IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2025] SGCA 52

Court of Appeal / Civil Appeal No 5 of 2025

Between

DMZ

… *Appellant*

And

DNA

… *Respondent*

In the matter of Originating Application No 1222 of 2024

Between

DMZ

… *Applicant*

And

DNA

… *Respondent*

GROUNDS OF DECISION

[Arbitration — Conduct of arbitration — UNCITRAL Model Law — Article 5 — Whether party permitted to apply to court while the arbitration is ongoing to challenge a decision of the arbitral institution]

[Arbitration — Conduct of arbitration — Rules — Arbitration Rules of the Singapore International Arbitration Centre (6th Ed, 1 August 2016) — Rules 40.1 and 40.2 — Whether tribunal or court permitted to review a decision of the arbitral institution]

DMZ
v
DNA

[2025] SGCA 52

Court of Appeal — Civil Appeal No 5 of 2025
Sundaresh Menon CJ, Steven Chong JCA and Ang Cheng Hock JCA
13 August 2025

14 November 2025

Sundaresh Menon CJ (delivering the grounds of decision of the court):

1 An essential facet of the principle of minimal curial intervention is the importance of ensuring that ongoing arbitral proceedings are protected from court intervention that is premature or otherwise unwarranted. The key to understanding the proper limits of such intervention is to inquire whether any judicial intervention in an arbitration that has the effect of impeding or affecting the progress of the arbitral proceedings is expressly permitted by the legislative framework. This strikes a suitable balance because otherwise, a party that had no genuine grievance might nonetheless be armed with a powerful tool enabling it to secure tactical delays in the proceedings. To hold otherwise would also be inconsistent with the parties' fundamental agreement to have their disputes resolved by an arbitral tribunal rather than the court.

2 The present appeal stemmed from an application that had been brought contrary to this principle. By way of HC/OA 1050/2024 (the "Main

Application"), the appellant applied to the court to challenge the decision of the relevant arbitral institution as to what the commencement date of an arbitration (the "Arbitration") was. As the respondent was insolvent, the appellant then filed an application in HC/OA 1222/2024 (the "Permission Application") for permission to proceed with the Main Application against the insolvent respondent. A Judge of the General Division of the High Court (respectively the "Judge" and the "GDHC") refused to grant the appellant permission to proceed with the Main Application, and the present appeal is brought against that decision.

3 Having heard and considered the appellant's submissions, we dismissed the appeal and agreed with the Judge's decision on the ground that the court had no power to grant the orders sought in the Main Application. We furnished brief reasons at the time of our decision and now provide our detailed grounds.

Background facts

4 In 2017 and 2018, the respondent entered into five contracts for the sale of oil products to the appellant (the "Five Contracts"). Each of these provided for arbitration under the auspices of the Singapore International Arbitration Centre (the "SIAC").

5 On 24 June 2024, the respondent filed a notice of arbitration (the "NOA") against the appellant to seek the repayment of sums that were allegedly due under the Five Contracts "by various dates on or before 1 July 2018". The NOA was filed just a week before the respondent's claims might have become time-barred on 1 July 2024 (being six years after the final payment deadline).

6 Two days later, on 26 June 2024, the SIAC wrote to the respondent to clarify the precise arbitration clauses that it sought to invoke. A week thereafter, on 3 July 2024, the respondent replied to confirm that it was relying on the five arbitration clauses contained respectively in the Five Contracts. By the time of its reply, the applicable period of limitation applicable to the claims had likely expired.

7 The Registrar of the SIAC (the "Registrar") issued a letter on 9 July 2024 to inform the parties that he deemed that the Arbitration was commenced on 3 July 2024, pursuant to r 3.3 of the Arbitration Rules of the SIAC (6th Ed, 1 August 2016) (the "SIAC Rules"). Rule 3.3 states that (a) the date of commencement of the arbitration shall be deemed as the date of receipt of the complete notice of arbitration by the Registrar; and (b) a notice of arbitration is deemed to be complete when all requirements prescribed by the SIAC Rules are fulfilled, or when the Registrar determines that there has been substantial compliance with these requirements. The Registrar's decision that the Arbitration was commenced on 3 July 2024 was presumably because he considered that the substantive requirements for the NOA were only substantially complied with after the respondent's confirmation on that date. We refer to this as the "Initial Decision".

8 We note that there is nothing on the record to indicate that at the time of the Initial Decision, the Registrar was aware of the potential significance of that decision on the question of the time-bar, or that his attention had been drawn to this point. Certainly, no submissions were made by either party as to how the Registrar should arrive at his decision. Notably, there would likely have been a number of issues pertaining to the *administration* of the Arbitration that would have been affected by the Registrar's decision on the commencement date of the Arbitration, such as the timelines for various actions to be taken by the

parties. For example, r 12.2 of the SIAC Rules prescribes that, in a case such as the present where three arbitrators are to be appointed, the parties must make their nominations within 28 days of the date of commencement of the arbitration unless otherwise agreed or directed by the Registrar.

9 There was no reply to the Initial Decision until after the appellant filed its response to the NOA on 22 July 2024 (the "RNOA"). Pertinently, the RNOA included an argument that the respondent's claims were time-barred given that the Arbitration was deemed to have commenced several days after 1 July 2024 (see [5] above). In short, the Initial Decision was relied on by the appellant in support of its position on a substantive issue in the Arbitration.

10 A day after the RNOA was filed, the respondent wrote to the SIAC requesting that the Initial Decision be amended. It submitted that the correct commencement date of the Arbitration should have been 24 June 2024 – being the date on which the NOA was filed (see [5] above). The appellant objected to this request, and the parties then exchanged submissions as to the appropriate commencement date of the Arbitration. As noted at [8] above, there had been no submissions on this prior to the Initial Decision.

11 On 30 July 2024, the SIAC issued a letter to the parties stating that the Registrar had considered the parties' submissions and was satisfied that "the date of commencement of [the Arbitration] shall be amended to 24 June 2024". We refer to the Registrar's decision to amend the commencement date of the Arbitration as the "Amended Decision".

12 On 10 October 2024, the appellant filed the Main Application in the GDHC against the respondent and the SIAC, seeking the following declarations:

(a) that the commencement date of the Arbitration was 3 July 2024;

(b) that the Amended Decision was unlawful as it was *ultra vires* the SIAC Rules;

(c) further and/or alternatively, that the Amended Decision was unlawful because it was made in breach of the SIAC Rules; and

(d) further and/or alternatively, that the Amended Decision was unlawful as it was made arbitrarily, capriciously and/or unreasonably.

In addition, the appellant also sought an order setting aside the Amended Decision.

13 At the time the Main Application was filed, the respondent was subject to insolvency proceedings in the Hong Kong court. Therefore, on 21 November 2024, the appellant filed the Permission Application in the GDHC for permission to proceed with the Main Application against the respondent pursuant to s 133(1) of the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed).

Decision below

14 The Judge dismissed the Permission Application: see *DMZ v DNA* [2025] SGHC 31 (the "GD"). In gist, he found that the Main Application was legally unsustainable, and following from this, it would be futile to grant the Permission Application: GD at [19].

15 First, the Judge held that the court did not have the power to review the Amended Decision. The parties were contractually obliged to comply with r 40.2 of the SIAC Rules, by which the parties waived any right of appeal or review in respect of any decisions of the Registrar to any judicial authority: GD at [23]. The Judge also rejected the appellant's reliance on *Sun Travels & Tours*

Pvt Ltd v Hilton International Manage (Maldives) Pvt Ltd [2019] 1 SLR 732 ("*Sun Travels*") in support of its contention that the court could exercise its "wide-ranging powers" under s 18 of the Supreme Court of Judicature Act 1969 (2020 Rev Ed) to grant the reliefs sought in the Main Application. The Judge considered that *Sun Travels* did not stand for the position that the court could grant such declaratory relief *contrary to the express provisions of the SIAC Rules*. Indeed, *Sun Travels* affirmed the policy of minimal curial intervention, which is reflected also in r 40.2. Moreover, the Court of Appeal in *Sun Travels* held that the power to grant declarations under s 18 of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) was not unfettered; courts should only intervene in an arbitration where expressly provided in the International Arbitration Act 1994 (2020 Rev Ed) (the "IAA"). In the present case, the Judge could find no provision in the IAA that would permit recourse to a court to review the Amended Decision: GD at [24]–[26].

16 Notably, the Judge also observed that the appellant was not without curial redress. If it was correct in its contention that the matter had been conducted on an incorrect footing, it could apply to set aside any eventual award under Art 34(2)(*a*)(iv) of the UNCITRAL Model Law on International Commercial Arbitration (the "Model Law") on the basis that the arbitral procedure leading to the Award had not been conducted in accordance with the agreement of the parties: GD at [34].

17 Second, even if the court did have the power to review the Registrar's decision, the Judge found that the Main Application was nonetheless without merit because the Registrar was plainly entitled to issue the Amended Decision: GD at [37]–[54].

18 As the application was clearly without basis and amounted to an abuse of process, the appellant was ordered to pay indemnity costs: GD at [57].

The parties' cases

The appellant's case

19 The appellant's primary argument, which was foundational to its success in the appeal, was that the Judge had erred in finding that the court lacked the power to grant the relief sought in the Main Application.

20 The appellant acknowledged the prohibition against court intervention in Art 5 of the Model Law (hereinafter referred to as "Art 5"), which states that "*[i]n matters governed by this Law, no court shall intervene except where so provided in this Law*" [emphasis added]. However, it argued that the decisions rendered by an arbitral institution were not "matters governed by [the IAA or the Model Law]", and therefore Art 5 did not operate to bar the court from hearing the Main Application. In essence, the appellant's contention was that there was nothing in the Model Law dealing with whether or when a court could intervene in respect of such a decision.

21 In relation to the SIAC Rules, the appellant argued that r 40.2 was void and unenforceable if and to the extent that its effect was to oust the court's jurisdiction to determine whether a Registrar's decision was *ultra vires* and/or violated due process. Such ouster clauses were said to be contrary to Singapore public policy. Further, r 40.1 of the SIAC Rules provides that the Registrar's decisions are conclusive and binding upon the parties and the tribunal. This suggested that the appellant could not seek to advance a position before the arbitral tribunal (the "Tribunal") that was contrary to the Amended Decision. Yet this would leave the appellant with no recourse at all if the Amended

Decision was erroneous and if it had no right to challenge it before the courts through the Main Application.

The respondent's case

22 The respondent, on the other hand, countered that the IAA and Model Law framework were intended also to govern decisions made by the arbitral institution. Since there were no provisions in the legislation which allowed the court to review the Amended Decision, the effect of Art 5 was to prohibit any judicial intervention.

23 In relation to r 40.2 of the SIAC Rules, the respondent argued that this was not contrary to public policy. On the contrary, it was aligned with the policy of minimal curial intervention, and the related principle that tribunals are the masters of their internal procedure. Under the IAA and Model Law framework, the right of recourse of any aggrieved party in an arbitration is to apply for the award to be set aside and/or to resist enforcement of the award. Viewed in this light, r 40.2 does not oust the jurisdiction of the court; rather, it demarcates the limits of that jurisdiction.

Issues to be determined

24 The central issue in this appeal was whether the court was empowered to hear and grant the reliefs sought in the Main Application. In our judgment, the answer to this question turned on the proper interpretation of Art 5, which, as we will explain, among other things, generally prohibits a court from interfering with procedural determinations which affect the progress and conduct of arbitration proceedings, save where this is expressly permitted by the IAA and Model Law framework. In the interest of completeness, we will also make some observations on rr 40.1 and 40.2 of the SIAC Rules.

The prohibition of court intervention under Art 5 of the Model Law

25 Article 5 of the Model Law sets out the prohibition against court intervention in the following terms:

> *Article 5. Extent of court intervention*
>
> In matters governed by this Law, no court shall intervene except where so provided in this Law.

26 In interpreting the scope of Art 5, the obvious starting point is its text, which has as its focal point the verb "intervene". What then does it mean to "intervene"? The plain meaning of this is to "come in or between so as to affect, modify or prevent" the ordinary course of events: Oxford English Dictionary Online (Oxford University Press, 2025). In the context of Art 5, what this connotes is that, in matters governed by the Model Law, the court must not act in any way to impede or alter the progress and conduct of a pending arbitration, save to the extent that express provision is made in either the Model Law or the implementing legislation (in our case, the IAA) that permits this. This is so whether the court is being asked to consider the validity of an award, or where the court is approached to act or assist in the proceedings prior to the issuance of the award. Sections 12A and 13 of the IAA provide some examples that expressly empower the court to intervene in an ongoing arbitration, while Art 34 of the Model Law and s 24 of the IAA provide examples of the court's power to intervene after an award has been rendered. In short, the plain meaning of the language used is that Art 5 is concerned with preventing the courts from taking steps to interfere with, or impede the progress of, an arbitration – precisely what the appellant sought to do here.

27 To avoid this conclusion, the appellant contended that Art 5 only prohibits court intervention "[i]n matters governed by this Law" and

characterised its application in narrow terms as one which sought "judicial recourse against the ***decision of an arbitral institution***" [emphasis added]. This, it argued, was a matter that was *not* governed by the Model Law or the IAA. On this basis, the appellant submitted that Art 5 did not apply to circumscribe the court's general power to grant the declaratory relief sought (see [12] above).

The two-step interpretation of Art 5

28 We accept the proposition that one needs to approach the inquiry in two steps. At the first step, the court is concerned with whether the application for the court's intervention concerns a "matter" which is governed by the Model Law; and at the second step, the court is concerned with whether the intended intervention is permitted, either because the legislation does make express provision for such intervention, or, if the "matter" is not governed by the relevant legislation, then because the grant of relief is warranted. We take this view for three reasons.

29 First, the plain language of Art 5 is itself limited by the opening words, "[i]n matters governed by this Law". It stands to reason that Art 5 does not apply to *every* instance where court intervention is sought in a matter that may in some way be connected to an arbitration governed by the Model Law.

30 Second, this is reflected also in the ancillary material covering the discussions that led to the adoption of the Model Law, which may be consulted by the court in construing the provisions of the Model Law: see s 4(1) of the IAA. We refer in this regard to the following sources which demonstrate that it was always contemplated that there would be certain types of intervention that fell outside the scope of the Model Law, and thus would not be prohibited by Art 5:

(a) *Report of the Secretary-General, Analytical Commentary on the Draft Text of a Model Law on International Commercial Arbitration* UN Doc A/CN 9/264 (25 March 1985) ("Analytical Commentary") at paras 4–5:

> 4. Another important consideration in judging the impact of article 5 is that the … necessity to list all instances of court involvement in the model law applies only to the 'matters governed by this Law'. The scope of article 5 is, thus, narrower than the substantive scope of application of the model law, i.e. 'international commercial arbitration' (article 1), in that *it is limited to those issues which are in fact regulated, whether expressly or impliedly, in the model law*.
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> 5. Article 5 would, therefore, *not exclude court intervention in any matter not regulated in the model law*. Examples of such matters include the impact of state immunity, the contractual relations between the parties and the arbitrators or arbitral institution, the fees and other costs, including security therefor, as well as other issues mentioned above in the discussion on the character of the model law as 'lex specialis' where the same distinction has to be made.
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> [emphasis in original in underline; emphasis added in italics]

(b) Explanatory note by the UNCITRAL Secretariat, appended at the end of the Model Law:

> 17. Beyond the instances [in which the Model Law expressly permits court involvement], 'no court shall intervene, in matters governed by this Law'. This is stated in the innovative article 5, which by itself does not take a stand on what is the appropriate role of the courts but guarantees the reader and user that he will find all instances of possible court intervention in this Law, *except for matters not regulated by it (e.g., consolidation of arbitral proceedings, contractual relationship between arbitrators and parties or arbitral institutions, or fixing of costs and fees, including deposits)*. Especially foreign readers and users, who constitute the majority of potential users and may be viewed as the primary addressees of any special law on

> international commercial arbitration, will appreciate that they do not have to search outside this Law.
>
> [emphasis added]

(c) *Report of the Secretary-General, Analytical Compilation of Comments by Governments and International Organizations*, UN Doc A/CN 9/263/Add. 2 (21 May 1985) at para 20:

> 20. The general intent of Article 5 has been explained by those responsible for introducing it as follows: *The model law does not embody a complete code of judicial intervention.* The model law is addressed only to certain types of situation[s] in which the question of judicial intervention may arise. Where a party seeks judicial intervention in one of those situations, the court is permitted to intervene only in the manner expressly prescribed by the model law, and in the absence of any express provision the court must not intervene at all. *By contrast, where the situation is not of a type to which the model law is addressed, the court may intervene or decline to intervene in accordance with the provisions of the relevant domestic arbitration law.*
>
> [emphasis added]

31 Third, this is also consistent with the previous jurisprudence of this court. Thus, in *L W Infrastructure Pte Ltd v Lim Chin San Contractors Pte Ltd* [2013] 1 SLR 125, we held that the court should not grant a declaration that an award was a nullity because that pertained to a matter, namely the recognition and enforcement of awards, that *was* governed by the legislation in question (in that case, the Arbitration Act (Cap 10, 2002 Rev Ed) (the "AA")). Indeed, to grant the declaration in that case would have undermined and evaded the statutory framework provided in the AA. We noted as follows at [36], [39] and [40]:

> 36 The effect of Art 5 of the Model Law is to confine the power of the court to intervene in an arbitration to those instances which are provided for in the Model Law and to 'exclude any general or residual powers' arising from sources other than the Model Law (see H M Holtzmann & J E Neuhaus, *A Guide to*

> *the UNCITRAL Model Law on International Commercial Arbitration: Legislative History and Commentary* (Kluwer Law and Taxation Publishers, 1989) ('*Holtzmann & Neuhaus*') at p 216). The *raison d'être* of Art 5 of the Model Law is not to promote hostility towards judicial intervention but to 'satisfy the need for certainty as to when court action is permissible' (*ibid*).
>
> …
>
> 39 In short, in situations expressly regulated by the [AA], the courts should only intervene where so provided in the [AA] (see Aron Broches, *Commentary on the UNCITRAL Model Law on International Commercial Arbitration* (Kluwer Law and Taxation Publishers, 1990) at p 32; see also *Mitsui Engineering & Shipbuilding Co Ltd v Easton Graham Rush* [2004] 2 SLR(R) 14 at [23]).
>
> ***The Plaintiff's complaint is a matter governed by the Act***
>
> 40 In the present case, the Plaintiff seeks a declaratory order that the Additional Award be deemed a nullity on the basis that s 43(4) of the [AA] does not apply and so there was no basis for the Arbitrator to have made it. We consider, however, that this is precisely a grievance which has been expressly regulated under s 48(1)(*a*)(v) of the [AA] …

The proper framing of the "matter" governed by the Model Law

32 However, the two-step interpretation of Art 5 did not lead us to the conclusion that the appellant sought. That is because a critical issue relates to how the relevant "matter" governed by the Model Law is to be framed.

33 A similar issue arose in *Tomolugen Holdings Ltd and another v Silica Investors Ltd and other appeals* [2016] 1 SLR 373 ("*Tomolugen*"), albeit in the different context of an application under s 6 of the IAA. Under s 6, a court is obliged to stay court proceedings in favour of arbitration "in respect of any *matter* which is the subject of [an arbitration agreement]" [emphasis added]. As in this case, one of the key points of contention in *Tomolugen* related to the degree of specificity with which the court should characterise the relevant "matter", which would, in turn, affect the assessment of whether the stay should

be granted: *Tomolugen* at [109]. For the purpose of s 6, we considered that a "matter" should not be construed in either an overly broad or an unduly narrow and pedantic manner; instead the court should "undertake a practical and common-sense inquiry in relation to any reasonably substantial issue that is not merely peripherally or tangentially connected to the dispute in the court proceedings": *Tomolugen* at [113]. This was subsequently followed by the UK Supreme Court in *Republic of Mozambique v Privinvest Shipbuilding SAL (Holding) and others* [2023] UKSC 32 at [75]. In the event, we rejected the overly broad construction of the "matter" advanced by the party resisting the stay in *Tomolugen* because that was ill-suited to the reality that disputes may be complex and engage disparate factual and legal issues – some of which may fall within the scope of an arbitration agreement, and some of which may not: *Tomolugen* at [121].

34 We refer to our decision in *Tomolugen* not for the proposition that the interpretation of the word "matters" in Art 5 of the Model Law must be the same as that applied in *Tomolugen* in the context of s 6 of the IAA. Indeed, unlike the approach to s 6 we took in *Tomolugen*, we consider that the relevant "matter" governed by the Model Law under Art 5 ought to be construed *broadly* rather than narrowly (see [37] below). For now, the significance of *Tomolugen* lies instead in its demonstration that it is a matter of critical importance that the relevant issue or matter be framed correctly, and what the correct framing is must depend on its context. In the context of Art 5, we cannot accept an interpretation of Art 5 that would leave it exposed to abuse if the parties were free to frame the "matter" that their application is concerned with, at whatever level of generality suited their purpose even if this enabled them to circumvent the prohibition in Art 5.

35 In our judgment, the correct interpretation of the word "matters" in Art 5 must begin with an understanding of its underlying purpose. The policy objective of Art 5 is to achieve certainty by having the Model Law set out the circumstances in which court intervention is permissible as completely as it is possible to do: *CBS v CBP* [2021] 1 SLR 935 at [110]. As articulated in the *Report of the United Nations Commission on International Trade Law on the work of its eighteenth session*, UN Doc A/40/17 (1985) dated 3–21 June 1985 at para 63:

> … The purpose of article 5 was *to achieve certainty as to the maximum extent of judicial intervention*, including assistance, in international commercial arbitrations, *by compelling the drafters to list in the (model) law on international commercial arbitration all instances of court intervention.* Thus, if a need was felt for adding another such situation, it should be expressed in the model law. …
>
> [emphasis added]

36 This purpose points to and is wholly consistent with the goal of having the greatest degree of certainty as to when the court may intervene. And this, in turn, is to be seen in the light of the well-established understanding that the overall policy of the IAA and the Model Law is to *minimise* judicial intervention in arbitral proceedings: *Republic of India v Vedanta Resources plc* [2021] 2 SLR 354 ("*Vedanta*") at [47]; *AKN and another v ALC and others and other appeals* [2015] 3 SLR 488 at [37]–[38]; *BLC and others v BLB and another* [2014] 4 SLR 79 at [51]; *Soh Beng Tee & Co Pte Ltd v Fairmount Development Pte Ltd* [2007] 3 SLR(R) 86 at [59] and [65(c)].

37 The confluence of (a) maximising certainty as to when a court may intervene; and (b) minimising the extent to which a court may intervene, points to the view that the word "matters" in Art 5 should be construed more broadly rather than narrowly because that would:

(a) widen the range of matters that are governed by the Model Law;

(b) limit the opportunities for a court to intervene; and

(c) in this way, advance certainty as to when a court may intervene.

38 Further, in line with this, when determining what is governed by the Model Law, the inquiry inevitably extends to both the express and the implied reach of the legislation: see, for instance, the Analytical Commentary at [4], which is reproduced at [30(a)] above. All this is also consistent with the interpretation of Art 5 taken in two other cases where our courts rejected similar applications for court intervention in an ongoing arbitration.

39 The first is *Mitsui Engineering & Shipbuilding Co Ltd v Easton Graham Rush and another* [2004] 2 SLR(R) 14 ("*Mitsui*"), where the plaintiff ("Mitsui") and the second defendant ("Keppel") were engaged in an ongoing arbitration. In the course of the proceedings, the arbitrator issued an interim award on various preliminary issues largely in favour of Keppel. Dissatisfied with the interim award, Mitsui mounted a challenge against the arbitrator alleging apparent bias and then invited him to withdraw from the case. When he refused, Mitsui applied to the relevant institution to remove the arbitrator and pending its application, Mitsui sought to suspend the progress of the arbitration. Keppel resisted this, and the arbitrator agreed with Keppel that he should proceed with further hearings. Mitsui then applied to the High Court for an injunction restraining the arbitrator from taking any further steps to hear the case. Woo Bih Li J (as he then was) declined to grant the injunction. While the court did not specifically consider the meaning of the word "matters", it held that Art 5 prohibited such intervention because the Model Law did not expressly provide a legal basis for the injunction sought by the applicant: *Mitsui* at [23].

40 The second case is *Vedanta*. In the course of an ongoing arbitration, the applicant sought a declaration from the Singapore courts on a question of law that the tribunal had already determined. This stemmed from the applicant's dissatisfaction with the tribunal's holding that certain documents from another related arbitration could not be produced in the *Vedanta* arbitration because of the implied obligation of confidentiality that arose in every arbitration seated in Singapore. Dissatisfied with this determination, the applicant applied to the Singapore courts for a declaration that the documents it sought were not confidential. Much like the appellant in the present case (see [27] above), the applicant in *Vedanta* contended that Art 5 did not prevent it from seeking this declaration because neither the IAA nor the Model Law made any provision as to confidentiality: *Vedanta* at [27]. We disagreed and held that "it was incorrect to frame the issue [in terms of] whether confidentiality was governed by the Model Law", because this "overlooked the broader *purpose* of the question of confidentiality and the context in which it was being considered" [emphasis in original]. The question of confidentiality was situated in the context of the tribunal pronouncing on the disclosure of documents, which was a procedural matter that fell within the exclusive purview of the tribunal: *Vedanta* at [29].

41 Although not articulated in terms of the prohibition against court intervention under Art 5, our decision in *Vedanta* was entirely consistent with, and indeed rooted in, the interpretation of Art 5 that we have set out at [37] above. We specifically noted that the lack of an explicit legal basis to intervene in the Model Law was at the heart of our decision to reject the application in *Vedanta* (at [34]):

> 34 For the above reasons, we concluded that there was absolutely no legitimate legal basis to invoke the jurisdiction of the seat court to ask for the declaratory relief. Absent a challenge against an *arbitral award* based on the grounds provided for in the IAA and/or the Model Law (for example, a

> claim that the tribunal acted in excess of jurisdiction, in breach of natural justice or contrary to public policy), the appellant had no basis to seek the declaratory relief [it had sought] and s 18 of the SCJA did not provide the answer. …
>
> [emphasis in original]

42 *Mitsui* and *Vedanta* provide useful illustrations of the general prohibition in Art 5 against applications that seek to interfere with or impede the progress or conduct of an arbitration, including by challenging procedural determinations of tribunals save where this is expressly provided for in the Model Law or IAA. More importantly, these decisions implicitly, and in *Vedanta* even somewhat explicitly, took an approach to construing the coverage of the Model Law in broader rather than in narrower terms, and focused on the procedural nature of the rulings of the tribunals in question that were being challenged in court.

43 Applying this broad interpretation to Art 5, we consider that the appropriate level of abstraction for framing the "matter" in this case should be one that encompasses challenges against a procedural determination which would affect the progress or conduct of an ongoing arbitration. It would be most exceptional, if at all it arises, that we would countenance a court intervening in an ongoing arbitration by seeking in essence to second-guess a procedural determination absent express empowerment to do so under the Model Law or IAA.

44 In our judgment, this interpretation is entirely in line with the very nature of arbitration, which is a mode of dispute resolution that is rooted in the agreement of the parties, and which places a high degree of procedural autonomy in the hands of the parties and their chosen arbitrators. Arbitration is characterised by some key features, including these:

(a) The source of the obligation to arbitrate is the arbitration agreement and this is generally enforced by an application to stay any proceedings brought in breach of that agreement: see s 6 of the IAA; Art 8 of the Model Law; *Tomolugen* at [63]–[64]; *Sim Chay Koon and others v NTUC Income Insurance Co-operative Ltd* [2016] 2 SLR 871 at [5] and [9]; and *Lun Yaodong Clarence v Dentons Rodyk & Davidson LLP* [2025] 1 SLR 849 at [25].

(b) The parties and their chosen arbitrators are vested with a very high degree of autonomy in how they will conduct their proceedings, as long as these do not offend any mandatory provisions of the applicable legislation: see s 15A of the IAA. Where the parties fail to agree on such matters, they will be bound by the procedural determinations of the arbitrators: see Art 19 of the Model Law. Thus, in *Vedanta*, we did not allow an application which we considered to be an attempt to relitigate a procedural determination made by the tribunal (see [40] above). To similar effect is our decision of *China Machine New Energy Corp v Jaguar Energy Guatemala LLC and another* [2020] 1 SLR 695, where we dismissed an application to set aside an award for breach of natural justice stemming from the tribunal's alleged mismanagement of certain procedural issues. We emphasised the importance of according a margin of deference to the tribunal in matters of procedure, and eschewed an approach where intervention could be warranted just because the court might have done things differently (at [103]):

> … [T]he court should accord a margin of deference to the tribunal in its exercise of procedural discretion. Deference is accorded in recognition of the fact that (a) the tribunal possesses a wide discretion to determine the arbitral procedure, and (b) that discretion is exercised within a highly specific and fact-intensive contextual milieu, the finer points of which the court may not be privy to. It has therefore been said that the

> court ought not to micromanage the tribunal's procedural decision-making, and will instead give 'substantial deference' to procedural decisions of the tribunal (*On Call Internet Services Ltd v Telus Communications Co* [2013] BCAA 366 at [18]). This means that the court will not intervene simply because it might have done things differently (*Soh Beng Tee* at [58], citing *ABB AG v Hochtief Airport GmbH* [2006] 2 Lloyd's Rep 1 at [67]). Overall, the threshold for intervention is a relatively high one: there must be a real basis for alleging that the tribunal has conducted the arbitral process 'either irrationally or capriciously' (*Soh Beng Tee* at [65(d)]), or where the tribunal's conduct of the proceedings is 'so far removed from what could *reasonably* be expected of the arbitral process that it must be rectified' (*ASM Shipping* at [38]).

(c) Where the parties have agreed to arbitrate their dispute subject to a set of arbitration rules, those rules shall constitute a part of their arbitration agreement: see s 15A(1) of the IAA; Art 2(*e*) of the Model Law; and *Insigma Technology Co Ltd v Alstom Technology Ltd* [2009] 3 SLR(R) 936 at [33].

45 A few points follow from this. First, any set of rules, which the parties have agreed will apply to their arbitration, is as much a part of their arbitration agreement, and is as much liable to be upheld and enforced by the court, as the primary agreement to arbitrate. To put it in a more granular way, the obligation of the parties is more correctly understood as one to *arbitrate in accordance with their agreed rules*; and absent agreement on any given point of procedure, the obligation is to arbitrate in accordance with the procedural determinations of the tribunal: see s 15A of the IAA and Art 19(2) of the Model Law. Once this is understood, it becomes readily apparent why *Mitsui, Vedanta* and the present matter were all decided in the way they each were.

46 In each of these cases, a *procedural* determination affecting the progress and conduct of the arbitration proceedings was at issue. In *Mitsui*, the question

was whether further hearings should be held pending the challenge against the arbitrator or whether the arbitration should be held in abeyance in the meantime. The arbitrator held that the arbitration should proceed and there was no basis at all for the court to second-guess that or to intervene in any other way. As Woo J held at [24] and [36], it was for the arbitrator to decide whether to stay the proceedings and the court would not second-guess that. In *Vedanta*, the tribunal had made a procedural ruling on a question of the admissibility of documents given the obligation of confidentiality. This was a matter well within its competence as seen in s 12 of the IAA and Art 19(2) of the Model Law. Again, there was no basis for the court to intervene.

47 And in the present case, the Registrar of the SIAC made a decision on the commencement date of the Arbitration, as he was empowered to do under the SIAC Rules (which, as noted above, was part of the parties' arbitration agreement). While it is true that the Registrar was not part of the tribunal charged with deciding the substantive dispute between the parties, that is a point that may go to the *effect* of the decision, as we allude to below. That, however, has nothing to do with the procedural *nature* of the decision, or with the court's lack of power to intervene at this stage. In our view, where the rules, which the parties have agreed to, provide that certain decisions may be made by a particular decision-maker, that is as much a part of the agreement of the parties as to how their arbitration is to be conducted; and hence, as much a part of the process that is beyond the intervention of the court at this stage of the proceedings.

48 The "matter" in question in this case pertains to the *procedure* by which the arbitration is to be conducted, and more specifically, whether the Registrar of the SIAC was entitled to reconsider and amend his prior decision on the commencement date of the arbitration. As we held above (at [43]), the scope of

court intervention in such circumstances are already provided for in the Model Law. Given the absence of an express enabling provision to support the appellant's Main Application, there was simply no room for the court to intervene in a procedural ruling which was made pursuant to the rules that the parties have agreed to.

49 As against all this, a somewhat different position might seem, at first blush, to emerge from our decision in *Sun Travels*, where we granted declarations upholding the validity of arbitral awards, even though there was no express power to do so under the Model Law and IAA (at [134]–[135]). However, *Sun Travels* was not a case affected by the prohibition in Art 5 because there was no "intervention" in any arbitration at all. The respondent there had obtained an award against the appellant in a Singapore-seated arbitration. Having lost the arbitration, the appellant commenced a fresh action against the respondent in the courts of the Maldives, effectively seeking to relitigate the issues determined in the award. The respondent did not initially seek anti-suit relief from the Singapore courts. In the event, the courts in the Maldives proceeded to hear and determine the dispute and they found in favour of the appellant. The respondent then applied to the Singapore courts seeking anti-suit relief alongside two declarations that:

(a) the arbitral awards were final and binding on the parties; and

(b) the appellant's conduct in the Maldivian courts was in breach of the parties' arbitration agreement.

50 Although we refused to grant the anti-suit relief in that case because the Maldivian proceedings were too far advanced (*Sun Travels* at [125]), we granted the declarations notwithstanding Art 5: *Sun Travels* at [134]–[135]. The key point is that the arbitration in *Sun Travels* was already complete and, since we

were granting a declaration to uphold the validity of an award, there could be no question at all of our action being seen as an intervention in those proceedings.

51 This was sufficient to dispose the appeal. But there was yet a further insurmountable hurdle to the Main Application in the form of r 40 of the SIAC Rules, to which we turn briefly.

The parties' waiver of any right of appeal or review under r 40.2 of the SIAC Rules

52 Under r 40.2 of the SIAC Rules, the appellant agreed to waive any right to bring an appeal against or to seek a review of any decision of the Registrar before any judicial authority:

> Save in respect of Rule 16.1 and Rule 28.1, the parties *waive any right of appeal or review* in respect of any decisions of the President, the Court and the *Registrar* to any State court or other judicial authority.
>
> [emphasis added]

53 We agreed with the respondent that the language of r 40.2 was "crystal clear". It expressly prescribes *only* two types of decisions in respect of which recourse to the court is available: (a) decisions on challenges to an arbitrator, which are governed by r 16.1 of the SIAC Rules; and (b) decisions on the jurisdiction of the arbitral tribunal, which are governed by r 28.1 of the SIAC Rules. Aside from these two cases, the rule categorically states that the parties "waive any right of appeal or review" to the courts. Given that the Amended Decision did not fall within either of these prescribed exceptions, r 40.2 posed an additional bar to the appellant's applications.

54 In an attempt to overcome this, the appellant argued that r 40.2 was an ouster clause that was void because it purported to oust entirely the court's

jurisdiction to review decisions made by the Registrar. While the appellant acknowledged that there is a distinction between clauses which (a) *completely* exclude recourse to the court, which may be void for being contrary to public policy, and (b) those that impose conditions on the right to judicial recourse *without totally prohibiting it*, which would not be contrary to public policy (see *Tay Shing Lee Eileen v Liang Ting Ping Jeffrey* [2024] SGHC 261 ("*Eileen Tay*") at [38]), it argued that r 40.2 of the SIAC Rules fell within the former category of clauses because it "*completely excluded* all recourse to the courts" and "*immunised* all decisions of the President, the Court and the Registrar against any appeal or review" [emphasis added].

55 We rejected this argument. As we noted in *CKR Contract Services Pte Ltd v Asplenium Land Pte Ltd and another and another appeal and another matter* [2015] 3 SLR 1041 ("*CKR Contract*"), in determining whether a clause is unenforceable for being contrary to public policy, the question is whether, by result of that clause, either party has been "*denied access to the court as such*" [emphasis added]: at [19] and [24]. For this reason, we observed in *CKR Contract* that a clause which purports to exclude an innocent party's right to damages in the event of a breach of contract by the other party would not ordinarily be treated as being void or unenforceable. While such a clause would restrict the availability of a common law remedy, it did not preclude either or both of the parties from coming to the court: at [19]. We also did not find that a clause was void and unenforceable just because it restricted the right of an obligor under a performance bond to apply for an injunction to restrain the beneficiary from calling on that bond. That clause only limited the right to an equitable remedy and did not oust the jurisdiction of the court: at [24] and [42].

56 A similar finding was made by the GDHC in *Eileen Tay*, where the court considered a clause which provided that a defendant waived his right to contest

legal proceedings commenced against him, and that he would consent to judgment being entered against him, in the event that he failed to repay certain sums owing by him to the claimant. The GDHC did not find such a clause to be contrary to public policy; even if the defendant was precluded from challenging the claimant's action, the court would nevertheless be required to satisfy itself that the claimant had made out the elements of its cause of action. Therefore, the clause did not have the effect of excluding recourse to the courts of law even on the part of the defendant: at [40]–[43].

57 Returning to the present case, r 40.2 falls within the latter category of clauses set out at [54] above because it does not completely exclude recourse to the court's jurisdiction. As a starting point, decisions made by the Registrar are, at least presumptively, administrative in nature and generally unlikely to affect the substantive rights and position of the parties. But, if and to the extent such a decision were to materially prejudice a party because it was incorporated into or somehow became a part of the eventual award, the parties would ordinarily retain the right to challenge it *at the post-award stage*, based on the grounds set out in Art 34 of the Model Law and s 24 of the IAA. It is clear that r 40.2 does not purport to bar such a setting aside application; indeed, the appellant accepts that it remains entitled to apply for a setting aside at the post-award stage. While r 40.2 might preclude the parties from seeking a *direct review* of decisions rendered by various organs of the SIAC, it certainly does not preclude the parties from taking the position that the *tribunal* had wrongly accepted or incorporated such a decision into the final award, and on this basis, that the award should be set aside (see [61(b)] below). Viewed in this light, it is clear that the court's jurisdiction has not been ousted by r 40.2 of the SIAC Rules. For the avoidance of doubt, we make these observations only in relation to the argument that there is an impermissible ouster of the court's jurisdiction that renders r 40.2 void and unenforceable. We do not purport to make any finding

in relation to the true effect and construction of r 40.1 of the SIAC Rules. As we explain below, that issue is not before us at this stage.

The appellant's right, if any, is to seek its remedy from the Tribunal

58 Finally, it was evident that much energy was expended on the Main and Permission Applications because the appellant harboured the concern that the Amended Decision would bind the Tribunal in respect of an issue that was material to the merits of a time-bar defence. But, as we indicated at the hearing, the question of whether it was possible and appropriate to review the Amended Decision were matters that should have been raised to the Tribunal rather than to the court.

59 To justify its decision to challenge the Amended Decision in court and rather than before the Tribunal, the appellant relied on r 40.1 of the SIAC Rules and contended that the Tribunal is not empowered to review any decision by the Registrar. Rule 40.1 reads:

> Except as provided in these Rules, the decisions of the President, the Court and the Registrar *with respect to all matters relating to an arbitration shall be* ***conclusive and binding*** *upon the parties and the* ***Tribunal***. The President, the Court and the Registrar shall not be required to provide reasons for such decisions, unless the Court determines otherwise or as may be provided in these Rules. The partis agree that the discussions and deliberations of the Court are confidential.
>
> [emphasis added in italics and bold italics]

60 On the appellant's case, r 40.1 might impose an absolute bar on the Tribunal's power to review any decision made by the Registrar. The appellant's counsel, Ms Koh Swee Yen SC ("Ms Koh"), submitted that this prohibition could extend to all decisions made by the Registrar, including those which are wrong or *ultra vires*.

61 We make some brief observations on this:

(a) First, it is not necessary, and hence not appropriate, for us to rule on the correct interpretation of r 40.1 or otherwise to comment on Ms Koh's submission. We have already explained that by virtue of Art 5 of the Model Law, the present application could not properly be made to the court. In those circumstances, it is not for us to decide on the separate question of whether r 40.1 has the effect suggested by Ms Koh.

(b) Second, if the decision of the Registrar as to the date of the commencement of the arbitration is binding on the parties not only for administrative purposes that relate to SIAC's administration of the arbitration, but is also binding on the Tribunal and the parties as a substantive finding of fact that may impact the merits of a time-bar defence, for instance, then it should be open to an aggrieved party to raise whatever grounds are available to seek recourse against or to resist enforcement of any award that incorporates that part of the Amended Decision, if it is contended that this decision was arrived at following an improper process that was not agreed to by the parties.

(c) But finally, if such recourse is not available to an aggrieved party because the true construction of the SIAC Rules makes such a decision irrevocably binding in way that cannot be challenged, that too is a consequence of party autonomy and the choices that the parties have made. It does not thereby mean the court can intervene.

Conclusion

62 We therefore dismissed the appeal. Given the manifest lack of merit in this appeal, we also exercised our discretion to award indemnity costs in favour

of the respondent, in the composite sum of $60,000, with the usual consequential order for payment out of the security for costs. For completeness, we also saw no reason to interfere with the Judge's decision to award indemnity costs in the proceedings below.

Sundaresh Menon
Chief Justice

Steven Chong
Justice of the Court of Appeal

Ang Cheng Hock
Justice of the Court of Appeal

Koh Swee Yen SC, Lin Chunlong, Zerlina Yee Zi Ling, Li Zizheng and Low Yi Heng Samuel (WongPartnership LLP) for the appellant;
and
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