The Asia-Pacific Arbitration Review 2021

Published by Global Arbitration Review in association with

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The Asia-Pacific Arbitration Review 2021

A Global Arbitration Review Special Report

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This article was first published in June 2020
For further information please contact Natalie.Clarke@lbresearch.com

The Asia-Pacific Arbitration Review 2021

Account manager Bevan Woodhouse

Production editor Kieran Redgewell
Chief subeditor Jonathan Allen
Subeditor Sarah Meaney
Head of production Adam Myers
Editorial coordinator Hannah Higgins

Publisher David Samuels

Cover image credit Mirexon/iStock

Subscription details
To subscribe please contact:
Global Arbitration Review
Meridian House, 34-35 Farringdon Street
London, EC4A 4HL
United Kingdom
Tel: +44 20 3780 4134
Fax: +44 20 7229 6910
subscriptions@globalarbitrationreview.com

ISBN: 978-1-83862-249-7

Printed and distributed by Encompass Print Solutions
Tel: 0844 2480 112

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Welcome to *The Asia-Pacific Arbitration Review 2021*, a *Global Arbitration Review* special report. *Global Arbitration Review* is the online home for international arbitration specialists, telling them all they need to know about everything that matters.

Throughout the year, *GAR* delivers pitch-perfect daily news, surveys and features, organises the liveliest events (under our GAR Live banner) and provides our readers with 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 37 pre-eminent regional practitioners.

Across 17 chapters and 112 pages, it offers an invaluable retrospective. All contributors are vetted for their standing and knowledge before being invited to take part.

Together, our contributors capture and interpret the most substantial recent international arbitration events of the year just gone, with footnotes and relevant statistics. Other articles provide valuable background so that you can get up to speed quickly on the essentials of a particular country as a seat.

This edition covers Australia, China, Hong Kong, India, Japan, Korea, Malaysia, Singapore and Vietnam. It also has overviews of construction and infrastructure disputes in the region (and how to avoid them), investment treaty arbitration (particularly its relevance to the Belt and Road Initiative), the impact of covid-19 on the art of damages calculation, and third-party funding.

Among the nuggets it contains:

- the common mistakes that contractors make when allocating risk in contracts and how to avoid them;
- a groundbreaking year for international arbitrations in Korea;
- the vogue among Asian states for including appeal mechanisms in their ISDS;
- how China's government has managed to open up the mainland market to institutions such as the ICC, without having to amend the national arbitration law;
- the end of natural-justice based challenges to awards in Singapore; and
- a handy table showing the position of third-party funding in eight Asian states.

And much, much more.

We hope you enjoy the volume. 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 2020

The rise of arbitration in the Asia-Pacific

Andre Yeap SC and Kelvin Poon
Rajah & Tann Singapore LLP

In summary

Use of arbitration continues to rise in Asia. Leading Asian arbitration institutions, such as the Singapore International Arbitration Centre and the Hong Kong 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 a trend exists across the region that converges 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 Asia.
- Arbitration's popularity in Asia can be explained by a number of factors, such as growth in the region and the relatively low costs of conducting arbitration in Asia. 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 its popularity, evidenced in recent developments in jurisdictions such as Singapore, the Philippines and Thailand.

Referenced in this article

- China Machine New Energy Corp v Jaguar Energy Guatemala LLC ([2020] SGCA 12).
- China Machine New Energy Corporation v Jaguar Energy Guatemala LLC ([2018] SGHC 101).
- BXS v BXT ([2019] SGHC (I) 10).
- 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 use of arbitration in Asia continues to rise. Compared to 2018, the Singapore International Arbitration Centre (SIAC) set a record high of 479 new case filings – a 76 per cent jump from the 271 cases filed in 2015. The total sum in dispute for all new case filings with the SIAC amounted to US$8.09 billion – a 14.6 per cent increase from 2018.[1] In Hong Kong, a total of 503 new cases were filed at the Hong Kong International Arbitration Centre (HKIAC) in 2019.[2] In tandem with an increase in the number of cases filed with the SIAC and the HKIAC, there has also been an increase in the number of arbitral institutions in Asia. In February 2019, the Integrated Bar of the Philippines established a new arbitral institution, the Philippines International Centre for Conflict Resolution (PICCR). The PICCR adds to the Philippine arbitration landscape, which has had the Philippine Dispute Resolution Centre Inc (PDRCI) in operation since 1996. In August 2019, the Beihai Asia International Arbitration Centre also opened in Singapore. Set up by the Beihai Arbitration Commission, it seeks to provide lower-cost, efficient arbitration services for small to medium-value disputes. It is the first ever international arbitration centre established in Singapore by a Chinese arbitration commission and signals Singapore's position as an ideal venue for disputes arising from the Belt and Road Initiative.[3]

The continued rise of arbitration may be explained by a number of factors, including growth in the region, the relatively low costs of conducting arbitration in Asia Pacific and the proliferation, development and advancement of arbitral institutions in Asia. With China's continued push of the Belt and Road Initiative in Asia and Africa, it is likely that the future will witness more disputes involving Asian parties, with arbitration continuing to be a preferred dispute resolution option.

One further factor – which perhaps explains the popularity of arbitration (compared to litigation) 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? This chapter considers recent developments in a few jurisdictions, examining whether the trend continues in favour of arbitration.

UNCITRAL Model Law

The United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration (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 *China Machine New Energy Corp v Jaguar Energy Guatemala LLC* ([2020] SGCA 12 (CMNC(CA))), the Court of Appeal dismissed an appeal against a High Court's decision to dismiss an application to set aside an arbitration award issued in International Chamber of Commerce (ICC) arbitration proceedings seated in Singapore. The dispute between the parties related to the construction of a power generation plant in Guatemala. The appellant, China Machine New Energy Corp (CMNC) was the contractor, and the respondents, Jaguar Energy Guatemala LLC and AEI Guatemala Jaguar Ltd (Jaguar) were the owners of the plant. Two agreements were relevant to the dispute:

- an engineering, procurement and construction (EPC) contract; and
- a deferred payment security agreement (DPSA).

Pursuant to the DPSA, CMNC agreed to provide financing to the project by allowing Jaguar the option of issuing debit notes in CMNC's favour in lieu of making relevant milestone payments. In turn, these debit notes were secured by interests in Jaguar's assets – including its rights under the EPC contract. Jaguar issued notices of breach when CMNC failed to meet takeover dates stipulated in the EPC contract. CMNC, in response, exercised its rights as a secured lender under the DPSA to take over Jaguar's rights under the EPC contract. Jaguar then notified CMNC of its intention to terminate the EPC contract, and requested that CMNC vacate the work site.

Jaguar commenced arbitration proceedings against CMNC to claim, among other reliefs, that it was entitled to validly terminate the EPC contract for CMNC's breach and also for the costs of completing the project. CMNC denied Jaguar's claims and made counterclaims asserting Jaguar's breach of the DPSA. In the course of the arbitration, the arbitral tribunal imposed an attorneys-eyes-only (AEO) regime, allowing Jaguar to make certain documents available only to CMNC's external counsel and expert witnesses, but not to CMNC's employees. This was in response to Jaguar's claims that CMNC had engaged in 'threatening actions' against Jaguar's employees after the termination of the EPC contract, and to address Jaguar's concerns about CMNC potentially misusing confidential information available in the documents that would be produced by Jaguar in the arbitration proceedings. The arbitral tribunal eventually unanimously found that Jaguar had validly terminated the EPC contract and substantially allowed Jaguar's claims, including its claim for the costs to complete the project.

CMNC commenced proceedings before the Singapore High Court to set aside the arbitral award on three main grounds. First, the arbitral award had been obtained in breach of article 34(2)(a)(ii) of the Model Law and section 24(b) of the International Arbitration Act because the AEO regime deprived CMNC of a reasonable opportunity to present its case and the arbitral tribunal failed to consider CMNC's arguments on the DPSA. Second, CMNC argued that the arbitral award had been obtained in breach of article 34(2)(a)(iv) of the Model Law and the parties' agreement to arbitrate because the arbitral tribunal had breached article 18 of the Model Law by not treating the parties equally and that Jaguar breached its obligations to arbitrate in good faith. The third argument that CMNC ran was that the arbitral award should be set aside for being contrary to public policy, pursuant to article 34(2)(b)(ii), as Jaguar engaged in guerrilla tactics in the arbitration by seizing CMNC's documents and evicting CMNC's employees from the construction site. Further, or alternatively, CMNC claimed that the arbitral tribunal failed to investigate allegations of corruption and fraud.

The High Court rejected all three grounds argued by CMNC and dismissed its application to set aside the arbitral award. The High Court disagreed with CMNC's argument that the AEO regime had deprived CMNC of a reasonable opportunity to present its case. The court took the view that CMNC could have – but chose not to – apply for access to the documents, an option available under the AEO regime.[4] Moreover, the arbitral tribunal subsequently issued a redaction order that allowed CMNC's employees to have access to the documents, albeit with confidential information redacted. This, in the High Court's judgment, would have mitigated the prejudice that CMNC claimed it suffered.[5] The High Court further held that CMNC did not suffer prejudice, which would have justified setting aside the arbitral award. CMNC's main argument was that the AEO regime ultimately caused CMNC to lose time in reviewing the documents which Jaguar relied on in support of its claim for the costs to complete the project. However, this argument was rejected. The High Court took the view that CMNC's complaint about the lack of time to review the documents was a result of its 'own choices and failings',[6] including its decision to change its legal team a few times during the arbitration proceedings. As to CMNC's argument that there had been a breach of agreed procedure, the High Court disagreed that the AEO regime had been 'asymmetrically' applied, or that the arbitral tribunal had deprived CMNC of a reasonable opportunity to present its case because it insisted that CMNC adhered to the procedural timelines – these were timelines that CMNC had agreed to.[7] Finally, the High Court also rejected CMNC's argument that there had been a breach of public policy in the rendering of the award. An arbitral tribunal's duty to investigate allegations of corruption did not arise in the present case as the allegations did not have any bearing on the issues in dispute in the arbitration.[8] In any case, a breach of an arbitral tribunal's duty to investigate corruption allegations per se did not render an arbitral award liable to be set aside.[9]

On appeal, CMNC focused on its due process argument, namely that it had not been given a reasonable opportunity to present its case due to the cumulative effect of three factors, namely:

- the effect of the AEO regime on CMNC's ability to review the documents produced by Jaguar;
- CMNC's lack of access to its own construction documents, as these documents had been seized by Jaguar; and
- the arbitral tribunal's failure to impose a cut-off date for Jaguar's production of documents in support of its costs to complete a claim, resulting in Jaguar continuing to produce a large amount of documents close to the main evidentiary hearing.[10]

As a result, CMNC argued that it lost time to prepare for the main evidentiary hearing. CMNC's ability to properly review the evidence in time was also affected. This ultimately resulted in CMNC filing two expert reports and a factual witness statement out of time.

The Court of Appeal rejected CMNC's arguments. In reaching its decision, the Court of Appeal was guided by the principle that 'in determining whether a party had been denied his right

to a fair hearing by the tribunal's conduct of the proceedings, the proper approach a court should take is to ask itself if what the tribunal did (or decided not to do) falls within the range of what a reasonable and fair-minded tribunal in those circumstances might have done'.[11] As such, the assessment is a fact-sensitive one and would depend on 'what was known to the tribunal at the material time',[12] and the court would also have to 'accord a margin of deference to the tribunal in exercise of procedural discretion'.[13] With this principle in mind, the Court of Appeal considered the circumstances in which the AEO regime had been imposed and disagreed with CMNC's submissions that the AEO regime had been imposed in breach of article 18 of the Model Law. The Court of Appeal affirmed the High Court's decision that any unfairness caused by the AEO regime would have been mitigated by the subsequent redaction order. The Court of Appeal also emphasised that in the arbitration, CMNC conducted itself in a manner that suggested that it was willing and able to proceed with the evidentiary hearing dates – despite the difficulties it claimed to face. As such, in the court's view, CMNC failed to discharge its burden of showing that the arbitral tribunal's conduct of the arbitral proceedings 'fell outside the realm of what a reasonable and fair-minded tribunal might have done' and it could not be said that there was a breach of the rules of natural justice in the rendering of the award.[14]

The Court of Appeal emphatically stated that '[a]n assertion that the tribunal has acted in material breach of natural justice is a very serious charge, not just for the imputation that such an allegation makes as to the *bona fides* and professionalism of the tribunal, but also for the grave consequence it might have for the validity of the award.'[15] As such, the Court of Appeal emphasised that there would be simply 'no room for equivocality in such matters'[16] and a party cannot complain after the fact that it had been deprived of a fair trial, but otherwise conducted itself in a manner that suggests that it is content to proceed with the arbitration. The appeal was therefore dismissed. While the decision was issued in the context of an application to set aside an arbitral award, it is likely that the Singapore courts will be guided by these same principles in future applications by parties to resist enforcement of an arbitral award on the grounds of breach of natural justice, as encapsulated by article V(1)(b) of the New York Convention.

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. The plaintiff claimed that the final award should be set aside as:

- the appointment of a sole arbitrator was in breach of the arbitration agreement for a three-person tribunal;
- the final award exceeded the scope of the matters submitted to arbitration; and
- the final award breached public policy.

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. As to the plaintiff's application to set aside the award, the court held that the SIAC Rules 2016 were incorporated by reference into the arbitration agreement and parties were therefore taken to have accepted the Expedited Procedure as provided for under the rules. This necessarily included Rule 5.2(b), which provided that a case dealt with under the Expedited Procedure would be 'referred to a sole arbitrator', unless the President of the SIAC Court determines otherwise. Even though the share sale agreement was entered into in 2012 (ie, before the SIAC Rules 2016), and the SIAC Rules in force then did not have Rule 5.3 (which provided that 'the rules and procedures set forth in Rule 5.2 shall apply even in cases where the arbitration agreement contains contrary terms'), the SIAC Rules 2016 nevertheless applied as this was the set of the rules in force at the time the arbitration commenced. The court also found that the plaintiff's challenge to the award on the ground that the award dealt with matters outside the scope of the arbitration agreement was, in effect, a challenge premised on the plaintiff's disagreement with the way in which the arbitrator had applied Thai law.[17] For this reason, the challenge on this ground and the public policy ground failed.

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 which are contained in the Model Law regime.

This first arbitration decision issued by the SICC applies 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. Parties should certainly take note 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[18] the Hong Kong Court of Final Appeal decision in *Astro Nusantara v PT Ayunda Prima Mitra and others* ([2018] HKCFA 12). The plaintiff 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 r 10(6) of the Rules of the Hong Kong Court – which the SICC observed to be similarly worded to Order 69A r 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 r 5 of the Rules of the Hong Kong Court,[19] the Hong Kong court has power to extend the time limit of 14 days in Order 73 r 10(6) and the Hong Kong court proceeded to exercise this power.

There are likely to be future developments to Singapore arbitration law. In June 2019, the Singapore Ministry of Law launched a public consultation to seek views on proposals to amend the International Arbitration Act.[20] The contemplated reform includes amendments to the International Arbitration 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.

If pushed through, the most significant amendment to the International Arbitration Act would be the amendment allowing parties to opt in to the mechanism of allowing a party to proceedings to appeal to the High Court on a question of law arising out of an award in Singapore-seated international arbitration proceedings.

Developments in ASEAN and Asia

There have also been developments in the arbitration landscape of other countries in the ASEAN. 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.

In the Philippines, the new arbitration centre PICCR was established in 2019. Formally launched on 7 February 2019,[21] it aims to promote the use of arbitration and other forms of alternative dispute resolution in the Philippines. While it is not known whether the PICCR has started administrating arbitration cases, it appears from its website that it has commenced training modules for arbitrators.[22] It remains to be seen whether it will be a successful competitor to the PDRCI. As arbitration becomes an increasingly popular choice for dispute resolution, the PDRCI also administered its first emergency arbitration case in 2019, which concluded with an award issued by the sole emergency arbitrator.

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).[23] 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.
- 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 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 2019 there were two additional Asian signatories to the New York Convention. On 17 July 2019, Papua New Guinea formally acceded to the New York Convention. This will be followed by a domestic arbitration bill to give effect to the New York Convention. The domestic arbitration bill will be prepared with

the assistance of the Asian Development Bank and UNCITRAL.[24] On 17 September 2019, the Maldives also formally acceded to the New York Convention. It is the 161st state party of the New York Convention.[25] These additions are positive developments for the arbitration landscape in Asia, as it will provide additional confidence for parties that have to seek enforcement of arbitration awards in these jurisdictions.

Conclusion

The trend in Asia is one which 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.

★ *Alessa Pang, a senior associate with the international arbitration construction and projects practice group at Rajah & Tann Singapore LLP, assisted with the drafting of this chapter.*

Notes

1 See www.siac.org.sg/images/stories/press_release/2020/[Press%20Release]%20SIAC%20Sets%20a%20New%20Record%20in%202019.pdf.
2 See www.hkiac.org/about-us/statistics.
3 'Arbitration Centre focused on China, Asean opens in S'pore', 8 August 2019, *The Straits Times*. Available at www.straitstimes.com/business/economy/arbitration-centre-focused-on-china-asean-opens-in-spore.
4 *China Machine New Energy Corporation v Jaguar Energy Guatemala LLC* ([2018] SGHC 101 (CMNC (HC)) at [163]).
5 CMNC (HC) at [134(b)].
6 CMNC (HC) at [167].
7 CMNC (HC) at [165(a)].
8 CMNC (HC) at [226] to [227].
9 CMNC (HC) at [228].
10 *China Machine New Energy Corporation v Jaguar Energy Guatemala LLC* ([2020] SGCA 2020 (CMNC (CA)) at [81]).
11 CMNC (CA) at [98].
12 CMNC (CA) at [99].
13 CMNC (CA) at [103].
14 CMNC (CA) at [173].
15 CMNC (CA) at [168].
16 CMNC (CA) at [168].
17 BXS at [16] to [17].
18 BXS at [32].
19 The equivalent provision can be found in Order 3 r 4 of the Singapore Rules of Court.
20 See www.mlaw.gov.sg/news/press-releases/public-consultation-on-proposed-amendments-to-the-international-arbitration-act.
21 See https://picc.r.com.ph/news.php.
22 See https://picc.r.com.ph/trainings.php.
23 See http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64839.
24 See https://globalarbitrationnews.com/papua-new-guinea-accedes-new-york-convention/.
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Andre Yeap SC
Rajah & Tann Singapore LLP

Kelvin Poon
Rajah & Tann Singapore LLP

Andre Yeap SC is Rajah & Tann Singapore's senior partner and heads its international arbitration practice. Apart from international arbitration work, where he has also represented various state interests in investor-state disputes, Mr Yeap 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 are landmark cases, setting precedents for various areas of the law. *The Legal 500 Asia Pacific* has stated that "Andre Yeap SC is a pillar of strength in commercial matters". He has been consistently recognised as a 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.

Kelvin Poon is a partner in the international arbitration, construction and projects practice group of Rajah & Tann Singapore LLP. He has represented clients in a broad range of construction, commercial and insolvency disputes before the Singapore courts and in numerous arbitrations.

Mr Poon has been cited and recommended in various publications for construction and international arbitration including the *The Legal 500 Asia Pacific* and *Best Lawyers*. He is a fellow of the Chartered Institute of Arbitrators. He is also a panel arbitrator of the Asian International Arbitration Centre.

RAJAH & TANN ASIA

9 Straits View #06-07
Marina One West Tower
Singapore 018937
Tel: +65 6535 3600
Fax: +65 6225 9630

Andre Yeap SC
andre.yeap@rajahtann.com

Kelvin Poon
kelvin.poon@rajahtann.com

www.rajahtannasia.com

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