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The New York Convention: 50 Years Of Experience



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Enforcement Of Foreign Arbitral Awards And The New York Convention — The Singapore Experience

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While the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards concluded in New York in 1958 (the "New York Convention") has reached its 50th year, it has a relatively shorter history in Singapore, which ratified the New York Convention in 1986.

The New York Convention was first given effect in Singapore through the enactment of the Arbitrations (Foreign Awards) Act¹ of 1986. Subsequently, when Singapore adopted the Model Law on International Commercial Arbitration adopted by the United Nations Commission on International Trade Law (the "Model Law"), the Arbitrations (Foreign Awards) Act was repealed. In its place, Parliament enacted the International Arbitration Act,² which sought to consolidate all statutory provisions on international arbitration, including the Model Law and the New York Convention, under a single parliamentary Act. The **Arbitration (Foreign Awards) Act** was re-enacted substantially unchanged as Part III of the International Arbitration Act.

At the time of writing, 142 States are parties to the New York Convention. In 1986, fewer States had acceded or ratified to the New York Convention (as of 1 January 1986, 69 States were parties to the New York Convention), but even then, its value in filling a lacuna in enforcement mechanisms within the framework of international trade and commerce was well recognized. In the Second Reading of the Arbitration (Foreign Awards) Bill³, which moved for the enactment of the Arbitrations (Foreign Awards) Act, the then Second Minister for Law Prof S Jayakumar stated:

"The Arbitration (Foreign Awards) Bill is to enable Singapore to ratify the New York Convention on the Recognition of Foreign Arbitral Awards concluded on 10th June 1958. Arbitration, rather than court proceedings, is the favoured means of resolving international commercial disputes. It is therefore important to the international business community that arbitral agreements and awards are recognized and easily enforced in as many countries as possible.

Under our present law, there are two ways in which an arbitral award obtained in another country may be enforced in Singapore. The successful party may commence fresh legal proceedings for the purpose, or where the arbitral award was made in a Commonwealth country to which the Reciprocal Enforcement of Commonwealth Judgments Act (Chapter 24) applies, register the award in the High Court. The first method is cumbersome and the second is available only in respect of awards made in a handful of Commonwealth countries.

On the other hand, the New York Convention provides a more convenient means of enforcing arbitral agreements and awards by simplifying the conditions and procedures governing the recognition of such agreements and awards at the international level. . . ."

The benefits of a streamlined and uniform regime for the enforcement of foreign arbitral awards extend beyond the individual litigant. International commercial arbitration would only remain a viable means of alternative dispute resolution if the arbitral awards are recognized and enforceable. In that context, it is only with an effective body of laws on enforcement,

will businesses have the confidence to invest in and participate in the economy. The New York Convention's contribution to Singapore's competitiveness was therefore another point raised in support of passing the Arbitration (Foreign Awards) Bill, which Prof Jayakumar stating:

"It is desirable for Singapore to accede to the Convention. To do so will be in keeping with our position as an international commercial and financial centre. It will encourage the development of Singapore as an international commercial arbitration centre and provide a boost to the service sector of our economy. The local business community will also benefit in that an award made in Singapore may be enforced in other countries which are parties to the Convention. . . ."

It is in line with the policy to make Singapore an international commercial arbitration centre⁴ that Singapore has ratified the New York Convention with the reservation (provided at Article I.3) that Singapore will apply the Convention only to the recognition and enforcement of awards made in the territory of another contracting State. Section 29 of the International Arbitration Act provides that a "foreign award may be enforced in a court either by action or in the same manner as an award of an arbitrator made in Singapore." A "foreign award" is defined as "an arbitral award made in pursuance of an arbitration agreement in the territory of a Convention country other than Singapore."

In that context, we now highlight the Singapore experience of the enforcement of foreign arbitral awards under the New York Convention.

Re An Arbitration Between Hainan Machinery Import And Export Corporation And Donald⁵

Background

The case of *Re An Arbitration between Hainan Machinery Import and Export Corporation and Donald & McArthur Pte Ltd* was the first reported judgment relating to enforcement of foreign arbitral awards under the New York Convention.

The application for enforcement had originally been made in October 1994 pursuant to the provisions

of the Arbitration (Foreign Awards) Act 1986. The application was for an order that liberty be given to enforce the award in the same manner as a judgment or order of the High Court of Singapore, and was allowed at first instance. The order was thereafter served on the defendants who applied for the order to be set aside. The application to set aside the order was heard in February 1995 by which time the Arbitration (Foreign Awards) Act had been repealed. Section 36 of the International Arbitration Act provided that any proceedings commenced under the Arbitration (Foreign Awards) Act should continue as if it had been commenced under the International Arbitration Act. As such, the application ultimately concerned the provisions of the International Arbitration Act.

In the event, the application for the order to be set aside was dismissed. The reported judgment concerned the appeal.

The Plaintiffs were an organisation constituted under the laws of China, and had entered into a contract to buy from the defendants 15,000 metric tons of steel wire rods from a Black Sea port to be delivered to the plaintiffs at the ports of Tianjin and Haikou in China. Under the contract, the latest date of shipment was 25 October 1992 and that in the event of there was a delay in shipment exceeding three weeks, the plaintiffs would have the right to cancel the contract and the defendants would pay a sum of 5% of the value of the contract.

The contract further provided that all disputes shall be settled through friendly negotiations, failing which the dispute may be submitted for arbitration to the Arbitration Committee of the China Council for the Promotion of International Trade in accordance with the Provisions Rules of Procedure promulgated by the said Committee. The arbitration clause provided that the arbitration shall take place in Beijing.

In the event, the defendants failed to ship the goods by the contractual date, the plaintiffs duly cancelled the contract and claimed the sum of US\$217,500 being the contractual non-performance penalty. The plaintiffs also gave notice that if the defendants did not pay the sum claimed, the plaintiffs would seek recourse through legal channels to recover their losses. The defendants on the other hand denied their liability, claiming that there had been a fierce storm and

earthquake in the Black Sea area and that they were thus entitled to rely on the *force majeure* provision in the contract.

In June 1993, the plaintiffs submitted the dispute for arbitration to the China International Economic and Trade Arbitration Commission ("CIETAC") (which the Court noted to be the same body as the China Council for the Promotion of International Trade — the body nominated under the contract to conduct the arbitration). On 24 June 1993, the defendants received a letter from CIETAC informing them that arbitration proceedings had been started, as well as inviting them to nominate an arbitrator and file their defence.

The defendants wrote to CIETAC stating that they did not agree to the institution of arbitration proceedings. The defendants were informed that the arbitration would proceed if they did not appoint an arbitrator. The defendants were also informed that a hearing would take place on 7 April 1994, and were also requested to present their case. The defendants repeatedly refused to take part in the arbitration, stating that they had not agreed to the arbitration. CIETAC thus proceeded to issue its award, which was in favour of the plaintiffs.

Defendants' Grounds For Refusal Of Enforcement

The Defendants argued before the High Court that the CIETAC award should not have been registered for the following reasons:

First, the order of court registering the award was not indorsed with a statement specifying the period of time within which the defendants had to apply to court to have the order set aside as was required under Order 69 rule 7(7) of the Rules of Court. The defendants argued that compliance with this rule of procedure was imperative.

Second, the making of the award was not in accordance with proper procedure. On this ground, the defendants relied on the treatise *Commercial Arbitration* by Mustill and Boyd to argue that before the arbitrators could make an ex parte award on the claim, they had to be satisfied that the plaintiffs had brought forth sufficient evidence to make out a good arguable case; and that the arbitrators had to consider any evi-

dence or submissions which the defendants had put before the arbitrators on any previous occasion. The defendants argued that the arbitrators had not taken into consideration the letter written by the defendants to CIETAC. Further, the defendants argued that the plaintiffs had failed to submit to CIETAC a *force majeure* certificate provided by the defendants nor revealed that they had notified the defendants of their intention to commence legal proceedings instead of arbitration proceedings. Lastly, the defendants claimed that the records of the hearings had not been supplied to the defendants, and contended that this was a breach of Article 30 of the CIETAC Arbitration Rules which provided that record should be taken of hearings.

Third, the award dealt with a difference not contemplated by, or not falling within the terms of the submission to arbitration or contained a decision on a matter beyond the scope of the submission to arbitration. The defendants contended that the plaintiffs had waived or repudiated their right to arbitration when notice was given that they intended to resort to legal process if the penalty was not paid. The defendants argued that this brought the agreement to arbitrate to an end.

Fourth, the subject matter of the difference between the parties was not capable of settlement by arbitration under the under law of Singapore. The defendants argued that where there is no express choice of substantive and/or curial law, it becomes necessary for the parties to agree on the applicable law or for the tribunal to decide on it, but on the face of the award, it CIETAC tribunal had not chosen a governing law but indicated that the award had been made according to "general internal trade practice."

Fifth, it would be contrary to public policy to allow the award to be enforced because an injustice would be done to the defendants and the award did not decide on the real matter in dispute between the parties.

The Court's Judgment

The Court dismissed the defendants' appeal. Taking each of the defendants' points in turn:

- Non-compliance with the Rules of Court

While it appears that the plaintiffs had readily conceded to the fact that there was an omission to comply with the procedure, the Court also agreed with the plaintiffs' submission that the omission was a mere irregularity that had not caused any prejudice to the defendants and was curable. Order 2 rule 1 of the Rules of Court expressly grants the courts the discretion to cure procedural irregularities.⁶ Additionally, the Court rightly pointed out that the omission to include the indorsement on the order of court did not affect the fundamental points of whether the court had the jurisdiction over the plaintiff's application for leave to enforce the award, or whether the preconditions for leave to enforce had been satisfied.

Section 31 of the International Arbitration Act expressly states:

*"In any proceedings in which the enforcement of a foreign award is sought by virtue of this Part, the party against whom the enforcement is sought may request that the enforcement be refused, and the enforcements in any of the cases mentioned in subsections (2) and (4) may be refused **but not otherwise.**"*

It is clear that the grounds on which the Court may refuse the enforcement of a foreign arbitral award made in another Convention country is exhaustively set out in Sections 31(2) and 31(4). Those statutory provisions do not include the failure to comply with court procedure (at least, where such failure does not amount to a contravention of public policy) as a grounds to refuse enforcement. It is submitted that this would have been an additional reason why the defendant's argument was doomed to fail.

- Non-compliance with the proper arbitration procedure

The defendant's argument in this regard sought to invoke the grounds stated in section 31(2)(e) of the International Arbitration Act, where enforcement may be refused where it is demonstrated that *"the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, was not in accordance with the law of the country where the arbitration took place."*

The first step would therefore be to identify the arbitral procedure agreed by the parties, or in the absence of that, the scope of the procedure in accordance with the laws of China, where the arbitration had taken place. As mentioned above, the contract had expressly provided that the arbitration was to be conducted in accordance with the rules of the Arbitration Rules of the China Council for Promotion of International Trade (in other words, the Arbitration Rules of CIETAC).

The plaintiffs adduced evidence from a Chinese lawyer who confirmed that the arbitration had been in accordance with the Arbitration Rules of CIETAC. In comparison, the defendants erred in relying on the arbitral procedure set out in *Commercial Arbitration* by Mustill and Boyd, which was a treatise on English law.

It is submitted that the defendants' assertion that the plaintiffs had failed to give full and frank disclosure and that the arbitrator had failed to fully consider the evidence before it, was in fact a backdoor to reviewing the merits of the tribunal's decision, rather than genuine complaints against failures to comply with the arbitral procedure. In any case, the Court was careful not to have examined in detail the grounds of the tribunal's decision and was content to note that *"the way in which the award was written that the arbitrators were well aware of the facts of the case . . . they knew that the defendants had made a claim that a force majeure incident had occurred."*

Given that the defendants had chosen not to present their evidence to the tribunal despite having been given every opportunity to do so, the defendants also could not then criticize the way in which the arbitration had been conducted. The Court noted this, and held that even *Commercial Arbitration* by Mustill & Boyd itself makes clear that if the arbitrator is only presented with only one version of the facts, the arbitrators does not thereby become an advocate for the other side. The CEITAC tribunal had not erred procedurally in going with the hearing on an *ex parte* basis since it was the defendants who refused to appear.

- Waiver or repudiation of the arbitration agreement

It appears from the judgment that the defendants had sought to rely on section 31(2)(d) of the International

Arbitration Act which states that enforcement may be refused if that award “*deals with a difference not contemplated by, or not falling within the terms of, the submission to arbitration or contains a decision on the matter beyond the scope of submission to arbitration.*” The Court rejected the defendant’s arguments on the factual finding that there was no evidence, other than a bare assertion, that the plaintiffs had represented that they were giving up their right to arbitration.

One additional observation that may be made is that the defendants’ argument did not fit comfortably within the scope of section 31(2)(d) in the first place. The ground for refusing enforcement under section 31(2)(d) is generally that the arbitrator has overstepped his authority. The award may be outside of the arbitrator’s authority if he deals with a dispute not falling within the scope of the arbitral clause, or if he decides on matters not submitted to him by the parties.⁷

In the *Hainan Machinery* case, the defendants’ complaint was essentially that there was no longer an arbitration agreement which bound them to submit their dispute to arbitration. This relates to a more fundamental question of whether the plaintiffs have satisfied the preconditions for the grant of the order for leave to enforce the award — if there was no arbitration agreement, the award would not fall within the definition of “foreign award” in Section 27 of the International Arbitration Act, which requires that the arbitral award be “made in pursuance of an arbitration agreement.” If the facts had supported the defendants, it is suggested that their argument could have been framed as the Plaintiffs failing to comply with condition precedents for enforcement, and alternatively that the arbitration agreement was not valid under section 31(2)(b).

- Non-Arbitrability

According to the judgment, the defendants relied on section 31(4)(a) of the International Arbitration Act, and argued that because there were no notes of evidence of the arbitration proceedings, it could not be said with certainty which law had been applied to the CIETAC tribunal’s analysis of the contract or to the proceedings and that it would therefore be unsafe for the Court to allow enforcement of the award.

The Court disposed of this argument by making a finding that it appeared that Chinese law was the basis of the tribunal’s award.

However, it bears commenting that the defendants’ argument in this respect again fails to fit comfortably within the statutory provision on which they rely. Section 31(4)(a) accords the Court the right to refuse enforcement if the dispute is not one which is capable of settlement by arbitration under the laws of Singapore. The non-arbitrability of a subject matter reflects a special national interest in judicial resolution of a dispute rather than through arbitration.⁸ Generally, the subject matter of disputes are arbitrable unless the issues touch on public interest elements such as marriage laws, copyrights, insolvency and bankruptcy.⁹ It is unclear how the defendants’ assertion that the award did not expressly state the applicable law would touch on public interest, when the *subject matter* of the dispute itself clearly relates only to non-performance under a commercial contract.

- Public Policy

The defendants’ final argument that the enforcement of the award would be contrary to the public policy of Singapore was also rejected.

The Court took a very narrow view of the circumstances which would justify a finding that the award was contrary to Singapore’s public policy. What is more remarkable is that the Court turned the defendant’s public policy argument on its head and opined that public policy would in fact *require* the award to be enforced. The judge stated:-

“In my view, public policy did not require that this court refuse to enforce the award obtained by the plaintiffs. There was no allegation of illegality or fraud and enforcement would therefore not be injurious to the public good. As the plaintiffs submitted, the principle of comity of nations requires that the awards of foreign arbitration tribunals be given due deference and be enforced unless exceptional circumstances exist. As a nation which aspires to be an international arbitration centre, Singapore must recognise foreign awards if it expects its own awards to be recognised abroad.”

I could see no exceptional circumstances in this case which would justify the court in refusing to enforce the award of the Commission.”

This approach is consistent with the outward-looking attitude of the Singapore courts. In *Liao Eng Kiat v Burswood Nominees Ltd*,¹⁰ the Singapore Court of Appeal was faced with the question of whether to allow enforcement of a foreign judgment under the Reciprocal Enforcement of Commonwealth Judgments Act. The Court of Appeal examined cases which dealt with enforcement of judgement and of arbitral awards and stated the following observations:

“A survey of these cases made it apparent that there is a higher standard of public policy in operation when a forum court is faced with a foreign judgment, as opposed to a domestic issue being litigated for the first time in the forum court. Foreign courts appear very reluctant to invoke the expedient of “public policy” to justify a refusal to recognise a foreign judgment, even if their domestic public policy would have precluded enforcement of the underlying claim. . .

. . .

We recognised that all four cases dealt with the enforcement of foreign arbitral awards. Nevertheless, we agreed with counsel for Burswood that the same public policy requirements that apply to the enforcement of international arbitral awards should apply to enforcement of foreign judgments under the RECJA. Both the New York Convention and the RECJA were enacted with the basic aim of removing pre-existing obstacles to the enforcement of foreign awards or judgments. A narrow reading of the public policy defence would help to further this aim. Above all, considerations of reciprocity that underlie both the New York Convention and the RECJA enjoin courts to invoke the public policy defence with caution.”

Based on these judgments, it would appear that it would only be in the most egregious cases that the

Singapore courts would interfere with a foreign arbitral award on the basis of public policy.

Aloe Vera of America, Inc v Asianic Food (S) Pte Ltd and Another¹¹

The next reported judgment of note is the case of *Aloe Vera of America, Inc v Asianic Food (S) Pte Ltd and Another*.

In that case, the plaintiff, Aloe Vera of America (“AVA”) applied for leave to enforce an arbitral award obtained against Asianic Food (S) Pte Ltd (“Asianic”) and Chiew Chee Boon (“Chiew”). The order was granted, but Chiew appealed the decision.

AVA was a manufacturer and distributor of aloe vera products incorporated in Texas, USA. Asianic had been set up by Chiew to sell, market and distribute AVA’s products under an Exclusive Supply Distributorship and License Agreement (the “Agreement”). The Agreement contained a clause 13.7 which provided for arbitration in accordance with the rules of the American Arbitration Association for any dispute which arises “relating to any relationship amount any of the Forever Ling Products Companies (“FLP”), their officers, employees, distributors or vendors or arising out of any products sold by FLP.” The arbitration was agreed to be governed by the Federal Arbitration Act and any substantive or procedural rights other than the enforceability of the arbitration agreement shall be governed by Arizona law.

Chiew had signed the Agreement on behalf of Asianic.

Disputes arose and AVA commenced arbitration proceedings by serving a notice of arbitration on both Asianic and Chiew. By a letter to both Asianic and Chiew, the International Centre for Dispute Resolution (“ICDR”) of the AAA acknowledged AVA’s demand for arbitration and set out instructions in relation to the procedural steps for the arbitration. Subsequently, the ICDR also informed all parties that an arbitrator had been appointed.

Chiew took the position that he was not a party to the Agreement and had not agreed to arbitration or to the laws of Arizona applying to him personally. His attorneys therefore wrote to the Arbitrator stating that Chiew was not submitting to the jurisdiction of

the Arbitrator and that he was not a party to the arbitration agreement. AVA's attorneys responded and submitted to the Arbitrator that Chiew was a party by reason of the words of clause 13.7 and/or that he was the alter ego of Asianic. The Arbitrator thereafter made a preliminary order finding that he had jurisdiction over Chiew because Chiew was a party to the arbitration under the broad definition in clause 13.7.

Subsequently, Chiew's attorney wrote to state Chiew's disagreement with the Arbitrator's preliminary order. Thereafter, Chiew took no further part in the proceedings, even though both Chiew and Asianic were given prior notice of a hearing.

Ultimately, the Arbitrator made a final award, holding in favour of AVA's claims. Additionally, the Arbitrator made a finding that Asianic was the alter ego of Chiew and that all acts and obligations of Asianic were the acts and obligations of Chiew.

Chiew first argued that no arbitration agreement existed between him and AVA. The Court rejected his argument, holding that it was sufficient for the purpose of satisfying the Court that there was an arbitration agreement by proving Chiew was mentioned in the arbitration agreement that was exhibited and that the arbitral tribunal had made a finding that Chiew was a party to the arbitration agreement. In coming to this determination, the Court noted that "*there is the principle of international comity enshrined in the Convention that strongly inclines the courts to give effect to foreign arbitral awards*"¹², and that the correct approach was for the court to take a mechanistic approach in the examination of the documents submitted in the application for enforcement. It was not for the Court to make a substantive examination of the arbitration agreement.

This position is supported in *Arbitration Law* by Robert Merkin which states:

"The Arbitration Act 1996, s 101(2) provides that a New York Convention award may, by permission of the court, be enforced in the same manner as a judgment or order of the court to the same effect, and s 101(3) goes on to state that "where leave is so given, judgment may be entered in terms of the award." This wording makes it clear that

the enforcement process is a mechanistic one, and that the court may simply give a judgment which implements the award itself. . . ."

Chiew then sought to argue that enforcement ought to be refused under Section 31(2)(b) of the International Arbitration Act if it is shown that "the arbitration agreement is not valid under the law to which the parties have subjected it or, in the absence of any indication in that respect, under the law of the country where the award was made." Chiew therefore bore the burden of proving that the arbitration agreement was not valid under Arizona law. However, it was found that Chiew had failed to adduce any expert evidence to prove that the Arbitrator was wrong in holding that Chiew was a party to the arbitration agreement under Arizona law. On that basis, the Court held that it could not make a finding that the arbitration agreement was invalid as between AVA and Chiew.

Chiew's next argument relied on section 31(2)(d) which allows for the refusal of enforcement if the award "deals with a difference not contemplated by, or not falling within the terms of, the submission to arbitration or contains a decision on the matter beyond the scope of the submission to arbitration." The Court accepted the argument of the counsel for AVA that where a challenge was being made on the basis that a person was not a party to the arbitration agreement, that challenge should be brought under section 31(2)(b) and not section 31(2)(d).

In a challenge under section 31(2)(d), the crux of the argument is that the award deals with matters not contemplated by the arbitration agreement - but this very argument assumes that the tribunal has jurisdiction over the parties.¹³ Chiew could not therefore avail himself to this ground for the refusal of enforcement.

Chiew also argued that the enforcement should be refused because enforcement would be contrary to public policy. It was submitted that there was no evidence before the court to show that Chiew was the alter ego of Asianic, and that the award was against public policy because the Arbitrator had pierced the corporate veil without any supporting evidence. It was also contended that Chiew was not given the opportunity to challenge the alter ego point and this was

a breach of natural justice. It was also contended that the enforcement of foreign arbitral awards that seek to bind non-signatory Singapore citizens to such awards would be contrary to Singapore's public policy.

In dealing with this point, the Court stated that foreign arbitral awards from a Convention country must be enforced by the Singapore courts "unless it offends against our basic notions of justice and morality."¹⁴ The Court then went on to make a finding that the award did not offend the basic notions of justice that the Singapore court adheres to. In this regard, the Court considered that Chiew could not be considered a "non-signatory" because he did in fact sign the Agreement (albeit as the manager of Asianic). The Arbitrator's finding on the point of alter ego was not against public policy because Singapore legal principles such as alter ego and agency also allowed for a person who is not named in a particular contract to in fact be responsible for the obligations purported undertaken by someone else. Finally, the Court noted that Chiew had at all times been able to avail himself to legal advice in Arizona and also been given the opportunity to deal with the substantive issues in the arbitration. Given that it was Chiew who had refused to take part in the proceedings, he could not now find fault with the award, especially where the fault could have been easily avoided by his participation.

Conclusion

The judgments in *Re An Arbitration Between Hainan Machinery Import and Export Corporation and Donald and Aloe Vera of America, Inc v Asianic Food (S) Pte Ltd and Another* clearly demonstrate the pro-enforcement stance adopted by the courts in interpreting and implementing the New York Convention.

Special note may be made of the Singapore courts express reluctance to resort to public policy arguments to refuse enforcement. The grounds on which a court may refuse enforcement are otherwise exhaustively laid out in the New York Convention and in section 31(2) of the International Arbitration Act. It would be tempting for a court to pay lip service to the New York Convention by rejecting all challenges under the express grounds, and to still refuse enforcement by resorting to vague concepts of domestic public policy.

Yet, if one were to take the view that Article V(2)(a) and (b) refer only to international public policy¹⁵ —

a narrower field of public policy — then one wonders if the provision itself then becomes otiose. If only awards that offend international public policy may be refused enforcement, would it not be also almost always possible in such a case to set aside the award in the supervisory jurisdiction? If the supervisory court were to reject the international public policy challenge, would the enforcing court take a different view? Whatever the answer may be, it appears that the public policy challenge is a narrow one — a good view to take for a jurisdiction aiming to be an international arbitration hub, like Singapore.

Endnotes

1. Cap 10A, 1985 Rev ed.
2. Cap 143A, 1994.
3. Sitting of Parliament on 25 August 1986.
4. Amongst other things, the Ministry of Law has announced in the 2008 Budget, plans to open an integrated dispute resolution complex, containing state of the art hearing room facilities for the conduct of high-end international dispute resolution work, in 2009. The building will also house eminent international arbitration bodies from around the world, including the largest ones from the United States and Europe, along with the Singapore International Arbitration Centre. Singapore Economic Development Board is also working to encourage more international arbitration institutions and foreign law firms to set up in Singapore. http://www.mof.gov.sg/budget_2008/expenditure_overview/minlaw.html.
5. [1996] 1 SLR 34.
6. Order 2 rule 1 reads: "Where, in beginning or purporting to begin any proceedings or at any stage in the course of or in connection with any proceedings there has, by reason of anything done or left undone, been a failure to comply with the requirements of these Rules, whether in respect of time, place, manner, form or content or in any other respect, the failure shall be treated as an irregularity and shall not nullify the proceedings,

- any step taken in the proceedings, or any document, judgment or order therein.”*
7. See *The New York Arbitration Convention of 1958*, Albert Jan van den Berg (Kluwer, 1994) at pgs 314-316.
 8. *Ibid.* at pgs 368-369. It is also noted that the question of non-arbitrability falls within the general concept of public policy, and that non-arbitrability as a separate ground for refusal of enforcement from public policy was a result of historical reasons.
 9. See *Halsbury's Laws of Singapore Volume 2* (2003 Reissue) at pg 2.
 10. [2004] 4 SLR 690.
 11. [2006] 3 SLR 174.
 12. *Ibid.* at [40].
 13. *Halsbury's Laws of Singapore Volume 2* (2003 Reissue) at para 20.145.
 14. [2006] 3 SLR 174 at [75].
 15. See *The New York Arbitration Convention of 1958*, Albert Jan van den Berg (Kluwer, 1994) at pg 382. ■