial Court dealt with an application to set aside an arbitral award on the basis of the tribunal having failed to consider issues submitted to it for determination *infra petita* under article 34(2)(a)(iii) of the Model Law. In his judgment in *CKG*, Jeremy Lionel Cooke J agreed with the applicant that the tribunal had failed to deal with live issues between the parties, which could have affected the applicant's liability or the quantum of damages. In the circumstances, Cooke J agreed that setting aside would be the *prima facie* remedy.<sup>[34]</sup>

However, as observed by Cooke J, under article 34(4) of the Model Law, when asked to set aside an award, the court may (where appropriate and so requested by a party) suspend the setting-aside proceedings for a time to give the tribunal an opportunity to take such action as would eliminate the grounds for setting aside.<sup>[35]</sup> In this regard, Cooke J was of the view that the main question in *CKG* was whether the original tribunal could approach the matter, which it failed to decide, in a balanced and open-minded way.<sup>[36]</sup>

This question was eventually answered in the affirmative.<sup>[37]</sup> A few reasons were raised for this. First, Cooke LJ was persuaded by the distinction of the tribunal, stating that he considered 'that this Tribunal should be capable of recognising its omission'<sup>[38]</sup> and would be capable of approaching the issues it had missed in an open-minded manner, instead of simply affirming its original decision. Second, Cooke LJ found that setting aside the award would create more difficulties, in that a differently constituted tribunal would have to essentially rehear the entire matter instead of simply deciding on the discrete issues that had inadvertently been left out by the original tribunal.<sup>[39]</sup> In sum, given that the original tribunal was able to do justice between the parties, Cooke LJ considered that it was sufficient to suspend the setting-aside proceedings and remit the award to the original tribunal to eliminate the grounds for setting aside.

### Stay Of Proceedings

A further case of particular interest to emerge from the Singapore courts in the past year was the Court of Appeal's decision in *The 'Navios Koyo' (Navios Koyo)*,<sup>[40]</sup> in which the Singapore Court of Appeal set out the circumstances under which it would exercise its discretion under section 6(2) of the IAA to impose conditions on a stay of proceedings in favour of arbitration. In *Navios Koyo*, the condition that the applicant sought to impose was a waiver of an accrued defence of time bar.

After surveying the relevant jurisprudence on the matter, the Court of Appeal was of the view that the exercise of its discretion to impose a condition depended on the true nature of the condition sought, in the context of the relevant circumstances.<sup>[41]</sup> In this regard, the condition that the applicant sought to impose (ie, the waiver of the defence of time bar) was markedly different from the usual administrative conditions, such as imposing a timeline to commence arbitration. Such conditions were essentially orders consequent upon the stay order and sought to give effect to the arbitration agreement. They did not purport to decide any substantive issue, which was rightly reserved to arbitration. By contrast, the question of whether a party is entitled to rely on a time bar is typically an issue that rightly should be determined in arbitration. The nature of the condition sought in *Navios Koyo* was, therefore, significant.<sup>[42]</sup>

That said, the Court of Appeal clarified that it would not go so far as to suggest that all conditions sought that do not solely facilitate or give effect to the arbitration agreement are necessarily impermissible, and regard will be had to all surrounding facts and circumstances. However, conditions that do not merely facilitate or seek to give effect to the arbitration agreement will be subject to a heightened level of scrutiny and the threshold for such conditions to be granted may be said to be considerably higher than that applicable for essentially administrative conditions.<sup>[43]</sup>

The Court of Appeal emphasised that the exercise of its discretion would largely entail a consideration of whether the party seeking the stay is able to put forward a proper justification for the imposition of the condition.<sup>[44]</sup> In determining whether such a justification is established, the relevant court would have regard to:

- the reasons for the conditions being sought and whether those reasons could have been obviated by the applicant's own conduct;
- whether the need for any of the conditions was contributed to or caused by the conduct of the respondent; and

- the substantive effect on the parties of any condition that the court may impose.<sup>[45]</sup>

The first two considerations focus on the conduct of each party, which should be assessed as a matter of sound commercial practice.<sup>[46]</sup> A party seeking a condition would not be allowed to do so if the reasons for the condition being sought arose entirely from its own conduct and the other party did nothing to cause or contribute to the need for the stay or the imposition of the condition.<sup>[47]</sup> The third consideration looks at the substance of the condition sought. In this regard, the Court of Appeal was of the view in *Navios Koyo* that being asked to deprive a party of a substantive and accrued defence that ought properly to be determined in arbitration (ie, a time bar) was a very strong factor against the imposition of the condition.<sup>[48]</sup> Ultimately, applying the above considerations to the facts of *Navios Koyo*, the Court of Appeal decided that it had no legal basis to impose the condition because, inter alia, the applicant had known from the outset that there was an arbitration clause that would govern the dispute. Despite this, the applicant had sat on its hands for almost a year, taking a risk that it could have been inferred to have elected to accept.<sup>[49]</sup>

### Enforcement

In terms of enforcement, recent jurisprudence has continued to demonstrate the Singapore courts' commitment to facilitating the enforcement of arbitral awards whenever possible. In *National Oilwell Varco Norway AS (formerly known as Hydralift AS) v Keppel FELS Ltd (formerly known as Far East Livingston Shipbuilding Ltd) (NOV)*,<sup>[50]</sup> the Singapore Court of Appeal dealt with a novel issue concerning a purported misnomer. Under section 19 of the IAA, the Singapore courts are empowered to enforce an award 'in the same manner as a judgment or an order to the same effect' and to enter a judgment against the debtor only 'in terms of the award'. The process that is entailed in this regard has been described as 'mechanical' in nature in that, when enforcing an award, the court may only do so on terms that implement the award and the award can only be enforced against a losing party in the arbitration.<sup>[51]</sup>

The appellant in *NOV* sought to enforce an award that was issued not in its name but in the name of a company that no longer existed: A/S Hydralift. Following two mergers as part of a corporate restructuring exercise, the appellant, a Norwegian company, assumed all the assets, rights, obligations and liabilities of Hydralift.<sup>[52]</sup> When the respondent commenced an arbitration against Hydralift, the appellant appeared, defended the claim and succeeded in its counterclaim in arbitration. The appellant did all this purporting to be Hydralift and it never disclosed the fact that the mergers had occurred or that Hydralift no longer existed.<sup>[53]</sup>

In the initial proceedings, the respondent had argued that, because the award was rendered in favour of Hydralift – a different entity that had ceased to exist even before the commencement of the arbitration – the appellant should not be permitted to enforce the award. The court agreed with the respondent, holding that the tribunal intended to and did issue the award in favour of Hydralift and not the appellant. Applying section 19 of the IAA and applying the mechanical approach to enforcement, the court would not be enforcing the award in the same manner as a judgment to the same effect if it were to allow the enforcement application.<sup>[54]</sup> Further, the court found that the use of Hydralift was not a mere misnomer because both parties had objectively intended to use Hydralift's name to refer only to Hydralift and not to the appellant. Thus, the arbitration and the award were null from the outset. In any event, a misnomer could only be corrected by taking the appropriate steps in the arbitration and this had not been done.<sup>[55]</sup>

The Court of Appeal in *NOV* disagreed, holding that the judge had erred in not appreciating that the effect of the mergers under Norwegian law is that the appellant is, for all intents and purposes, the same legal entity as Hydralift.<sup>[56]</sup> Therefore, although Hydralift ceased to exist as a separate entity thereafter, its legal personality continued to survive and was subsumed by that of the appellant<sup>[57]</sup> and the situation was that of a true misnomer. In the Court of Appeal's view, the power to enforce an arbitral award in a misnomer situation would not be inconsistent with the mechanical approach to enforcement,<sup>[58]</sup> opining that the Singapore courts generally endeavour 'to facilitate the enforcement of arbitral awards' and an 'unduly rigid approach towards enforcement would be antithetical to this aim'.<sup>[59]</sup> True slips and changes of name can thus be accommodated within the mechanical approach to enforcement.

In the context of emergency arbitrations, in 2012, the Singapore courts amended the IAA to include 'emergency arbitrator' within the definition of 'arbitral tribunal' in section 2(1). As a similar amendment was not made to the definition of 'foreign awards' in Part 3, there was initially a query as to the enforceability of foreign emergency arbitration awards. This question was resolved in *CVG v CVH (CVG)*,<sup>[60]</sup> in which the High Court of Singapore ruled that emergency awards issued by foreign tribunals fell within the definition of a 'foreign award' in

section 27 and were thus enforceable under section 29.<sup>[61]</sup> On the facts of *CVG*, however, the emergency award was not enforced due to a breach of natural justice in the process of obtaining the award. The High Court found that the defendant in *CVG* had not been given the opportunity to rebut a new case that the claimant had set out for the first time in its closing submissions.

### State Immunity

As the arbitration scene in Singapore continues to mature, an increasing number of high-profile investor-state disputes have also been adjudicated in the country. In March 2022, there was a novel ruling on the applicability of section 14(2) of the State Immunity Act 1979 to a leave order under section 29 of the IAA to enforce an arbitral award in Singapore against a foreign state. The question in *CNX v CNY (CNX)*<sup>[62]</sup> was as follows: where an award creditor is granted such leave to enforce an arbitral award in Singapore against a foreign state, how much time does the foreign state have, following service of the leave order on it, to take the steps necessary to challenge the order?<sup>[63]</sup> Specifically, would section 14(2) of the State Immunity Act 1979, which provides that any 'time for entering an appearance (whether prescribed by Rules of Court or otherwise) shall begin to run [two] months after the date on which the writ or document is so received', apply to an application to set aside a leave order?

In *CNX*, the plaintiff had obtained a leave order stating that the defendant state could apply to set aside the order 'within 21 days' of service of the order. The defendant state argued that, once the leave order was served on the defendant in accordance with section 14(1) of the State Immunity Act 1979, section 14(2) of the Act would then apply to govern the time that the defendant had to apply to set aside the leave order.<sup>[64]</sup> The plaintiff, on the other hand, took the position that section 14(2) would not apply to an application to set aside the leave order because, inter alia, a state would not require as much time to react to enforcement proceedings compared to fresh claims against it, since it would be aware of the disputes and arbitral proceedings giving rise to the arbitral award, particularly in instances where the state had actively and fully participated in the underlying arbitration.<sup>[65]</sup>

The High Court of Singapore disagreed with the plaintiff, holding that a purposive interpretation of section 14(1) of the State Immunity Act 1979 shows that it does indeed apply to the time that a defendant state has to set aside a leave order. In this regard, apart from the plain words of the Act, the High Court was also of the view that, while the enforcement of an arbitral award may not take a respondent state by surprise, different considerations would come into play when a state is faced with the potential enforcement of the award in a particular jurisdiction compared to the considerations at play in the underlying arbitral proceedings. The High Court firmly disagreed that the defendant should be deprived of its entitlement to the additional time allowed under section 14(2) simply because it had participated in arbitration.<sup>[66]</sup> In the circumstances in **CNX**, the High Court held that, where a leave order is served on a state and the leave order provides for a time limit for the state to challenge the enforcement of the order, such a time limit would only begin to run two months after the date of service of the order.<sup>[67]</sup>

### Legislation

On the legislative front, the Parliament of Singapore has passed the Legal Profession (Amendment) Act 2022 (LPAA), which will permit lawyers and their clients to enter into conditional fee agreements (CFAs) for certain types of contentious proceedings. CFAs have traditionally been disallowed in Singapore due to concerns about champerty and conflicts of interest between lawyers and their clients. However, following positive feedback during a public consultation in August 2019,<sup>[68]</sup> CFAs will now be allowed for, inter alia, domestic and international arbitration.<sup>[69]</sup>

The LPAA defines a CFA as an agreement between lawyers and their clients relating to the whole or any part of the remuneration and costs in respect of contentious proceedings, to be payable only in circumstances specified in the agreement (eg, the success of the client's claim).<sup>[70]</sup> A CFA may provide for an uplift fee, which is a fee that is payable in specified circumstances that is higher than the costs that would otherwise be payable if there were no CFA.<sup>[71]</sup> However, the CFA must not provide for the remuneration or costs to be payable as a percentage or proportion of the amount of damages or other amounts awarded to the client in the proceedings – in other words, agreements where the lawyer is paid fees based on a percentage of the financial benefit awarded in a claim are still prohibited in Singapore.

With the introduction of CFAs for arbitration, Singapore joins international dispute resolution hubs – such as London, United Kingdom; New York, United States; and Geneva, Switzerland – that have long allowed such outcome-related fee structures. This is a welcome development that cements Singapore's position as a pre-eminent arbitration destination in Asia.

## DEVELOPMENTS IN THE ASIA-PACIFIC REGION

### China

China seems set on lifting its long-standing prohibition on ad hoc arbitrations. On 30 July 2021, the Ministry of Justice issued, for public consultation, the Arbitration Law of the People's Republic of China (Amended Version) (Draft for Comments),<sup>[72]</sup> which sets out a basic framework of rules for ad hoc arbitrations. At present, this legislation limits ad hoc arbitrations to disputes that have 'foreign-related elements', which has been defined to mean disputes where:

- at least one party concerned is a foreign citizen, legal person or organisation in a foreign jurisdiction;

- the habitual residence of at least one party to the arbitration is outside the territory of China;
- the subject matter is outside the territory of China; or
- the legal facts that establish, change or eliminate the civil relations between the parties took place outside the territory of China.

For the purpose of determining whether a dispute has a foreign element, Hong Kong, Macau and Taiwan, which are politically considered part of China, shall be treated as foreign territories. The proposed introduction of ad hoc arbitration in China is likely to have a significant impact on the growth of the Chinese arbitration scene, and is good news for arbitration practitioners and those looking to arbitrate in China.

### Cambodia

Arbitral institutions in the Asia-Pacific region have also revamped their rules to better address the needs of commercial parties. On 28 March 2021, the National Commercial Arbitration Centre of Cambodia (NCAC) introduced new arbitration rules (the 2021 NCAC Rules) that incorporate a number of significant amendments, including a new expedited procedure and provisions for the appointment of an emergency arbitrator.<sup>[73]</sup>

The expedited procedure, provided for under article 9 of the 2021 NCAC Rules, is a cost-saving procedure for disputes involving small claims. Parties may file an application to implement the expedited procedure under three circumstances:

- the sum of the dispute does not exceed the amount of US\$3 million representing the aggregate value of the claim, counterclaim and any set-off defence;
- the parties so agree; or
- in cases of exceptional urgency.

If the application is approved, the NCAC's General Secretariat may shorten the time limit for the proceedings and the final award shall be made within 270 calendar days of the date on which the tribunal is constituted.

Further, a party that wishes to obtain emergency interim measures may file an application with the NCAC's General Secretariat for such measures to be issued by an emergency arbitrator. The costs of the application will have to be borne by the applicant, and include application fees, emergency arbitrator fees and expenses for the proceedings. Within three days of receipt of the application and the applicant's payment of the application fees, the Appointment and Proceeding Committee will appoint an emergency arbitrator. The emergency arbitrator is to issue an interim order or award within 15 days of the date of his or her appointment, unless the NCAC's General Secretariat extends the time limit in exceptional circumstances.

### Malaysia

In Malaysia, The Asian International Arbitration Centre (AIAC) introduced new rules (the 2021 AIAC Rules) that took effect in Malaysia on 1 August 2021.<sup>[74]</sup> Similar to the 2021 NCAC Rules, the 2021 AIAC Rules provide for a new fast-track procedure in three situations:

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the amount of the dispute does not exceed US\$500,000 for an international arbitration or 2 million ringgit for domestic arbitration parties;

- the parties so agree; or
- in cases of exceptional urgency.

An arbitration under the fast-track procedure must be determined by a sole arbitrator (unless otherwise agreed by the parties) and must proceed as a documents-only arbitration. Shorter and stricter timelines are prescribed under the fast-track procedure and such timelines will supersede any prescribed in the arbitration agreement. The 2021 AIAC Rules have also been consolidated with the UNCITRAL Arbitration Rules 2013, removing the need to read the two sets of arbitration rules together. This consolidation aligns the AIAC's rules with international standards, ensuring greater efficiency and a more user-friendly structure.

## India

Finally, in India, the 2021 amendments to the Arbitration and Conciliation Act 1996 (ACA) have caused some apprehension among arbitration practitioners.<sup>[75]</sup> On 10 March 2021, the Parliament of India passed the Arbitration and Conciliation (Amendment) Act 2021,<sup>[76]</sup> which, among other things, empowers the Indian courts to 'stay the [enforcement of an] award unconditionally' where the court is prima facie satisfied that the arbitration agreement or underlying contract or the making of the award was induced or effected by fraud or corruption. There is understandable concern that this amendment may increase the risk of defendants making unmeritorious claims of fraud and dragging their cases into court, undermining India's arbitration regime.

*The Project Director, NH No. 45E and 220, NHAI v M Hakeem & Anr (Project)*<sup>[77]</sup> concerned the Indian courts' power to modify arbitral awards. For context, before *Project*, several setting-aside applications before the Indian courts had resulted in a modification or a concession to the losing side in arbitration. In regard to this phenomenon, the Supreme Court of India in *Project* clarified that, while the ACA does not provide Indian courts with the power to modify arbitral awards, the Supreme Court may make modifications to an award pursuant to its constitutional power to do 'complete justice' under article 142 of the Constitution of India. Although this ruling is welcome in that it specifies the precise source of the Indian courts' discretion, the dismissal of the ACA is little comfort in the face of the Supreme Court's confirmation of its broad discretionary power under the Constitution of India.

That said, the Indian courts have generally taken a decidedly pro-arbitration approach in recent judgments. In *PASL Wind Solutions Private Limited v GE Power Conversion (PASL)*,<sup>[78]</sup> the Supreme Court ruled that there was nothing in the ACA precluding Indian parties from arbitrating in a foreign seat. *PASL* involved two Indian parties that had agreed to arbitrate a dispute in Zurich, Switzerland. At arbitration, all the plaintiff's claims were dismissed, and the defendant was awarded the costs of the arbitration along with interest thereon.

The defendant applied for enforcement of the award as a foreign award under Part II of the ACA. In challenging the award, the plaintiff argued, inter alia, that:

- first, the award should be treated as a domestic award because the dispute involved two Indian parties; and
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second, the designation of a foreign seat was contrary to Indian public policy as it would essentially allow parties to contract out of Indian law where it would otherwise apply.

Accordingly, the defendant argued that the arbitration and the resultant award in *PASL* should be declared impermissible.<sup>[79]</sup>

The Supreme Court rejected both arguments. First, it held that, based on a proper reading of the applicable law, the mere fact that both parties to the arbitration were Indian entities would not make an award given in a foreign-seated arbitration a domestic award. Such an award would be considered a foreign award enforceable by the Indian courts.<sup>[80]</sup> Second, the Supreme Court held that the designation of a foreign seat for arbitration is not contrary to Indian public policy, as:

“there is no clear and undeniable harm caused to the public in permitting two Indian nationals to avail of a challenge procedure of a foreign country [sic] when, after a foreign award passes muster under that procedure, its enforcement can be resisted in India.”<sup>[81]</sup>

In concluding that Indian parties may choose a foreign seat of arbitration, the Supreme Court also stressed the importance of freedom of contract and party autonomy, opining that the latter is ‘the brooding and guiding spirit of arbitration’.<sup>[82]</sup>

Finally, in *Amazon.com NV Investment Holdings Inc v Future Retail Ltd*,<sup>[83]</sup> the Supreme Court held that an India-seated award rendered by an emergency arbitral tribunal appointed by the SIAC is enforceable. The Supreme Court was of the view that the term ‘arbitral tribunal’ in section 17 of the ACA (which provides for the enforcement of awards by tribunals seated in India) includes an emergency arbitrator and, therefore, any awards by such an arbitrator could be deemed an order of the Indian courts and enforceable as such.

It is important to mention, however, that while the award in this case was issued by a tribunal appointed by the SIAC, the arbitration itself was seated in India. Therefore, it still remains to be seen whether awards rendered in foreign-seated emergency arbitration proceedings may be enforced in India. Nevertheless, this clear pronouncement of the law will aid in ensuring the protection of arbitral processes and is likely to strengthen the position of arbitration in India as the dispute resolution mechanism of choice.

## CONCLUSION

The trend in the Asia-Pacific region is one that generally continues to converge in favour of arbitration. Alongside the growing number of arbitrations in the region, governments and courts alike have taken a firmly pro-arbitration approach, paving the way for increased adoption of arbitration as a means of dispute resolution. Arbitration institutions across the region have also refined their rules to better cater to commercial parties. While there have been some issues along the way, these are likely to be growing pains, and it is hoped that the arbitration scene will continue to go from strength to strength in the years to come.

*\*The authors would like to thank Sandi Tun for her assistance in the preparation of this article.*

*\*\*The information contained in this chapter was accurate as at April 2023.*

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Endnotes

- <sup>[1]</sup> The 2021 QMUL Survey is available on Queen Mary University of London's website.
- <sup>[2]</sup> The 2022 Queen Mary University of London and Pinsent Masons Energy Arbitration Survey is available on Queen Mary University of London's website.
- <sup>[3]</sup> [2021] SGCA 9.
- <sup>[4]</sup> Bloomberry at [32].
- <sup>[5]</sup> Bloomberry at [32].
- <sup>[6]</sup> Bloomberry at [81] and [89].
- <sup>[7]</sup> Bloomberry at [91].
- <sup>[8]</sup> Bloomberry at [95].
- <sup>[9]</sup> [2023] SGCA 1.
- <sup>[10]</sup> [2021] SGHC 244.
- <sup>[11]</sup> Westbridge at [23(a)].
- <sup>[12]</sup> [2014] 1 SLR 130.
- <sup>[13]</sup> See *International Research Corp v Lufthansa Systems Asia Pacific Pte Ltd and another* [2013] 1 SLR 973.
- <sup>[14]</sup> *International Research Corp* at [103].
- <sup>[15]</sup> [2021] EWHC 286.
- <sup>[16]</sup> [2021] EWHC 2666.
- <sup>[17]</sup> [2022] 3 HKLRD 116.
- <sup>[18]</sup> [2020] 2 SLR 453.
- <sup>[19]</sup> [2021] 1 SLR 276.
- <sup>[20]</sup> Jan Paulsson, 'Jurisdiction and Admissibility', *Global Reflections on International Law, Commerce and Dispute Resolution* (Gerald Asken et al, eds) (ICC Publishing, 2005). The distinction set forth by Paulsson between matters of jurisdiction and admissibility, which has been termed the 'tribunal versus claim' test, provides that, where the tribunal refuses to hear the claim because it could not be brought to the particular forum seized, the issue is ordinarily one of jurisdiction and subject to further recourse. However, where the tribunal refuses to hear the claim because it should not be heard at all (or at least not yet), the issue is ordinarily one of admissibility and the tribunal's decision is final.
- <sup>[21]</sup> *BTN* at [70].
- <sup>[22]</sup> [2021] SGCA 102.
- <sup>[23]</sup> *CAJ* at [2].
- <sup>[24]</sup> *CAJ* at [52].
- <sup>[25]</sup> *CAJ* at [52].
- <sup>[26]</sup> *CAJ* at [54].

- [27] CAJ at [54].
- [28] [2022] SGCA 17.
- [29] Phoenixfin at [50].
- [30] Phoenixfin at [52].
- [31] Phoenixfin at [52].
- [32] Phoenixfin at [64].
- [33] [2021] SGHC(I) 5.
- [34] CKG at [61].
- [35] CKG at [65].
- [36] CKG at [67].
- [37] CKG at [69].
- [38] CKG at [69].
- [39] CKG at [70].
- [40] [2021] SGCA 99.
- [41] Navios Koyo at [26].
- [42] Navios Koyo at [27].
- [43] Navios Koyo at [29].
- [44] Navios Koyo at [30].
- [45] Navios Koyo at [30].
- [46] Navios Koyo at [31].
- [47] Navios Koyo at [31].
- [48] Navios Koyo at [32].
- [49] Navios Koyo at [34].
- [50] [2022] SGCA 24.
- [51] NOV at [2].
- [52] NOV at [3].
- [53] NOV at [3].
- [54] NOV at [17(a)].
- [55] NOV at [17(b)].
- [56] NOV at [6].
- [57] NOV at [53].
- [58] NOV at [76].

<sup>[59]</sup> NOV at [95].

<sup>[60]</sup> [2022] SGHC 249.

<sup>[61]</sup> CVG at [35].

<sup>[62]</sup> [2022] SGHC 53.

<sup>[63]</sup> CNX at [1].

<sup>[64]</sup> CNX at [12].

<sup>[65]</sup> CNX at [31].

<sup>[66]</sup> CNX at [31].

<sup>[67]</sup> CNX at [52].

<sup>[68]</sup> The paper on the CFA public consultation is available on the Singaporean Ministry of Law's website.

<sup>[69]</sup> The second reading speech on the LPAA is available on the Singaporean Ministry of Law's website.

<sup>[70]</sup> Section 115A of the LPAA defines a CFA as: 'an agreement relating to the whole or any part of the remuneration and costs in respect of contentious proceedings (whether relating to proceedings in Singapore or any state or territory outside Singapore) conducted by a solicitor, a foreign lawyer or a law practice entity, which provides for the remuneration and costs or any part of them to be payable only in specified circumstances, and may provide for an uplift fee.'

<sup>[71]</sup> Section 115A of the LPAA defines an uplift fee as: 'the remuneration or costs which the agreement provides are payable in specified circumstances which are higher than the remuneration or costs that would otherwise be payable if there were no conditional fee agreement.'

<sup>[72]</sup> Yu Zheng, 'Draft Law Potentially Lifts Prohibition on Ad Hoc Arbitrations in China', Rajah & Tann Asia Arbitration Asia, February 2022.

<sup>[73]</sup> Heng Chhay, 'Expedited Procedure, Emergency Arbitrators: New NCAC Rules 2021', Rajah & Tann Asia Arbitration Asia, April 2022.

<sup>[74]</sup> Han Li Meng, 'What You Need to Know about the AIAC Arbitration Rules 2021', Rajah & Tann Asia Arbitration Asia, February 2022.

<sup>[75]</sup> Ashish Dholakia, Ketan Gaur and Kaustub Narendran, 'India's Arbitration And Conciliation (Amendment) Act, 2021: A Wolf In Sheep's Clothing?', Kluwer Arbitration Blog, 23 May 2021.

<sup>[76]</sup> The Arbitration and Conciliation (Amendment) Act 2021 is available on the Gazette of India's website.

<sup>[77]</sup> SLP (C) No. 13020/2020.

<sup>[78]</sup> Civil Appeal No. 1647 of 2021.

<sup>[79]</sup> PASL at [4.1].

<sup>[80]</sup> PASL at [12]–[13].

<sup>[81]</sup> PASL at [59].

<sup>[82]</sup> PASL at [60].

<sup>[83]</sup> Civil Appeal Nos. 4492–4493 of 2021.

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