IN THE SINGAPORE INTERNATIONAL COMMERCIAL COURT
OF THE REPUBLIC OF SINGAPORE

[2025] SGHC(I) 14

Originating Application No 10 of 2024 (Summonses No 17 and 18 of 2025)

Between

DKB

… *Claimant*

And

DKC

… *Defendant*

GROUNDS OF DECISION

[Arbitration — Stay of court proceedings — Lifting of stay — Variation of conditions]

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DKB
v
DKC

[2025] SGHC(I) 14

Singapore International Commercial Court — Originating Application No 10 of 2024 (Summonses No 17 and 18 of 2025)
Thomas Bathurst IJ
22 March, 1 April 2025

2 May 2025

Thomas Bathurst IJ:

Introduction

1 By an originating application dated 21 December 2023, the Claimant, DKB, as the assignee of a final award arising from the Swiss-seated arbitration between [B] and the Defendant, DKC (the "Award") sought leave to enforce the Award pursuant to s 29 of the International Arbitration Act 1994 (2020 Rev Ed) (the "IAA"). DKB also sought orders that within 14 days after service of the order granting leave, DKB be at liberty to enter judgment against DKC in an amount of US$ 315,913,988.82.

2 Leave was granted on 22 December 2023. On 24 April 2024, DKC applied to the court in HC/SUM 1177/2024 to stay the enforcement of the Award pursuant to s 6 of the IAA. On the same day, DKC also applied in

HC/SUM 1133/2024 to set aside the enforcement order. I heard the stay application on 5 February 2025.

3 On 19 February 2025, I made orders on the stay application granting a stay of all proceedings in SIC/OA 10/2024 subject to the following conditions (the "19 February Orders"):

> (a) that the Defendant within 10 days of the making of these orders commences an arbitration in accordance with the Rules for Expedited Arbitration of the Arbitration Institute of the Stockholm Chamber of Commerce pursuant to clause 6.2 of the Deed of Settlement dated 23 March 2017 between the Defendant, [C], [D] and the Applicant seeking orders that in the events which have happened the Applicant is not entitled to enforce the arbitration award, the subject of these proceedings; and
>
> (b) that the Defendant diligently prosecute the arbitration referred to in clause (2)(a) and comply with all directions of the arbitrator or of the Board of the Arbitration Institute of the Stockholm Chamber of Commerce.

4 On 16 April 2025, I published my reasons for making these orders (see *DKB v DKC* [2025] SGHC(I) 11, or the "Stay Grounds"). These grounds should be read in conjunction with those reasons.

5 DKC did not comply with the condition that within ten days it commence an arbitration (the "Stockholm arbitration") in accordance with the rules for expedited arbitration of the Arbitration Institute of the Stockholm Chamber of Commerce (the "SCC Rules"). However, prior to the expiration of the ten-day period for the commencement of such proceedings, on 26 February

2025, the solicitors for DKC wrote to the solicitors for DKB seeking consent to an extension of time to commence the Stockholm arbitration by 31 March 2025. The reason given was that Article 6 of the SCC Rules required the request for arbitration to constitute the statement of claim in the arbitration and more time was required to prepare such a document.

6 On 28 February 2025, the solicitors for DKB wrote to the solicitors for DKC indicating that DKB was not prepared to consent to the extension of time sought.

7 In that letter, DKB referred to the statement by DKC's legal counsel, Mr [J], in his draft affidavit of 4 February 2025 (enclosed in a covering affidavit by solicitors for DKC) that "[DKC] was first made aware of [D's] Arbitration Request on 28 January 2025 and immediately sought legal advice on the same without delay". The reference to "[D's] Arbitration" is a reference to the arbitration between [D], DKC and [C] to which I have referred in [15] of the Stay Grounds (the "[D] arbitration").

8 The letter also asserted that DKC had been granted an extension until 21 February 2025 to file an answer to the [D] arbitration but DKC had not "entered appearance, appointed counsel, or responded to correspondence from the parties or the SCC". The letter also asserted that it was likely that DKC and [C] would retain the same legal counsel having regard to the statement in Mr [J's] draft affidavit of 6 March 2024 that "Branch Austin McCormick LLP advised the Defendant and [C]".

9 The letter also pointed to the fact that notwithstanding that the SCC Rules provide for the request for arbitration to stand as a statement of claim,

Article 30 of the SCC Rules provides for supplementary written submissions and Article 31 for amendment.

10 On 3 March 2025, the expiry date of the ten-day period to commence the Stockholm arbitration, the solicitors for DKC wrote to the solicitors for DKB indicating that DKC intended to make an application varying the timeline contained in my orders after giving the requisite two days' notice. On 6 March 2025, DKC filed a summons (SIC/SUM 17/2025, or "SUM 17") seeking an order that the time to commence the arbitration be extended to 14 April 2025.

11 By summons filed on 7 March 2025 (SIC/SUM 18/2025, or "SUM 18"), DKB sought an order that the stay be lifted. On 1 April 2025, I ordered that:

(a) Order 2(a) of the orders made by me on 19 February 2025 be varied by substituting the words "by 12 April 2025" for the words "within 10 days of the making of these orders".

(b) The Defendant pay the costs of SUM 17.

(c) SUM 18 is to stand over until the conclusion of the arbitration referred to in Order 2(a) of my 19 February Orders, with liberty for the Claimant to apply on two days' notice.

(d) The question of costs of SUM 18 is reserved.

12 These are my grounds of decision in respect of SUM 17 and SUM 18.

The Evidence

DKC

13 DKC relied on two affidavits of Mr [J], the first being an affidavit in support of the orders sought in SUM 17 and the second being in opposition to the orders sought in SUM 18.

14 In his affidavit in support of SUM 17, Mr [J] stated that DKC had "a genuine and reasonable need for more time to appoint and instruct counsel" in the Stockholm arbitration and for counsel "to get up on the matter and to file the necessary [r]equest for [a]rbitration". He stated the parties were intending to engage in without prejudice settlement negotiations. Mr [J] repeated the statement made in [DKC's] solicitor's letter of 26 February 2025 that as the request for arbitration constituted a statement of claim, it was "not a short form document that [could] be prepared on short notice in a matter of days".

15 So far as the letter from the solicitors for DKB of 28 February 2025 was concerned, Mr [J] said that the reference to Branch Austin McCormick LLP ("BAMC") in his draft affidavit of 6 March 2024 was a reference to that firm advising on the application by DKB for leave to enforce the award. He stated that that did not automatically mean that DKC intended to engage BAMC as its counsel in the Stockholm arbitration. He stated that before DKC was in a position to file the necessary request for arbitration, it needed first "to obtain the approval of the Board of [DKC] and arrange a tender process to appoint a suitable counsel for the [c]ontemplated [a]rbitration". He stated that the need to take these steps was a legitimate and demonstrated need, not an excuse to delay proceedings.

16 Mr [J] stated that even it were correct that the issues in the [D] arbitration were identical to those in the Stockholm arbitration, that did not mean, as a matter of commercial and practical reality, any counsel instructed by DKC in the Stockholm arbitration would be able to put together the request for an arbitration instantly, referring to the need to take instructions, go through the documents and draft the request. He also stated that just because the SCC Rules allow for supplementary submission and amendments did not mean that DKC should first make an incomplete request for arbitration and seek to patch it up later. He submitted that would not be of benefit to anyone.

17 Mr [J] stated that in the circumstances an extension of time of six weeks from 3 March 2025 to commence the Stockholm arbitration would be a reasonable length of time which would not cause prejudice to DKB that could not be compensated by an order for costs. He stated that would ensure that the Stockholm arbitration would commence with a sufficiently detailed request for arbitration which would then minimise the need for subsequent amendments and consequent wasted time and costs.

18 In his affidavit in opposition to the orders sought in SUM 18, Mr [J], in addition to relying on his affidavit in SUM 17, stated that since that affidavit was affirmed, without prejudice negotiations had progressed and that DKC would endeavour to appoint counsel to commence the Stockholm arbitration at its Board meeting on 27 March 2025.

DKB

19 DKB relies on two affidavits of its attorney, Mr [K], first sworn in SUM 18 and the second in SUM 17. In his draft affidavit of 7 March 2025 filed in SUM 18, Mr [K] noted that DKC had failed to commence the Stockholm

arbitration within the time frame laid down in the conditions which I ordered, saying that was unjustifiable because DKC had all the necessary information and time to comply with the deadline and the SCC Rules would have allowed DKC to comply even if it was not able to finalise the request for arbitration by that date. He essentially repeated what was contained in DKB's solicitor's letter of 28 February 2025 to which I have referred at [6]−[9] above.

20 In his affidavit of 24 March 2025 filed in SUM 17, Mr [K] asserted there was sufficient time for DKC to comply with the condition that it commence the Stockholm arbitration within ten days. He stated that even if time was necessary to appoint counsel, there was little reason why this could not be done before the expiration of the deadline. He referred first to the statement of Mr [J] in his draft affidavit of 4 February 2025 that DKC immediately sought legal advice on becoming aware of the [D] arbitration on 28 January 2025 and, second, to DKC's counsel statement at the hearing of the stay application that the [D] arbitration was dealing with identical issues to those in the present case.

21 Mr [K] also asserted that DKC could not have been surprised by the imposition of a condition that it commence arbitration as it must have been aware of that possibility by virtue of the submissions made by DKB on the stay application.

22 He also stated that the tender process described in Mr [J's] affidavit could not in reality be described as a tender process. In that context, he pointed to the fact that the appointment of DKC's Singapore counsel did not appear to involve a genuine tender process. He referred in that context to paragraph 29 of Mr [J's] affidavit of 21 May 2024 filed in HC/SUM 621/2024 which stated that BAMC was instructed to appoint Singapore lawyers and Allen & Gledhill LLP was appointed on 4 March 2024. He stated that these facts showed that DKC

already had an engagement with BAMC, which is [C's] counsel on record in the [D] arbitration. Mr [K] opined that in these circumstances, the tender process was likely an exaggeration of a straightforward instruction by DKC appointing counsel. He further referred to the Articles of Association of DKC which he stated did not provide for a tender process for the appointment of solicitors or counsel.

23 Mr [K] next opined that DKC could have reasonably commenced the Stockholm arbitration within the deadline set in the conditions. He stated that even if the tender process could only have commenced on 19 February 2025, which was the date of publication of my orders, it was arguable that DKC's counsel for the Stockholm arbitration would have all the information and time to commence the arbitration within the specified deadline. He pointed again to the fact that DKC's counsel at the hearing of the stay application stated the issue in the [D] arbitration was identical to that in the stay proceedings. He also pointed to the speed with which DKC's Singapore counsel were able to prepare and file an affidavit in support of DKC's application for an extension of time in HC/SUM 621/2024.

24 Mr [K] also referred to the statement by DKC's counsel at the hearing of the stay application to the effect that DKC was going to participate in the [D] arbitration and was making the necessary preparations.

25 Mr [K] next stated that the extension was not reasonable and would be prejudicial to DKB. He stated that the [D] arbitration had advanced with the appointment of an arbitrator and the case would soon be transferred to the arbitrator for determination. He stated this could result in a situation where the Stockholm arbitration would not be consolidated or joined with the [D] arbitration which he submitted would place DKB in a disadvantageous position.

26 Mr [K] expressed the view that DKC had acted in bad faith. He stated that DKC had disregarded the [D] arbitration, failed to enter an appearance or appoint counsel in that arbitration, and rather than making an earlier request for an extension of the deadline, it continued to delay the process. Finally, he stated that if the stay was to be continued and an extension of time to commence the arbitration granted, it should be on the basis that DKC commence the arbitration by 28 March 2025 and provide security in the sum of US$ 15m.

The parties' submissions

DKC

27 DKC submitted that the power to extend time is discretionary and is generally governed by four factors, first, the length of the extension sought, second, the reason why more time is needed, third, the chances of the defaulting party succeeding in the relevant action or proceeding should the extension be granted and, fourth, the degree of prejudice that the counterparty would suffer, if any. It referred in that context to the decision of the Singapore International Commercial Court ("SICC") in *Navayo International AG v Ministry of Defence, Government of Indonesia* [2024] 6 SLR 1 ("*Navayo*"). DKC, however, submitted that the overall picture should be considered in balancing the competing interests of the parties and arriving at a just outcome.

28 In dealing with the first and second factors referred to in *Navayo*, DKC submitted that the six weeks' extension sought was reasonable and justifiable having regard to all the circumstances of the case, in particular, the fact that the parties were engaged in without prejudice negotiations.

29 In that context, DKC referred to the evidence of Mr [J] to that effect. I have referred to that evidence at [14] and [18] above. It submitted there was no

credible denial of that evidence and submitted that in the absence of such a denial, DKC's evidence should be accepted by the court.

30 DKC also submitted that the evidence of Mr [J] established that DKC genuinely required more time to commence the arbitration. It referred to Mr [J's] evidence as to the need for a tender process stating that would involve identifying suitable firms with the relevant expertise, approaching those firms to clear conflict, and render their fee quotes and finally establishing a positive response from those firms. It submitted that the evidence also established that following the tender process, Board approval for the appointment of counsel was required and the appointed counsel would need time to take instructions and review the documentation. It pointed to Mr [J's] evidence that DKC would seek to appoint counsel on 27 March 2025. It submitted that in those circumstances it could not be said that DKC was sitting idly by and ignoring the court order.

31 DKC also submitted that the submission of DKB that DKC should not have required so much time to appoint counsel was misplaced. It stated the mere fact that DKB had sought a condition that DKC commence arbitration within 14 days after any stay had been granted did not mean that DKC should have pre-emptively appointed solicitors.

32 DKC also submitted that the fact that BAMC had been instructed to assist in the appointment of DKC's Singapore counsel in the present case, and to assist [C] in the [D] arbitration had no bearing on DKC's appointment of solicitors in the Stockholm arbitration. It submitted that DKC had the right to appoint lawyers best suited to protect its interests. It submitted that contrary to the suggestion by DKB that DKC's appointed solicitors should promptly file the statement of claim, rushing the process risked procedural inefficiencies

which could complicate and extend the delay rather than expedite the arbitration. It submitted that in all the circumstances, the reality was that DKC had acted in accordance with internal governance procedures and had been undertaking the necessary steps to ensure that the Stockholm arbitration was properly commenced.

33 In dealing with the third factor in *Navayo*, DKC accepted that for the limited purpose of considering whether to grant an extension of time, the court is entitled to assess the prospects of success in the Stockholm arbitration. However, DKC submitted that the court should assess this question in light of the fact that the parties had agreed that the dispute should be resolved by arbitration in accordance with the provisions of clause 6.2 of the Settlement Deed. DKC submitted that the evidence of Mr Ng Jern-Fei KC to which I have referred in paragraphs [28]−[33] of the Stay Grounds, demonstrated that the defence raised by it had at least arguable prospects of success.

34 In relation to the fourth factor in *Navayo*, DKC submitted that DKB's contention that it would find itself in a disadvantageous position because an arbitrator had already been appointed in the [D] arbitration, fell far short of the degree of prejudice necessary to outweigh the first three factors. It submitted it was never a given that the [D] arbitration and the Stockholm arbitration would be consolidated.

35 It also submitted that if the stay was lifted, DKC and DKB would be compelled to litigate whether DKB is a sanctioned entity by reason of Mr [H's] indirect controlling interest in it (see [13] of the Stay Grounds) and whether in the circumstances, enforcement of the award would be contrary to public policy under s 31(4)(*b*) of the IAA.

36 DKC submitted that weighing up these factors, the extension sought was justified.

37 DKC also submitted that security should not be ordered. It submitted that as a matter of general principle, where an applicant is able to demonstrate that the balance falls in favour of granting an extension, it should be granted without conditions unless there are special circumstances justifying the imposition of further conditions.

38 DKC submitted that whilst the court's discretion to impose conditions in s 6 is unfettered, the discretionary power must be exercised judiciously with great caution and the courts should generally be slow to interfere in the arbitration process. It submitted there must be proper justification for the imposition of any condition.

39 DKC submitted the fact that it had not taken any steps in the [D] arbitration and the fact the application for the extension was made two days before the deadline of 3 March 2025 did not justify the onerous condition that security be provided. It submitted that if the arbitration was not commenced within any extended time, certain consequences would follow, none of which required forfeiture of a substantial sum of money. It submitted that the submission of DKB did not make clear what would happen to the security if DKC did not commence the Stockholm arbitration by the extended date.

40 DKC submitted that in exercising the discretionary power, the court must have regard to settled law in respect of established forms of relief such as freezing injunctions, security for costs, security for claims or preservation of property. It referred by way of analogy to the provisions of ss 7(1) and 7(2) of the IAA which provide that where a court stays proceedings under s 6, the court

may, if "property has been arrested or bail or other security has been given to prevent or obtain relief from arrest", order that the stay be conditional on the provision of equivalent security and in such circumstances "the same law and practice apply in relation to property retained pursuant to an order under this section as would apply if it were held for the purpose of proceedings in the court which made the order". DKC submitted it would not be appropriate to impose conditions on the mandatory stay if "the court has an unbridled power to impose conditions in the form of reliefs which would ordinarily only be granted if the tests governing such reliefs are met".

DKB

41 DKB submitted that I had power to lift the stay if the conditions I imposed were not met. I did not understand this to be in dispute.

42 In its submissions, DKB repeated what was said by Mr [K] in his affidavit as to the prejudice it would suffer if the extension sought was granted (see [25] above). DKB emphasised that it had the benefit of a valid and binding arbitral award, which it should not be left unable to enforce.

43 DKB further submitted that DKC had both the time and information needed to commence the Stockholm arbitration well before the expiration of the 3 March 2025 deadline. It repeated in effect what was said by Mr [K] in his affidavit to which I have referred at [20]−[21] above. As asserted by Mr [K] in his affidavit, DKB submitted that the tender process referred to by DKC was an exaggeration of a straightforward appointment of counsel. DKB's submissions also repeated the fact that DKC's counsel had stated at the hearing of 5 February 2025 that the issues were identical to those in the [D] arbitration. It submitted that DKC had completely disregarded the [D] arbitration.

44 So far as security was concerned, DKB submitted that security in the amount of US$ 15m should be provided. It stated that this was premised on the fact that DKB had incurred significant legal costs in excess of US$ 15m in seeking to enforce the arbitral award in multiple jurisdictions and DKC had engaged in delaying tactics to frustrate enforcement.

45 DKB submitted in this context that the security should be sufficient to compel DKC to comply with the conditions. It submitted the authorities established that unreasonable delay brought about by a party is a ground for the imposition of security. It should be noted that the authorities relied upon by DKB in this context were in respect of applications for security for costs.

46 DKB also submitted that in Mr [J's] third affidavit of 21 May 2024 filed in HC/SUM 1177/2024, he described DKC as being the state-owned aluminium smelter of [country F], one of the largest aluminium producers in its region. In these circumstances, it submitted that security of US$ 15m would impose no great burden on DKC.

Consideration

47 Prior to considering the factors set out in *Navayo*, it is convenient to summarise the chronology leading to the application for an extension. The chronology demonstrates, in my opinion, that there was little justification for the submission of DKC that it required a little in excess of seven weeks to commence the Stockholm arbitration proceedings.

48 So far as the period before 19 February 2025 is concerned, the following should be noted:

(a) The evidence showed that DKC was aware of the [D] arbitration on 28 January 2025. As I pointed out in the Stay Grounds, the request for arbitration anticipated the Sanctions Defence (see [15] of the Stay Grounds). It would have been apparent to DKC by that time that should it wish to defend against [D's] claim, it would be necessary for it to plead and prove the Sanctions Defence.

(b) As DKB pointed out, counsel for DKC in the stay application stated that the issues in the [D] arbitration and those in the Stockholm arbitration proceedings between DKB and DKC were substantially the same.

(c) The SCC Rules state in Article 9 that the Secretariat is to provide a time for the making of an answer to a request for arbitration. Although there is no direct evidence of any time limit imposed, counsel for DKC in the stay application stated that the answer was supposed to be given on 13 February 2025. Whatever the position may be, the evidence of Mr [K] that DKC has completely disregarded the [D] arbitration, failed to enter an appearance, appoint counsel and respond to correspondence from the Stockholm Institute was not disputed.

(d) In his affidavit of 21 May 2024 filed in HC/SUM 621/2024, Mr [J] set out in some detail the basis of the Sanctions Defence including the facts relied on in support of it (see paragraphs [16]−[24] of the affidavit). He also contended in that affidavit that the dispute should be submitted to arbitration under clause 6.2 of the Settlement Deed.

(e) In support of its application for a stay, DKC filed the expert report of Mr Ng Jern-Fei KC. That report dated 27 February 2024 again

set out the basis of the Sanctions Defence (see paragraph 12 of the report).

(f) In a draft affidavit filed by Mr [J] of 4 February 2025, he deposed that DKC was first made aware of [D's] request for arbitration on 28 January 2025 and sought legal advice without delay (see paragraph [6] of the affidavit). This statement sat somewhat uncomfortably with the fact that DKC had taken no steps in the [D] arbitration and with the need for the significant extension of time in the present case.

49 The events following the making of the 19 February Orders may be summarised briefly.

50 On 26 February 2025, the solicitors for DKC wrote to the solicitors for DKB seeking an extension of time to commence the arbitration until 31 March 2025. This was rejected on 28 February 2025.

51 On 6 March 2025, DKC filed an application seeking an extension of time up to 14 April 2025 to file a request for arbitration. No reason was given as to why an additional 14 days was required compared to the request made to DKB in DKC's solicitor's letter of 26 February 2025.

52 The reasons given by DKC for requesting an extension must be considered in that context.

53 DKC relied first on without prejudice negotiations which it said were taking place between it and DKB. The extent of such negotiations was not set out in Mr [J's] affidavit. In any event, absent any evidence that DKB either expressly or impliedly agreed to an extension while such negotiations were

progressing, the mere existence of such negotiations seems to me to be irrelevant to the question of whether an extension can be granted.

54 DKC also relied on what might be described as its governance procedures concerning the appointment of lawyers. It may be accepted that there are such procedures but such procedures do not permit a corporation to ignore court orders setting out time limits merely to implement a process it considers appropriate. Mr [J's] statement in his draft affidavit of 17 March 2025 that DKC would endeavour to appoint counsel at its upcoming Board meeting of 27 March 2025 involved a delay of some five weeks between the date of my orders and the date of appointment of counsel. I did not think that could be considered reasonable.

55 I accept that DKC is entitled to choose the lawyers to represent it and that the lawyers who are eventually chosen may not be ones to whom it has previously given instructions. However, the fact that DKC was entitled to choose its lawyers did not mean that it could ignore time limits imposed by the court on the taking of any action.

56 DKC next submitted that as the matter was complex, counsel would need reasonable time to take instructions, review the documents and draft the request for arbitration. That would seem to me to depend to a large extent on whether or not DKC retained lawyers who had previously advised it. If it retained the lawyers who had previously advised it on the issue, the drafting of the statement of claim would not seem to me to involve a lengthy process. However, whatever time it would take for counsel to draft the statement of claim, the period between the orders which I made and the time before which counsel was retained cannot be justified.

57 In those circumstances, I did not think that DKC had provided any real justification for the delay which had occurred.

58 DKC submitted that the relevant principles in determining whether to grant a stay are generally governed by the four factors referred to in *Navayo*. So far as the first and the second factors were concerned, namely the length of the extension sought and the reason more time is needed, I have concluded that the matters raised by DKC did not justify the length of the extension sought nor did DKC provide adequate reasons as to why an extension was necessary.

59 So far as the third factor was concerned, namely the chances of the defaulting party succeeding in the arbitration, I accept, as DKC contended, that this is a matter which would usually be decided in the course of the arbitration and as a consequence, I have not formed a firm view on the matter. It is sufficient to note that it is not disputed that DKC had failed to make the payments required by clause 3.8 of the Settlement Deed and the onus will be on it to demonstrate that the Sanctions Defence provides a justification for non-payment. However, I have treated that as a neutral factor in determining whether an extension should be granted.

60 So far as the fourth factor, namely prejudice to DKB, is concerned, the only prejudice that DKB can point to apart from the inevitable delay in the enforcement proceedings is that it may not be possible to have the Stockholm arbitration consolidated with the [D] arbitration. Although that could well lead to some delay and the incurring of additional costs, the prejudice could hardly be described as overwhelming. Further, it was always open to DKB to commence the Stockholm arbitration should it have wished to do so.

61 Ultimately, as was pointed out in *Navayo* at [164], the exercise of the court's discretion is guided by the justice of the case and the overall position must be considered in balancing the competing interests of the parties. Notwithstanding the fact that DKC could not point to any real justification for the delay, having regard to the quantum of the claim, the fact that the parties intended such disputes to be resolved by arbitration and the limited prejudice occasioned to DKB, I thought DKC should be granted a final opportunity to raise its allegations in the arbitration proceedings. Whilst I say a final opportunity, I accept that it would be open to DKC to make a further application but as presently advised, it would take very compelling reasons for me to grant a further extension.

62 There remained the question of security. In its submissions, DKB sought US$ 15m security, first, on the basis that that is what it had spent in seeking to enforce the award and, second, on the basis that a sum in that amount was necessary to compel DKC to comply with the conditions.

63 As I indicated in the Stay Grounds, the general power to impose conditions in s 6 of the IAA would include the requirement for security in an appropriate case (see [78] of the Stay Grounds). However, as DKC submitted, that power should only be exercised with great caution. Having regard to the fact that s 6 of the IAA gives the court no discretion but to refer the matter to arbitration if the relevant dispute is covered by an arbitration agreement, I agreed that in these circumstances, conditions generally should only be imposed to facilitate the conduct of the arbitration and in respect of security, only to protect property which was liable to be divested or wrongly dealt with during the course of the arbitration. It was not submitted that this had occurred or was likely to have occurred in the present case.

64 In these circumstances, it did not seem to me to be an appropriate exercise of my discretion to order security to in effect protect DKB in respect of previously expended amounts in enforcing the award particularly when the evidence is silent as to the amount of such expenditure or the circumstances in which it was incurred. Nor was it appropriate to impose security as in effect a mechanism to compel DKC to commence the arbitration.

65 In those circumstances, I made the orders sought by DKC that the time for commencement of the Stockholm arbitration be extended, albeit only up to 12 April 2025. I stood SUM 18 over to the conclusion of that arbitration with liberty to DKB to apply on two business days' notice. So far as costs were concerned, DKC was seeking an indulgence and DKB was fully justified in opposing it. I ordered that DKC pay the costs of SUM 17 and reserved the costs of SUM 18.

Orders

66 In the result, I made the following orders:

(a) Order 2(a) of the orders made by me on 19 February 2025 be varied by substituting the words "by 12 April 2025" for the words "within 10 days of the making of these orders".

(b) Order that the Defendant pay the costs of SUM 17.

(c) Stand over SUM 18 until the conclusion of the arbitration referred to in paragraph 2(a) of my orders of 19 February 2025 with liberty for the Claimant to apply on two days' notice.

(d) Reserve the question of costs of SUM 18.

Thomas Bathurst
International Judge

Ang Cheng Ann Alfonso and James Ch'ng Chin Leong (A.Ang, Seah & Hoe) for the claimant;
Chong Yee Leong, KarLuis Quek, Liew Pei Jun Annette and Ng Ying Ning Theodora (Allen & Gledhill LLP) for the defendant.