

RECENT DEVELOPMENTS IN SINGAPORE ON INTERNATIONAL COMMERCIAL ARBITRATION

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The Singapore dispute resolution landscape entered the new millennium with the reconstruction of the dual carriageway for arbitration. In 2002, the old road to arbitral resolution of disputes (*i.e.*, the old *Arbitration Act* and the old *International Arbitration Act*) were reconstructed and what emerged were two updated pieces of legislation: the *Arbitration Act* and the *International Arbitration Act*. At about the same time, the Singapore International Arbitration Centre (SIAC) also diversified with the introduction of a new set of Domestic Arbitration Rules in 2001 to complement its previously singular set of Arbitration Rules of 1991, which were formulated mainly for the conduct of international arbitration. Where the legislative architects and the executive planners had gone, judicial lawmakers soon followed suit. By 2002, the Singapore judiciary had about ten years of experience in the introduction of alternative dispute resolution (ADR) mechanisms into the Singapore legal system.¹ It was no surprise that it would embrace arbitration as a viable alternative to litigation. As arbitral issues exponentially arose with greater frequency in the courts, so did court resources allocated to the development of Singapore's own body of arbitration law. This report is the first in a series of yearly updates that will follow the developments in arbitration law in Singapore. As much has already been written on the effects of the new legislation and the institutional rules,² the focus of this first review will be on the significant judicial decisions in the years after the Acts were introduced (*i.e.*, 2003-2004). In subsequent installments, any legislative amendments and institutional changes will be fully considered together with continual common law developments.

I. INTRODUCTION

A. *The Holistic Approach and Triumvirate Support for Arbitration*

1. *The first pillar: Government policy and legislation*

In 2002, Singapore reconstructed its dual-track arbitration law and system into a highway for domestic and international arbitral disputes. In the new millennium, in line with its policy of diversification, the Singapore government has looked beyond the goals of achieving transportation, finance and technology hub status, by accelerating its efforts in developing Singapore as a trade, education, and private dispute resolution centre as well. The

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¹ See Asanthi Mendis, Marvin Bay & Shobha G. Nair, "The Integration of Alternative Dispute Resolution within the Subordinate Courts' Adjudication Process" (2004) 16 *Sing. Ac. L.J.* 501.

² See Lawrence Boo, *The Law and Practice of Arbitration in Singapore* (Workshop IV Paper III) (Singapore: ASEAN Law Association, December 2003).

groundwork was laid a decade ago when the government fostered the establishment of the Singapore International Arbitration Centre (SIAC) in July 1991 followed by the enactment of the *International Arbitration Act*³ in 1994, which incorporated the UNCITRAL Model Law on Commercial Arbitration.⁴ In 2002, the dual-track approach was revamped with the coming into force of the new *Arbitration Act*⁵ (AA) (replacing the old *Arbitration Act*⁶) and an amended *International Arbitration Act*⁷ (IAA).

Those moves were part of a conscious effort by the Singapore government to promote the use of arbitration to resolve domestic disputes, as well as to promote Singapore as a forum or seat of arbitration for the resolution of international disputes by local and foreign parties involved in international, and largely commercial, transactions. The government also led by example, accepting or incorporating arbitration clauses into some of its own international, regional and bilateral agreements and domestic contracts.

2. *The second pillar: Executive and institutional support*

The SIAC was set up as Singapore's answer to other well-known arbitral institutions, such as the International Court of Arbitration in Paris set up by the International Chamber of Commerce (ICC), the London Court of International Arbitration (LCIA) and the American Arbitration Association (AAA), to name but a few. Its purpose is to promote arbitration as a viable alternative to litigation and to attract foreign "arbitrants" to Singapore. As with the above-mentioned institutions, the SIAC provides a full range of services and facilities for both international and domestic arbitration for a fee, including administrative and logistical support as well as depository services. It is also the statutory appointing authority for arbitrators under the IAA, and maintains a panel of accredited arbitrators from around the world from which appointments can be made. Last but not least, the SIAC administers the cases before it under its own Rules of Arbitration while not confining itself to administering arbitrations only under those Rules.

3. *The third pillar: The judiciary and developments in case law*

The courts have since followed suit in placing importance on, and encouraging the development of the law and rules for the arbitral process. It is a sign of how important arbitration law and practice has become to the Singapore system of dispute resolution that three High Court Justices were specially appointed to oversee the development of Singapore's case law jurisprudence in the field of arbitration. On 1 November 2004, Chief Justice Yong Pung How appointed Justice Belinda Ang and Justice V. K. Rajah to join Justice Judith Prakash (appointed earlier on 7 April 2003) to hear arbitration matters brought before the High Court. They will hear all High Court applications arising from arbitration proceedings made under the AA and the IAA.

This was a move in anticipation of the increase in such applications relating to, amongst others, evidential discovery, jurisdiction of an arbitration tribunal, challenges to arbitrator appointments, and the enforcement of arbitral awards. The media release explicitly noted that the appointments were made with the intention of creating a group of judges in the High Court with a depth of expertise and experience in arbitration matters, to enable the High Court to hear the increasing volume of arbitration matters quickly and efficiently, and

³ Cap. 143A, 1994 Sing.

⁴ Adopted by the United Nations Commission on International Trade Law on 21 June 1985 as United Nations document A/40/17, Annex I.

⁵ Cap. 10, 2002 Rev. Ed. Sing.

⁶ Cap. 10, 1985 Rev. Ed. Sing.

⁷ Cap. 143A, 2002 Rev. Ed. Sing.

more significantly, with a view to supporting Singapore's efforts in promoting herself as the location of choice for commercial arbitration in the Asia-Pacific region and beyond.

B. *The Arbitration Souffle: It Rises and Rises*

Concomitant with that move, disputes containing arbitration issues continue to arise in the courts with greater frequency, particularly those relating to jurisdictional challenges to the tribunal, the removal of arbitrators and the setting aside of awards. From this pool of cases, there recently arose some illuminating decisions on Singapore's stance on certain issues of interest. These include matters relating to confidentiality in arbitration (which has not been consistently applied around the world) and whether an ambiguous reference to a set of arbitral rules in a contract can lead to the incorporation of a subsequent set of rules (and when it is appropriate to do so). Generally, where there is already jurisprudence in English law, our courts appear, both in form and spirit, to toe the line with the English decisions.

Notably and unsurprisingly, in terms of context, we see that the bulk of arbitral issues brought before the courts involved construction and commercial disputes.

As already noted, there are the usual cases on issues relating to applicable law,⁸ stay of court proceedings for arbitration,⁹ jurisdiction of the tribunal, scope, coverage, reach, and incorporation by reference of arbitration clauses,¹⁰ challenges of arbitrator,¹¹ interim

⁸ See *Jurong Engineering Ltd. v. Black and Veatch Singapore Pte. Ltd.* [2004] 1 Sing.L.R. 333 and the appeal in *Black and Veatch Singapore Pte. Ltd. v. Jurong Engineering Ltd.* [2004] 4 Sing.L.R. 19 (examined in greater detail below).

⁹ E.g., in *The Body Shop (Singapore) Pte. Ltd. v. Winmax Investment Pte. Ltd. and Another (Obayashi Corporation and Others, Third Parties)* [2004] SGDC 73, the respondent argued against a stay of the court proceedings under s. 6 of the AA on two bases; first, that the appellant had taken a step in proceedings and was no longer entitled to a stay, and second, that a stay would give rise to undesirable multiplicity of actions (which would be good enough reason or sufficient cause within the meaning of s. 6(2)(a) of the Act for the judge to exercise her discretion against granting a stay). The judge was persuaded to exercise her discretion.

¹⁰ E.g., in *Chin Leong Construction Systems Pte. Ltd. (formerly known as Chin Leong Construction Pte. Ltd.) v. Kin Lin Builders Pte. Ltd.* [2004] SGDC 143, the District Court judge had to consider, on the facts, whether an arbitration clause under a main construction contract was incorporated by reference into a sub-contract. She examined the authorities presented by the parties and summarised the rule as being a question of construction of the contract. She found that the parties did indeed have the intention to incorporate under the facts of the case as the incorporation was sufficiently specific, and the parties' intention to incorporate was clear. On the separate question of the grant of a stay in favour of arbitration, the judge held that once the arbitration clause is proven, the burden of proof fell on the opposing party to show cause against allowing a stay. In exercising its discretion, the court followed the approach of the court in *Kwan Im Tong Chinese Temple v. Fong Choon Hung Construction Pte. Ltd.* [1998] 2 Sing.L.R. 137, by assessing, in a holistic manner, whether there was a dispute before concluding that there indeed was one.

¹¹ E.g., in *Anwar Siraj and Another v. Ting Kang Chung and Another* [2003] 2 Sing.L.R. 287, Tay Yong Kwang J. dealt with an application for the removal of an arbitrator from a construction arbitration on a plethora of grounds including lack of diligence, incompetence, inexperience and bias. The statutory bases for the challenge were "misconduct" and a failure of "reasonable despatch" under ss. 17 and 18 of the old AA. Although the bases are worded differently under ss. 14 and 16 of the new AA and Arts. 12 and 14 of the Model Law applicable through the IAA (which uses the test of, *inter alia*, "justifiable doubts as to [an arbitrator's] impartiality or independence" as well as failure to "properly conduct the proceedings"/"perform his functions" or to "use all reasonable despatch"/"act without undue delay"), the general considerations are still instructive as to the treatment judges will give to such challenges and the factors that they will consider. The judge held that "misconduct" occurs where there is a mishandling of the arbitration amounting to "substantial miscarriage of justice" (notably made a precondition under s. 16 of the new AA under the modified phrase—"substantial injustice"). That is a question of fact and degree depending upon the circumstances of the case, and to be determined by the application of an objective reasonable person test to determine the "real likelihood" of injustice. A subjective perception, an erroneous finding of law or fact, or procedural errors, does not amount to misconduct *per se* [*ibid.* at para. 40-41 & 43]. As for "reasonable despatch", it is also a question of fact and degree [*ibid.* at para. 45]. Following the general trend, the judge emphasised that "the Court's supervisory role is to be exercised with a light hand" and the arbitrator remains the master of his own procedure and has

measures,¹² setting aside of awards, and even appeals on questions of law.¹³ Only those which contain new jurisprudence, particularly those addressing novel issues, and which will be of particular legal interest, will be considered in greater detail below.

C. *Relevance of Singapore Case Law to International and Domestic Arbitrations*

It is in the nature of arbitration that the parties' agreement largely determines the law (and the rules) applicable to the agreement and to the proceedings. Arbitrations are not held in a vacuum and where a *situs* is chosen, as is usually the case, the laws of the *lex arbitri*, be it in the form of codes or statutes and case law, will determine how such arbitrations and its related issues should be treated. Parties who choose to hold their arbitration proceedings in Singapore subject those proceedings to its laws unless they expressly select the laws of another country, which is rare.

As Singapore has a dual-track approach to arbitration, domestic and international,¹⁴ it is important for potential "arbitrants" to know which statutory regime is applicable,¹⁵ and what the laws mean to their agreement, for the arbitral proceedings, and to the award which follows. Thus, it is no less important for, say, a French, Moroccan or Korean party to know what Singapore arbitration law means to him than a Singaporean party when there is an arbitration agreement for them to resolve their disputes in Singapore. Hence, the development of the law in this area by the court's growing pool of decisions is welcome, whether as a clarification of the law (for certainty and predictability) or to establish the law in relation to a novel issue that has come before the courts.

Briefly, the relevance of these cases extends to both domestic and international arbitration, as some of them illustrate and distinguish the differences between both regimes and the importance of good drafting of an arbitration agreement or clause so as to clearly and explicitly assert the parties' choice of law (the Acts allow for party autonomy in their selection of arbitration law),¹⁶ and other cases establish the stance of the Singapore courts on issues relevant to both domestic and international regimes, which is especially important since

wide discretionary powers. He dismissed the motion on the facts of the case. See also, *Koh Brothers Building and Civil Engineering Contractor Pte. Ltd. v. Scotts Development (Saraca) Pte. Ltd.* [2002] 4 Sing.L.R. 748.

¹² E.g., in *Econ Corp. International Ltd. v. Ballast-Nedam International BV* [2003] 2 Sing.L.R. 15, Lai Kew Chai J. affirmed the power of the arbitral tribunal under s. 12 of the IAA to grant interim measures including interlocutory injunctions and *mareva*-type injunctions, which are powers exercisable by the High Court in support of an arbitration. In this case, it was even used as the basis for the grant of leave to serve an originating summons out of jurisdiction which seeks a grant of an injunction against the calling upon a bond and advance payment guarantees given for a contract calling for arbitration in another country (*i.e.*, India, where the plaintiffs commenced arbitration proceedings). This is consistent with the reading of Art. 1(2) read with Art. 9 of the Model Law.

¹³ See *Liew Ter Kwang v. Hurry General Contractor Pte. Ltd.* [2004] 3 Sing.L.R. 59 and *Northern Elevator Manufacturing Sdn. Bhd. v. United Engineers (Singapore) Pte. Ltd.* (No. 2) [2004] 2 Sing.L.R. 494 (examined in greater detail below).

¹⁴ Arbitration is "international" if the parties to the arbitration are of different nationalities or the subject matter of the dispute involves a State other than the State in which the parties are nationals. An international arbitration may have no connection whatsoever with the State in which the arbitration is being held except for the process taking place there. See also Art. 1(3) of the Model Law, which is applicable in Singapore *via* s. 3(1) and the First Schedule of the IAA.

¹⁵ *Ibid.* on the applicability of the IAA. The AA does not contain any provision on its scope of application. It applies to all arbitrations that come under Singapore law, which do not come under the ambit of the IAA. The IAA allows parties to "opt out", but not the AA, although parties to what would otherwise be a domestic arbitration can "opt in" to the IAA regime or expressly provide their own rules to govern the arbitral proceedings that will apply in lieu of the AA's implied rules.

¹⁶ *Supra* note 4.

Singapore severed ties with the English Privy Council and indicated its intention to develop an independent body of law. These may relate to the interpretation of provisions common to both statutes, or relate to matters unlegislated and belonging to the common law domain.¹⁷

II. THE BODY OF DECISIONS

A. Singapore Builds its Case Law Database

It is not surprising that most of the emerging case law consider issues relating to the two most disputed areas in arbitration law, namely, the existence, applicability or scope of an arbitration provision and the jurisdiction of an arbitral tribunal, which determines the legitimacy of an arbitration,¹⁸ as well as the reviewability and enforceability (or otherwise) of an arbitral award, which determines the outcome of the case.¹⁹

The outcomes of these cases are usually determined on the facts. But there are still some cases which deal with more interesting, sometimes novel legal issues, and it is these to which we shall now turn our attention.

¹⁷ For example, the recent case of *Myanma Yaung Chi Oo Co. Ltd. v. Win Win Nu and Another* [2003] 2 Sing.L.R. 547 addressed for the first time Singapore's stance on confidentiality in arbitration, which is neither sufficiently addressed under the statutes nor the institutional rules, and the degree of which varies from country to country.

¹⁸ An example is the 30 September 2004 judgment by Lai Siu Chiu J. in the case of *Sintal Enterprise Pte. Ltd. v. Multiplex Constructions Pty. Ltd.* [2004] 4 Sing.L.R. 841. In that case, the judge had to consider whether there was a "dispute" referable to arbitration. She referred to s. 6 of the AA as well as the previous Court of Appeal cases of *SA Shee & Co. (Pte.) Ltd. v. Kaki Bukit Industrial Park Pte. Ltd.* [2000] 2 Sing.L.R. 12 (which held that the answer to the question whether a dispute fell within an arbitration clause in a contract depends on what the dispute was and what disputes the clause covered) and *Kwan Im Tong Chinese Temple v. Fong Choon Hung Construction Pte. Ltd.* [1998] 2 Sing.L.R. 137 (which held that the court should adopt a "holistic and common-sense approach" to determine if there was a dispute for purposes of an arbitration clause) [*ibid.* at para. 25]. It was finally determined, on the facts, that the matter did not fall within the scope of the arbitration agreement. Another example is a case which was heard almost exactly a year previously, on 10 September 2003, by Tan Lee Meng J. in *Teck Guan Sdn. Bhd. v. Beow Guan Enterprises Pte. Ltd.* [2003] 4 Sing.L.R. 276, the judge had to consider if the clause, "any dispute of this contract to be governed by the rules of the Cocoa Merchants' Association of America Inc (CMAA)", required the parties to refer their disputes to the CMAA to be resolved. The judge found that the clause was too vague and ambiguous, and did not make it clear that the parties agreed to resolve disputes by arbitration much less one by the CMAA. Factors which led him to that conclusion included the fact that the parties were not members of CMAA whose rules did not mandate their use of its arbitration processes (hence no incorporation by reference), and the fact that it was only after two years that the appellants sought arbitration under the CMAA. See also, *Mae Engineering Ltd. v. Dragages Singapore Pte. Ltd.* [2002] 3 Sing.L.R. 45.

¹⁹ A straightforward case on the question of the setting aside of an arbitral award under s. 24(b) of the IAA (additional grounds for setting aside to those under Article 34 of the Model Law) was *Luzon Hydro Corp. v. Transfield Philippines Inc* [2004] 4 Sing.L.R. 705. In this case, the applicant who was dissatisfied with the award in favour of the respondent took out an application to set it aside pursuant to s. 24(b). The grounds of the application were that the arbitral procedure was not in accordance with the agreement of the parties and that a breach of the rules of natural justice had occurred in the making of the award. The judge rightly held that under the Act, there was no appeal against the merits of an arbitral proceeding. As such, the applicant's argument that the tribunal had failed to make certain findings or had failed to consider its defences properly could not be grounds for setting aside the award. On the facts, the allegations of the expert witness' partiality and of him over-stepping his bounds as well as of the tribunal's abdication of decision-making to him were not found to be proven. Implicit in the judgement was the awareness that it was common for an unsuccessful party to an arbitration to try to set aside awards, hence, as in the cases before it, the integrity and independence of the tribunal should only be disproved by strong and clear evidence, otherwise arbitral awards will lose their effect if they are easily set aside by the courts [*ibid.* at paras. 17-18].

B. Construction of Arbitration Clauses

1. Applicable law, applicable rules

In *Jurong Engineering Ltd. v. Black and Veatch Singapore Pte. Ltd.*,²⁰ the parties, both of which were companies incorporated in Singapore, had entered into a construction contract containing an arbitration clause. Differences arose and the plaintiffs issued a notice of arbitration. The arbitration was commenced under the SIAC Domestic Rules to which the defendants objected. The issue turned on the meaning of the sentence under the arbitration clause which stated that: “Any arbitration will be conducted in English in Singapore under and in accordance with the rules of arbitration promulgated by the Singapore International Arbitration Center”. Did it mean the rules at the time of contracting or at the time of submission of the dispute to arbitration?

The significance was that if it were the former, the old SIAC Rules would have been applicable, but if it were the latter, the SIAC Domestic Rules (which were developed in the interim period) would have been applicable.

Lai Kew Chai J. in the High Court adopted a two-step approach in the interpretation of the clause. He first looked at whether the words used were general or specific. That is, were they clearly referring to the old SIAC Rules or were they too generally worded and need not have so referred. He decided that the words were used generally.²¹ The judge then gave the clause its “natural and ordinary meaning”, which was taken to be referring to the “most appropriate institutional rules existing at the time of the submission”. Thus, the parties were not confined to the old (or even existing) rules, but whichever were most relevant when a dispute is submitted to arbitration should be applicable. He held that the SIAC Domestic Rules applied.

The defendants appealed against his decision to the Court of Appeal in *Black and Veatch Singapore Pte. Ltd. v. Jurong Engineering Ltd.*,²² which upheld the lower court decision and the judge’s reasoning. The judges noted that the repercussion of which Rules applied was that it would also determine whether the *Arbitration Act* was applicable or the *International Arbitration Act* was applicable,²³ with their different standards of operation.²⁴

²⁰ [2004] 1 Sing.L.R. 333.

²¹ The model clause set out in the SIAC Rules made specific reference to the full title of the SIAC Rules. As the parties in this case did not use the full title, this omission was a factor taken against the defendant’s contention that the clause “stood still” at the time of contracting [*ibid.* at para. 12].

²² [2004] 4 Sing.L.R. 19.

²³ *Ibid.* at para. 8. This was a curious statement by the court and may cause some confusion. It is clearly stated under s. 15(2) of the IAA that “[f]or the avoidance of doubt, a provision in an arbitration agreement referring to or adopting any rules of arbitration shall not of itself be sufficient to exclude the application of the Model Law or this Part to the arbitration concerned”. Section 15(1) of the Act further states that if the parties expressly excluded the Model Law or that Act, then the domestic AA or the old (repealed) Act (if applicable) would apply by default. The mirror-image of this is s. 3 of the AA, which states that it “shall apply to any arbitration where the place of arbitration is Singapore and where Part II of the IAA does not apply to that arbitration”. Hence, a choice of rules, or a lack of choice thereof, should not *prima facie* determine the applicable law (unless it can be argued that it clearly evidences a preference of the domestic over the international, or *vice versa*). In fact, the rules by which the arbitration will be conducted are determined by the Act which applies, unless the parties clearly and explicitly stipulate in the arbitration agreement itself a particular set of rules, in which case, the contractually agreed-upon rules will apply instead. Perhaps what the judges meant was that given the ambiguity of the clause, it was left to be determined by the usual principles which statutory “track” the dispute fell under. Since the parties chose to leave the applicable rules provision open-ended, that also evidenced an intention to leave the applicable law to be similarly determined by law, that is, if it does not fall under the definition of an “international arbitration” under s. 5 of the IAA, then the domestic AA applies by default.

²⁴ As noted, the regime adopted by the IAA is the UNCITRAL Model Law, while the AA was modeled after the English *Arbitration Act* of 1996 (which regime is generally not as extensive or comprehensive as the former). The main differences between the Acts relates to the extent of court intervention, which is more restrictive under the IAA than under the AA. For example, the court’s power to hear appeals on questions of law that appears

They felt that there was a *prima facie* inference that where rules were mainly procedural, the rules in force at the time of commencement of the arbitration would apply.²⁵ The fact that the SIAC Domestic Rules were a different set, rather than a different version, of the SIAC Rules existing at the time of contracting was not important, being “only a distinction of form rather than substance”.

The significance of this case was that it did not draw a distinction between different *versions* of the same set of institutional rules and different *sets* of rules. Hence, if the parties leave their choice of rules produced by an arbitral institution open-ended, then they are taken to have accepted any amendments to existing rules, and even new rules, which are adjudged to be more appropriate to the parties and the dispute at hand. This was an extension of the existing English case law which only dealt with the issue of the applicability of changes to existing rules, not entirely new rules.²⁶

Hence, it is important for the parties to an arbitration provision to state their intentions clearly and specifically to avoid ambiguity, and to avoid the possibility of a different version, or even a different set, of rules (which were not within their contemplation) becoming applicable to their dispute, particularly when the differences in the rules may lead to unforeseen or unwanted repercussions. Referring to the full title of a set of rules, perhaps even stating that it should be the rules *at the date of contracting* (or as of any other date) will remove any ambiguities and effectively incorporate the selected rules.

2. Interpretation of arbitration clauses

Closely related to the issues surrounding the construction of arbitration provisions are the ever prominent questions as to their scope and coverage, which often surface as the basis for jurisdictional challenges. Applications for stay in this regard are thus related to the larger issue of jurisdiction.

In the High Court decision of *Sabah Shipyard (Pakistan) Ltd. v. Government of the Islamic Republic of Pakistan*,²⁷ which came out on 28 May 2004, Judith Prakash J. affirmed what has largely been espoused by arbitration treatises on the drafting and construction of arbitration clauses. That is, the natural and ordinary meaning of the phrase “arising out of” is narrower than that of the phrase “in connection with”, requiring a “more direct connection” between the dispute and the contract.²⁸ Presumably, although it was not addressed in the judgment, “in connection with” is *in pari materia* with “in relation to” or “relating to” in terms of its ambit or extent of coverage. However, it is to be noted that the context of the arbitration clause and the circumstances of the case may also shed light on the intention of the parties when they included those words of qualification. Perhaps when drafting a clause, if there is an inclusive intent, using such connectors as “arising out of or in connection with” may be the safest thing to do to avoid such disputes over the scope of the clause.

This problem with the scope or coverage of an arbitration clause or agreement also often surfaces in the context of the word “disputes” and its meaning. It was certainly the point of contention in the earlier case of *Mark Grow Engineering Pte. Ltd. v. Goodland Development Pte. Ltd.*,²⁹ wherein the District Court judge had to decide whether a stay should be allowed. Having decided that the arbitration clause was in a separate document

under the AA, is not an option under the IAA (although such an award may still be set aside on grounds common to both Acts). Differences like these are significant and, depending on the issues that arise during arbitration, may determine its conduct and result in a different outcome.

²⁵ *Ibid.* at paras. 17 and 19.

²⁶ See *Bunge S.A. v. Kruse* [1979] Lloyd’s Rep. 279, *Cremer v. Granaria* [1981] 2 Lloyd’s Rep. 583 and *China Agribusiness Development Corporation v. Balli Trading* [1998] 2 Lloyd’s L.R. 76.

²⁷ [2004] 3 Sing.L.R. 184.

²⁸ *Ibid.* at para. 18.

²⁹ [2003] SGDC 230.

incorporated by reference in the parties' contract, the crux of the issue then turned on whether there was a "dispute", and the onus was on the party resisting the application for a stay to show that the other party had no defence to the claim, hence an "undisputed or indisputable claim". The judge endorsed and followed the *Kwan Im Tong Chinese Temple* case,³⁰ which took a "holistic and commonsense approach" to identifying the existence of a dispute. He determined that there was a dispute justifying a stay and one which was fit to be referred to arbitration in this case. Again, for a wide-encompassing phrase, perhaps something along the line of "any questions, disputes, disagreements or differences" will be useful, albeit potentially wordy.³¹

The courts cannot restrain an arbitrator from continuing an arbitration hearing even while his appointment, or jurisdiction under the arbitration agreement, is in issue.³² However, in *PT Tugu Pratama Indonesia v. Magma Nusantara Ltd.*,³³ it was held that the court's power under Article 16(3) of the Model Law (applicable through the *International Arbitration Act*) to determine the issue of jurisdiction, after a tribunal has made a preliminary ruling, included ancillary orders (such as orders of costs made by the tribunal in relation to that ruling). That power involved an independent determination from the tribunal's own finding or reasoning based on the *kompetenz-kompetenz* principle.³⁴

C. Standard Required for Appeals on Questions of Law

One of the last remaining bastions of court "supremacy" over private arbitration is the statutorily preserved judicial control over or intervention in arbitral awards. The extent of judicial intervention varies throughout the world with some countries, particularly the Western European ones, opting for minimum control whilst others retain some measure of review, albeit usually with a high threshold requirement, for example, the comprehensive English *Arbitration Act* of 1996. As already noted, since 2002, Singapore distinguishes between domestic and international arbitrations. Unlike the domestic AA and the old AA, there is no appeal on questions of law arising out of an award made by the arbitral tribunal in an international arbitration (under the IAA). However, there have been some interesting

³⁰ *Kwan Im Tong Chinese Temple & Anor v. Fong Choon Hung Construction Pte. Ltd.* [1998] 2 Sing.L.R. 137.

³¹ *I.e.*, the tribunal is empowered to rule on its own jurisdiction, either as a preliminary issue or in the award on its merits. The equivalent provision under the AA is s. 21. If it rules that it has jurisdiction as a preliminary issue, the dissatisfied party can apply to the High Court for a decision. The court will decide the matter independently of the tribunal's ruling and is not limited to the grounds raised before it. See *supra* note 18 for other recent similar cases.

³² For an example of the former, see *Mitsui Engineering and Shipbuilding Co. Ltd. v. Easton Graham Rush and Another* [2004] 2 Sing.L.R. 14. The plaintiff in this case was challenging the appointment of the arbitrator who decided to continue with further hearings pending the challenge. The plaintiff sought an interlocutory injunction from the court to restrain him from continuing with the arbitration until the challenge to his appointment was resolved. The court held that it was for the arbitrator and not the courts to decide whether to stay arbitral proceedings under the Model Law. For the courts to grant such an injunction would be to go against the spirit and substance of Art. 5 of the Model Law, which provided that "no court shall intervene except where so provided in this Law". On the contrary, Art. 13(3) indicated that it was for the arbitrator to decide whether arbitral proceedings should be stayed pending the court's ruling on the challenge, and the Commission's report also demonstrated that the court was barred from granting interlocutory injunctions to stop him from doing so [*ibid.* at paras. 24-29]. Moreover, there was clearly no such power for the court to so act under the relevant provisions (Arts. 13 and 34 on the challenge procedure and on the setting aside of an award respectively).

³³ [2003] 4 Sing.L.R. 257.

³⁴ The case was also important in determining that an agreement to refer disputes to an "appraiser" can be an arbitration agreement and that the functions of an appraiser need not be confined to that of apportioning monetary value of loss or damage. The judge referred to a statement in the *Halsbury's Laws of England* (4th ed., Vol. 49(1), 1996) which stated that the terms "valuer" and "appraiser" have similar meanings and that a valuer appointed to resolve disputes may concomitantly act as an arbitrator. Finally, the case also reiterated the now well-accepted principle that an arbitration clause trumps an arbitral rule in the event of a conflict.

distinctions made in relation to the standard for the grant of leave to appeal on the basis of questions of law in recent Singapore cases which are worth looking at.

In the case of *Liew Ter Kwang v. Hurry General Contractor Pte. Ltd.*,³⁵ which came out on 11 May 2004, the issue was whether there should be a lower threshold applied to an application for leave of court to appeal on questions of law arising from standard-form building contracts. The applicable provisions here were subsections 28(2) and (4) of the old *Arbitration Act*. The contract between the applicant and the respondent incorporated the Singapore Institute of Architects' Articles and Conditions of Building Contract (Lump Sum Contract),³⁶ which contained standard contractual clauses used in building contracts in Singapore.

The questions dealt with the interpretation of clauses in the Conditions relating to the grant of extensions of time by the architect. Judith Prakash J. held that, in deciding whether to grant leave to appeal, the appropriate approach in this case was a less restrictive one. The reasoning was premised on the fact that this case did not involve a one-off contract, but rather a form of contract that was frequently used. Hence, a resolution of the questions of law would "add to the certainty and comprehensiveness of the law". Her approach followed a series of English and Singapore cases, which established that the discretion to grant leave for a *one-off contract or clause* will be more strictly exercised (by the application of an "obviously wrong" test) than for *standard form contracts or boilerplate clauses*,³⁷ owing to the fact that the resolution of questions of law in the latter respect will clarify the law for subsequent contracts. Once a "strong *prima facie* case" has been made out that the arbitrator was wrong in his construction of the terms of the contract, leave will be granted.³⁸

The treatment of the facts in this case can be contrasted to that in the more recent Singapore Court of Appeal case of *Northern Elevator Manufacturing Sdn Bhd v. United Engineers (Singapore) Pte. Ltd. (No 2)*,³⁹ which the judges held to be a one-off case where the dispute raised an issue of concern that was "of a singular character unlikely to recur", and any findings on the dispute would have little application beyond the parties and the matter.⁴⁰ The court found that there was no "question of law" arising from the award as the arbitrator incorrectly applied an established principle of law, which only constituted a mere "error of law". A question of law involves a finding of law which the parties dispute and thus requires the guidance of the court to resolve. In this case, neither party disputed the applicability of the principle in question (*i.e.*, the compensatory

³⁵ [2004] 3 Sing.L.R. 59.

³⁶ 1997, 5th ed.

³⁷ See in particular, *Pioneer Shipping Ltd. v. BTP Tioxide Ltd. (The Nema)* [1982] App.Cas. 724, *American Home Assurance Co v. Hong Lam Marine Pte. Ltd.* [1999] 3 Sing.L.R. 682, *The Antaios: Antaios Compania Naviera SA v. Salen Rederierna AB* [1985] App.Cas. 191 and *Hong Huat Development Co. (Pte.) Ltd. v. Hiap Hong & Co. Pte. Ltd.* [2000] 2 Sing.L.R. 609. Also, see *United Engineers (Singapore) Pte. Ltd. v. Northern Elevator Manufacturing Sdn. Bhd.* [2003] SGHC 158, wherein the judge endorsed the *Nema* principles to the effect that the guidelines for granting leave under s. 28 of the old AA were that "where the construction was of a "one-off" contract or clause, then discretion was to be strictly exercised and leave normally refused unless the arbitrator was obviously wrong", but "if the construction was of a standard contract or clause, then a less guarded approach would be adopted and leave would be granted where the resolution of the question would add significantly to the clarity, certainty and comprehensiveness of the law and there was strong *prima facie* evidence that the arbitrator was wrong". As this appeal involved the determination of the arbitrator's exercise and the application of general principles governing award of damages, it was determined not to be of a "one-off" nature [*ibid.* at paras. 13-14].

³⁸ *Ibid.* at paras. 5-6. An additional requirement for the grant of leave to appeal was that the determination of the questions of law would have a "substantial effect" on the rights of one or more parties to the arbitration. An extension of time satisfied the "substantial effect" test. It would appear that this additional requirement is even easier to satisfy than the first requirement.

³⁹ [2004] 2 Sing.L.R. 494.

⁴⁰ *Ibid.* at paras. 23-24.

principle).⁴¹ As such, no question of law arose from the award in this case and leave was not granted.

D. *Stay of Court Proceedings*

1. *The relationship between summary judgments and stay applications*

It is established that the courts can and will grant an Order 14 summary judgment even in cases where parties had contractually agreed to refer disputes to arbitration.⁴² Prior to 1 December 2002, when the *Rules of Court*, including Order 14 Rule 1, was amended, the practice was for the courts to hear both Order 14 and stay applications concurrently. This made sense as it was efficient and saved both time and money. However, since the amendment, some confusion has arisen regarding this order of procedure.

In the High Court case of *Chinese Chamber Realty Pte. Ltd. and Others v. Samsung Corp.*,⁴³ the issue that arose for consideration by Rajendran J. was whether the assistant registrar was right in granting the plaintiffs leave to file their Order 14 application without the defence having been served, in view of the fact that Order 14 Rule 1 provided that a plaintiff may only so apply *after* the statement of claim has been served on a defendant and that defendant has served a defence to the statement of claim. The judge held on 15 August 2003 that the assistant registrar had unjustifiably overridden the clear words of the order,⁴⁴ and upheld the former position, which was for both the Order 14 and stay applications to be heard together (a “compromise order”). The defendant could file its defence at the hearing on the understanding that it would not be construed as a “step in the proceedings” so as to have submitted itself to the court’s jurisdiction.

The defendant brought the matter to the Court of Appeal in *Samsung Corp. v. Chinese Chamber Realty Pte. Ltd. and Others*,⁴⁵ which gave judgment on 29 December 2003 allowing the appeal. The judge felt that this was not a case where there was a need, an injustice, or an abuse compelling enough to justify the courts overriding the clear provisions of the amended *Rules of Court*, specifically Order 14 in this case.⁴⁶ The effect of the new Order 14 Rule 1 was that no Order 14 application should be entertained while a stay application was pending, and after that, only when a defence has been filed in accordance with the Rule.⁴⁷

This is more in keeping with the spirit of section 6(1) of the *Arbitration Act* and certainly pays some respect to the arbitral forum of determination. It also streamlines the procedure so that a defendant wanting to enforce an arbitration agreement need not have to perform “a “gymnastic” exercise in order to achieve a result” by having to “run two contradictory courses of action”.⁴⁸ Making the defendant file a defence, albeit without prejudice to his stay application, would clearly be inefficient and illogical, particularly if he is likely to be eventually granted a stay.

⁴¹ *Ibid.* at paras. 17-22.

⁴² The High Court judge referred to *Aoki Corp. v. Lippoland (Singapore) Pte. Ltd.* [1992] 1 Sing.L.R. 609, as an authority for this rule [*ibid.* at para. 5].

⁴³ [2003] 3 Sing.L.R. 656.

⁴⁴ *Ibid.* at para. 18.

⁴⁵ [2004] 1 Sing.L.R. 382.

⁴⁶ The high threshold was enunciated in the Court of Appeal case of *Wee Soon Kim Anthony v. Law Society of Singapore* [2001] 4 Sing.L.R. 25.

⁴⁷ *Ibid.* at paras. 22 to 23.

⁴⁸ *Ibid.* at para. 24.

2. “Steps in the proceedings” as an impediment to a stay application

Almost a year later, on 29 October 2004, Belinda Ang J. revisited the issue in the case of *Australian Timber Products Pte. Ltd. v. Koh Brothers Building and Civil Engineering Contractor (Pte.) Ltd.*⁴⁹ The judge referred to the above Court of Appeal decision but distinguished the case on its facts.⁵⁰ Although this case did involve the issue of stay of court proceedings under section 6(1) of the *Arbitration Act*, it dealt specifically with the question of whether an action brought in breach of an arbitration agreement resulting in a default judgment can be set aside if the defendant refused to file its defence pending a stay application, and whether doing so would have “constituted a step in the proceedings” sufficient to submit it to the court’s jurisdiction despite the agreement.

The first thing to note about this decision is that the defendant prejudiced itself by not filing its defence, while actively pursuing a stay application, an act which would not have compromised its application. An act of defence need not constitute submission to court jurisdiction as long as it is made clear that that is the case. A pending stay application alone does not stop time running for the service of the defence.⁵¹ Because an Order 14 default judgement was made, the defendant had to live with the consequence of its failure to act.

Hence, a defendant should be diligent in filing its defence even while pursuing a stay, and should not think that the arbitration agreement itself trumps the court process without active involvement in defending itself (while, of course, reserving its legal right to stay the court proceedings).⁵² In this case, the defendant bore the burden of either bringing forward the hearing date of the stay application for immediate hearing as a matter of urgency, or of applying for an extension of time to serve its defence under Order 3 Rule 4 of the *Rules of Court* while also seeking an urgent hearing of the matter. As the judge put it succinctly, “[a] proactive approach should be adopted”.⁵³

The second thing to note is that even though an act would otherwise be regarded as a step in the proceedings, it would not be treated as such if the applicant makes it crystal clear that he does not submit to the court’s jurisdiction and intended to seek a stay, or reserves his right to do so, such as seeking an extension of time to serve defence when proceedings have already begun against it in the courts. Even an application to set aside a default judgment need not constitute a step in the proceedings. However, because the defendant in this case was not careful, it lost its right to a stay of the proceedings and was faced with the Order 14 default judgment which it eventually failed to set aside, being unable to prove to the court’s satisfaction that it had a defence on the merits with “a real prospect of success and carries some degree of conviction”. The moral of the story is that a defendant should proceed to state a defence to protect its position, and that should not prejudice its intention to seek a stay of the proceedings provided that that is stated clearly and there was no submission to the court’s jurisdiction.⁵⁴

That was the mistake made by the defendant in the case of *Chong Long Hak Kee Construction Trading Co. v. IEC Global Pte. Ltd.*⁵⁵ Tay Yong Kwang J. held that the defendant had prejudiced itself by filing a counterclaim to the Plaintiff’s suit against it, and taking the

⁴⁹ [2004] SGHC 243.

⁵⁰ *Ibid.* at paras. 12 to 15.

⁵¹ And unless unsuccessful, also does not provide the basis for a request for an extension of time to file a defence.

⁵² The judge noted that a pending stay application in itself does not stop time running for the service of the defence. She further stated that “[t]he Rules of Court have their own self-contained provisions relating to the service of defence, time extension and default judgment. Unless and until there is a stay order to halt proceedings, the plaintiff is entitled to give notice to the defendant to serve its defence. It is for a defendant, faced with a 48-hour notice to serve its defence, to respond appropriately.” [*ibid.* at para. 16].

⁵³ *Ibid.* at para. 16.

⁵⁴ A step taken in the proceedings will prevent a party’s right to seek a stay application and it is not in the court’s discretion whether or not to allow a stay despite such a step.

⁵⁵ [2003] 4 Sing.L.R. 499.

step of serving a 48-hour notice on the plaintiff for its counterclaim, an action which the assistant registrar correctly took to constitute a step in the proceedings. Hence, the defendant was no longer entitled to a stay under section 6(1) of the *Arbitration Act*, as the court no longer had the discretion to grant a stay. A counterclaim constituted a “step that affirmed the correctness of the proceedings or demonstrated a willingness or intention to defend the substance of the claim in court instead of at arbitration.”⁵⁶

A defendant should normally file its stay application immediately and not along with its defence. In this case, as the defence and even the counterclaim did contain an express reservation of its right to stay the proceedings in favour of arbitration, it still preserved the defendant’s right. However, the mistake came when the defendant served the 48-hour notice on the plaintiff for its counterclaim, an act showing what the court took to be its serious intention to pursue the counterclaim in the courts rather than at arbitration. As the matters covered under both the defence and counterclaim were “intertwined”, that step was taken to have vitiated the defendant’s arguments that it had shown a clear and unequivocal intention to arbitrate the matter. Hence the stay application was dismissed by the High Court judge.⁵⁷

E. Singapore’s Stance on Confidentiality amongst Parties and Arbitrators

For the first time, on 6 June 2003, the courts of Singapore had the opportunity to take its stance on the issue of confidentiality amongst the parties to an arbitration proceeding and the panel of arbitrators. Particularly important was the question of whether, and if so to what extent, documents and information used in arbitration are confidential and should not be divulged in subsequent proceedings or to the public. Kan Ting Chiu J. sitting as the judge on the High Court case of *Myanma Yaung Chi Oo Co. Ltd. v. Win Win Nu and Another*,⁵⁸ took the opportunity to address these questions.

It is in the nature of arbitral proceedings that they are held in private (*i.e.*, not open to the public). In fact, that was one of the original features of the arbitral process which was considered attractive to its users. Privacy and confidentiality are, however, two different concepts which should not be confused. The right to privacy in the conduct of arbitral proceedings is commonly provided for in institutional arbitration rules. Unlike most court litigation, the rule is that the general public is usually not allowed to attend arbitral hearings and have no right of access to the written records of the proceedings. Common law jurisdictions have also upheld this rule as an implicit understanding in an agreement to arbitrate.⁵⁹

On the other hand, confidentiality in arbitration has given rise to inconsistent and disparate treatment between jurisdictions. For example, under English law, there is a general rule of confidentiality in relation to documents and information generated or produced in the course of arbitral proceedings.⁶⁰ The cases have upheld a good measure of protection against disclosure subject to the exceptions that have slowly been carved out by subsequent

⁵⁶ *Ibid.* at para. 9.

⁵⁷ *Ibid.* at paras. 11 and 13.

⁵⁸ [2003] 2 Sing.L.R. 547.

⁵⁹ See *Oxford Shipping Co. Ltd. v. Nippon Yusen Kaisha (The Eastern Saga)* [1984] 3 All E.R. 835.

⁶⁰ *Dolling-Baker v. Merrett & Another* [1991] 2 All E.R. 890. It was a contractual term implied by “custom and business efficacy” that documents generated for, and disclosed during, the discovery process should be kept in confidence. In such a case, only by leave of court by a showing of relevance and necessity can such materials be ordered to be produced during the discovery process.

case law.⁶¹ On the other hand, in Australia and the United States, there is no general duty of confidentiality at all.⁶²

In the *Win Win Nu* case, the defendants wanted to produce affidavits referring to documents and information elicited during an arbitration proceeding with the plaintiffs to support their application to strike out or stay the plaintiff's action commenced in the courts on the basis that the plaintiffs abused the court process as they had launched similar actions in different *fora* (instituting arbitration proceedings and bringing actions before the Myanmar courts). By doing so, the plaintiffs were acting vexatiously and oppressively against the defendants. The plaintiffs objected to the disclosure and the assistant registrar agreed by refusing to admit the affidavits. On the appeal before Kan Ting Chui J., the issue was, *inter alia*, whether parties to an arbitration proceeding owed any duty of confidence to each other, and if so, whether leave of the court was required for disclosure.

The judge held that there was a general duty of confidence of arbitral documents and information, thus expressly endorsing the English position in this regard.⁶³ Similarly, the court held that a party can be relieved of that duty if the "reasonable necessity" exception is applicable. Notably, leave of court is not necessary in such a case (unlike in the English courts).⁶⁴ However, on the facts, as the arbitration proceedings had been terminated by the time of the appeal, it was held that the previously existing basis ceased to exist; hence there would be no disclosure.

It is to be noted then that Singapore's position on confidentiality can be extrapolated as follows: there is a general duty of confidence of documents and information generated or produced during the arbitration proceeding. This duty is an implied term of the parties' contract which arises from their expectations of the arbitration agreement and process.⁶⁵ The exception to this is where it is "reasonably necessary" to do so. This will depend on the facts of each case and the reasons for the disclosure.⁶⁶ Other exceptions which the court

⁶¹ For example, an award and its reasons may be used for the purpose of establishing a cause of action against or defending a claim brought by a third party without the leave of court. Where the interests of the arbitrating party require disclosure, for example to enforce an arbitral award, the general rule will also not apply. See *Hassneh Insurance Company of Israel & Others v. Stuart J Mew* [1993] 2 Lloyd's Rep. 243. Another exception to the rule of confidentiality is where the "public interest" and the "interest of justice" require disclosure. See *London & Leeds Estates Ltd. v. Paribas Ltd. (No. 2)* [1995] Estates Gazette 134; and *Ali Shipping Corporation v. Shipyard "Trogir"* [1998] 2 All E.R. 136. Disclosure for the purpose of establishing an issue estoppel and the enforcement of rights accorded by an arbitral award is another exception. See *Associated Electric and Gas Insurance Services Ltd. v. European Reinsurance Company of Zurich* [2003] UKPC 11. This is so even if there was a confidentiality clause.

⁶² See *Alliance v. Australian Gas Light Co.* [1983] 34 S.A.S.R. 215 at 229-232; and *ESSO Australia Resources Limited & Others v. The Honourable Sidney James Plowman (The Minister for Energy and Minerals) & Others* [1995] 128 A.L.R. 391. Even if there was an express confidentiality clause in the arbitration agreement, the courts may allow disclosure in the "public interest". See *Commonwealth of Australia v. Cockatoo Dockyard Pty. Ltd.* [1995] 36 N.S.W.L.R. 662. Unless otherwise expressly agreed between, or provided for by, the parties, they are not required to treat arbitration proceedings and what transpired in confidence. See *Industrotech Constructors Inc. v. Duke University* [1984] 314 S.E.2d 272; *Giacobazzi Grandi Vini S.p.A. v. Renfield Corp.* [1987] US Dist. LEXIS 1783; and *United States v. Panhandle Eastern Corp. et al.* (1988, Del) 118 F.R.D. 346.

⁶³ *Ibid.* at paras. 9 and 17.

⁶⁴ *Ibid.* at para. 19. But he went on to state that it is not for one party alone to decide whether the disclosure is reasonably necessary, and if the other party disputes the necessity, it can apply to expunge the disclosure. Then the court will determine if it is reasonably necessary, and make an order to expunge it if it is not [*ibid.* at para. 20].

⁶⁵ The case did not address whether the obligation extended to witnesses as such. However, it is interesting to note that in England, an expert witness appointed by one party has been held to owe an obligation of confidentiality to *both* parties. Similarly, parties owe an obligation of confidence to their witnesses and the panel of arbitrators and *vice versa*. See *London & Leeds Estates Ltd. v. Paribas Ltd. (No. 2)* [1995] Estates Gazette 134.

⁶⁶ E.g., for the protection of the legitimate interests of an arbitrating party's legal rights *vis-a-vis* a third party in order to found a cause of action against that third party or to defend against a claim, or counterclaim, brought by the third party; and to enforce an award or the rights and obligations arising out of an award.

did not explicitly endorse (but which it is likely to embrace) include, if the parties consent (and there is no issue of confidence to third parties, such as witnesses); if there is leave of the court or an order of the court to produce, and if it is in the “public interest” or it is in the “interest of justice” to do so.⁶⁷

F. *The Relationship between Arbitration Laws and other Legislation*

1. *The Companies Act and the standing to arbitrate*

In *Kiyue Company Limited v. Aquagen International Pte. Ltd.*,⁶⁸ the issue the court faced was whether the word “action” in section 216A(2) of the *Companies Act*⁶⁹ included an “arbitration proceeding” so as to permit a minority shareholder complainant to bring an action in the name and on behalf of a company that is involved in arbitration proceedings. The court held that the *Companies Act* has clearly shown a discrimination between “action” and an “arbitration proceeding” under section 366(2)(a), and since words must be given a consistent meaning within the same statute, the word “action” is ordinarily a reference to proceedings commenced in court and not to arbitration (unless specifically legislated otherwise).⁷⁰ Although who exactly is a “party” to an arbitration agreement, and thus eligible to participate in it, is not always clear,⁷¹ this case has clarified to some extent the matter in the context of the *Companies Act*. Legislative amendments will have to be made in order to permit a minority shareholder to intervene and participate in an arbitration to protect its interests, if Parliament decides that that should be the case.

2. *The Rules of Court and the issue of time limits*

In a 25 July 2003 judgment of the High Court issued by Lai Siu Chiu J., *United Engineers (Singapore) Pte. Ltd. v. Northern Elevator Manufacturing Sdn. Bhd.*,⁷² it was held that the time for an appeal to be filed against an arbitration award begins from the time that the arbitration award is *ready for collection* and not from the time that *notice is given* of the time that the arbitration award would be ready for collection.⁷³ This appears to be a fair and sound judgement for how can someone determine if he should file without looking at the judgment and how can he be diligent if the judgment is not even available? Moreover, if the reverse were true, one may technically be left with no time to consider at all, in the case where notice is given but collection may only be made very near the deadline. In this case, even though the applicants filed their appeal 28 days after notice that the arbitration award would be ready for collection, as they had done so within 21 days of the time when the award was actually ready for collection, the appeal was held to have been filed on time.

Another case of interest here is *ABC Co. v. XYZ Co. Ltd.*⁷⁴ This case involved an international arbitration. The arbitral tribunal had issued an interim award which the applicants sought to challenge by way of an originating motion in court for the award to be set aside. The motion originally stated two grounds as bases for setting aside the award, but the applicants later filed a summons-in-chambers seeking leave to amend the motion

⁶⁷ *Ibid.* at para. 9.

⁶⁸ [2003] 3 Sing.L.R. 130.

⁶⁹ Cap. 50, 1994 Rev. Ed. Sing.

⁷⁰ *Ibid.* at paras. 6, 7 and 10.

⁷¹ Some examples of non-signatories who may have standing to commence, appear in and participate in an arbitration may arise in exceptions to the privity of contract doctrine, such as in situations involving assignment, novation, third-party beneficiaries, agency, and so on.

⁷² [2003] SGHC 158.

⁷³ *Ibid.* at para. 18.

⁷⁴ [2003] 3 Sing.L.R. 546.

to add six new grounds as bases for setting aside the award. Judith Prakash J. refused the application in most part. She looked at Article 34(3) of the Model Law, and after examining its wording and their interpretation (with some help from the *travaux préparatoires*), she determined that the prescribed three-month period for filing an application to set aside was to be strictly enforced and allowed for no new grounds. Hence, the court does not have the power to extend time. However, there could still be an opportunity for the applicant to amend court proceedings, depending on the court procedure of the *lex arbitri*. Singapore's *Rules of Court* contains provisions for the amendment of an originating motion (under Order 20), which allows amendments incorporating only new grounds that arise out of the same facts or substantially the same facts as the grounds originally specified. Only one of the six grounds satisfied this criterion.⁷⁵

III. CONCLUSION

The law in this area will continue to evolve through legislative amendments, new or amended institutional rules and the continuous flow of cases where litigants bring arbitration—related issues before the courts. It is envisioned that Singapore's own body of arbitration laws will mature, aiding in its development as a hub for dispute resolution for both domestic and international parties. This is not the beginning, but rather the middle of the journey towards a more mature arbitral forum and jurisdiction.

⁷⁵ In this case, the judge also noted that the setting aside of an arbitral award under Order 69A was not equivalent to an appeal.

