IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2026] SGHC 182

Originating Application No 114 of 2026

Between

Far Ocean Sea Products Pte Ltd

… *Applicant*

And

United Overseas Insurance Limited

… *Respondent*

JUDGMENT

[Arbitration — Agreement — Scope]
[Arbitration — Commencement — Extension of time]
[Arbitration — Commencement — Time-bar]
[Arbitration — Section 10(1) of the Arbitration Act 2001 (2020 Rev Ed)]

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Far Ocean Sea Products Pte Ltd
v
United Overseas Insurance Ltd

[2026] SGHC 182

General Division of the High Court — Originating Application No 114 of 2026
Philip Jeyaretnam J
15 July 2026

8 September 2026 Judgment reserved.

Philip Jeyaretnam J:

1 Over the past few decades, Singapore has acquired the reputation of a jurisdiction with a "pro-arbitration" stance: see, *eg*, Michael Hwang & Yin Wai Chan, "Case Law of the Supreme Court of Singapore in the Field of Arbitration" (2019) 1(2) *Belgian Review of Arbitration* 629 at 629–631. This reputation rests on, among other things, the policy of minimal curial intervention, the principle that when parties choose to arbitrate their disputes arbitration clauses should be interpreted as far as possible to give effect to that choice and the rebuttable presumption that commercial parties intend to have all the disputes between them decided in the same forum. Nonetheless, parties sometimes agree to refer only parts of their disputes to arbitration, splitting up modes of resolution for sound reasons. In the insurance context, one may find clauses that refer disputes to an arbitrator only if liability has been agreed. Coupled with contractual time bars that are also not uncommon in the insurance context, such clauses can be

tricky for the insured, including because a lay perception that the insurance company has more or less agreed to pay up on a claim may not align with a strict interpretation of what is required for a binding admission of liability.

2 The application before me concerns the interpretation of one such arbitration agreement. It is an application to extend time beyond a contractual time bar under s 10(1) of the Arbitration Act 2001 (2020 Rev Ed) ("AA") for Far Ocean Sea Products Pte Ltd ("Applicant") to commence arbitration proceedings against United Overseas Insurance Limited ("Respondent"). Parties agreed to refer to arbitration only differences concerning the amount to be paid under the insurance policy "liability being otherwise admitted". Accordingly, central to this application is the threshold question of whether parties' dispute was indeed one where liability had been "otherwise admitted" within the meaning of the arbitration agreement, such that reference to arbitration had become available. If not, then there would be no operative arbitration agreement in respect of which time to commence arbitration could be extended under the relevant statutory power. In urging me to adopt an interpretation of this phrase that would permit disputes to go to arbitration so long as some liability had been admitted, the Applicant prayed in aid the so-called pro-arbitration stance of our jurisdiction.

3 Before going on to the issues, I briefly outline the facts.

Facts

The parties

4 The Applicant is a frozen seafood products supplier, and the Respondent is an insurance provider.[1] Since March 2011,[2] the Applicant had leased and carried out its operations on an industrial property ("Premises") comprising several processing rooms and cold rooms designed to store its core inventory of frozen seafood products ("Cold Rooms").[3]

5 On 31 March 2024, parties renewed a fire insurance policy ("Policy"),[4] under which the Respondent agreed to insure the Applicant's Premises for a year, up to 30 March 2025 for a sum of S$12,580,000.[5] Embedded within the Policy were two key clauses:[6]

(a) first, a time bar clause which provided that:

> In *no case whatever shall the [Respondent] be liable for any loss or damage after the expiration of twelve (12) months from the happening of the loss or damage* unless the claim is the *subject of pending action or arbitration.*
>
> [emphasis added]

(b) second, an arbitration clause which provided that:

> If any difference shall arise as to the amount to be paid under this Policy *(liability being otherwise admitted)* such difference shall be referred to an arbitrator to be

1 Applicant's Written Submissions dated 15 May 2026 ("AWS") at paras 1–2.

2 Respondent's Written Submissions dated 15 May 2026 ("RWS") at para 2.

3 AWS at para 7.

4 Respondent's Bundle of Documents dated 15 May 2026 ("RBOD") at pp 38–58.

5 AWS at para 8; RWS at para 3; RBOD at p 38.

6 RBOD at p 56.

> appointed in accordance with the statutory provisions in that behalf for the time being in force.
>
> Where any difference is by this Condition to be referred to arbitration the making of an award shall be a *condition precedent to any right of action against the [Respondent].*
>
> Unless *any such action or suit be commenced within six (6) months of the making of an award* the [Respondent] shall not be liable to make any payment in excess of the amount of the award.
>
> [emphasis added]

Background to the dispute

6 Shortly after the Policy was renewed, on 28 June 2024, a fire caused by an electrical fault caused severe damage to the Premises.[7] Several areas within the Premises suffered heat damage or water damage from fire-fighting operations.[8] In particular, such damage was caused to the building's electrical systems which resulted in power failures to the Applicant's Cold Rooms.[9] Neither party disputes that the fire gravely disrupted the Applicant's business operations – including millions of dollars' worth of losses to its inventory, which had a "knock-on impact" on the Applicant's other businesses downstream.[10]

Parties' negotiations on the Applicant's insurance claims

7 Immediately following the fire, the Applicant promptly appointed an insurance broker and notified the Respondent that it was filing a reinstatement

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7 AWS at para 9.

8 AWS at para 9.

9 AWS at para 9.

10 AWS at para 10.

claim on the Policy.[11] The Respondent likewise appointed its loss adjustor to assess the Applicant's claims under the Policy.[12] Together, the Applicant (via its insurance broker) and the Respondent (via its loss adjustor) began a string of correspondence over the Applicant's reinstatement claims.[13] Crucially, regardless of whether the parties had realised this at the time, since the fire and the damage it caused happened on 28 June 2024, the 12-month contractual time bar took effect on 28 June 2025. Thus, the Applicant's prospective claims would be time-barred after this date.[14] However, notwithstanding the time bar, from July 2024 up to over 17 months later in December 2025, parties engaged in extensive negotiations via their representatives on the scope and costs of reinstatement works the Applicant required for the Premises.[15]

8 I note as an aside that in their submissions, parties vigorously dispute when the Applicant was first notified of the contractual time bar or of the Respondent's intention to rely on it.[16] Parties' submissions examined these negotiations over the course of those many months.[17] I do not consider it necessary to make any findings on when the Applicant received such notice nor reproduce those negotiations at length. This is because I accept the Respondent's position that the Applicant, having signed the Policy and been advised by insurance professionals throughout the negotiations, is precluded

11 AWS at para 11; RWS at para 6.

12 RWS at para 7.

13 See generally RBOD at pp 132–180.

14 RWS at para 34; RBOD at p 56.

15 AWS at paras 12–19; RWS at paras 9–48.

16 AWS at para 19; RWS at para 38.

17 AWS at paras 12–19; RWS at paras 9–48.

from disclaiming knowledge of its provisions.[18] Moreover, the Applicant did not contend for the purpose of this application that the Respondent was estopped from relying on the contractual time bar. Indeed, applying for an extension of time presumed that there was an operative time bar which needed to be lifted. Nonetheless, the conduct of parties would be relevant to the exercise of the power to extend time, if the threshold question is crossed.

9 Without trawling through the details of parties' correspondence, it was at least clear by May 2025 that while the Respondent disputed several of the Applicant's reinstatement claims, it was willing to allow the Applicant to commence some of its reinstatement works.[19] In emails sent by the Respondent's representative to the Applicant on 30 April and 5 May 2025,[20] the Respondent agreed that the Applicant may proceed to commence reinstatement works for only *two* of the Applicant's seven claim items.[21] Moreover, the Respondent particularly disputed the Applicant's claim items pertaining to reinstating its Cold Rooms and other temporary works, stating that "[b]ased on the policy wording and the sum insured", these items were "not covered under the policy".[22] As regards the rest of the Applicant's reinstatement claims items, the Respondent maintained that the scope of its coverage of these claims would be subject to the Respondent's approval pending the Applicant's commencement and completion of its reinstatement works.[23] From that point onwards, the Respondent maintained its position as detailed above, including at

18 RWS at para 61.

19 AWS at para 14.

20 RBOD at pp 154 and 157.

21 AWS at para 14.

22 RBOD at pp 154, 157 and 324.

23 RWS at para 25.

a physical meeting between parties' representatives on 23 June 2025.[24] The time bar then came into effect just five days later on 28 June 2025.

10 Nonetheless, parties continued in discussions for months after. This included discussing whether the Applicant's claims pertaining to its Cold Rooms were covered under the Policy.[25] The Applicant appointed its first set of solicitors to negotiate its reinstatement claims and the Cold Rooms' inclusion in September 2025, but no progress was made.[26] During this period up until early December 2025, the Respondent's representatives continued negotiations, only saying that the Respondent "require[d] more time to assess" the Applicant's reinstatement claims (pending the Applicant's commencement and completion of all its reinstatement works) and claims for the Cold Room.[27]

11 Ultimately, it was only in mid-December 2025, nearly five months after the time bar had come into effect, that the Respondent formally invoked the time bar clause under the Policy to disclaim its liability in its entirety.[28] Shortly thereafter, the Applicant appointed new solicitors.[29] It issued a notice of arbitration against the Respondent in January 2026 and made this application to extend the time for it to pursue its claims in arbitration, in view of the time bar.[30]

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24 AWS at para 16; RWS at paras 32–33.

25 AWS at paras 16–17.

26 RWS at para 36; see also RBOD at p 24.

27 AWS at para 17; RBOD at p 225.

28 AWS at para 19; RBOD at p 234.

29 AWS at para 21; RBOD at p 236.

30 AWS at para 21; RBOD at p 236.

The Applicant's sale of the Premises

12 In the weeks immediately preceding the Respondent's decision to invoke the time bar in December 2025, the Respondent was made aware that the Applicant had, in fact, issued an option to purchase the Premises on an "as is, where is" basis in April 2025, and exercised it in May 2025.[31] The Respondent took the view that this removed any basis for the Applicant to claim reinstatement costs under the Policy, because no reinstatement works were required or done on the Premises.[32]

13 The Applicant, on the other hand, informed the Respondent that it had sold the Premises on a forced sale basis after the fire had severely disrupted its business operations.[33] The Applicant had suffered significant financial losses following the damage to its inventory, but it had not received any insurance payout necessary for it to undertake the reinstatement works.[34] The consequence was that the Applicant was ultimately put into receivership. This resulted in the forced sale of the Premises for S$8million[35] just below its valuation on a forced sale basis of S$8.4million, and S$4 million below its free market valuation of S$12million.[36] The Applicant contends that loss of value is a viable alternative basis for its insurance claim.[37]

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31 RWS at para 43; RBOD at pp 398–399.

32 See RWS at para 47.

33 AWS at para 68; RWS at paras 44–45.

34 AWS at paras 68–69; see RBOD at pp 148–149.

35 RBOD at p 394.

36 RBOD at pp 61 and 67.

37 AWS at para 66.

The parties' cases

14 The Applicant's application rests on s 10(1) of the AA which empowers the court to extend time for a party to pursue a claim in arbitration beyond a contractual time bar when "a dispute to which the [arbitration] agreement applies has arisen" if the court considers that "undue hardship would otherwise be caused" to parties.

> **Powers of Court to extend time for beginning of arbitral proceedings**
>
> 10.—(1) Where the terms of an arbitration agreement to refer future disputes to arbitration provide that a claim to which the arbitration agreement applies is barred unless —
>
> > (*a*) some step has been taken to begin other dispute resolution procedures which must be exhausted before arbitral proceedings can be begun;
> >
> > (*b*) notice to appoint an arbitrator is given;
> >
> > (*c*) an arbitrator is appointed; or
> >
> > (*d*) some other step is taken to commence arbitral proceedings,
>
> within a time fixed by the agreement *and a dispute to which the agreement applies has arisen*, the Court may, if it is of the opinion that in *the circumstances of the case undue hardship would otherwise be caused,* extend the time for such period and on such terms as the Court thinks fit.
>
> [emphasis added]

15 It is common ground between parties that the threshold question of whether the court has the power to extend time for arbitration under s 10(1) of the AA turns on whether the dispute the Applicant intends to bring to arbitration falls within the scope of parties' arbitration agreement.[38] What parties contest is whether the arbitration agreement has come into effect by virtue of liability being otherwise admitted, specifically:

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38 AWS at para 24; RWS at para 8.

(a) whether this requires that liability has been *fully* admitted by the insurer, such that the *only* differences left to be arbitrated are questions of mere quantum;[39] or

(b) whether it would suffice that *some* liability has been admitted by the insurer (for example, that the fire was an insured event within the policy) even though whether the insured loss extended to all items claimed (for example, the Cold Rooms) had not been admitted.[40]

16 In answering the broad issue above, parties advanced their submissions as follows.

The Applicant's case

17 In the Applicant's submission, the court should find that so long as *some* liability has been admitted by the insurer, parties may bring their dispute within the scope of the arbitration clause.[41]

18 First, while the court has yet to set out the applicable standard of review when determining whether a dispute falls within the scope of an arbitration agreement under s 10 of the AA, the court should adopt a *prima facie* standard of review – consistent with how the court determines all jurisdictional issues in arbitration, be it the existence or applicability of an arbitration clause: *Beltran, Julian Moreno v Terraform Labs Pte Ltd* [2024] 4 SLR 674 ("*Terraform Labs*") at [122].[42] The Applicant relies on [5] of the Court of Appeal's decision in *Sim*

39 RWS at paras 51–52.

40 AWS at paras 30–38 [*sic*].

41 AWS at paras 30–38.

42 AWS at paras 26–28.

Chay Koon v NTUC Income Insurance Co-operative Ltd [2016] 2 SLR 871 ("*Sim Chay Koon*") to submit that a *prima facie* standard of review in determining whether to stay court proceedings in favour of arbitration under s 6 of the AA. An arbitration clause must be "*clearly* invalid or inapplicable" to fall short of this *prima facie* standard: *Tomolugen Holdings Ltd v Silica Investors Ltd* [2016] 1 SLR 373 ("*Tomolugen*") at [68].[43] In so doing, the court should undertake a "restrained review of the facts and circumstances", and on these facts, refrain from applying an exacting standard to determining whether liability had been admitted by the Respondent in order for the Applicant to enforce its right to arbitrate: *Sim Chay Koon* at [5].[44]

19 Second, the Applicant acknowledges that the English courts have held that a similar arbitration clause which contained the phrase "liability being otherwise admitted" applied only to claims of "mere quantum" where liability had been *fully* admitted.[45] Nevertheless, the Applicant seeks to distinguish those cases,[46] and further persuade me to instead rely on case law from the United States ("US") and India which have held the contrary in relation to similarly worded arbitration clauses in insurance policies.[47] The Applicant argues that these decisions rightly show a "pro-arbitration stance",[48] as well as a general reluctance to require parties to litigate substantially connected and intertwined claims before separate forums.[49] Consequently, so long as the insurer has

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43 AWS at para 29.

44 AWS at paras 29–30.

45 AWS at paras 43–46.

46 AWS at paras 47–49.

47 AWS at paras 31–38.

48 AWS at para 34.

49 AWS at para 37.

admitted liability to *some* portions of the same claim, that is sufficient because any remaining disagreements still go towards the question of *how much* the insurers must pay, not *whether* the insurers need to pay anything at all.[50]

20 Third, and flowing from the above, it was clear enough from parties' correspondence that the Respondent had admitted liability for *at least two* of the seven reinstatement claim items.[51] The Respondent had never disclaimed liability entirely.[52] Rather, parties had proceeded on the basis that the Respondent was liable for at least some of the Applicant's claims. Parties' disagreement thus centred solely on *how much* the Respondent would be liable for.[53] Further, even if the possibility of the Applicant obtaining its reinstatement claims in the arbitration is now hampered by its sale of the Premises, it remains open for the Applicant to mount an alternative claim for loss of value at the arbitration: *Sartex Quilts & Textiles Ltd v Endurance Corporate Capital Ltd* [2020] 2 All ER (Comm) 1050 at [69].[54]

The Respondent's case

21 In the Respondent's submission, the court should instead find that parties' dispute could only be referred to arbitration once liability had been *fully* admitted by the insurer.[55]

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50 AWS at paras 31–38.

51 AWS at paras 40–42.

52 AWS at paras 40–42.

53 AWS at paras 40–42.

54 AWS at para 66.

55 RWS at paras 51–52.

22 With respect to the applicable standard of review for determining whether a dispute falls within the scope of an arbitration clause, it is common ground between parties that this is a novel question in the context of an application under s 10(1) of the AA. The Respondent argues for a "full merits" standard of review. The standard of review the court undertakes in determining stay applications under s 6 of the AA is not immediately transposable to determining applications under s 10(1) of the AA. An application under s 10(1) of the AA seeks the court's *indulgence* to extend time for an arbitration to be brought. Whether parties' dispute falls within the scope of parties' arbitration agreement is a necessary pre-requisite for the exercise of discretion to extend time and should therefore be fully determined on its merits.

23 Concerning the scope of the arbitration clause, the Respondent relies on decisions of the English courts. These conclude that where parties have agreed to refer disputes to arbitration only once liability has been otherwise admitted by the insurer, the arbitration agreement only covers disputes on *quantum*.[56] Relying on the decision in *Bath Racecourse Company Ltd v Liberty Mutual Insurance Europe Se* [2025] EWHC 1870 (Comm) ("*Bath Racecourse*"), the Respondent submits that such agreements to arbitrate come into effect only if the "precondition" – that the insurer has admitted *full* liability to the claims and left *only* issues of quantum to be decided – has been fulfilled.[57] In the Respondent's submission, such a precondition to arbitration is not satisfied so long as the claim the insured intends to bring to arbitration engages "a point of law or construction rather than a mere dispute on quantum".[58] Nor would it be satisfied even where an insurer has admitted that an event is *prima facie*

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56 RWS at paras 51–52.

57 RWS at paras 51–52.

58 RWS at para 52.

covered, if the amount payable is still subject to other conditions which similarly turn on matters of construction.[59] Barring a full admission of liability and fulfilment of this precondition, there would exist "no operative agreement to arbitrate" between the parties and it would be for the Applicant to commence court proceedings to litigate parties' dispute on liability.[60]

24 In addition to its view that a valid admission of liability must be with respect to *all* the Applicant's claims to come within the scope of parties' arbitration agreement, the Respondent submits that admissions of liability must also be *clear and unequivocal* (citing the Court of Appeal's decision in *Tjong Very Sumito v Antig Investments Pte Ltd* [2009] 4 SLR(R) 732 at [61]–[62]).[61] It was insufficient for the Applicant to rely purely on the fact that the Respondent had never expressly denied liability for all its claims, to submit that liability had been impliedly admitted.[62]

25 On the facts, the Respondent submits that parties' correspondence reveals that it had never expressly accepted liability for *any* of the Applicant's reinstatement claims, let alone unequivocally admitted liability for *all* the claims brought against it.[63]

(a) As regards the two reinstatement claims that the Applicant submits were admitted, it was clear from the emails sent by the Respondent's loss adjustor that though the Respondent had *allowed* the Applicant to *commence* works on, parties were aware that the

59 RWS at para 52.

60 RWS at para 51.

61 See RWS at para 53.

62 RWS at para 53.

63 RWS at para 54.

Respondent's liability for those claims was "still subject to [the Respondent's] approval", pending *completion* of those reinstatement works.[64]

(b) As regards the few emails the Applicant characterised as admissions of liability by the Respondent's loss adjustor, the Respondent submits that, in any event, the loss adjustor had no authority to admit liability on behalf of the Respondent.[65]

(c) Even if the court were to accept that the Respondent via its loss adjustor had validly admitted to some liability, these were at best, only *partial* admissions of liability.[66] It was consistent throughout parties' correspondence that the Respondent had expressly denied liability in respect of the Applicant's remaining reinstatement claims, particularly those pertaining to the Cold Rooms as those claims fell outside the scope of coverage in the Policy.[67]

26 Accordingly, to the extent that any dispute the Applicant intends to bring to arbitration now would necessarily engage questions such as (a) whether the Cold Rooms were covered under the Policy; and (b) given that the Applicant has since sold the Premises, whether the Applicant is entitled to substitute its reinstatement claims by a loss of value claim at the arbitration, any arbitral tribunal constituted would be tasked with interpreting the Policy and deciding questions of law. This, in the Respondent's submission, would clearly bring this

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64 RWS at para 19.

65 RWS at paras 28 and 32.

66 RWS at para 54.

67 RWS at para 54.

dispute well beyond mere questions of quantum and place it far outside the scope of parties' arbitration agreement.[68]

Issues to be determined

27 I will proceed to consider the following issues in order to decide whether the arbitration agreement has become operative, such that I should then proceed to consider whether this is an appropriate case to extend time:

(a) the applicable standard of review for determining whether a dispute falls within an arbitration agreement under s 10(1) of the AA;

(b) the proper interpretation of this arbitration agreement in particular the condition for its coming into operation, namely "liability being otherwise admitted"; and

(c) whether, on that proper interpretation, liability has been admitted.

Issue 1: The applicable standard of review under s 10(1) of the AA

28 In my judgment, a party seeking to rely on s 10(1) of the AA to extend time to commence arbitration proceedings and so relax the contractual time bar must satisfy the court on a "full merits" basis that the arbitration it intends to commence falls within the arbitration agreement.

29 The Applicant frames its submission that only a *prima facie* standard of review ought to suffice under s 10(1) of the AA primarily as a matter of consistency.[69] The Applicant submits, and the Respondent does not deny, that

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[68] RWS at para 54.

[69] AWS at paras 26–28.

while the court has determined that a *prima facie* standard of review applies in respect of other applications brought under the AA, the court has yet to set out an applicable standard of review specific to s 10(1).[70] In the only other reported decision applying s 10(1) of the AA, *Lee Hui Chin v Chubb Insurance Singapore Ltd* [2024] SGHC 69 ("*Chubb*"), parties did not dispute that the underlying dispute fell within the scope of the arbitration clause such that the court *had* the power extend time.[71] The question, instead, was solely whether that power should be exercised in light of whether any undue hardship would be otherwise caused to the applicant: see *Chubb* at [21]–[27].[72]

30 In the absence of a settled position on how the court should determine the question, the Applicant invites the court to transpose wholesale and "adopt the settled principles applicable to the stay of court proceedings in relation to disputes that are subject to arbitration".[73] To the extent that the court has consistently held that only a *prima facie* standard of review applies to determining whether to stay court proceedings in favour of enforcing an arbitration clause, the same standard should necessarily apply to determining whether time should be extended for a party to enforce an arbitration clause.[74]

31 The Applicant further submits that adopting the *prima facie* standard of review for applications under s 10(1) of the AA would not only be consistent with the approach taken under s 6 of the AA but would also be principled.[75] In

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70 AWS at para 25.

71 AWS at para 25.

72 AWS at para 25.

73 AWS at para 26.

74 AWS at para 28.

75 AWS at paras 26–28.

the Applicant's view, the court has "every reason" to adopt the same *prima facie* standard of review across applications under ss 6 and 10(1) of the AA as the "underlying rationale" supporting the lower standard in stay applications in s 6 "applies with equal force" to extension of time applications under s 10(1).[76]

32 The Applicant correctly identifies that underlying the court's earlier decisions to adopt a *prima facie* standard of review for applications under s 6 was a need to protect the policy of minimal curial intervention and give effect to the doctrine of *kompetenz-kompetenz*: *Terraform Labs* at [121]–[123] citing *Tomolugen* at [63]–[68]. Where I disagree with the Applicant, however, is on whether those principles apply similarly to an application to extend time under s 10(1) of the AA.

33 When the court considers whether to stay court proceedings in favour of an arbitration in a s 6 application, the question concerns the regulation of proceedings before the court. Whether and on what terms proceedings are to be stayed is a matter for the court, and there is no difficulty of principle in the court giving effect to party autonomy and the doctrine of *kompetenz-kompetenz* by adopting only a *prima* facie standard of review before exercising the power to stay proceedings before it.

34 But s 10(1) of the AA is different. It is a statutory power conferred on the court to extend time for the commencement of an arbitration in respect of a dispute to which the arbitration agreement applies. The court may only exercise the statutory power when the dispute is one to which the arbitration agreement applies. Thus, the court must first be satisfied that the dispute is indeed one to which the arbitration agreement applies. It is a condition to the exercise of a

[76] AWS at para 28.

positive power (here, to extend time). This coheres with how the English courts approach similar extension of time applications under s 12 of the Arbitration Act 1996 (c 23) (UK). In *Grimaldi Compagnia Di Navigazione SpA v Sekihyo Lines Ltd* [1999] 1 WLR 708 ("*Grimaldi*"), Mance J (as he then was), sitting in the High Court of England and Wales, recognised two points. The first is that an extension of time provision set out in legislation is one which would qualify parties' prior agreement to a contractual time bar, in the court's words at 717:

> The dominant icon where litigation and arbitration inter-net (*sic*) is now *party autonomy*. The *power granted in English law by section 12 to extend time for the commencement of arbitration involves a limited qualification of that basic principle*... The essence of the matter in the present context is, however, that *statute enables the court to qualify the effect of the party's actual agreement.*
>
> [emphasis added]

35 The second point, which flows from this, is that because such extension of time provisions are a "mechanism for relieving a claimant, in limited cases, from the effects of a time bar", such provisions "should be capable of operation in a manner which is consistent with the *full deployment*, by both parties, of all arguments on substance available to each" [emphasis added]: *Grimaldi* at 716.

36 For these reasons, I consider that a court determining an application under s 10(1) of the AA should be *satisfied* that the arbitration agreement is operative and applies to the dispute in question before considering whether to extend time, rather than considering whether to extend time if there is, only on a *prima facie* basis, a valid and operative arbitration agreement applicable to the dispute.

37 I should add that as it happens, the question of which standard to adopt may not make much if any practical difference to my task in this case. Neither party contends that there is evidence beyond what parties have already adduced

that would be relevant to this issue. Further, both parties also submit that its case is sufficiently made out on either standard of review:

(a) the Applicant submits that even if the court were to undertake a full determination of the dispute, there is enough evidence on record to support its submission that the Respondent had effectively admitted liability to at the very least two of its seven reinstatement claims; and

(b) the Respondent submits that even on a *prima facie* standard of review, there is no evidence on record to suggest that the Respondent had admitted liability in full to all the claims made against it.

38 This being the case, I turn now to consider the second issue of interpretation.

Issue 2: The proper interpretation of this arbitration agreement

39 I begin by setting out the terms of parties' arbitration agreement.[77]

> If any difference shall arise as to the amount to be paid under this Policy *(liability being otherwise admitted)* such difference shall be referred to an arbitrator to be appointed in accordance with the statutory provisions in that behalf for the time being in force.
>
> Where any difference is by this Condition to be referred to arbitration the making of an award shall be a condition precedent to any right of action against the [Respondent].
>
> Unless any such action or suit be commenced within six (6) months of the making of an award the [Respondent] shall not be liable to make any payment in excess of the amount of the award.
>
> [emphasis added]

77 RBOD at p 56.

40 The question then is how the phrase "liability being otherwise admitted" should be interpreted. Does the phrase require that liability has been *wholly* admitted by the insurer such that only mere questions of quantum remain? Or is the phrase broad enough to allow an insured to refer both questions of liability and quantum to arbitration, so long as *some* liability has been admitted?

41 At the opening of parties' oral submissions, counsel for both the Applicant and Respondent helpfully framed their submissions by reference to two key points. The first is that this arbitration clause is not bespoke or novel. Rather, the key phrase of "liability being otherwise admitted" has been used in insurance policies for decades across the global industry. The second and related point is that the decisions of courts in other jurisdictions on the interpretation of this phrase will be helpful and persuasive.

42 Unfortunately, those decisions do not speak with one voice:

(a) The Applicant cites in its favour recent decisions of the US and Indian courts that so long as the insurer has admitted liability to *some* portions of the same claim, the dispute would fall within the scope of near-identically worded arbitration clauses.[78]

(b) The Respondent instead relies on English case law to support the opposite proposition that only disputes of *mere quantum*, where liability has been fully admitted by the insurer, can be referred to arbitration.[79]

43 I ultimately agree with the Respondent's submission and interpret the phrase "liability being otherwise admitted" as requiring all questions or aspects

[78] AWS at paras 31–38.

[79] RWS at paras 51–52.

of liability to have been admitted, leaving only mere questions of quantum for the arbitrator. To explain my conclusion, I now set out my review of the cases cited.

The approach in the US and Indian courts

44 The Applicant first relies on the US decision of *Keller North America, Inc v Certain Underwriters at Lloyd's of London* 687 F Supp 3d 712 (ED Va, 2023) ("*Keller*")[80] where Davis J (sitting in the US District Court for the Eastern District of Virginia) considered a materially similar arbitration clause in an insurance policy, which read:

> All disputes arising out of or in connection with amount to be paid under this Policy (liability being otherwise admitted) shall be settled under the International Chamber of Commerce (ICC) Arbitration Rules.

45 In *Keller*, the insured's submissions largely mirrored what the Respondent in the present dispute contends, namely that the phrase "liability being otherwise admitted" (at 719):

> … draws a distinction between issues of coverage and issues of quantum… the arbitration provision only compels arbitration of disagreements *regarding the proper quantification of the covered damages after all of the contract interpretation questions have been resolved*, establishing the scope of [insurer's] liability under the Policy. In other words, it is *only after* the parties have resolved which damages (if any) [insurers] are *liable* to provide coverage for that the Policy *then requires the parties to arbitrate the proper measurement of those damages.*
>
> [emphasis added]

46 The court, however, preferred the alternative interpretation proffered by the insured that liability need only be partially admitted, as "it is also a

[80] AWS at paras 31–34.

reasonable interpretation to describe the remaining insurance dispute as a dispute about how much [the insurer] will be required to pay, rather than whether they will be required to pay …" [emphasis in original]: at 720. The court took the view that it was bound by a "heavy presumption of arbitrability" such that the court "must resolve a dispute about the scope of an arbitration agreement in favour of arbitration unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute": at 719. This being the case, the court at 719–720 considered that "nothing in [the arbitration clause] specifically requires that all liability ([*ie*], coverage) issues be resolved prior to compelling arbitration" [emphasis in original] and that neither party had cited any precedent in support of that proposition; and accordingly, agreed that the insured may bring its dispute to arbitration.

47 A similar interpretation also prevailed in the Madras High Court in *Tagros Chemicals India Private Limited v United India Insurance Company Limited* [2025] 1 MLJ 133 ("*Tagros*"),[81] albeit for one additional reason. The court came to this conclusion despite two key facts. The first is that in addition to the presence of the phrase "liability being otherwise admitted" in the arbitration clause in *Tagros*, the clause also explicitly identified the disputes it applied to as differences "as to *quantum*" as opposed to the broader term of "amount". Specifically, the arbitration agreement in parties' insurance clause read:

> If any difference shall arise as to the *quantum* to be paid under this policy ***(liability being otherwise admitted)*** such difference shall independently of all other questions be referred to the decision of an arbitrator …
>
> [emphasis in original in italics; emphasis added in bold italics]

[81] AWS at paras 35–38.

48 The second was that the court in *Tagros* departed from two earlier decisions in the Indian Supreme Court (at [14]–[15]) which held that such arbitration clauses ought to be "interpreted strictly" to only include disputes on matters of *mere quantum* on account of two reasons.

(a) The court also considered itself bound by more recent decisions of the Indian Supreme Court which found in favour of adopting the same presumption of arbitrability: *Tagros* at [24].

(b) However, in addition to this, allowing an arbitral tribunal to determine parties' *whole* dispute on all its insurance claims even where parties have only *partially* admitted liability made sense where the claims are so intertwined and inseparable that it would be unreasonable to require parties to separately pursue these claims in litigation and arbitration: *Tagros* at [26].

49 The first reason adopted by the court in *Tagros* and *Keller* is, in the Applicant's submission, identical to the "pro-arbitration stance" adopted by the Singapore courts including the principle of interpreting arbitration agreements generously to give effect to parties' intention to have their disputes resolved via arbitration.[82] The second reason is, in essence, what is known as the "one stop shop presumption" or the *Fiona Trust* principle laid down by Lord Hoffmann in *Fiona Trust & Holding Corporation v Privalov* [2007] 4 All ER 951 at [13], which has been affirmed in Singapore by the Court of Appeal in *Tomolugen* at [124].

50 These principles are definitely important. However, presumed intentions must give way to the actual intentions manifested objectively by the words of

82 AWS at paras 34–35.

an arbitration agreement read purposively in context. Thus, one may start with "the *presumed intentions* of the parties as rational commercial parties" [emphasis added]; parties are *presumed* to have intended that their arbitration agreements have effect and for their disputes to be decided by a single forum: *Tomolugen* at [124]. But this is readily displaced by language which indicates parties' intention to limit the scope of their arbitration agreement to a subset of disputes.

51 Davis J in *Keller* (at 719–720) noted that the arbitration clause does not expressly state that *all* liability must be otherwise admitted. But the phrase "liability being otherwise admitted" itself connotes that liability as a whole must be admitted: that is the import of the word "otherwise". Thus, an admission of a breach of duty without an admission of causation is not of itself an admission of liability for the loss.

52 I now turn to the decisions from England.

The approach in the English courts

53 As both parties recognised at the hearing, arbitration clauses of this nature have been used in the insurance industry for decades in England. In fact, in some of the earliest English cases considering whether arbitration clauses were invalid agreements to oust the jurisdiction of the courts to deal with parties' contractual rights, the House of Lords dealt with arbitration agreements in insurance policies that were the other way around, *ie*, they had to first refer disputes to an arbitral tribunal: see *Scott v Avery* [1843-60] All ER Rep 1 ("*Scott v Avery*"); *Caledonian Insurance Company v Andrew Gilmour* [1893] AC 85 ("*Caledonian*").

54 Subsequently, the English courts have adopted a fairly consistent position.

The English approach where arbitration agreements exclude language that requires prior admissions of liability

55 Where parties opt *not* to include language that requires liability to have been admitted in their arbitration agreements, the English courts have accepted that such clauses are broad enough to "embrac[e] not only the assessment of damages, the computation of quantum, but also any dispute that might arise between the under writers and the insured respecting the liability of the insurers as well as the amount to be paid": *Scott v Avery* at 6 (*per* Lord Campbell).

56 Such was also the position taken by the English Court of Appeal more recently in *Sulamérica Cia Nacional de Seguros SA v Enesa Engenharia SA* [2013] 1 WLR 102 ("*Sulamérica*"), which affirmed Cooke J's decision below that "[a]s a matter of language, a failure to agree 'as to the *amount* to be paid under this policy' includes a dispute about whether *any sum is due under the policy at all*, and thus *includes matters of liability and coverage*" [emphasis added]: see *Sulamérica* at [40] and [49] affirming *Sulamérica Cia Nacional de Seguros SA v Enesa Engenharia SA* [2012] EWHC 42 (Comm) at [44]. Crucially, the language of the arbitration agreement in *Sulamérica* effectively mirrored that in the present case, minus the inclusion of the phrase "liability being otherwise admitted". The clause read:

> In case the insured and the insurer(s) shall fail to agree as to the *amount to be paid* under this policy through mediation as above, such dispute shall then be referred to arbitration under ARIAS Arbitration Rules.
>
> [emphasis added]

57 Accordingly, where parties opt to exclude language that requires liability to have been admitted in their arbitration agreements, the English courts will readily allow parties to have both disputes as to liability and quantum brought before an arbitral tribunal, much for the same reasons that the courts in *Keller* and *Tagros* have.

58 In *Scott v Avery*, Lord Campbell considered it a mere matter of giving effect to a "just construction" of parties' agreement, such that even if parties' dispute may encompass questions of law such as the alleged commission of a breach, such questions would rightly lie within the remit of an arbitral tribunal: *Scott v Avery* at 7.

59 Likewise, in *Sulamérica*, Moore-Bick LJ considered that barring any express language to the contrary, it would be "unusual" to find that "parties to a contract of this kind [would] establish separate and distinct procedures for resolving what in many cases are likely to be different aspects of the same dispute": at [40]. In this, Moore-Bick LJ particularly noted at [40] that:

> It would be very surprising if the parties had intended to limit the scope of the arbitration agreement in that way. If, as [counsel] suggested, there were thought to be good reasons for resolving disputes about liability in the courts … leaving only disputes about quantum to be determined by arbitration, *that could easily have been provided for …*
>
> [emphasis added]

60 I place particular emphasis on the closing line of the above excerpt, that such an intention may be "easily provided for" because indeed, it is sometimes so provided in arbitration clauses; and when this is done, the courts have consistently granted such clauses their intended effect.

The English approach where arbitration agreements include language that requires prior admissions of liability

61 This brings me to the English cases relied on by the Respondent in these proceedings, which show that the English courts have interpreted the phrase "liability being otherwise admitted" to limit the claims referrable to arbitration to pure questions of quantum.

62 In *Bath Racecourse*, Mr Sean O'Sullivan KC (sitting as a Deputy Judge of the High Court of England and Wales) described arbitration clauses in insurance policies which include the phrase "liability being otherwise admitted" as "familiar territory for the English court": at [240], see also [226]. In interpreting the inclusion of such language in an arbitration clause, the court in *Bath Racecourse* referred to the decision of Sir Nigel Teare J (also sitting in the High Court of England and Wales) in *DC Bars Ltd v QIC Europe Ltd* [2023] EWHC 245 (Comm) ("*DC Bars*") who held at [30] that:

> [t]he aim of the clause, *as is apparent from its wording*, is to *refer to arbitration disputes as to quantum or assessment of loss* but *where there is, or is also, a dispute as to the liability* of the insurer based upon the terms of the policy *there is no agreement to arbitrate.*
>
> [emphasis added]

63 In both *Bath Racecourse* and *DC Bars*, the court considered arbitration clauses *identical* to that present before me, namely clauses which essentially read:

> If any difference shall arise as to the amount to be paid under this [Policy] (liability being otherwise admitted) such difference shall be referred to an arbitrator …

64 In arriving at their respective decisions, both courts referred to the earlier decision of Potter J (sitting in the High Court of England and Wales) in *New*

Hampshire Insurance Co v Strabag Bau AG [1990] 2 Lloyd's Rep 61 ("*New Hampshire*"). There, again faced with an *in pari materia* clause, Potter J accepted at 64 that the words "differences … as to the amount paid under this policy (liability being otherwise admitted)" are "plain in their meaning and intention". Namely, they restrict parties' agreement to arbitrate to *only* disputes about *quantum* once the insurers have admitted liability: *New Hampshire* at 64.

65 Dissecting the phrase "liability being otherwise admitted", Potter J considered at 64 that:

> … the word "otherwise" is apt to emphasi[s]e the fact that it is *"mere" disputes as to quantum* which are to be arbitrated, thus excluding disputes as to amount which, despite *prima facie* acceptance of liability, *depend upon the application* of particular provisos or exemptions in the policy which place limitations on categories of loss, or otherwise apply to limit the amount recoverable. Such cases would *raise a question of liability in the sense and to the extent that they involve a point of law or construction rather than a mere dispute on quantum.* It is said in Mustill & Boyd Commercial Arbitration (2nd ed.) at p 121:
>
> > Certain forms of arbitration agreement entrust the Arbitrator with jurisdiction over liability but not over the amount of the claim or vice-versa. In the first category are clauses referring to the "meaning and intention of the contract". The second type of clause is much more common. Clauses in this form are usually expressed in terms which make their purpose clear.
>
> In my view clarity has been achieved in this case.
>
> [emphasis added]

66 Potter J's decision on this point was not appealed. In fact, Teare J in *DC Bars* further notes that on appeal, Lloyd LJ described that point as "almost unarguable": *DC Bars* at [28] citing *Strabag Bau AG v New Hampshire Insurance Company* [1991] ILP 478 at [11]. In this vein, Teare J makes a point at [29] with which I particularly agree, that where a pronouncement on how a clause ought to be interpreted has "stood for over 30 years", any subsequent

court called to interpret such clauses ought to be slow to depart from that interpretation:

> This decision [referring to Potter J's decision in *New Hampshire*] has stood for over 30 years. *It is a clear statement of the true construction of this type of arbitration clause and must have informed those in the insurance world who have used the clause since 1990.* It should therefore only be departed from if the court is convinced that Potter J's construction of the arbitration clause is wrong. Counsel for the [insurer] accepted that Potter J was correct with regard to exclusions but submitted that he was wrong with regard to limits. I am not persuaded that Potter J's understanding of the clause was wrong in any respect. Indeed, I think it was correct.
>
> [emphasis added]

67 Recognising an established definition of such clauses is a forceful and cogent point, because certainty is important for persons engaged in commerce.

68 This interpretation is further supported by the commercial context for such a division of labour between court and arbitration. Liability questions are more likely to involve legal questions, requiring the attention of a legally trained decision-maker, while those of quantum could be referred directly to a valuer, a loss adjuster or an accountant. Insurers may well have in mind the potential costs savings of such a division of labour. This was a point taken by counsel for the insurer in *Bath Racecourse* and helpfully identified in the judgment at [235] that:

> … the reasons [*sic*] for such clauses in insurance contracts is obvious: namely, that resolving "pure" quantum disputes can be a technical and tedious process, which can usually be conducted more efficiently and cost-effectively by an arbitrator with a market, claims adjustment, or accountancy background.

69 Indeed, this is reinforced by the analysis of the House of Lords in *Caledonian*, which identified at least three decisions arising out of Scots law

from the 1800s that entitled parties to refer technical but limited questions of valuation to arbitration: *Caledonian* at 94–100.

Other foreign jurisdictions

70 It is also helpful to refer to two further decisions, one from Hong Kong and one from Malaysia.

71 Maurellet J (sitting in the Hong Kong Court of First Instance) considered in *Cheung Shing Hong Ltd v China Ping An Insurance (Hong Kong) Co Ltd* [2020] HKCU 3051 ("*Cheung Shing*") a clause which likewise mirrors that in the present case, except for the absence of the phrase "liability being otherwise admitted".

> if any difference shall arise as to the amount to be paid under this Policy, such difference shall be determined by arbitration in accordance with the prevailing Arbitration Ordinance.

72 Maurellet J held at [35] that such clauses are "apt to cover *both* issues of liability and quantum" [emphasis added]. In so deciding, Maurellet J distinguished between how arbitration clauses which include the phrase "liability being otherwise admitted" should be interpreted from those which excluded such language. In doing so, he recognised that the presence of this phrase would limit disputes referrable to arbitration to disputes which "[go] to the quantification of the insurance claim not to the insured's primary liability in principle": *Cheung Shing* at [26]–[29].

73 In similar vein, the High Court in Kuala Lumpur held in *Allianz General Insurance Company (M) Bhd v Kapar Energy Ventures Sdn Bhd* [2016] MLJU 1515 ("*Allianz*"), in relation to a clause which is materially identical to the one in the present case, that such clauses "provide that only the issue of quantum is arbitrable": *Allianz* at [144] and [174]. Accordingly, the court considered that

to the extent that "[t]he dispute here is obviously not confined to quantum, but it involves [a] question of liability" then "[t]here can never be any prejudice on the part of the [insured] when in the first place it is not entitled to arbitrate where issue[s] of liability arose": *Allianz* at [174].

74 In arriving at the decision in *Allianz*, Badaruddin JC (as she then was) further considered the "one stop shop presumption" (at [145]) that the Applicant had alluded to when it sought to rely on the proposition in *Tagros*.[83] While Badaruddin JC accepted that interpreting the arbitration agreement in this manner would result in parties having the same claims heard partly in court and partly in arbitration, she considers that this is merely the natural effect and most likely even the intention of parties when they had entered into such an agreement: [145] and [172]. In her view, it was "clear and unambiguous that parties did not intend [for] a 'one-stop' adjudication before an [a]rbitrator": at [145]. The court in *Allianz* (at [146]) drew particular attention to *Barclays Bank PLC v Nylon Capital LLP* [2012] 1 All ER (Comm) 912 at [28] which states that:

> … quite unlike the position under agreements with arbitration clauses (as exemplified by the *Fiona Trust* case), the parties have chosen two alternative forms of dispute resolution. There is, therefore, *no presumption in favour of giving a wide and generous interpretation to the jurisdiction of the expert conferred by the expert determination clause* as the reasoning in the *Fiona Trust* case is inapplicable. The simple question is whether the dispute which has arisen between the parties is within the jurisdiction of the expert conferred by the expert determination clause or is not within it and is therefore within the jurisdiction of the English court. It is a question of construction with no presumption either way.
>
> [emphasis in original omitted; emphasis in italics added]

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83 AWS at para 37.

75 This, in Badaruddin JC's view, ought to apply likewise in the case of arbitrators being tasked to determine mere matters of quantum in insurance disputes: see *Allianz* at [147] and [173]. Relying on an earlier Kuala Lumpur High Court decision in *Standard Chartered Bank Malaysia Bhd v City Properties Sdn Bhd* [2008] 1 MLJ 233 at [24], Badaruddin JC considered that to read such arbitration agreements in a manner which unduly expands the scope of disputes to which they would apply would be tantamount to the court "re-writ[ing] the contract or 'audit[ing] the bargain made between the parties'": *Allianz* at [160]–[161]. Accordingly, regardless of the sensibility or commerciality of the agreement parties have arrived at, the court ought to "hold [parties] to the contract they have made by giving effect to the clear and unequivocal words of the contract": see *Allianz* at [161] and [170].

76 In closing the decision, Badaruddin JC adopted at [170] the well-known principle set out by Lord Hoffmann (sitting in the Privy Council) in *Attorney General of Belize v Belize Telecom Ltd* [2009] 1 WLR 1988 at [16].

> … The court has *no power to improve upon the instrument* which it is called upon to construe, whether it be a contract, a statute or articles of association. It *cannot introduce terms to make it fairer or more reasonable*. It is concerned only to discover what the instrument means. *However, that meaning is not necessarily or always what the authors or parties to the document would have intended*. It is the meaning which the instrument would convey to a reasonable person having all the background knowledge which would reasonably be available to the audience to whom the instrument is addressed…
>
> [emphasis added]

77 Such a view is also in keeping with the widely accepted position here in Singapore, which I consider aptly expressed by Chong JA, delivering the grounds of decision of the Court of Appeal in *BNA v BNB* [2020] 1 SLR 456 at [104]:

> The essential point we make is that the *parties' manifest intention to arbitrate is not to be given effect at all costs*. The parties did not only choose to arbitrate – *they chose to arbitrate in a certain way*, in a certain place, under the administration of a certain arbitral institution. Those all have to be given effect to by a process of construction which critically gives the words of the arbitration agreement their natural meaning, unless there are sufficient contrary indicia to displace that reading. *If the result of this process of construction is that the arbitration agreement is unworkable, then the parties must live with the consequences of their decision.*
>
> [emphasis added]

My decision

78 Summarising my analysis above, there are three principal reasons for my interpretation of the phrase "liability being otherwise admitted" as limiting the arbitration agreement to disputes of mere quantum:

(a) This interpretation comports with the language of the arbitration agreement. The word "all" is not needed to give the clause the meaning I consider it holds. Rather, one would need to qualify the word "liability" by a word like "some" or "partial" to give it a different effect.

(b) This interpretation fits with a reasonable commercial purpose, namely that legal questions could be decided by judges, while technical questions of quantum could be decided by a person qualified in a technical discipline.

(c) This interpretation has acquired a degree of consistency over decades as reflected by my survey of the English decisions. This is especially important in the context of the insurance industry.

Issue 3: Whether liability has been otherwise admitted

79 On the proper interpretation of the arbitration agreement, I find that liability has not been otherwise admitted and so the arbitration agreement has not become operative. I explain.

80 It is common ground between parties that even if the Respondent may be taken to have admitted liability for some of the Applicant's reinstatement claims, at least one claim remains in clear dispute, *ie*, parties' dispute on whether the Cold Rooms fell within the Policy.[84] Further, following the Applicant's sale of the Premises, parties now also dispute whether the Applicant's reinstatement claims may now be converted to claims for a loss in value under the Policy.[85] Thus, it is not the case that liability has been otherwise admitted. Accordingly, the agreement to arbitrate is not operative.

81 This being the case, I do not have any power to extend time for the Applicant to commence arbitration.

82 Any perception that this interpretation bears harshly against the Applicant is mitigated by the fact that it is not difficult for an insured to file a protective claim in court within the contractual time bar, if the insurer is dragging its feet on the question of liability.

84 AWS at para 40; RWS at para 54.

85 AWS at para 66; RWS at para 47.

Conclusion

83 For these reasons, I dismiss the application for extension of time to pursue the matter in arbitration.

84 I began with the invocation by the Applicant of the jurisdiction's perceived pro-arbitration stance. My decision has gone against the Applicant, but this should not be perceived as "anti-arbitration". Rather, my approach has been to interpret the arbitration agreement in context and purposively, and having done so, it is clear that the Applicant cannot bring its claims, which still include matters for which liability has not been admitted, within the scope of the arbitration agreement.

85 I award costs to the Respondent on the standard basis. Parties are to endeavour to agree on the quantum of costs, failing which they are to file costs submissions of no more than five pages within three weeks of the date of this judgment, and I will assess and fix such quantum thereafter.

Philip Jeyaretnam
Judge of the High Court

Chua Sui Tong, Gan Jhia Huei and Dikaios Pang Siran (Rev Law LLC) for the applicant;
Goh Keng Yeow Simon, Alvin Ee Chin Liang and Lim Le-Si Alicia (Rajah & Tann Singapore LLP) for the respondent.