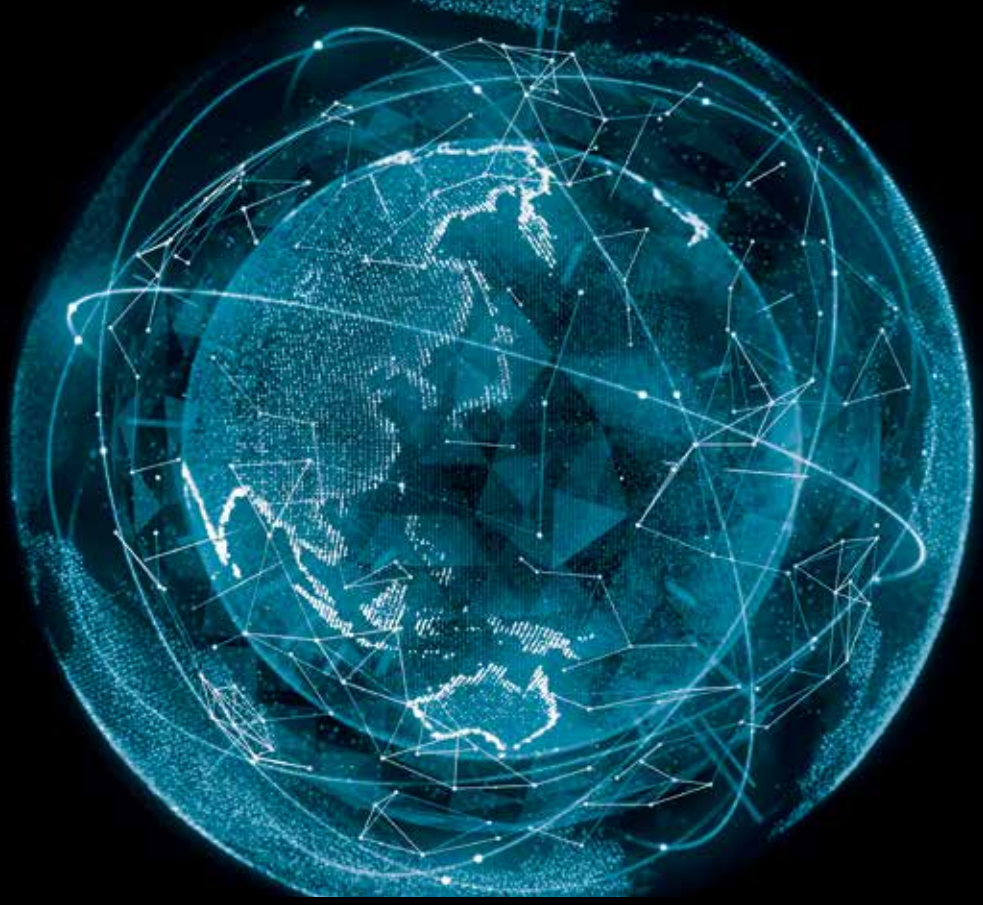

The Asia-Pacific Arbitration Review 2022

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Welcome to *The Asia-Pacific Arbitration Review 2022*, *a Global Arbitration Review* special report. For the uninitiated, *Global Arbitration Review* is the online home for international arbitration specialists the world over, telling them all they need to know about everything that matters.

Throughout the year, we deliver our readers pitch-perfect daily news, surveys and features; lively events (under our GAR Live and GAR Connect banners (GAR Connect for virtual)); and innovative tools and know-how products.

In addition, assisted by external contributors, we curate a range of comprehensive regional reviews – online and in print – that go deeper into developments in each region than the exigencies of journalism allow. *The Asia-Pacific Arbitration Review*, which you are reading, is part of that series.

It contains insight and thought leadership inspired by recent events, from 35 pre-eminent practitioners. Across 14 chapters and 92 pages, they provide us with an invaluable retrospective on the past year. All contributors are vetted for their standing and knowledge before being invited to take part.

The contributors' chapters capture and interpret the most substantial recent international arbitration events across the Asia-Pacific region, with footnotes and relevant statistics. Elsewhere they provide valuable background on arbitral infrastructure in different locales to help readers get up to speed quickly on the essentials of a particular country as a seat.

This edition covers Australia, Hong Kong, India, Malaysia, Singapore, Sri Lanka and Vietnam and has overviews on construction and infrastructure disputes in the region (including the effect of covid-19), the state of ISDS and what to expect there, and trends in commercial arbitration, as well as contributions by four of the more dynamic local arbitral providers.

Among the nuggets this reader learned is that:

- force majeure is not necessarily the only option for project participants affected by covid-19, especially if the FIDIC suite is in the picture;
- Korea's diaspora is known as its *Hansang* and more 'international' arbitrators are now accepting KCAB appointments (the number of KCAB 'first-timers' is up by 23 per cent);
- it has become far easier for foreign counsel and arbitrators to conduct cases in Thailand;
- there have been some strongly pro-arbitration decisions from the Philippines and Vietnam of late;
- Sri Lanka's courts also seem to have turned a corner on avoiding excessive interference; and
- improvements in the arbitral environment in Vietnam are part of a concerted effort that began in 2015.

I also found answers to some other questions that had been on my mind, such as whether an increase in case numbers in the SIAC in 2020 was matched by an increase in the total value at stake there (spoiler alert: no), and a number of components I plan to consult when the need arises – including a summary of key decisions in Singapore; a long explainer on the background to the Amazon-Future dispute in India; and a fabulous chart deconstructing the arbitral furniture in Uzbekistan.

I hope you enjoy the volume and get as much from it as I did. If you have any suggestions for future editions, or want to take part in this annual project, my colleagues and I would love to hear from you. Please write to insight@globalarbitrationreview.com.

David Samuels
Publisher
May 2021

The rise of arbitration in the Asia-Pacific

Andre Yeap SC, Kelvin Poon and Alessa Pang
Rajah & Tann Singapore LLP

In summary

The use of arbitration continues to rise in Asia. Leading Asian arbitration institutions, such as the Singapore International Arbitration Centre, have seen an increase in the number of case filings. In response to the increasing demand, new arbitration institutions have been established in the region. In 2019, the Beihai Asia International Arbitration Centre opened in Singapore, marking the first-ever international arbitration centre established in Singapore by a Chinese arbitration commission. Arbitration's popularity in Asia can be explained by a multitude of factors, including growth in the region, as well as the relative ease with which arbitral awards can be enforced around the world. This chapter examines recent developments in Singapore and other parts of the Association of Southeast Asian Nations (ASEAN) and Asia to examine whether trends exist across the region that converge in favour of arbitration.

Discussion points

- Arbitration is on the rise in Asia, as evidenced by the increasing number of case filings and arbitration institutions across the region.
- Factors such as growth in the region and the relatively low costs of conducting arbitration in Asia contribute to the popularity of arbitration.
- The continued push of the Belt and Road Initiative is likely to bring with it an increase in disputes involving Asian parties, with arbitration continuing to be the preferred dispute resolution option.
- The ease with which arbitral awards may be enforced worldwide is one factor contributing to arbitration's popularity, as evidenced in recent developments in jurisdictions such as Singapore, the Philippines and Thailand. However, there has been some divergence, as seen in the 14 November 2019 decision of the People's Court of Hanoi in Vietnam.

Referenced in this article

- *Bloomberry Resorts and Hotels Inc v Global Gaming Philippines* LLC ([2020] SGHC 1)
- *BXS v BXT* ([2019] SGHC (I) 10)
- *CBP v CBS* ([2020] SGHC 23)
- The Singapore International Arbitration Act (Cap 143A)
- The Thai Arbitration Act BE 2545 (AD 2002)
- *Mabuhay Holdings Corporation v Sembcorp Logistics Limited* (GR 212734, 5 December 2018)

The popularity of arbitration in Asia continues to rise. Notwithstanding challenges caused by the covid-19 pandemic in 2020, the Singapore International Arbitration Centre (SIAC) set a record high of 1,080 new case filings – the first time that the SIAC's caseload has crossed the 1,000 mark. This is a 125 per cent jump from the 479 cases filed in 2019.[1] In tandem with an increase in the number of cases filed with the SIAC, the centre has also expanded its reach outside Asia. In December 2020, the SIAC opened a representative office for the Americas in New York, entrenching its reputation as an international arbitration institution with a global reach.[2] The Korean Commercial Arbitration Board (KCAB) handled a total of 443 arbitration cases in 2019, reporting a 12.7 per cent increase in the number of cases filed with the institution.[3] The China International Economic and Trade Arbitration Commission (CIETAC) has seen a steady increase in the number of cases it handles, reaching a total of 3,615 cases in 2020.[4] Asian arbitration institutions have also taken steps to enhance and update their regulations to compete with international arbitral institutions. In October 2020, the Standing Committee of the Shenzhen Municipal People's Congress passed the revised Regulations of the Shenzhen Court of International Arbitration. The revised Regulations are modelled on the Arbitration Law of the People's Republic of China.

Indeed, the ability of arbitration institutions in Asia to adapt to the challenges caused by the covid-19 pandemic entrench their position as leaders in this field. Institutions such as the SIAC continued to administer hearings remotely, even as the Singapore government imposed stringent lockdown measures from April to June 2020. The Seoul Protocol on Video Conferencing in International Arbitration,[5] which was an initiative introduced in 2018 by lawyers in Asia with support from KCAB International and the Seoul International Dispute Resolution Centre (SIDRC), has taken centre stage with the rise of virtual hearings in a post-covid-19 world. With China's continued push of the Belt and Road Initiative in Asia and Africa, it is likely that there will be more disputes involving Asian parties in the longer term, with arbitration continuing to be a preferred dispute resolution option.

One further factor, which explains the popularity of arbitration (compared to court proceedings) in general, is the relative ease with which arbitral awards may be enforced worldwide. But to what extent is this really the case? Have Asian countries generally tended to be arbitration-friendly or arbitration-averse?

UNCITRAL Model Law

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 so as to take into account the particular features and needs of international commercial arbitration' in a bid to achieve uniformity of the law of arbitral procedures across jurisdictions. The Model Law

provides guidelines, found in 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 – Korea and Myanmar – adopting the law as recently as 2016. Even though there are countries in the region (eg, Indonesia) that are yet to adopt the Model Law, these countries nevertheless typically enact domestic legislation that broadly tracks the Law's provisions in relation to enforcement.

Singapore

Singapore is a Model Law country that has enacted local legislation – the International Arbitration Act – that gives effect to the Model Law.

In June 2019, the Singapore Ministry of Law launched a public consultation to seek views on proposals to amend the International Arbitration Act.[6] The contemplated reform includes amendments to the Act to:

- provide for the default appointment of arbitrators in multi-party situations;
- allow parties by mutual agreement to request the arbitrators to decide on jurisdiction at the preliminary award stage;
- provide an arbitral tribunal and the courts with the powers to support the enforcement obligations of confidentiality in an arbitration; and
- allow a party to arbitral proceedings to appeal to the High Court on a question of law arising out of an award made in the proceedings provided that parties have agreed to opt in to this mechanism.

Following the public consultation, the International Arbitration (Amendment) Act 2020 came into force on 1 December 2020. Two new subsections (9B and 12(1)(j)) were introduced into the International Arbitration Act (Chapter 143A). The new subsections introduce two out of four of the amendments discussed, namely a default mode of appointment of arbitrators in multi-party situations, and recognition of an arbitral tribunal and the Singapore High Court's power to enforce confidentiality obligations in an arbitration.

In the absence of an agreed appointment procedure, section 9B[7] provides for a default method and timelines for the appointment of a three-member arbitral tribunal in an arbitration with three or more parties. If the default method fails, powers are vested in the appointing authority to appoint all members of the tribunal. The amendment addresses a gap in the International Arbitration Act (IAA). Prior to the inclusion of section 9B, the IAA only provided for a process for the default appointment of a three-member arbitral tribunal in a two-party arbitration. The amendment is timely as multi-party arbitration has become increasingly common in complex commercial transactions. The amendment also serves to harmonise Singapore's arbitral legislation with leading arbitral institutional rules, such as Rule 12.2 of the SIAC Rules 2016,[8] and article 12(6)[9] and 12(8)[10] of the International Chamber of Commerce (ICC) Rules 2021 (which provide for a mechanism for the appointment of arbitrators in a multi-party arbitration). The amendment also makes the tribunal constitution process more efficient in multiparty ad hoc arbitrations seated in Singapore.

The new section 12(1)(j)[11] confers a Singapore-seated arbitral tribunal with the power to make orders and issue directions to enforce confidentiality obligations arising from: (i) an agreement between the parties; (ii) any written law or rule of law; or (iii) the arbitration rules agreed or adopted by the parties. Such orders and directions are, by leave of the General Division of the Singapore High Court, enforceable in the same manner as if they were orders made by a court. The addition of section 12(1)(j) is an important development as it expressly preserves and protects the confidential nature of arbitral proceedings. Confidentiality is considered to be one of the most important traits of arbitration.

In 2019, the Singapore International Commercial Court (SICC) also issued its first decision on an international arbitration-related application in *BXS v BXT* ([2019] SGHC (I) 10 (BXS)). In this case, the dispute between the parties arose from a share sale agreement governed by Thai law. The plaintiff (buyer) commenced Singapore-seated SIAC arbitration proceedings against the defendant (seller), claiming that the defendant was liable to indemnify the plaintiff for taxes that had been imposed after the share sale transaction. The arbitration agreement in the share sale agreement provided for SIAC arbitration, and that the arbitration would be heard by a three-person arbitral tribunal. However, after the plaintiff commenced arbitration, the plaintiff agreed to the defendant's proposal to have the arbitration conducted in accordance with the Expedited Procedure under Rule 5 of the SIAC Rules 2016. As a result, only a sole arbitrator was appointed to hear the dispute. The sole arbitrator eventually denied the plaintiff's claims and found in favour of the defendant. The final award was issued on 12 June 2018.

The plaintiff then sought to set aside the final award before the courts in Thailand. Following the defendant's application for an anti-suit injunction before the Singapore High Court against the plaintiff's setting-aside application in Thailand, the plaintiff filed an application to set aside the final award before the Singapore High Court on 9 November 2018. As the plaintiff's application to set aside the award was brought in breach of the three-month time limit imposed by article 34(3) of the Model Law, the defendant applied to strike out the plaintiff's application for being out of time.

Both the plaintiff's application to set aside the award and the defendant's striking out application were heard together by Anselmo Reyes IJ. The plaintiff's application to set aside the award was dismissed and the court allowed the defendant's striking out application. Reyes IJ allowed the defendant's striking out application on the basis that the setting-aside application had been filed out of time. Article 34(3) of the Model Law states that an application 'may not' be made after three months have elapsed from the date on which the award had been received by parties. This, in the court's view, meant that the timeline was absolute and could not be modified. Moreover, the court's general power to extend procedural timelines also did not apply to article 34(3). There were two reasons for this. First, article 34 provided for a party's substantive (as opposed to procedural) right of action. Second, article 5 of the Model Law also prohibits a court from intervening in matters governed by the Model Law. This was another reason against the court's resort to its inherent powers to intervene with matters that are contained in the Model Law regime.

BXS demonstrates the Singapore courts' approach towards challenges to an arbitral award: challenges to an award that are, in effect, challenges to the merits of an arbitral tribunal's decision will not be accepted. Moreover, the decision also clarifies that the three-month timeline in article 34(3) of the Model Law is strict and cannot be extended under the court's general power to extend time.

BXS was followed in a subsequent Singapore High Court decision in *Bloomberry Resorts and Hotels Inc v Global Gaming Philippines LLC* ([2020] SGHC 1). In this case, the plaintiffs

applied to set aside a partial award rendered in a Singapore-seated arbitration governed by 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 were not discoverable until months after the partial award had been rendered. The plaintiffs' position was that the fraud allegations amounted to procedural fraud, constituting a ground 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 after the three-month time limit in article 34(3) of the Model Law. The permissible time limit to set aside the order granting leave to enforce the partial award in Singapore had also expired. To overcome the three-month time limit in article 34(3) of the Model Law, the plaintiffs sought to argue that the time limit 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. However, the Singapore High Court found that the drafting history of article 34(3) of the Model Law confirmed that the proposal for a separate regime with a different time period to apply to setting-aside applications brought on grounds of fraud or corruption was considered but eventually rejected.[12] The Singapore High Court considered a second argument on whether section 24(a) of the IAA was a separate regime with no express time limit for setting aside arbitral awards on grounds of fraud or corruption. This turned on the construction of the opening words '[n]otwithstanding Art 34(1) of the Model Law' in section 24 of the IAA.[13] The Singapore High Court confirmed[14] that it preferred the defendant's construction of the phrase, namely that '[n]otwithstanding Art 34(1) of the Model Law' referred to section 24 of the IAA being in spite of the grounds for setting aside enumerated in article 34(2) of the Model Law and not with reference to the time limit in article 34(3) of the Model Law.[15] As such, an application to set aside an arbitral award on the basis of section 24 of the IAA would still be subject to the three-month time limit in article 34(3) of the Model Law.

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 the three-month timeline. That said, the same timeline would likely not apply to an application to resist enforcement of an award.

In *BXS*, the SICC expressly addressed[16] the Hong Kong Court of Final Appeal decision in *Astro Nusantara v PT Ayunda Prima Mitra and others* ([2018] HKCFA 12). The plaintiff in *BXS* relied on this case in support of its argument that the three-month timeline in article 34(3) of the Model Law was not absolute. However, the SICC distinguished *Astro* on the basis that it involved the setting aside of a Hong Kong court order that allowed enforcement of a Singapore arbitration award against the counterparty's assets in Hong Kong. It did not concern a timeline for setting aside an award in the seat. More importantly, the SICC highlighted that Order 73 Rule 10(6) of the Rules of the Hong Kong Court, which the SICC observed to be similarly worded to Order 69A Rule 6(4) of the Singapore Rules of Court, a party has 14 days to apply to set aside a court order granting leave to enforce an arbitral award. Pursuant to Order 3 Rule 5 of the Rules of the Hong Kong Court,[17] the Hong Kong court has power to extend the time limit of 14 days in Order 73 Rule 10(6) and the Hong Kong court proceeded to exercise this power.

In *Bloomberry Resorts*, apart from the application to set aside the award, there was a separate application to set aside the Singapore court order granting leave to enforce the partial award. After considering the length of delay,[18] and the reason for the extension of time,[19] the Singapore High Court followed *Astro* and granted the extension of time to set aside the court order granting leave to enforce the partial award (and the enforcement judgment arising therefrom). An important factor that weighed in favour of the plaintiff's application was the Singapore High Court's view that the plaintiffs' reasons for the delay and allegations of fraud were bound up with the merits of the application to challenge enforcement of the partial award.[20]

Another recent case of significance in Singapore is *CBP v CBS* ([2020] SGHC 23) (*CBP*). It is a rare instance when the Singapore courts have to set aside an award. The appellant, CBS, was a bank incorporated in Singapore. The respondent, CBP, was a company incorporated in India engaged in the business of steel manufacturing and power generation. CBP entered into an agreement with a third party to purchase coal, which was to be delivered in two tranches. The third party entered into a facility agreement with CBS, which provided for the assignment of the third party's debts to CBS. As such, all amounts due in respect of the coal transaction were to be paid to CBS. CBS did not receive any payment and commenced arbitration against CBP to claim the outstanding sum due. CBP made a belated allegation in the arbitration, claiming that there had been a settlement at the meeting subsequent to CBP's failure to take the full amount of coal contracted for. There was a dispute of fact as to whether there had been a settlement reached at this meeting. After CBP filed its defence, the tribunal directed parties to consider whether an oral hearing was necessary. CBS informed the tribunal that it did not intend to call any witnesses or submit any witness statements, and submitted that the arbitration should proceed on a documents-only basis. It submitted in the alternative that if an oral hearing was necessary, a hearing could be held for oral submissions only. However, CBP took the position that an oral hearing was 'required and necessary'. CBP therefore sought to lead evidence from witnesses who were present at the meeting. With reference to Rule 28.1 of the Singapore Chamber of Maritime Arbitration Rules,[21] the tribunal directed that since parties had not agreed to a documents-only arbitration, a hearing would be held for oral submissions only. The arbitrator stated that there would be no witnesses presented at the hearing because the buyer had 'failed to provide witness statements or any evidence of the substantive value of presenting witnesses'. This specific direction barring all of the buyer's witness testimony underpinned CBP's setting-aside application on the ground of breach of natural justice. The Court of Appeal set aside the award, noting that the tribunal's 'denial of the entirety of the witness evidence from [CBP] constitutes a breach of natural justice'[22] and that CBP suffered prejudice.[23]

The year 2020 also saw a novel application before the Singapore High Court in *Government of India v Vedanta Limited* ([2020] SGHC 208). India sought declarations from the High Court that documents generated or produced in its investment treaty arbitration against Vedanta were not subject to the general obligation of confidentiality that applies in international commercial arbitrations. This was despite the tribunal having ruled against India on this issue in the arbitration. To avoid infringing the principle of minimal curial intervention, India undertook to the Court that it would not seek to act upon the declarations, if granted. Instead, it would seek to persuade the tribunal to reconsider its decision if the High Court granted the declarations. The High Court declined to grant the declarations holding that such an order would violate the principle of minimal curial intervention and that the declarations would not have made a material difference to the tribunal's decision. On appeal, the Singapore

Court of Appeal affirmed the decision of the High Court on 8 April 2021, holding that it was an abuse of process for India to have brought such an application. This decision underscores Singapore's well entrenched policy in favour of arbitration. It also reflects Singapore's growing popularity as a seat for investment treaty arbitrations.[24]

Developments in Asia and ASEAN member states

There have also been developments across the arbitration landscape in Asia.

In Thailand, amendments were made to the Thai Arbitration Act BE 2545 (AD 2002) to ease rules allowing foreign arbitrators and foreign lawyers to act in arbitration proceedings that take place in Thailand. The amendments came into effect on 15 April 2019. Prior to the amendments, foreign arbitrators and representatives were required by Thai immigration law to go through an onerous process just to apply for a work permit to participate in arbitration proceedings taking place in Thailand. Pursuant to the amendments made to the Thai Arbitration Act, foreign arbitrators and representatives can apply for a certificate from the Thai Arbitration Institute or the Thailand Arbitration Centre. The certificate will allow the foreign arbitrator or representative to perform their work for the estimated time period of the arbitration proceedings, as a work permit will be issued on the basis of this certificate. The certificate will also allow the foreign arbitrator or representative to obtain permission to enter and reside temporarily in Thailand during the time period stipulated in the certificate. This development will serve to increase Thailand's reputation and attractiveness as an arbitration venue for foreign investors.

The courts in the Philippines have also veered in the direction of adopting an arbitration-friendly approach in arbitration-related applications. In December 2018, the Supreme Court of Philippines issued a decision in *Mabuhay Holdings Corporation v Sembcorp Logistics Limited* (GR 212734, 5 December 2018).[25] In this case, Sembcorp Logistics Limited applied to enforce an arbitral award arising out of Singapore-seated ICC arbitration proceedings against Mabuhay Holdings Corporation. Mabuhay Holdings Corporation argued that the award should not be enforced, relying on the following grounds in article V of the New York Convention:

- the award dealt with a conflict not falling within the terms of the submission to arbitration;
- the composition of the arbitral authority was not in accordance with the agreement of the parties; and
- recognition or enforcement of the award would be contrary to the public policy of the Philippines.

At first instance before the Regional Trial Court of Makati City (RTC), the Court ruled that the award could not be enforced as the dispute in the arbitration dealt with an intra-corporate matter[26] and was, therefore, excluded from the scope of the arbitration agreement between the parties. The Court of Appeal reversed the decision of the RTC and allowed the enforcement of the award. The Court of Appeal noted that the RTC's findings amounted to a review of the merits of the findings in the arbitral award and remanded the case to the RTC for enforcement and execution. On appeal to the Supreme Court of the Philippines, the Supreme Court emphasised that the Philippines 'adopts a policy in favour of arbitration'. For this reason, the starting point for a court would be to 'not disturb the arbitral tribunal's determination of facts and/or interpretation of law'. As there were no prior court decisions that define public policy in the context of applications made under the New York Convention, the Supreme Court clarified that 'mere errors in the interpretation of the law or factual findings would not suffice to warrant refusal of enforcement under the public policy ground'. The Supreme Court therefore affirmed the Court of Appeal's decision and ruled in favour of enforcing the arbitral award. The Supreme Court concluded its judgment with a reminder to the lower courts to apply Philippine arbitration legislation in accordance with the objectives of the statutes, emphasising that there are policy reasons in favour of promoting international arbitration, as it would 'attract foreign investors to do business in the country that would ultimately boost . . . [the Philippine] economy'.

In Vietnam, the People's Court of Hanoi issued Decision 11/2019/QD-PTT on 14 November 2019. The Court set aside an arbitral award that had been issued under the Vietnamese Law on Commercial Arbitration 2010 (VLCA). The dispute arose out of a contract for the construction of a hydropower plant project. The contractors terminated the contract against the employer. Thereafter, the contractors commenced arbitration under the Arbitration Rules of the Vietnam International Arbitration Centre against the employer to claim amounts due and owing. The tribunal issued an award unanimously in favour of the contractors. The employer therefore filed an application before the People's Court of Hanoi to set aside the award on three main grounds:

- the tribunal's decision to change the hearing venue to a location that differed from the parties' agreement;
- the tribunal's reference to the IBA Rules and Guidelines on Taking of Evidence without fully reviewing the materials and evidence submitted by the employer; and
- the tribunal's sole reliance on the contractors' expert report (instead of engaging in its own assessment of the quantum of damages).

The People's Court of Hanoi accepted the employer's application on all three grounds. As to the tribunal's decision to change the hearing venue, the court found that an agreement had been reached between the parties to select Hanoi as the place of the hearing and this had been recorded in the tribunal's procedural order. However, during the arbitration, the employer had filed a petition to injunct the arbitrators personally. The employer had done so in response to a decision by the tribunal to make an injunction order against the employer. Despite the tribunal's request to the employer to withdraw the court petition against the arbitrators, the employer refused to comply. In the absence of express provisions under Vietnamese law that address arbitrator immunity, the tribunal decided to change the location of the hearing to Singapore and Osaka. The court found that the tribunal's decision to hold the hearing in locations other than Hanoi amounted to a breach of the parties' agreement. As to the tribunal's reference to the IBA Rules and Guidelines on Taking of Evidence, while the employer filed witness statements in the arbitration, the witnesses were not present at the hearing. Given the employer's general lack of cooperation in the arbitration and the fact that the witnesses failed to appear at the hearing, the tribunal decided to not accord any weight to the employer's witness statements. The People's Court of Hanoi held that this was in breach of article 56.2 of the VLCA, which requires the tribunal to 'proceed with settling the dispute based on available documents and evidence' even in a situation where a party does not participate during the hearing. As to the third ground, the People's Court of Hanoi held that the tribunal's decision to rely solely on the contractors' quantum expert report was in breach of article 46.3 of the VLCA, which states that '[t]he arbitral tribunal,

on its own or at the request of one of the parties, has the right to procure expert assessment and valuation of property in the dispute as a basis for the settlement of the dispute'. The Court's decision suggests that the tribunal's power under article 46.3 to 'procure expert assessment' is a mandatory obligation. However, this does not square with the language provided in article 46.3.

Conclusion

The trend in Asia is one that generally continues to converge in favour of arbitration. That said, parties (and parties' counsel) may still face practical challenges in enforcement, whether as a result of needing to familiarise themselves with the different nuances in law in a foreign jurisdiction (where enforcement is being considered) or being dissuaded as a matter of perception of the foreign court's attitude towards arbitration. However, these are challenges that can be overcome with time with training and education of relevant stakeholders in these jurisdictions on the Model Law and the New York Convention.

Notes

1 See https://www.siac.org.sg/images/stories/articles/annual_report/SIAC_Annual_Report_2020.pdf.

2 https://www.straitstimes.com/singapore/singapore-arbitration-centre-opens-office-in-ny.

3 http://www.kcabinternational.or.kr/user/Board/comm_notice.do?BD_NO=174&CURRENT_MENU_CODE=MENU0017&TOP_MENU_CODE=MENU0014.

4 http://www.cietac.org/index.php?m=Page&a=index&id=40&l=en.

5 http://www.kcabinternational.or.kr/user/Board/comm_notice.do?BD_NO=172&CURRENT_MENU_CODE=MENU0015&TOP_MENU_CODE=MENU0014.

6 See www.mlaw.gov.sg/news/press-releases/public-consultation-on-proposed-amendments-to-the-international-arbitration-act.

7 In brief, section 9B(1) of IAA provides for a default procedure as follows: (i) all claimants are to jointly appoint an arbitrator; (ii) all respondents are to jointly appoint an arbitrator; and (iii) the two party-appointed arbitrators are to jointly appoint the third, presiding arbitrator. Section 9B(2) provides that the appointing authority 'must, upon the request of any party, appoint all 3 arbitrators and designate any one of the arbitrators as the presiding arbitrator' if the default procedure in section 9B(1) fails. The 'appointing authority' under the IAA is the President of the Court of Arbitration of the SIAC, pursuant to section 8(2) of the IAA.

8 Rule 12.2 of the SIAC Rules 2016 provides: 'Where there are more than two parties to the arbitration, and three arbitrators are to be appointed, the Claimant(s) shall jointly nominate one arbitrator and the Respondent(s) shall jointly nominate one arbitrator. The third arbitrator, who shall be the presiding arbitrator, shall be appointed in accordance with Rule 11.3. In the absence of both such joint nominations having been made within 28 days of the date of commencement of the arbitration or within the period otherwise agreed by the parties or set by the Registrar, the President shall appoint all three arbitrators and shall designate one of them to be the presiding arbitrator.'

9 Article 12(6) of the ICC Rules 2021 provides: 'Where there are multiple claimants or multiple respondents, and where the dispute is to be referred to three arbitrators, the multiple claimants, jointly, and the multiple respondents, jointly, shall nominate an arbitrator for confirmation pursuant to Article 13.'

10 Article 12(8) of the ICC Rules 2021 provides: 'In the absence of a joint nomination pursuant to Articles 12(6) or 12(7) and where all parties are unable to agree to a method for the constitution of the arbitral tribunal, the Court may appoint each member of the arbitral tribunal and shall designate one of them to act as president. In such cases, the Court shall be at liberty to choose any person it regards as suitable to act as arbitrator, applying Article 13 when it considers this appropriate.'

11 Section 12(1)(j) of the IAA provides that 'an arbitral tribunal shall have powers to make orders or give directions to any party for . . . enforcing any obligation of confidentiality' that (i) parties have agreed to in writing, (ii) under any written law or rule of law or (iii) under the rules of arbitration agreed to or adopted by the parties.

12 *Bloomberry Resorts* at [28].

13 *Bloomberry Resorts* at [37].

14 *Bloomberry Resorts* at [41].

15 *Bloomberry Resorts* at [39].

16 *BXS* at [32].

17 The equivalent provision can be found in Order 3 Rule 4 of the Singapore Rules of Court.

18 *Bloomberry Resorts* at [51] and [52].

19 *Bloomberry Resorts* at [52] and [53].

20 *Bloomberry Resorts* at [54].

21 Rule 28.1 of the Singapore Chamber of Maritime Arbitration Rules provides: 'Unless the parties have agreed on a documents only arbitration or that no hearing should be held, the Tribunal shall hold a hearing for the presentation of evidence by witnesses, including expert witnesses or for oral submissions.'

22 *CBP* at [79].

23 *CBP* at [85].

24 See Lesotho, Sanum.

25 See http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64839.

26 Under Philippine law, an intra-corporate dispute is one that arises between a stockholder and the corporation, or among stockholders relating to the internal affairs of the corporation.

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Andre Yeap SC is Rajah & Tann Singapore's senior partner. Apart from international arbitration work, where he has separately represented both investor and state interests in investor-state disputes, Andre has developed a broad-based corporate, commercial and insolvency-related litigation practice, which includes banking, securities, shareholder disputes, fraud, breach of fiduciary duties, trust and estate matters, often with strong cross-border elements. Many of his cases, including cases relating to international arbitration awards, are landmark cases, setting precedent for various areas of the law. *The Legal 500 Asia Pacific* has stated, 'Andre Yeap SC is a pillar of strength in commercial matters'. He has been consistently recognised as a market-leading lawyer in arbitration and dispute resolution by various publications, including *Global Arbitration Review, Chambers Global, Chambers Asia-Pacific* and *AsiaLaw Profiles*. Andre is a member of the Energy Market Authority Board and was previously deputy chairman of the Income Tax Board of Review and a member of the Competition Appeal Board.

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