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

[2026] SGHC 243

Originating Application No 96 of 2026

Between

(1) The Roe Corporation
(2) 267 Partners, LLC
(3) Buhm Jung Roe

… *Claimants*

And

Berhero Pty Limited (trading as Acuity Funding)

… *Respondent*

JUDGMENT

[Arbitration — Award — Recourse against award — Setting aside — Breach of natural justice]
[Arbitration — Award — Recourse against award — Setting aside — Making of award induced or affected by fraud]
[Arbitration — Award — Recourse against award — Setting aside — Unequal treatment]

TABLE OF CONTENTS

INTRODUCTION **1**

THE PARTIES **2**

BACKGROUND TO THE DISPUTE **3**

THE ARBITRATION **4**

SALIENT ASPECTS OF THE PARTIES' CASES IN THE ARBITRATION 4

PO1 DATED 16 DECEMBER 2024 6

THE ROE PARTIES' APPLICATION ON 28 MAY 2025 FOR A THREE-WEEK EXTENSION OF TIME TO FILE DOCUMENTS AND A POSTPONEMENT OF THE HEARING 8

PO4 DATED 6 JUNE 2025 11

THE ROE PARTIES' APPLICATION ON 20 JUNE 2025 FOR CROSS-EXAMINATION OF MR ROE TO BE DISPENSED WITH AND HIS WITNESS STATEMENT ADMITTED INTO EVIDENCE 12

ACUITY'S APPLICATION ON 25 JUNE 2025 FOR A THREE-WEEK EXTENSION OF TIME TO FILE ITS AMENDED STATEMENT OF REPLY AND FACTUAL WITNESS STATEMENTS 17

ACUITY'S APPLICATION ON 30 JUNE 2025 FOR MR THAMBYRAJAH TO TESTIFY REMOTELY 18

SLB'S DISCHARGE AS THE ROE PARTIES' SOLICITORS IN THE ARBITRATION ON 4 JULY 2025 19

THE ROE PARTIES' REQUEST ON 8 JULY 2025 FOR A 30-DAY EXTENSION OF TIME TO FIND REPLACEMENT COUNSEL 20

ACUITY'S APPLICATION ON 9 JULY 2025 FOR A SHORT EXTENSION OF TIME TO FILE ITS AMENDED STATEMENT OF REPLY AND FACTUAL WITNESS STATEMENTS AND TO REDUCE THE HEARING DAYS TO 23 TO 25 JULY 2025 21

Version No 1: 24 Nov 2026 (17:50 hrs)

GRANT THORNTON'S WITHDRAWAL AS THE ROE PARTIES' WITNESS ON 10 JULY 2025 21

PO5 DATED 16 JULY 2025 22

COMMUNICATIONS BETWEEN MR ROE AND THE TRIBUNAL ON 17 JULY 2025 23

ACUITY'S APPLICATION ON 17 JULY 2025 TO INTRODUCE EVIDENCE OF THE NEW YORK PROCEEDINGS COMMENCED BY ROE PARTIES ON 2 JULY 2025 24

THE ROE PARTIES' APPLICATION ON 18 JULY 2025 FOR MR ROE'S WS AND THE GT REPORT TO BE ADMITTED INTO EVIDENCE 25

THE HEARING 28

POST-HEARING COMMUNICATIONS FROM MR ROE TO THE TRIBUNAL ON 25 AND 30 JULY 2025 29

THE AWARD 30

ISSUES TO BE DETERMINED 39

GROUND 1: ALLEGED FRAUD 39

THE ROE PARTIES' CASE 39

Concealment Allegation 40

Perjury Allegation 44

ACUITY'S CASE 46

DECISION 48

The applicable law 48

Application of the law to the facts 50

(1) Perjury Allegation 50

(2) Concealment Allegation 54

Conclusion 55

GROUND 2: ALLEGED BREACH OF NATURAL JUSTICE 55

Version No 1: 24 Nov 2026 (17:50 hrs)

THE ROE PARTIES' CASE 55
Replacement Counsel Issue *55*
GT Report Issue *57*
Cross-examination Issue *59*
Korean Interpreter Issue *61*
ACUITY'S CASE 61
Replacement Counsel Issue *61*
GT Report Issue *63*
Cross-examination Issue *63*
Korean Interpreter Issue *64*
DECISION 64
The applicable law *64*
Application of the law to the facts *67*
(1) Replacement Counsel Issue 67
(2) GT Report Issue 75
(3) Cross-examination Issue 79
(4) Korean Interpreter Issue 84
Conclusion *86*
GROUND 3: ALLEGED UNEQUAL TREATMENT 86
THE ROE PARTIES' CASE 86
ACUITY'S CASE 87
DECISION 88
The applicable law *88*
Application of the law to the facts *89*
Conclusion *89*
CONCLUSION 90

Version No 1: 24 Nov 2026 (17:50 hrs)

COSTS 90

Version No 1: 24 Nov 2026 (17:50 hrs)

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The Roe Corp and others
v
Berhero Pty Ltd (trading as Acuity Funding)

[2026] SGHC 243

General Division of the High Court — Originating Application No 96 of 2026
Kristy Tan J
15, 19 October 2026

24 November 2026 Judgment reserved.

Kristy Tan J:

Introduction

1 HC/OA 96/2026 ("OA 96") is an application by The Roe Corporation ("Roe Corp"), 267 Partners, LLC ("267 Partners") and Mr Buhm Jung Roe ("Mr Roe") (together, "Roe Parties") to set aside the arbitral award ("Award") made by a sole arbitrator ("Tribunal") in an arbitration administered by the Singapore International Arbitration Centre ("SIAC") and commenced by Berhero Pty Limited (trading as Acuity Funding) ("Acuity") against the Roe Parties ("Arbitration").

2 The Roe Parties seek the setting aside of the Award on the grounds that:

(a) Ground 1: the making of the Award was induced or affected by fraud, and the Award is thus liable to be set aside under s 24(*a*) of the International Arbitration Act 1994 (2020 Rev Ed) ("IAA");[1]

(b) Ground 2: the Tribunal breached the fair hearing rule of natural justice through four procedural decisions, and the Award is thus liable to be set aside under s 24(*b*) of the IAA and/or Art 34(2)(*a*)(ii) of the UNCITRAL Model Law on International Commercial Arbitration 1985 ("Model Law");[2] and/or

(c) Ground 3: the parties were not treated with equality as required under Art 18 of the Model Law, and the Award is thus liable to be set aside under s 24(*b*) of the IAA and/or Art 34(2)(*a*)(ii) of the Model Law.[3]

The parties

3 The Roe Parties are the claimants in OA 96 and were the respondents in the Arbitration. Roe Corp is a company incorporated in the US and is in the business of real estate development.[4] 267 Partners is a special purpose vehicle incorporated in the US to invest in and develop the super luxury condominium

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1 Originating Application in HC/OA 96/2026 ("OA 96") ("Originating Application") at prayer 1(i).

2 Originating Application at prayers 1(ii) and 1(iii), r/w Claimants' Written Submissions dated 8 October 2026 ("CWS") at paras 22 and 71.

3 Originating Application at prayer 1(iv), r/w CWS at paras 74–76.

4 Affidavit of Buhm Jung Roe filed on behalf of the claimants in OA 96 on 27 January 2026 ("BJR") at para 11; Affidavit of Janette Thambyrajah filed on behalf of the respondent in OA 96 on 13 March 2026 ("JT") at para 8.

Version No 1: 24 Nov 2026 (17:50 hrs)

project at 265–267 Broadway, New York ("Project").[5] Mr Roe, a US citizen, is an experienced businessman and real estate investor with substantial assets.[6] He and his children wholly own Roe Corp, of which he is the chief executive officer and president.[7] He is also the sole managing member and president of 267 Partners.[8]

4 Acuity is the respondent in OA 96 and was the claimant in the Arbitration. Acuity is a company incorporated in Australia and is in the business of financial and commercial brokerage.[9] Acuity's Managing Director is Mr Ranjit Prithviraj Thambyrajah ("Mr Thambyrajah").[10]

Background to the dispute

5 On or around 29 September 2023, the Roe Parties and Acuity executed a Loan Term Sheet ("LTS") and Costs Agreement Associated with the Loan Term Sheet ("CA") (together, "LTS&CA").[11] By the LTS&CA, the Roe Parties engaged Acuity to introduce, organise, arrange or obtain a loan of up to US$280m for the development of the Project (cl 3 of the CA read with cll 3 and 5 of the LTS).[12] Pursuant to cl 4 of the CA and cl 12 of the LTS, the Roe Parties

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5 JT at para 9.

6 JT at para 10.

7 BJR at para 11; JT at para 10.

8 JT at para 10.

9 JT at para 7.

10 BJR at paras 5 and 13.1.

11 Parties' List of Agreed Issues, List of Non-Agreed Issues and Common Ground between the Parties dated 1 October 2026 ("Parties' Joint Statement"), section III, s/n 1; BJR at pp 335–348 (exh BJR-1, tab 15).

12 BJR at pp 336, 338 and 343–344.

Version No 1: 24 Nov 2026 (17:50 hrs)

were obliged to pay Acuity a "Fund Arrangement Fee" in the event that the loan to the Roe Parties was conditionally approved or a discussion paper, term sheet or loan proposal in the terms of the LTS was issued.

6 On or around 20 October 2023, Acuity arranged for Global Wise Investments Pte Ltd ("Global Wise") to issue, and Global Wise issued, to the Roe Parties a Conditional Letter of Offer for Mortgage Finance for a loan amount of US$280m ("Conditional Offer").[13]

7 Negotiations between Acuity and the Roe Parties over the terms of the Conditional Offer followed from the end of October to early November 2023.[14]

8 Mr Roe ultimately did not sign the Conditional Offer as he found its terms commercially unreasonable and/or unworkable.[15]

The Arbitration

9 On 29 April 2024, Acuity commenced the Arbitration against the Roe Parties, claiming, *inter alia*, US$11.2m as the Fund Arrangement Fee due under the LTS&CA.[16]

Salient aspects of the parties' cases in the Arbitration

10 Acuity claimed that upon the issuance of the Conditional Offer on 20 October 2023, the Fund Arrangement Fee (calculated to be US$11.2m)

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13 Parties' Joint Statement, section III, s/n 3; BJR at pp 350–358 (exh BJR-1, tab 16).

14 BJR at paras 23–24; JT at paras 23–24.

15 BJR at paras 20–22.

16 Parties' Joint Statement, section III, s/n 4.

Version No 1: 24 Nov 2026 (17:50 hrs)

became immediately due and payable pursuant to cl 4 of the CA read with cl 12 of the LTS. The Roe Parties had failed to pay the Fund Arrangement Fee to Acuity.[17]

11 The Roe Parties denied liability to pay the Fund Arrangement Fee. Their defences included that:

(a) There were terms implied in fact in the LTS&CA that (i) the conditionally approved loan, discussion paper, term sheet or loan proposal procured by Acuity had to be from a lender who was ready, able and willing to provide the loan; (ii) the lender had to be in a position to demonstrate that it was ready, willing and able to provide the loan; and (iii) the Fund Arrangement Fee would only be due and payable if the conditionally approved loan, discussion paper, term sheet or loan proposal was from a lender who was ready, willing and able to provide the loan ("Implied Terms").[18]

(b) Acuity had also represented, pursuant to cl 3 of the CA read with cl 5 of the LTS, that it would introduce, organise, arrange or obtain loan funds to fund the Project ("Representation").[19]

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17 BJR at pp 611 and 612 (exh BJR-1, tab 21): Statement of Claim in the Arbitration dated 13 January 2025 at paras 14 and 18.

18 BJR at para 28.2; BJR at p 997 (exh BJR-1, tab 22): Statement of Defence in the Arbitration (Amendment No 1) dated 20 June 2025 ("Defence") at para 4.3.1.

19 BJR at p 994: Defence at para 4.1.5; BJR at p 115: Award at [159].

Version No 1: 24 Nov 2026 (17:50 hrs)

(c) However, Global Wise was not a lender that was ready, willing and able to provide the intended loan to the Roe Parties at the time the Conditional Offer was made.[20]

(d) Consequently, Acuity had breached the Implied Terms, and the Roe Parties were entitled to terminate and had terminated the LTS&CA.[21]

(e) Acuity had also made the Representation fraudulently in that Acuity did not intend at the time the LTS&CA was executed to procure a lender who was ready, willing and able to provide the loan.[22] By virtue of Acuity's fraudulent misrepresentation, the LTS&CA was voidable and had been rescinded by the Roe Parties.[23]

PO1 dated 16 December 2024

12 On 16 December 2024, the Tribunal issued Procedural Order 1 ("PO1"),[24] which included the following procedural rules governing the evidence of witnesses and the use of interpreters (since the parties had agreed that the language of the Arbitration was English[25]):

> **8. WITNESSES**
>
> 8.1 Evidence of witnesses of fact shall be adduced in written witness statements and oral evidence in accordance with this Section. Any person may present evidence as

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20 BJR at para 29; BJR at p 1009: Defence at para 4.5.4.

21 BJR at para 29; BJR at pp 1011–1012: Defence at paras 5.2, 5.2.1 and 5.2.2.

22 BJR at para 29; BJR at p 1014: Defence at para 5.4.3.

23 BJR at para 28.4; BJR at p 1014: Defence at para 5.4.1.

24 JT at pp 126–145 (exh JT-1, tab 2).

25 JT at p 133: Procedural Order 1 dated 16 December 2024 ("PO1") at para 11.1.

Version No 1: 24 Nov 2026 (17:50 hrs)

a witness, including a Party or a Party's officer, employee, or other representative.

…

8.6 The Parties are to give notice as to which of the other Party's witnesses it wishes to cross examine by the date specified in the Procedural Timetable.

8.7 Each Party is responsible for ensuring the presence of its witnesses in respect of which one [or] more of the other Parties have given notice that it wishes to cross-examine.

8.8 Witness statements shall stand as that witness' direct testimony.

8.9 If a witness does not appear despite being called, the weight of his or her evidence may be reduced or it may be disregarded altogether, in the discretion of the Tribunal, depending upon the reasons for the witness not attending.

8.10 In all matters pertaining to the evidence of witnesses of fact not expressly provided for in this paragraph 8, the Tribunal and the parties shall be guided by the IBA Rules on the Taking of Evidence in International Arbitration 2020 (the "**IBA Rules**").

…

11. TRANSLATION AND INTERPRETERS

…

11.6 Any witness giving oral evidence at the Evidentiary Hearing may give such evidence in his or her mother tongue, in whole or in part, provided that consecutive interpretation into English is provided by the party presenting the witness. *Any Party intending to present oral evidence from a witness in a language other than English* shall notify the Tribunal and the other Parties in accordance with the Procedural Timetable and *shall be responsible for providing suitable consecutive interpretation of such evidence into English. …*

[emphasis added]

Version No 1: 24 Nov 2026 (17:50 hrs)

13 PO1 also fixed the evidentiary hearing in the Arbitration ("Hearing") for 21 to 25 July 2025 (with 26 July 2025 as a reserve date).[26]

The Roe Parties' application on 28 May 2025 for a three-week extension of time to file documents and a postponement of the Hearing

14 The Roe Parties initially engaged Control Risks Group (S) Pte Ltd ("Control Risks") to investigate entities/persons identified in documents disclosed by Acuity and/or in Acuity's Statement of Reply.[27] The Roe Parties were due to disclose Control Risks' report and file their amended Statement of Defence by 28 May 2025.[28]

15 On 28 May 2025, the Roe Parties' counsel in the Arbitration at the time, Shook Lin & Bok LLP ("SLB"), wrote to the Tribunal indicating that Control Risks had withdrawn as the Roe Parties' witness in the Arbitration:[29]

(a) SLB stated:

> 3. … our client's appointed investigators [*ie*, Control Risks] informed us late yesterday that *they are refusing to give evidence in these proceedings*. The investigators have not disavowed their draft report but *they have refused to present themselves to be examined viva voce thereon.*
>
> …

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26 JT at pp 144–145: PO1, Annex B – Procedural Timetable, s/n 21.

27 BJR at pp 1609–1611 (exh BJR-1, tab 42): E-mail from Shook Lin & Bok LLP ("SLB") dated 28 May 2025 at para 3; BJR at para 80.

28 JT at pp 249–250 (exh JT-1, tab 6): Procedural Order 3 dated 25 May 2025, Annex – Procedural Timetable, s/n 9; BJR at pp 1606–1608 (exh BJR-1, tab 42): E-mail from WongPartnership LLP ("WongP") dated 29 May 2025 at para 2.

29 BJR at pp 1609–1611: E-mail from SLB dated 28 May 2025; *cf*, BJR at para 83.2.

Version No 1: 24 Nov 2026 (17:50 hrs)

> 5. In the circumstances, our clients require an extension of time to engage replacement investigators on an urgent basis as well as for the replacement investigators to carry out the necessary investigations. *We have already reached out to various firms to enquire as to their availability to take the matter on.* The feedback received is that they will require approximately 4 weeks to produce their investigation report, even on the assumption that their work is carried out on an urgent basis.
>
> [emphasis added]

(b) SLB sought an extension of time until 20 June 2025 to file an investigation report and an amended Statement of Defence; consequential revision of the timelines for subsequent steps in the proceedings; and a postponement of the Hearing to a week after 1 August 2025.

16 On 29 May 2025, WongPartnership LLP ("WongP"), acting on behalf of Acuity in the Arbitration, wrote to the Tribunal expressing dissatisfaction with the Roe Parties' application.[30] WongP observed that, given the Roe Parties' requested extension of time, the earliest the Hearing could reasonably take place would be the week of 11 August 2025.[31] WongP suggested that, as a practical way forward and without prejudice to Acuity's position, a procedural case conference be convened to re-fix the dates for the Hearing, after which the deadlines for the steps leading up to the Hearing could be agreed.[32]

17 On 29 May 2025, the Tribunal informed the parties that it was not prepared to vacate the Hearing dates, for reasons which would be provided in

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30 BJR at pp 1606–1608: E-mail from WongP dated 29 May 2025.

31 BJR at p 1607: E-mail from WongP dated 29 May 2025 at para 6.

32 BJR at p 1607: E-mail from WongP dated 29 May 2025 at para 7.

Version No 1: 24 Nov 2026 (17:50 hrs)

due course, but was willing to hold a procedural meeting on 5 June 2025 to consider what amendments might be made to the existing procedural timetable in the light of the matters raised in the Roe Parties' application.[33]

18 On 5 June 2025, the procedural meeting was held. SLB explained that the Roe Parties' engagement of replacement investigators was not confirmed until late afternoon on 4 June 2025 and stated that 20 June 2025 was the earliest time by which the Roe Parties could disclose further documents, file an amended Statement of Defence and file their factual witness statements. Acuity contended that the Roe Parties should be given only until 13 June 2025 to do so. The timelines for subsequent steps were otherwise agreed between the parties.[34]

19 On 6 June 2025, the Tribunal issued its procedural ruling giving the Roe Parties until 20 June 2025 (as opposed to 13 June 2025 as contended for by Acuity) to disclose further documents, file an amended Statement of Defence and file their factual witness statements.[35] The Tribunal also provided its reasons for declining to postpone the Hearing, which included the consideration that any adjourned Hearing would not be able to take place until 2026:[36]

> Pursuant to Article 19.1 of the SIAC Arbitration Rules 2016, the Tribunal has a duty to conduct the arbitration in such manner as it considers appropriate, after consulting with the parties, to ensure the fair, expeditious, economical and final resolution of the dispute. The evidentiary hearing in these proceedings has been fixed since Procedural Order 1 dated 16 December 2024 to take place on 21–25 July (26 July in reserve) 2025. The Tribunal had repeatedly stated previously that any extensions

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33 BJR at pp 1536–1538 (exh BJR-1, tab 38): E-mail from the Tribunal dated 6 June 2025 at para 5.

34 BJR at p 1537: E-mail from the Tribunal dated 6 June 2025 at paras 8–9.

35 BJR at p 1537: E-mail from the Tribunal dated 6 June 2025 at para 11.

36 BJR at p 1537: E-mail from the Tribunal dated 6 June 2025 at para 10.

Version No 1: 24 Nov 2026 (17:50 hrs)

> granted must not impact on the date for the evidentiary hearing. Were the Tribunal to have grant[ed] the application as originally advanced, it would be necessary to postpone the evidentiary hearing to a date in the first quarter of 2026, which would be unfair, taking into account the position of both parties, and not consistent with the expeditious, economical and final resolution of the parties' dispute. At the procedural meeting, neither party sought to pursue any application for the postponement of the evidentiary hearing.

PO4 dated 6 June 2025

20 On 6 June 2025, the Tribunal issued Procedural Order 4 ("PO4"),[37] reflecting the developments at [19] above.[38]

21 Under PO4, the revised timelines also included the following:

(a) The parties were to designate which of the other party's witnesses they wished to cross-examine (pursuant to para 8.6 of PO1) by 15 July 2025.[39]

(b) The parties were to notify the Tribunal and the other party of any witness whose oral evidence was to be given in a language other than English (pursuant to para 11.6 of PO1) by 18 July 2025.[40]

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37 JT at pp 254–258 (exh JT-1, tab 7).

38 BJR at p 92: Award at [70].

39 JT at p 257: Procedural Order 4 dated 6 June 2025 ("PO4"), Annex – Procedural Timetable, s/n 11.

40 JT at pp 257–258: PO 4, Annex – Procedural Timetable, s/n 13.

Version No 1: 24 Nov 2026 (17:50 hrs)

The Roe Parties' application on 20 June 2025 for cross-examination of Mr Roe to be dispensed with and his witness statement admitted into evidence

22 On 20 June 2025, the Roe Parties filed (a) the witness statement of their sole factual witness, Mr Roe ("Mr Roe's WS")[41] and (b) the witness statement of Ms Tan Lynn-Yin ("Ms Tan") of Grant Thornton Singapore Private Limited ("Grant Thornton"), exhibiting Grant Thornton's investigation report ("GT Report").[42]

23 On 20 June 2025, the Roe Parties also made an application for orders that (a) the requirement for Mr Roe to attend and present himself for cross-examination at the Hearing be waived and (b) Mr Roe's WS be admitted into evidence.[43] In support of their application, the Roe Parties relied on a medical report issued by one Dr Saad Abdul Sami Mir ("Dr Mir") dated 17 June 2025 ("Medical Report").[44]

24 The Medical Report was presented as a form in which Dr Mir provided responses to questions:

(a) In a field titled "Doctor-patient relationship", Dr Mir wrote: "Have known [Mr Roe] since June 2023, last seen April 2025".

(b) In a field titled "Patient's clinical history", Dr Mir wrote:

> He has had two ischemic strokes and a left basal ganglia intracerebral hemorrhage in 2023. As a result, he has

41 BJR at pp 1553–1601 (exh BJR-1, tab 40).

42 JT at pp 561–635 (exh JT-1, tab 18).

43 JT at pp 260–269 (exh JT-1, tab 8).

44 BJR at pp 223–227 (exh BJR-1, tab 3).

Version No 1: 24 Nov 2026 (17:50 hrs)

ongoing cognitive difficulties right sided weakness, and has to use a cane due to dragging of his leg.

(c) In a field titled "Findings from physical and mental state examination", Dr Mir wrote: "Please see office notes from 4/16/2025".

(d) In a field titled "Relevant investigation results", Dr Mir wrote: "Slow cognition, poor recall, weakness in right arm and leg".

(e) In a field titled "Diagnosis", Dr Mir wrote: "left basal ganglia intracerebral hemorrhage".

(f) In a section titled "Opinion on Patient's Mental Capacity in relation to Oral Examination", Dr Mir was asked to check "Yes" or "No" boxes in response to the following questions:

(i) "In your opinion, can the patient understand information relevant to a question raised in an oral examination?".

(ii) "In your opinion, can the patient retain information long enough to answer a question raised in an oral examination?".

(iii) "In your opinion, can the patient weigh information as part of the process of answering a question raised in an oral examination?".

(iv) "In your opinion, can the patient communicate his or her answer to a question raised in an oral examination?".

(v) "Taking into consideration the above, in your opinion, does the patient have mental capacity in respect of being a witness put under oral examination?".

Version No 1: 24 Nov 2026 (17:50 hrs)

Dr Mir checked the "No" box for all the above questions. In the next field asking him to state the basis for his opinion, Dr Mir wrote: "See progress notes of 4/16/25 and letter written".

(g) Dr Mir also checked the "No" box, without elaboration, for the next question of "is the patient likely to regain mental capacity in respect of being a witness put under oral examination".

(h) Dr Mir indicated that Mr Roe was not fit for air travel as "[h]e has functional deficits making travel difficult and requires close monitoring of his blood pressure with close proximity to hospitals for urgent care".

25 It was common ground that the "office notes" and "progress notes" of 16 April 2025 and "letter written" referred to by Dr Mir (see [24(c)] and [24(f)] above) were not exhibited to the Medical Report disclosed in the Arbitration and were unavailable in the Arbitration and in OA 96.[45]

26 On 30 June 2025, Acuity filed its objections to the Roe Parties' application to admit Mr Roe's WS into evidence without cross-examination.[46] Acuity stated, *inter alia*, that (a) it required Mr Roe's appearance at the Hearing (whether in person or remotely) to give testimony and be cross-examined, and pursuant to Art 4.7 of the IBA Rules on the Taking of Evidence in International Arbitration 2020 ("IBA Rules") and para 8.9 of PO1, Mr Roe must thus appear unless there was a valid reason for him not to; (b) the conclusion in the Medical Report that Mr Roe lacked mental capacity for oral examination was at odds

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45 Certified transcript of the hearing of OA 96 on 19 October 2026 ("Tpt 19 Oct 2026") at pp 3:18–9:8.

46 BJR at pp 1540–1551 (exh BJR-1, tab 39).

Version No 1: 24 Nov 2026 (17:50 hrs)

with the fact that Mr Roe could give instructions to his lawyers on filing the Roe Parties' pleadings, Mr Roe's WS and the GT Report; and (c) pursuant to Art 4.7 of the IBA Rules, Mr Roe's WS must be disregarded and could not be admitted into evidence if he did not appear to give testimony at the Hearing.[47]

27 On 1 July 2025, the Tribunal directed the Roe Parties to provide any response to Acuity's objections by 4 July 2025.[48] No response was received.[49]

28 On 6 July 2025, the Tribunal disallowed the Roe Parties' application, reasoning that:[50]

> **Attendance of Mr Roe for cross-examination**
>
> …
>
> Tribunal's conclusion
>
> 9. Having carefully considered the parties' submissions, in the exercise of its discretion, the Tribunal is not prepared to waive the requirement that Mr Roe attend and present himself for cross-examination at the evidentiary hearing. Were his evidence peripheral to the issues in the case, the Tribunal may have taken a different view. However, the parties agree that his evidence is of critical importance.
>
> 10. The Tribunal accepts, based on the [M]edical [R]eport, that Mr Roe is unfit to travel to Singapore to give evidence but takes the view that this should not prevent him giving evidence remotely by video-link.
>
> 11. The Tribunal notes that the [M]edical [R]eport does not identify the source of the information regarding Mr Roe's clinical history and does not state the basis of Dr Mir's opinion in respect of Mr Roe's mental capacity in respect of being a witness put under cross-examination. Cognitive impairment

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47 BJR at pp 1541, 1546 and 1548: Claimant's Response dated 30 June 2025 at paras 3, 10 and 16.

48 BJR at pp 92–93: Award at [74(3)].

49 JT at p 519: E-mail from the Tribunal dated 6 July 2025 at para 4.

50 JT at pp 519–521 (exh JT-1, tab 16).

Version No 1: 24 Nov 2026 (17:50 hrs)

does not necessarily mean that Mr Roe lacks mental capacity and no explanation is provided as to why that is said to be so. It is not self-evident that his lack of mental capacity is '*patently obvious*' from his clinical history and examination. The Tribunal is also troubled by the absence of any information as to the origin of the medical report form and how it is dated 17 June 2025 when Dr Mir appears to have last examined Mr Roe in April 2025. Without much more information, of which none is available, with which to assess Dr Mir's evidence, the Tribunal does not regard it as conclusive. Mr Roe's presence as a witness will enable the Tribunal itself to evaluate the impact of his slow cognition and poor recall reported on by Dr Mir and to assess what, if any weight, can or should be given to his evidence, including his statement which may otherwise not be admitted in evidence (see further below).

…

Admission into evidence of Mr Roe's witness statement

…

15. Where a witness does not appear despite being called, paragraph 8.9 of PO1 affords the Tribunal a discretion whether to reduce the weight of his evidence or to disregard it altogether, depending on the reasons for the witness not attending. Article 4.7 of the IBA Rules provides that where a witness whose appearance has been requested fails to appear without a valid reason, his evidence shall be disregarded by the tribunal unless, in exceptional circumstances, the tribunal decides otherwise. As the [Roe Parties] point out, Article 4.7 of the IBA Rules is of no direct application because the effect of paragraph 8.10 of PO1 is that the Tribunal and the parties shall only be guided by the IBA Rules in all matters pertaining to factual evidence where paragraph 8 of PO1 makes no express provision. Here, paragraph 8.9 of PO1 *has* made express provision and so Article 4.7 of the IBA Rules does not apply. …

Tribunal's conclusion

16. As stated above, if Mr Roe appears at the evidentiary hearing, the question whether to disregard the evidence in his statement on that ground will not arise: his evidence will fall to be evaluated by the Tribunal in the usual way.

17. Based on the Tribunal's determination concerning Mr Roe's attendance for cross-examination, if Mr Roe were not to appear at the evidentiary hearing, the Tribunal considers that there would be no valid reason for his non-attendance. In those circumstances, the Tribunal needs to consider whether to

Version No 1: 24 Nov 2026 (17:50 hrs)

> disregard his statement altogether or else determine what, if any, weight should be attributed to it. (In practice, where a witness does not make himself available for cross-examination, very little, if any, weight is likely to be attributed to his statement, even if it is admitted into evidence at all). In the circumstances of the present case, having carefully considered the parties' submissions, the Tribunal determines in the exercise of its discretion that it would be unfair and inappropriate to admit Mr Roe's statement into evidence if he does not appear at the evidentiary hearing.
>
> [emphasis in original]

Acuity's application on 25 June 2025 for a three-week extension of time to file its amended Statement of Reply and factual witness statements

29 On 25 June 2025, Acuity sought a three-week extension of time until 1 August 2025 to file its amended Statement of Reply and factual witness statements (which, under PO4, were due to be filed on 11 July 2025[51]), on the basis that more time was required to look into the serious allegations of fraud made in the voluminous GT Report against, *inter alia*, Acuity, Mr Thambyrajah and Global Wise.[52] This was especially given that a travel ban had been imposed on Mr Thambyrajah, which prevented his departure from Vietnam.[53] Acuity added that:[54]

> We appreciate that this will necessarily mean that the currently scheduled dates for the evidentiary hearing of this arbitration will have to be vacated. However, the requested extension of time is crucial to allow [Acuity] to properly prepare its case and to be able to meaningfully and effectively exercise its right to be afforded an equal and adequate opportunity to be heard. [Acuity's] request is also not unreasonable or unfair given among other things, the [Roe Parties] have repeatedly sought and have been granted various extensions of time to submit

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51 JT at p 257: PO4, Annex – Procedural Timetable, s/n 10.

52 BJR at pp 1099–1100 (exh BJR-1, tab 25): E-mail from WongP dated 25 June 2025.

53 BJR at pp 1099 and 1100: E-mail from WongP dated 25 June 2025 at paras 2, 3 and 8.

54 BJR at p 1100: E-mail from WongP dated 25 June 2025 at para 9.

Version No 1: 24 Nov 2026 (17:50 hrs)

> their Amended Defence, factual witness statements, and documents that they are relying on in this arbitration. The [Roe Parties] will also not suffer any prejudice if [Acuity's] request is granted. …

30 On 1 July 2025, the Tribunal disallowed Acuity's application.[55] The Tribunal was not satisfied that the requested extension was necessary to enable Acuity to deal fairly and properly with the Roe Parties' case but was amenable to granting Acuity a short extension beyond 11 July 2025.[56] The Tribunal added that:[57]

> The Tribunal must also take into consideration the length of any postponement of the evidentiary hearing. In practice, [Acuity's] EOT Application, if granted, would result in the evidentiary hearing not taking place until well into 2026. The Tribunal considers that a delay of that duration would not be consistent with the fair, expedient and efficient conduct of the proceedings.

Acuity's application on 30 June 2025 for Mr Thambyrajah to testify remotely

31 On 30 June 2025, Acuity applied for the evidence of Mr Thambyrajah to be given remotely by video-link.[58] On 1 July 2025, the Tribunal directed the Roe Parties to respond to Acuity's application by 4 July 2025,[59] but they did not do so. On 6 July 2025, the Tribunal allowed Acuity's application, subject to the proviso that the permission for Mr Thambyrajah to give evidence remotely by video-link would be revoked if, by the time of the Hearing, the travel ban

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55 BJR at pp 1103–1105 (exh BJR-1, tab 26): E-mail from the Tribunal dated 1 July 2025.

56 BJR at p 1104: E-mail from the Tribunal dated 1 July 2025 at paras 6 and 9.

57 BJR at p 1104: E-mail from the Tribunal dated 1 July 2025 at para 7.

58 BJR at p 92: Award at [73].

59 BJR at pp 92–93: Award at [74(3)].

Version No 1: 24 Nov 2026 (17:50 hrs)

imposed on him by the Vietnamese authorities was lifted such that he would be able to attend the Hearing in person.[60]

SLB's discharge as the Roe Parties' solicitors in the Arbitration on 4 July 2025

32 On 4 July 2025, SLB wrote to the Tribunal and WongP stating: "we are hereby discharging ourselves as [the Roe Parties'] solicitors in [the Arbitration]".[61] SLB did not provide any reason for its discharge.[62]

33 Following receipt of SLB's notification, the Tribunal wrote on 4 July 2025 to Mr Roe stating:[63]

> … I and [Acuity] have today been informed by [SLB], until today the [Roe Parties'] solicitors, that that firm has today discharged itself from continued representation of the [Roe Parties] in these proceedings. I am therefore addressing this email directly to you on the [Roe Parties'] behalf.
>
> Please be advised that under Rule 24.3 SIAC Rules which apply to this arbitration, *'If any party fails to appear at a meeting or hearing without showing sufficient cause for such failure, the Tribunal may proceed with the arbitration and may make the Award based on the submissions and evidence before it*'. In the absence of sufficient cause being shown, I intend to proceed with the arbitration in accordance with the current procedural timetable.
>
> …
>
> [emphasis in original]

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60 BJR at p 94: Award at [79].

61 JT at p 522 (exh JT-1, tab 16): E-mail from SLB dated 4 July 2025.

62 Parties' Joint Statement, section III, s/n 19.

63 JT at p 523 (exh JT-1, tab 16): E-mail from the Tribunal dated 4 July 2025.

Version No 1: 24 Nov 2026 (17:50 hrs)

The Roe Parties' request on 8 July 2025 for a 30-day extension of time to find replacement counsel

34 On 8 July 2025, Mr Roe sent an e-mail to the Tribunal (time-stamped 7.01pm) requesting a 30-day extension of time to find replacement counsel, without providing any explanation for SLB's discharge:[64]

> Dear [Tribunal],
>
> As you know, my attorneys, [SLB] stopped representing me as of Friday, July 4, 2025.
>
> I would like to request an extension of time of 30 days to find a new attorney for this Arbitration case.
>
> Please let me know if you have any questions.
>
> Thank you very much for your understanding.
>
> Regards,
>
> B.J. Roe

35 On 9 July 2025, the Tribunal replied by e-mail (time-stamped 2.19am) refusing the Roe Parties' request, in the following terms:[65]

> As you will appreciate, the request for an extension of 30 days made in your email on the [Roe Parties'] behalf would necessarily result in the postponement of the evidentiary hearing until some time in 2026. As the Tribunal has repeatedly stated in previous correspondence, the hearing dates of 21–25 July 2025 (with 26 July 2025 in reserve) have been fixed for a considerable period of time and, absent exceptional circumstances, must be maintained. The Tribunal has rejected the parties' previous requests for the hearing to be postponed, for the reasons stated when giving its rulings and which continue to apply. The Tribunal is unaware of the circumstances which led [SLB] to discharge themselves from representing the [Roe Parties] and the potential effect of that must have been apparent to the [Roe Parties]. In the Tribunal's

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64 Parties' Joint Statement, section III, s/n 21; JT at pp 525–526 (exh JT-1, tab 16): E-mail from Mr Roe dated 8 July 2025.

65 JT at p 525 (exh JT-1, tab 16): E-mail from the Tribunal dated 9 July 2025.

Version No 1: 24 Nov 2026 (17:50 hrs)

> view, no exceptional circumstances have been put forward as to why the hearing dates should now be vacated.
>
> Therefore, the [Roe Parties'] request is refused.

Acuity's application on 9 July 2025 for a short extension of time to file its amended Statement of Reply and factual witness statements and to reduce the Hearing days to 23 to 25 July 2025

36 On 9 July 2025, further to [30] above, Acuity sought a short extension of time to 15 July 2025 to file its amended Statement of Reply and factual witness statements. Acuity also proposed that the Hearing duration be reduced to three days from 23 to 25 July 2025 as it was then anticipated that there would be only three witnesses between the parties.[66]

37 On 11 July 2025, the Tribunal granted the extension of the filing deadline sought by Acuity. The Tribunal also directed that the Hearing would take place from 23 to 25 July 2025.[67]

Grant Thornton's withdrawal as the Roe Parties' witness on 10 July 2025

38 On 10 July 2025, Ms Tan of Grant Thornton notified the Tribunal of her withdrawal as the Roe Parties' witness in the Arbitration "due to the termination of [Grant Thornton's] engagement with the [Roe Parties] in the Arbitration, … effective as of July 10, 2025". Ms Tan did not state *who had initiated* or *the reasons for* the termination of Grant Thornton's engagement.[68]

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66 JT at pp 545–547 (exh JT-1, tab 16): E-mail from WongP dated 9 July 2025 at paras 3(a)–3(b).

67 BJR at p 96: Award at [83].

68 Parties' Joint Statement, section III, s/n 24; BJR at p 235 (exh BJR-1, tab 5): E-mail from Grant Thornton dated 10 July 2025.

Version No 1: 24 Nov 2026 (17:50 hrs)

39 Following Ms Tan's notification, WongP wrote to the Tribunal on 10 July 2025 to request on Acuity's behalf that the Tribunal disregard Ms Tan's witness statement and the GT Report and exclude the same from the evidence in the Arbitration, given that Ms Tan would not be giving evidence or presenting herself for cross-examination in the Arbitration.[69] Acuity also requested that the Tribunal disregard amendments to the Statement of Defence and certain paragraphs in Mr Roe's WS that were "based on the GT Report".[70]

40 The Tribunal replied on 10 July 2025 that, on the basis, as stated by Ms Tan, that her witness statement was withdrawn and she would not be appearing as a witness for the Roe Parties at the Hearing, her witness statement and the GT Report exhibited thereto would not form part of the evidence in the Arbitration.[71] However, the Tribunal was not prepared at that stage to disregard any part of the amended Statement of Defence or Mr Roe's WS relating to the findings in the GT Report.[72]

PO5 dated 16 July 2025

41 Following a pre-hearing conference call on 16 July 2025 (which the Roe Parties chose not to attend), the Tribunal issued Procedural Order 5 on the same date ("PO5"), directing that the Hearing would take place on 23 July 2025,

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69 BJR at p 233 (exh BJR-1, tab 5): E-mail from WongP dated 10 July 2025 at paras 2–3.

70 BJR at p 233 (exh BJR-1, tab 5): E-mail from WongP dated 10 July 2025 at para 4.

71 BJR at p 232 (exh BJR-1, tab 5): E-mail from the Tribunal dated 10 July 2025 at para 1.

72 Parties' Joint Statement, section III, s/n 26; BJR at p 232 (exh BJR-1, tab 5): E-mail from the Tribunal dated 10 July 2025 at paras 2–3.

Version No 1: 24 Nov 2026 (17:50 hrs)

starting at 9.30am (Singapore time). The Hearing dates on 24 and 25 July 2025 were vacated.[73]

Communications between Mr Roe and the Tribunal on 17 July 2025

42 On 17 July 2025, Mr Roe sent the Tribunal an e-mail informing that he would be attending the Hearing on 23 July 2025.[74]

43 The Tribunal replied to Mr Roe on 17 July 2025 in the following terms:[75]

> I acknowledge receipt of your below email sent at shortly before 4.00am SGT on Thursday 17 July 2025.
>
> As you will appreciate from the Tribunal's previous rulings, to which the [Roe Parties] did not respond, the present position is that, while you may certainly attend the evidentiary hearing fixed to start at 9.30am SGT on Wednesday 23 July 2025 (9.30pm on Tuesday 22 July 2025 EDT) and make submissions and cross-examine Mr Thambyrajah, you are not entitled to give evidence (remotely or otherwise) and your witness statement is not in evidence before the Tribunal. On the assumption that you will not be attending the hearing in person in Singapore, [WongP] will make arrangements for you to be provided with a link so that you may attend the hearing remotely. Please confirm by return whether or not you will be attending in person in Singapore.
>
> The Tribunal will of course entertain any application which the [Roe Parties] may wish to make and consider it on its merits at that time. However, in view of the Tribunal's previous rulings, to which the [Roe Parties] have had every opportunity to respond, the Tribunal is not willing to have the proceedings postponed or otherwise disrupted at this very late stage. If the [Roe Parties] wish to make any further application, it must be a reasoned application and made by 10.00am SGT on Friday 18 July 2025.

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73 JT at pp 329–331 (exh JT-1, tab 10).

74 Parties' Joint Statement, section III, s/n 30; JT at p 532 (exh JT-1, tab 16): E-mail from Mr Roe dated 17 July 2025.

75 BJR at pp 96–97: Award at [87(2)]; JT at p 539 (exh JT-1, tab 16): E-mail from the Tribunal dated 17 July 2025.

Version No 1: 24 Nov 2026 (17:50 hrs)

Acuity's application on 17 July 2025 to introduce evidence of the New York Proceedings commenced by Roe Parties on 2 July 2025

44 On 17 July 2025, Acuity applied for, and was granted, permission by the Tribunal to introduce into the Arbitration record a transcript of the hearing and judgment in the New York Proceedings (defined in [45] below) dated 15 July 2025.[76]

45 The New York Proceedings comprised:[77]

(a) the Roe Parties' petition, brought on 2 July 2025, against Acuity and the SIAC in the US District Court for the Southern District of New York ("SDNYDC") for a stay of the Arbitration ("Stay Petition"); and

(b) the Roe Parties' application for a temporary restraining order ("TRO") to restrain Acuity from proceeding with the Arbitration pending the determination of the Stay Petition ("TRO Application").

46 The Roe Parties were represented by US counsel in the New York Proceedings.

47 On 15 July 2025, the SDNYDC had heard and dismissed the Stay Petition and TRO Application.[78] It was common ground that the SDNYDC made the following findings in reaching its decision:[79]

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76 BJR at pp 96–97: Award at [87(3)].

77 Parties' Joint Statement, section III, s/n 27; BJR at pp 1107–1125 (exh BJR-1, tab 27).

78 Parties' Joint Statement, section III, s/n 28; BJR at pp 1445–1475 (exh BJR-1, tab 29).

79 Parties' Joint Statement, section III, s/n 28; JT at paras 67(a)–67(c).

Version No 1: 24 Nov 2026 (17:50 hrs)

(a) There was significant delay in the Roe Parties' applications as the dates of the Hearing were set months ago and they had waited until the eve of the Hearing to apply to stay the Arbitration after having willingly participated in the Arbitration.

(b) The Roe Parties' argument that they would be prejudiced by the denial of a TRO was not persuasive as the Tribunal had allowed Mr Roe to testify remotely.

(c) Acuity would suffer hardship if injunctive relief was granted, including because the Tribunal had suggested that any postponement of the Hearing would require rescheduling the Hearing to the first quarter of 2026.

The Roe Parties' application on 18 July 2025 for Mr Roe's WS and the GT Report to be admitted into evidence

48 On 18 July 2025, Mr Roe sent an e-mail to the Tribunal:[80]

(a) He alleged that the Arbitration was unfair because he was not allowed to present Grant Thornton's evidence. He alleged that "[t]he Grant Thornton witness cannot appear at the hearing, because [his] previous lawyers stopped the witness from appearing at the hearing even if [he] paid for the [GT Report]".

(b) He alleged that the Arbitration was unfair because he did not have any lawyer representing him as of 4 July 2025 and the Tribunal had denied his request for 30 days to find a lawyer.

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80 BJR at p 97: Award at [88(2)]; JT at pp 537–538 (exh JT-1, tab 16): E-mail from Mr Roe dated 18 July 2025.

Version No 1: 24 Nov 2026 (17:50 hrs)

(c) He alleged that the Arbitration was unfair because he could not fly to Singapore due to his strokes.

(d) Notwithstanding the Tribunal's previous rulings, he stated that he "would like to include [Mr Roe's WS] and the [GT Report]".

49 On 18 July 2025, WongP wrote to SLB to give the latter an opportunity to respond to Mr Roe's allegation that Ms Tan had withdrawn as the Roe Parties' witness in the Arbitration because SLB "stopped [her] from appearing at the hearing even if [Mr Roe] paid for the [GT Report]".[81] SLB replied to WongP on the same day rejecting the allegation that SLB had stopped Ms Tan from appearing at the Hearing. SLB stated that it was "prevented from providing further context to [its] position without the [Tribunal] making an order for such disclosure, as contemplated by Rule 6(3)(b) of the Legal Profession (Professional Conduct) Rules 2015".[82]

50 On 18 July 2025, WongP informed the Tribunal of Acuity's opposition to the Roe Parties' latest application and enclosed SLB's denial of Mr Roe's allegation against SLB. Nevertheless, Acuity was prepared for Mr Roe's WS to be admitted into evidence if Mr Roe confirmed that he would submit himself for cross-examination.[83]

51 On 18 July 2025, the Tribunal directed that:[84]

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81 JT at pp 548–549 (exh JT-1, tab 16): E-mail from WongP dated 18 July 2025.

82 JT at p 548 (exh JT-1, tab 16): E-mail from SLB dated 18 July 2025.

83 JT at pp 534–537 (exh JT-1, tab 16): E-mail from WongP dated 18 July 2025.

84 JT at pp 533–534 (exh JT-1, tab 16): E-mail from the Tribunal dated 18 July 2025.

Version No 1: 24 Nov 2026 (17:50 hrs)

(a) Mr Roe was to state clearly and unequivocally by 6pm Eastern Daylight Time ("EDT") on 18 July 2025 whether he would not only attend the Hearing but also submit himself to cross-examination. If he agreed to submit to cross-examination, the Tribunal would allow Mr Roe's WS to be admitted into evidence.

(b) The Hearing would not be conducted entirely remotely "since no prejudice will be sustained by Mr Roe in consequence of the hearing being hybrid".

(c) The Tribunal was prepared to start the Hearing at 7.30am Singapore time ("SGT") on 23 July 2025 (which would be 7.30pm EDT on 22 July 2025) to accommodate Mr Roe.

(d) Mr Roe was to reply to WongP's 18 July 2025 e-mail by 6pm EDT on 19 July 2025.

52 On 19 July 2025, Mr Roe confirmed that he would attend the Hearing remotely at 7.30pm EDT on 22 July 2025 and submit to cross-examination.[85] The Tribunal thus indicated on the same day that it would admit Mr Roe's WS into evidence.[86]

53 On 20 July 2025, the Tribunal rejected the Roe Parties' renewed application in Mr Roe's 18 July 2025 e-mail for the GT Report to be admitted into evidence and explained why it considered the continuation of the proceedings to be justified.[87]

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85 JT at p 533 (exh JT-1, tab 16): E-mail from Mr Roe dated 19 July 2025.

86 BJR at p 98: Award at [89(2)].

87 BJR at p 98: Award at [90].

Version No 1: 24 Nov 2026 (17:50 hrs)

The Hearing

54 The Hearing took place on 23 July 2025 from 7.30am to 11.24am SGT.[88]

55 Mr Roe attended the Hearing remotely from New York on the Roe Parties' behalf. His daughter, Ms Diana Roe ("Ms Roe"), was present with him to assist him with his evidence.[89] No Korean interpreter was present.[90]

56 In Mr Roe's oral opening submissions which he read in English,[91] he protested proceeding with the Hearing on the grounds that (a) the Roe Parties lacked legal representation; (b) the Tribunal had refused to admit the GT Report into evidence; (c) the Medical Report stated that he was not capable of answering questions in cross-examination "due to [his] multiple strokes and old age" (he was 81 years old); and (d) English was not his first language and he needed a Korean interpreter.[92]

57 Mr Roe also made substantive arguments on the Roe Parties' case, including allegations of fraudulent activity by Acuity in Vietnam:[93]

> … Acuity Funding is in a court case right now in Vietnam. Acuity Funding promised the Vietnam company over $400 million. Acuity Funding never gave the $400 million to the Vietnam company. Acuity Funding wanted to collect the fee of $20 million from the Vietnam company without giving the loan.

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88 BJR at p 98: Award at [92].

89 BJR at p 98: Award at [92].

90 Parties' Joint Statement, section III, s/n 38.

91 BJR at p 105: Award at [117].

92 Parties' Joint Statement, section III, s/n 39; JT at pp 409–410 (exh JT-1, tab 12): Transcript of the Arbitration hearing on 23 July 2025 ("Arbitration Hearing Tpt") at pp 34–35.

93 JT at pp 410–412 and 417–418: Arbitration Hearing Tpt at pp 35–37 and 42–43.

Version No 1: 24 Nov 2026 (17:50 hrs)

> The Vietnam company got very angry and counter-sued Acuity Funding, criminal court, in fraud.

58 After Mr Thambyrajah took the stand, Mr Roe declined to cross-examine the former, stating: "I don't want to talk to that kind of cheating people. … No questions. They are cheater".[94] The Tribunal posed questions of its own to Mr Thambyrajah.[95]

59 Mr Roe was then cross-examined by Acuity's counsel.

60 Acuity's counsel and Mr Roe then made oral closing submissions in turn. Mr Roe read his submissions in English.[96]

Post-Hearing communications from Mr Roe to the Tribunal on 25 and 30 July 2025

61 On 25 July 2025, Mr Roe sent an e-mail to the Tribunal requesting that it take into consideration the GT Report. Mr Roe alleged that "[SLB] terminated the agreement with Grant Thornton, when [SLB] decided to stop representing [the Roe Parties]".[97] On the same day, WongP responded in refutation,[98] after which the Tribunal indicated that it did not wish to receive further communications from the parties.[99]

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94 Parties' Joint Statement, section III, s/n 41; JT at p 419: Arbitration Hearing Tpt at p 44.

95 JT at pp 419–431: Arbitration Hearing Tpt at pp 44–56.

96 JT at pp 466–469: Arbitration Hearing Tpt at pp 91–94.

97 JT at pp 552–553 (exh JT-1, tab 16): E-mail from Mr Roe dated 25 July 2025.

98 JT at pp 550–551 (exh JT-1, tab 16): E-mail from WongP dated 25 July 2025.

99 JT at p 550 (exh JT-1, tab 16): E-mail from the Tribunal dated 25 July 2025.

Version No 1: 24 Nov 2026 (17:50 hrs)

62 On 30 July 2025, Mr Roe sent an e-mail to the Tribunal regarding "a Vietnam lawsuit that Acuity is currently involved in", stating:[100]

> At the Hearing, I told you about a Vietnam lawsuit that Acuity is currently involved in.
>
> I have been in communication with the Vietnam lawyer who represents the Vietnam company that did not receive $400 Million Dollars from Acuity.
>
> The Vietnam lawyer said Acuity and [Mr Thambyrajah] are under investigation by Ministry of Police in Vietnam for their fraud activities.
>
> The name of the Vietnam Company that is suing Acuity is NSH Petroleum Joint Stock Company.

63 On 1 August 2025, the Tribunal declared the proceedings in the Arbitration closed.[101]

The Award

64 On 22 October 2025, the Tribunal issued the Award[102] in Acuity's favour,[103] ordering the Roe Parties to pay to Acuity (a) the Fund Arrangement Fee of US$11.2m; (b) contractual late payment interest in the sum of US$5,608,997 up to 18 July 2025 and calculated at the contractual rate from 19 July 2025 to the date of the Award; (c) Acuity's legal costs and expenses in the sums of S$552,596.22 and US$71,473; (d) reimbursement for Acuity's costs of the Arbitration in the sum of S$196,677.86; and (e) simple interest at the rate of 5.33% per annum on the foregoing sums from the date of the Award until payment in full (Award at [189]).

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100 JT at p 554 (exh JT-1, tab 16): E-mail from Mr Roe dated 30 July 2025.

101 Parties' Joint Statement, section III, s/n 47.

102 BJR at pp 75–123 (exh BJR-1, tab 1).

103 Parties' Joint Statement, section III, s/n 5.

Version No 1: 24 Nov 2026 (17:50 hrs)

65 The Tribunal rejected the Roe Parties' defence based on the alleged Implied Terms, finding that there was no scope for the implication of the Implied Terms in the LTS&CA (Award at [139]). The Tribunal added, for completeness, that the evidence did not bear out Mr Roe's suspicions about Global Wise's inability to provide the loan funds (Award at [141]–[142]):

> 141. For completeness, however, on the evidence before it, the Tribunal considers that Mr Roe's suspicions about Global Wise's inability to provide the loan funds are not borne out. Hence, even if the Implied Terms did form part of the [LTS&CA], the [Roe Parties] – on whom the burden of proof lies – would have failed to establish that they were breached.
>
> 142. In that regard, the Tribunal accepts Mr Thambyrajah's evidence and the supporting documentary evidence to the effect that Global Wise was a legitimate and credible lender. According to Mr Thambyrajah, Acuity and Global Wise frequently work together on project financing opportunities, with Acuity sourcing opportunities and Global Wise putting together the financing from its investors, including the Elite group of companies, which itself has a long history of project finance. The [Roe Parties] adduced no evidence, much less credible evidence, to challenge Acuity's evidence.

66 The Tribunal rejected the Roe Parties' allegation that Acuity was liable for fraudulent misrepresentation, for, *inter alia*, the following reasons (Award at [162]):

> …
>
> (2) There is no evidence before the Tribunal that the [Representation] was untrue.
>
> (3) There is no evidence before the Tribunal that the [R]epresentation was operative in Mr Roe's mind when he executed the [LTS&CA] on the [Roe Parties'] behalf or that the [Roe Parties] relied on it.
>
> (4) There is no evidence before the Tribunal that Acuity either knew or recklessly did not care whether the [R]epresentation was true or false. Such a conclusion would also be inconsistent with Acuity having proposed [in negotiations over the terms of the Conditional Offer] to allow the

Version No 1: 24 Nov 2026 (17:50 hrs)

[Roe Parties] to make payment of the Fund Arrangement Fee from the first drawdown under the loan.

(5) The host of matters relied on by the [Roe Parties] consists of allegations which are unsupported by the evidence. They in large part derive from the [GT] Report which is not in evidence because, as mentioned above, Ms Tan withdrew her statement to which it was exhibited. The [Roe Parties] have adduced no other evidence in support of the allegations. The matters in question are the basis for Mr Roe's views and suspicions but are a long way from establishing a case of deceit. For example, the following allegations are not made out:

> (a) That Mr Thambyrajah's past corporate interests are indicative of fraudulent conduct on Acuity's part. In any event, the Tribunal accepts Mr Thambyrajah's evidence about his personal past corporate interests. The Tribunal also accepts that he would not have been accredited by ANZ Bank as an approved mortgage originator if there had been any fraud involved in his past corporate activities.
>
> (b) That Acuity's modus operandi in respect of its previous clients was materially similar to its conduct in its dealings with the [Roe Parties] in the several respects particularised in paragraph 5.4.4A of the [amended Statement of Defence] and that such modus operandi demonstrates the falsity of the [R]epresentation and Acuity's state of mind when it was made.
>
> (c) That Acuity would promise to procure loans from lenders that were ready, willing and able to provide the agreed-upon loans to the victims but would fail to deliver on such promises and would enforce claims for fund arrangement fees despite the victims not having obtained the loans they sought.
>
> (d) That the financial position of Global Wise and Elite demonstrates that Global Wise was not ready, willing and able to provide the loan funds. There is documentary evidence that Global Wise had a track record of providing funding.
>
> (e) The allegations made against Mr [Bal] Lankan [who was the chairman, sole shareholder and a director of Global Wise].

(6) The [Roe Parties'] reliance on various other proceedings identified in the [GT] Report is also misplaced. Although the [GT] Report is not in evidence before the Tribunal, fairness to

Version No 1: 24 Nov 2026 (17:50 hrs)

> the [Roe Parties] requires that regard be had to the authorities [in cases involving Acuity] which it has identified. With the general caveat that each case must turn on its own facts:
>
> > (a) The issue in *Berhero Pty Ltd (trading as Acuity Funding) v Dinsey* [2013] QCATA 311 was different from the issues in the present case. … The case is of no relevance here.
> >
> > (b) The decisions of the New South Wales Supreme Court in *Berhero Pty Ltd v Hinds* [2019] ACTSC 378 and [2023] NSWSC 1022 are also of no relevance here. …
> >
> > (c) Neither *Berhero Pty Ltd v Senibina Sentral Sdn Bhd* [2024] NSWSC 459 nor *Aquamore Credit Equity Pty Ltd v Maroon* [2023] FCA 1399 and *Wengel (Trustee), in the matter of Maroon, a bankrupt* [2024] FCA 921 assist the [Roe Parties]. The proceedings in both cases appear to be ongoing and there are no determinations by the respective courts which are of any relevance to the present case.
> >
> > (d) The Tribunal also agrees with Acuity that the Final Award No. 068 of 2022 in SIAC Arbitration 946/2020 is not of assistance to the [Roe Parties].
>
> [references omitted]

67 In footnote 26 of the Award, the Tribunal stated that Mr Roe's 30 July 2025 e-mail regarding a Vietnamese case involving Acuity (see [62] above) added nothing material to his opening statement on the Roe Parties' defences to Acuity's claims:

> … on 30 July 2025, the Tribunal received an email from Mr Roe seeking to expand on what he said in the [Roe Parties'] opening statement at Transcript 37:1–8 concerning a court case in Vietnam involving Acuity. In the Tribunal's view, the email adds nothing of materiality to the opening statement.

68 Given their centrality to the Roe Parties' challenge under Grounds 2 and 3, I also set out *in extenso* the Tribunal's grounds for rejecting the Roe Parties' allegations of unfair conduct of the Arbitration (Award at [106]–[122]):

Version No 1: 24 Nov 2026 (17:50 hrs)

106. *Second*, the great majority of Mr Roe's oral submissions in his opening statement related to the [Roe Parties'] position that the proceedings have been conducted unfairly. …

107. According to the [Roe Parties], the alleged unfairness was based on four matters: (i) the [Roe Parties] were without legal representation and had not had time to find a replacement for SLB; (ii) the Tribunal's refusal to admit the [GT] Report; (iii) Mr Roe's alleged lack of mental capacity; and (iv) the absence of an interpreter for Mr Roe's evidence. As seen above, the Tribunal had already ruled on the matters raised in (i) to (iii) above. However, in view of the [Roe Parties'] continued reliance on them, together with the [Roe Parties'] new reliance on the absence of an interpreter for Mr Roe's evidence, it is appropriate for the Tribunal to restate its position. For the reasons set out in paragraphs 108 to 122 below, the Tribunal does not accept that there are legitimate grounds for the [Roe Parties'] submission that the proceedings have been conducted unfairly.

108. The Tribunal has been concerned generally that the [Roe Parties] have been engaging in tactics designed to put off the Hearing and consequently to put off a determination by the Tribunal of the issues in dispute between the parties and to found a challenge to any adverse award made against them. In the Tribunal's view, the [Roe Parties'] claim that the proceedings have been conducted unfairly forms part of those tactics. That concern is derived not only from the matters specifically addressed in this part of this award but also from the late withdrawal in unexplained circumstances of Control Risks, the previous investigation firm engaged by the [Roe Parties], and the [Roe Parties'] 28 May 2025 extension of time application referred to in paragraph 66(1) above which, had it been granted, would have resulted in the adjournment of the Hearing.

109. Under Rule 19.1 of the SIAC Rules, the Tribunal '*shall conduct the arbitration in such manner as it considers appropriate, after consulting with the parties, to ensure the fair, expeditious, economical and final resolution of the dispute*'.

110. In relation to the [Roe Parties'] lack of legal representation, as previously stated, SLB informed the Tribunal and Acuity on 4 July 2025 that it was discharging itself as the [Roe Parties'] solicitors. It is not clear when the [Roe Parties] themselves were told of SLB's decision. Based on the matters referred to in paragraphs 74(2) and (3) and 75 above [*viz*, where the Roe Parties did not respond by 30 June 2025 and 4 July 2025 in respect of certain applications, as directed by the Tribunal], the Tribunal considers it likely that this occurred

Version No 1: 24 Nov 2026 (17:50 hrs)

around the end of June 2025. On 8 July 2025, the Tribunal refused the [Roe Parties'] application for a 30 day extension of time to enable them to instruct new counsel. Had the application been granted, it would necessarily have resulted in the postponement until 2026 of the Hearing (as the Tribunal had first informed the parties on 28 May 2025, as set out in paragraph 66(3) above).

111. The late withdrawal of a party's counsel does not automatically entitle that party to an adjournment or make it unfair or unjust to proceed with a scheduled hearing. The decision to grant or refuse an adjournment is within the discretion of the tribunal, having regard to the fairness to both parties and the expeditious, economical and final resolution of their dispute. While it is important to allow a party adequate time to find new representation, it is equally important to ensure that the arbitration proceedings continue in a timely manner.

112. In the present case, the [Roe Parties] had about three to four weeks in which to replace SLB as their counsel prior to the start of the Hearing (and 19 days from the date on which SLB informed the Tribunal and Acuity of its withdrawal). The Tribunal considers that the [Roe Parties] had adequate time to address the situation but there is no indication that they did anything in respect of the present proceedings. They gave no explanation for SLB's late withdrawal, which was a matter between themselves and SLB. They advanced no reason, still less any exceptional reason, why their ability to proceed was prejudiced by SLB's withdrawal, for example by stating that it was not possible in the circumstances to engage other counsel or that other counsel was unable to prepare for the Hearing in the time available. In contrast, they had no difficulty in instructing New York counsel at short notice to apply in the New York Proceedings for a temporary restraining order to stay the present proceedings. The grant of an adjournment would have undermined the orderly conduct of proceedings and the efficient resolution of the parties' dispute and would have been unfair to Acuity, which is entitled to a determination of its claims without undue delay. A delay in the evidentiary hearing for at least six to nine months would have resulted in additional costs and would not have been consistent with the Tribunal's obligation to ensure that the arbitration proceeded efficiently.

113. In relation to the Tribunal's refusal to admit the [GT] Report, Rule 19(2) of the SIAC Rules provides *inter alia* that the Tribunal '*shall determine the relevance, materiality and admissibility of all evidence*'. Paragraph 8.9 of PO1 provides that '*If a witness does not appear despite being called, the*

Version No 1: 24 Nov 2026 (17:50 hrs)

weight of his or her evidence may be reduced or it may be disregarded altogether, in the discretion of the Tribunal, depending upon the reasons for the witness not attending'. Paragraph 8.10 of PO1 provides that '[i]*n all matters pertaining to the evidence of witnesses of fact not expressly provided for in this paragraph 8, the Tribunal and the parties shall be guided by the … IBA Rules*'. Article 4(7) of the IBA Rules provides that '*If a witness whose appearance has been requested pursuant to Article 8.1 fails without a valid reason to appear for testimony at an Evidentiary Hearing, the Arbitral Tribunal shall disregard any Witness Statement related to that Evidentiary Hearing by that witness unless, in exceptional circumstances, the Arbitral Tribunal decides otherwise*'.

114. On 10 July 2025, following Ms Tan's withdrawal of her witness statement and her statement that she would not be appearing as a witness for the [Roe Parties], in the exercise of its discretion having regard to the above provisions, the Tribunal informed the parties that her statement and the [GT] Report exhibited to it would not form part of the evidence in the proceedings. In the Tribunal's view, it would have been unfair to admit her evidence in circumstances where Acuity would have had no ability to cross-examine her on it. Even if her statement and the [GT] Report were to have been admitted into evidence, in the absence of cross-examination and corroboration of its contents with the available documentation, it would have carried little or no weight. The [Roe Parties] advanced no exceptional circumstances to justify why the Tribunal should have adopted a different approach.

115. In relation to Mr Roe's alleged lack of mental capacity, the Tribunal rejected the Roe Application [*ie*, the Roe Parties' application to dispense with cross-examination of Mr Roe and for Mr Roe's WS to be admitted into evidence] for the reasons set out in its ruling of 6 July 2025: see paragraphs 77 and 78 above (including footnote 14). The Tribunal observes that SLB did not seek to withdraw from the proceedings on the grounds of Mr Roe's lack of mental capacity and nor has there been any indication at any stage that Mr Roe has been unable to follow advice and provide instructions to his counsel, whether in the present proceedings or the New York Proceedings. Dr Mir's medical report does not, in the Tribunal's view, constitute clear or compelling evidence that Mr Roe was unable to understand or participate in the proceedings. There is no evidence that his condition has deteriorated since the proceedings started that would suggest his capacity has diminished to such an extent as to prevent him from participating in the Hearing.

Version No 1: 24 Nov 2026 (17:50 hrs)

116. At the Hearing, it was clear that Mr Roe is an elderly gentleman with difficulties of speech consistent with his physical medical condition as reported by Dr Mir. However, the Tribunal does not accept that Mr Roe lacked the mental capacity to participate in the proceedings. While he repeatedly said during his brief cross-examination that he did not understand or had difficulty understanding the questions he was being asked, the Tribunal considers that there was an element of exaggeration in those answers of the difficulty. He displayed no difficulty in understanding his daughter in the exchanges between them. Finally on this aspect, there is also no evidence that Mr Roe's condition will improve in the future.

117. The suggestion that, without an interpreter for Mr Roe's evidence, the hearing was unfair was raised for the first time when his daughter, Diana said at the start of the hearing that English was not Mr Roe's first language and '*we were not able to get an interpreter*'. The suggestion was repeated in Mr Roe's opening statement which he read (in English) to the Tribunal. As the Tribunal pointed out to Mr Roe, there was no mention in his witness statement, which was made in the English language, of any requirement for it to have been translated into the Korean language for him to have been able to understand it, or that it has been prepared in the Korean language and translated into the English language. The same is the case in respect of his affidavit in the New York Proceedings. Mr Roe's evidence in cross-examination was that his statement was written by SLB, to whom he first explained matters, and that he then reviewed the statement before signing it. No mention was made by Mr Roe of the need for an interpreter for his explanations to SLB or for his review of the draft which SLB prepared. Diana's interjection at the Hearing – not in evidence – that interpretation only became an issue when SLB '*decided not to represent us anymore*' is not, in the Tribunal's view, credible. The matter was not raised when SLB withdrew on 4 July 2025 or when Mr Roe agreed on 19 July 2025 to subject himself to cross-examination.

118. Also, in answer to a question from the Tribunal, Mr Roe said that no interpreter was present at the New York Meeting [*ie*, a meeting attended by, *inter alia*, Mr Roe and Mr Thambyrajah between 27 October and 1 November 2023]. His evidence that none was necessary because he was just listening to Acuity's representatives is not credible. If he was just listening, he plainly had no difficulty in understanding what was being said. To the extent that Mr Roe was talking, he was doing so without the assistance of an interpreter. Mr Thambyrajah's evidence was that, at the New York Meeting, Mr Roe was '*quite fluent in the way he spoke English. … He was*

Version No 1: 24 Nov 2026 (17:50 hrs)

talking to Dr Hwang. … and he conducted himself quite reasonably in spoken English and understanding and behaviour'. The fluency of Mr Roe's spoken English may be questionable but the Tribunal otherwise accepts that evidence.

119. As already mentioned, Mr Roe also had no difficulty understanding Diana when she spoke in the English language to him during the course of the Hearing. Mr Roe confirmed that he had no difficulty reading documents written in English (albeit, as became apparent during the Hearing, sometimes with the aid of a magnifying glass) and, in the Tribunal's view, he had no difficulty understanding written English.

120. For the reasons set out in paragraphs 105 to 119 above, the Tribunal does not accept the [Roe Parties'] renewed submission made at the Hearing that the proceedings have been conducted unfairly.

121. *Third*, the Tribunal records that Mr Roe expressly declined to cross-examine Mr Thambyrajah. The Tribunal recognises that Mr Roe is not fluent in the English language and that his speech is impaired due to his physical medical condition. However, neither of those matters was put forward as a reason for not questioning Mr Thambyrajah. Mr Roe declined to take the opportunity to question Mr Thambyrajah on the basis that '*I don't want to talk to that kind of cheating people. That's it. Because they're all cheating. When I get the loan, I pay them fee. But I didn't get it. That's why – if they give something – I check it, who is doing it, no interest, nothing at all. All the thing is – they lie all the thing. … No questions. They are cheaters*'. The Tribunal afforded Diana some indulgence to address it throughout the Hearing but she added nothing here to what her father said about the reasons for not cross-examining Mr Thambyrajah. The Tribunal did, however, put questions of its own to Mr Thambyrajah.

122. *Fourth*, in reviewing the evidence of Mr Thambyrajah and Mr Roe, the Tribunal has paid particular regard to the consistency of that evidence with the contemporaneous documentation, which largely speaks for itself. Where the documentary evidence supports their evidence, the Tribunal accepts it. Where, on the other hand, the documentary evidence is at odds with that evidence, the Tribunal prefers to accept the documentary evidence as more reliable. The evidence of Mr Thambyrajah and Mr Roe in large part consisted of a recitation of the documents. Mr Roe's cross-examination did not to any significant degree take matters forward.

[emphasis in original; references omitted]

Version No 1: 24 Nov 2026 (17:50 hrs)

69 In footnote 14 of the Award (referred to in the Award at [115]), the Tribunal stated:

> The Tribunal's doubts about Mr Roe's alleged absence of mental capacity addressed in its ruling have been reinforced by the fact that Mr Roe made an affidavit dated 2 July 2025 in [the New York Proceedings]. Mr Roe presumably was also able to give instructions to the [Roe Parties'] attorneys in those proceedings. Further, at no time during the present proceedings following SLB's withdrawal has there been any indication in the communications between the Tribunal and the parties or otherwise that Mr Roe's ability to follow the proceedings or that his comprehension of them was in any way impaired.

Issues to be determined

70 I will address each of the Roe Parties' grounds for setting aside the Award (see [2] above) in turn.

Ground 1: alleged fraud

The Roe Parties' case

71 The Roe Parties' case was that the making of the Award was induced or affected by fraud because:[104]

(a) Acuity had concealed material information from the Tribunal ("Concealment Allegation"); and

(b) Mr Thambyrajah had given false evidence in the Arbitration ("Perjury Allegation").

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104 BJR at para 63.

Version No 1: 24 Nov 2026 (17:50 hrs)

Concealment Allegation

72 It was common ground between the parties that:[105]

(a) From January 2024, Acuity had dealings with certain Vietnamese companies ("NSH Companies"), including Nam Song Hau Trading Investing Petroleum Joint Stock Company ("NSH Petro"), to assist them to seek financing.

(b) On 5 February 2024, Acuity entered into three Loan Term Sheets and Costs Agreements ("NSH Agreements") with the NSH Companies and certain of their representatives ("NSH Individuals").

(c) The NSH Agreements provided that in the event that a loan was conditionally approved or a discussion paper, term sheet or loan proposal was issued, a fund arrangement fee of 4% of the loan amount was payable to Acuity ("NSH Fee").

(d) On or around 19 February 2024, Acuity arranged for Global Wise to issue, and Global Wise issued, three Conditional Letters of Offer for Mortgage Finance to the NSH Companies and NSH Individuals.

(e) Despite repeated demands by Acuity for the NSH Companies and NSH Individuals to pay the NSH Fees under the NSH Agreements, they refused to do so.

(f) On 13 August 2025, Acuity commenced arbitrations to recover the NSH Fees.

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105 Parties' Joint Statement, section III, s/ns 48–50; JT at paras 83(a)–83(g).

Version No 1: 24 Nov 2026 (17:50 hrs)

(g) In or around October 2025, NSH Petro and its related companies filed criminal complaints against Mr Thambyrajah in Vietnam.

73 The Roe Parties' counsel in OA 96, Mr Randolph Khoo ("Mr Khoo"), specified that it was the Roe Parties' case that Acuity had concealed three pieces of information in relation to the transactions at [72] above:[106]

(a) first, that concluded investigations against Mr Thambyrajah in Vietnam showed wrongdoing;

(b) second, that Mr Thambyrajah had been arrested in Vietnam for loan fraud; and

(c) third, that Mr Thambyrajah had been charged in Vietnam, albeit Mr Khoo caveated that there was "some debate" over this point "because the press articles [were] somewhat contradictory".

74 Mr Khoo specified that the Roe Parties relied, for evidence of the alleged matters which were the subject of the alleged concealment, on:[107]

(a) the following five online media articles published from October to December 2025:[108]

(i) an article titled "Australian CEO detained, NSH Petro's recovery hopes collapse" and dated 18 October 2025,[109] which purportedly showed that the investigations against Acuity in

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106 Certified transcript of the hearing of OA 96 on 15 October 2026 ("Tpt 15 Oct 2026") at pp 18:15–19:9.

107 Tpt 15 Oct 2026 at pp 19:10–23:23.

108 Tpt 15 Oct 2026 at pp 19:26–22:25 and 115:2–7; BJR at paras 64–69; CWS at para 15.

109 BJR at pp 305–307 (exh BJR-1, tab 8).

Version No 1: 24 Nov 2026 (17:50 hrs)

Vietnam had concluded in findings of wrongdoing by Mr Thambyrajah;[110]

(ii) an article titled "Australian CEO arrested in Vietnam for $5M loan fraud" and dated 18 October 2025,[111] which purportedly showed that Mr Thambyrajah had been arrested for "loan fraud"[112] and in which "charges [were] mentioned";[113]

(iii) an article titled "Police seek victims in Australian-Vietnamese fraud probe" and dated 13 November 2025,[114] which purportedly showed that Mr Thambyrajah had been "apprehended";[115]

(iv) an article titled "NSH Petro Rebound Hopes Crash After Australian CEO Charged for Fund Misappropriation" and dated 19 December 2025,[116] which purportedly showed that Mr Thambyrajah had been charged;[117] and

(v) an article titled "Australian businessman Ranjit Thambyrajah languishes in Vietnam jail after string of failed loan deals" and dated 24 December 2025,[118] which "appear[ed]

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110 Tpt 15 Oct 2026 at p 20:2–15.

111 BJR at pp 1483–1484 (exh BJR-1, tab 33).

112 Tpt 15 Oct 2026 at pp 20:17–21:2.

113 Tpt 15 Oct 2026 at p 21:14–15.

114 BJR at pp 1486–1487 (exh BJR-1, tab 34).

115 Tpt 15 Oct 2026 at p 21:3–11.

116 BJR at pp 1489–1494 (exh BJR-1, tab 35).

117 Tpt 15 Oct 2026 at pp 21:12–13 and 21:15–18.

118 BJR at pp 309–319 (exh BJR-1, tab 9).

Version No 1: 24 Nov 2026 (17:50 hrs)

to suggest [Mr Thambyrajah] [was] actually imprisoned without charge by the Vietnamese Ministry of Public Safety";[119]

(b) paragraphs 84 to 87 of Acuity's affidavit filed in OA 96, in which Acuity acknowledged investigations by the Vietnamese Ministry of Public Security against Mr Thambyrajah, asserted that Acuity's transactions with NSH Petro and its related companies were legitimate, stated that Mr Thambyrajah had not been charged or convicted, and stated that Mr Thambyrajah continued to be "unjustifiably detained" by the Vietnamese Ministry of Public Security;[120] and

(c) paragraph 19 of Acuity's written submissions in OA 96, which referred to Mr Thambyrajah being arrested on 15 October 2025.[121]

75 The Roe Parties submitted that Acuity had deliberately concealed Mr Thambyrajah's detention for investigation in Vietnam from the Tribunal.[122] This fact was relevant to the Roe Parties' defence that Global Wise was not ready, willing and able to provide funding.[123] Acuity's deliberate concealment was especially inexcusable given that, on 25 June 2025, it had informed the Tribunal that it would investigate and take instructions on the Roe Parties' allegations of fraud against Mr Thambyrajah.[124] Acuity's concealment was aimed at deceiving the Tribunal: Mr Roe's 30 July 2025 e-mail indicated the

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119 Tpt 15 Oct 2026 at p 21:19–23.

120 JT at paras 84–87.

121 Respondent's Written Submissions dated 8 October 2026 ("RWS") at para 19.

122 CWS at para 15.

123 CWS at para 16.

124 CWS at para 16.

Version No 1: 24 Nov 2026 (17:50 hrs)

Roe Parties' deep concerns over the emerging criminal investigations in Vietnam into Acuity's business methods but Acuity made no disclosure even after the concluded Vietnamese investigation led to Mr Thambyrajah's detention and the initiation of criminal proceedings against him.[125]

Perjury Allegation

76 The Roe Parties submitted that the "new evidence" of the media articles at [74(a)] above showed that Mr Thambyrajah gave false evidence in the Arbitration as to the readiness, willingness and ability of Global Wise to provide the loan at the time the Conditional Offer was made.[126] Mr Khoo specified that the false evidence allegedly given by Mr Thambyrajah was limited to two instances:[127]

(a) the following portion of Mr Thambyrajah's oral evidence at the Hearing:[128]

> ARBITRATOR: Well, I've read your witness statement, and you've covered most of the points that were raised by the [Roe Parties] in your witness statement. But you heard Mr Roe, when he declined to ask you any questions, saying that you were cheats, and that's why he wasn't going to ask you anything. Do you want to comment on that?
>
> A. No. I'll just leave it to you.
>
> ARBITRATOR: Of the many criticisms which are made by the [Roe Parties], you're accused of having been fraudulent. Do you want to say anything

125 CWS at para 17.

126 CWS at paras 6, 8 and 10; BJR at paras 64–69.

127 Tpt 15 Oct 2026 at pp 26:6–30:5.

128 JT at pp 430–431: Arbitration Hearing Tpt at pp 55:8–56:2.

Version No 1: 24 Nov 2026 (17:50 hrs)

> more than you say in your witness statement about that?
>
> A. I've been in the industry for 43 years. We've had – there is an accreditation there from ANZ Bank because that dealt with some of the other criticisms they made. However, I am actually registered to refer qualified business to all the major banks in Australia and I have settled numerous loans with them. So – which is not – which is in contradiction to what was shared by Mr Roe, and contradicts what he said.

(b) paragraphs 82 to 84 of Mr Thambyrajah's witness statement in the Arbitration, which read:[129]

> 82. There was no fraud involved in any of my past corporate interests. On the contrary, since 2009, I have been accredited as an approved mortgage originator by ANZ Bank, and therefore recognised as reputable and respected and approved to introduce business to ANZ Bank. A copy of the certificate of my accreditation is exhibited hereto and marked "**C-036**". If there was fraud involved in my past corporate interests, ANZ Bank would not have accredited me as an approved mortgage originator.
>
> 83. The [Roe Parties'] allegation that Acuity and I had attempted to defraud them is absurd. If we were attempting to do so (which we were not), Acuity would not have offered … for the Fund Arrangement Fee to be paid from first drawdown under the loan, and continued to honour that offer right up until the time when it was clear that the [Roe Parties] were not interested in continuing the deal and were trying to get out of the deal.
>
> 84. For completeness, I should also mention that I note that the [Roe Parties] have made various allegations against Global Wise and Elite. Acuity will leave WongP to deal with these allegations. Suffice to say, based on Acuity's experience and working relationship with Global Wise and what

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129 BJR at pp 1644–1645 (exh BJR-1, tab 43): Witness Statement of Ranjit Prithviraj Thambyrajah dated 15 July 2025 at paras 82–84.

Version No 1: 24 Nov 2026 (17:50 hrs)

> Acuity knows of Global Wise and Elite, there is no reason to believe that Global Wise would not have been capable of providing financing for [the Project].

77 The new evidence was not in existence, and thus could not have been produced, during the Hearing.[130]

78 The new evidence was decisive as it undermined the Tribunal's basis for rejecting the Roe Parties' defence concerning Global Wise's ability to provide the loan; corroborated the Roe Parties' allegations of Acuity's pattern of conduct in its past dealings with previous clients; showed that Acuity's evidence concerning Global Wise's lending capacity and track record was false; and would have led the Tribunal to a different conclusion on Global Wise's ability to provide the loan.[131]

79 The present case was distinguishable from *Bloomberry Resorts and Hotels Inc v Global Gaming Philippines LLC* [2021] 3 SLR 725 ("*Bloomberry (HC)*") in that the concealed matters here involved the same companies concerned in the Arbitration, *viz*, Acuity and Global Wise, applying an unlawful *modus operandi* against multiple victims including the Roe Parties, and went directly to the heart of the dispute in the Arbitration.[132]

Acuity's case

80 Acuity submitted that it was not obliged to disclose the investigations into Mr Thambyrajah and/or his subsequent arrest as Acuity had not relied on

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130 CWS at para 10.

131 CWS at paras 11–12 and 72.

132 CWS at paras 13–14.

Version No 1: 24 Nov 2026 (17:50 hrs)

these matters and they were not relevant to the Arbitration.[133] In any event, Acuity had not concealed the investigations into Mr Thambyrajah but had referred to them in its application on 30 June 2025 for Mr Thambyrajah to give evidence remotely (see [31] above); neither the Tribunal nor the Roe Parties had requested disclosure of further information in this regard.[134] As for Mr Thambyrajah's arrest on 15 October 2025, this was not information available during the Arbitration.[135]

81 Further, the investigations into and subsequent arrest of Mr Thambyrajah would not have affected the outcome of the Award.[136] The Roe Parties had highlighted the investigations at the Hearing and in Mr Roe's 30 July 2025 e-mail to the Tribunal (see [57] and [62] above). However, the Tribunal found in the Award that these "add[ed] nothing of materiality" (see [67] above).[137] The Tribunal also found that the Roe Parties' allegation that Acuity had a *modus operandi* of deceiving its previous clients was not made out, distinguishing the present case from the facts of the legal proceedings involving Acuity on which the Roe Parties had relied to establish the alleged *modus operandi* (Award at [162(5)] and [162(6)]). The Vietnamese case was similarly unrelated and irrelevant to the present case.[138] Acuity's counsel in OA 96, Mr Tiong Teck Wee ("Mr Tiong"), added that, in any case, the Tribunal's finding that there was no evidence that the Representation was

133 RWS at para 17.

134 RWS at para 18.

135 RWS at para 19.

136 RWS at para 20.

137 RWS at para 21.

138 RWS at paras 23–24.

Version No 1: 24 Nov 2026 (17:50 hrs)

operative in Mr Roe's mind at the material time (Award at [162(3)]) was sufficient to "kill" the Roe Parties' defence that Acuity was liable for fraudulent misrepresentation; the Concealment Allegation and Perjury Allegation would not change this finding.[139]

82 Finally, there was no cogent and strong evidence of fraud by Acuity. The Roe Parties relied only on speculative and sensational media articles.[140] It was undisputed that Mr Thambyrajah had not been convicted of any offences in connection with Acuity's transactions with the NSH Companies.[141] He denied engaging in any fraudulent or criminal conduct and had engaged Vietnamese lawyers to represent him, while Acuity's position was that the transactions with the NSH Companies were legitimate.[142]

Decision

The applicable law

83 Section 24(*a*) of the IAA provides for the setting aside of an arbitral award if "the making of the award was induced or affected by fraud or corruption".

84 "Fraud" in s 24(*a*) of the IAA includes procedural fraud, *ie*, when a party commits perjury, conceals material information and/or suppresses evidence that would have a substantial effect on the making of the award (*Bloomberry Resorts*

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139 Tpt 15 Oct 2026 at pp 122:11–123:8.

140 RWS at para 28.

141 RWS at para 26.

142 RWS at paras 26–28.

Version No 1: 24 Nov 2026 (17:50 hrs)

and Hotels Inc v Global Gaming Philippines LLC [2021] 1 SLR 1045 ("*Bloomberry (CA)*") at [41]).

85 Where perjury is alleged, the applicant must prove that:

(a) false evidence was given in the arbitration which was intended to cause any person in that proceeding to form an erroneous opinion touching any point material to the result of the proceeding (*Bloomberry (HC)* at [105(a)]);

(b) the new evidence is decisive in that it would have prompted the arbitral tribunal to rule in favour of the applicant instead of the other party (*Bloomberry (HC)* at [105(c)]); and

(c) the new evidence demonstrating fraud was not available or could not have been obtained with reasonable diligence at the time of the arbitration (*Bloomberry (HC)* at [105(b)] and [107]).

86 Where non-disclosure or concealment of material documents is alleged, the applicant must prove that:

(a) there was an anterior obligation to disclose the documents or information based on their relevance as understood in the context of the rules governing the arbitration: matters which were not in issue in the arbitration, no matter how interested one party was to know about them, need not be disclosed and failure to mention them cannot be regarded as concealment (*Bloomberry (CA)* at [44]);

(b) there was deliberate (as opposed to innocent or negligent) concealment aimed at deceiving the arbitral tribunal *ie*, there was no

Version No 1: 24 Nov 2026 (17:50 hrs)

good reason for the non-disclosure (*Bloomberry (HC)* at [106(a)]; *Bloomberry (CA)* at [71]);

(c) there is a causative link between the deliberate concealment and the decision in favour of the concealing party: the concealed document or information must be so material that earlier discovery would have prompted the tribunal to rule in favour of the applicant instead (*Bloomberry (HC)* at [106(b)]); and

(d) the new evidence demonstrating fraud was not available or could not have been obtained with reasonable diligence at the time of the arbitration (*Bloomberry (HC)* at [107]).

87 Strong and cogent evidence of the alleged fraud has to be adduced and the court will not infer a finding of fraud. The standard of proof remains that of a balance of probabilities and the touchstone is one of dishonesty (*Bloomberry (HC)* at [99]).

Application of the law to the facts

(1) Perjury Allegation

88 I find that the Perjury Allegation fails *in limine* because the Roe Parties failed to prove that the evidence given by Mr Thambyrajah was false.

89 Mr Thambyrajah made two main points in the portions of his evidence impugned by the Roe Parties: (a) that he was accredited as an approved mortgage originator by ANZ Bank; and (b) Acuity had not attempted to defraud the Roe Parties and had no reason to believe Global Wise was not capable of providing financing (see [76] above).

Version No 1: 24 Nov 2026 (17:50 hrs)

90 On the first point, the Roe Parties raised nothing touching on the subject of Mr Thambyrajah's accreditation.

91 On the second point:

(a) The online media articles cited by the Roe Parties simply do not constitute *evidence* of the matters discussed therein and thus cannot be relied on as proof that Mr Thambyrajah had perjured himself. Here, it is apposite to refer to *Bloomberry (CA)*, which concerned an unsuccessful application to set aside an arbitral award on the ground that the claimants in the arbitration ("GGAM" and its subsidiary) had concealed evidence of fraud. The evidence of fraud on which the applicants relied took the form of a non-prosecution agreement between the US Department of Justice and Las Vegas Sands Corp ("LVS") and an order by the US Securities and Exchange Commission instituting cease-and-desist proceedings against LVS (together, "FCPA Findings") (*Bloomberry (CA)* at [2]). The Court of Appeal held that the weight of the FCPA Findings was affected by their character: they were not the findings of a court, an independent tribunal or a fact-finder who evaluated the sufficiency of the underlying evidence or its appropriateness after a contestation between the parties (*Bloomberry (CA)* at [55]). The FCPA Findings thus did not establish to the degree of proof that a court requires the various assertions of wrongdoing that the applicants made (*Bloomberry (CA)* at [52]). In my view, the online media articles relied on by the Roe Parties in the present case (the sources of which are unclear) stand on far more precarious footing than the FCPA Findings. It is unsafe to place weight on them as proof that Mr Thambyrajah had given false evidence in the Arbitration.

Version No 1: 24 Nov 2026 (17:50 hrs)

(b) This leaves the common ground between the parties that Mr Thambyrajah had been investigated and arrested in Vietnam in respect of Acuity's loan brokering arrangements with the NSH Companies and NSH Individuals pursuant to which Acuity had arranged for Global Wise to issue conditional offers of financing to them ("Vietnamese transactions"). However, these matters fall far short of proving that Mr Thambyrajah gave false evidence in the Arbitration when he said Acuity had not attempted to defraud the Roe Parties and had no reason to believe Global Wise was not capable of providing financing: (i) Mr Thambyrajah being investigated and arrested is not tantamount to Mr Thambyrajah or Acuity being found guilty of wrongdoing; and (ii) the Vietnamese transactions are separate and different from Acuity's dealings with the Roe Parties which are the subject of the Arbitration. In *Bloomberry (CA)*, the dispute in the arbitration arose out of an agreement between the applicants and GGAM for GGAM to manage the development and operation of the "Solaire Casino". The applicants alleged that the FCPA Findings showed wrongdoing by two senior executives of GGAM while they were employed by LVS (before GGAM's formation) and in relation to transactions for LVS (*Bloomberry (CA)* at [4]–[5] and [51(a)]–[51(c)]). LVS was not involved in the arbitration (*Bloomberry (CA)* at [2(a)]). The Court of Appeal held that, whatever weight might be given to the FCPA Findings, they related to misconduct by LVS occurring four years before the opening of the Solaire Casino and did not in any way hint, much less show, bribery by GGAM or its senior executives at the Solaire Casino (*Bloomberry (CA)* at [61]). Similarly, in the present case, notwithstanding the common involvement of Acuity and Global Wise,

Version No 1: 24 Nov 2026 (17:50 hrs)

the Vietnamese transactions remain separate and different from Acuity's dealings with the Roe Parties and there is insufficient material before me to conclude that any impropriety in the former transactions was also to be found in the latter dealings.

92 I also find that the Roe Parties failed to establish the requisite causative link between the alleged fraud and the Tribunal's decision in favour of Acuity. Even if, *arguendo*, the Roe Parties managed to prove the alleged perjury and to thereby prove that Global Wise was not ready, willing and able to provide funding:

(a) this would not alter the Tribunal's rejection of the Roe Parties' defence that Acuity had breached the Implied Terms, because the Tribunal found that the Implied Terms did not exist to begin with (see [11(a)], [11(c)], [11(d)] and [65] above; Award at [139]); and

(b) this would not alter the Tribunal's rejection of the Roe Parties' defence that Acuity was liable for fraudulent misrepresentation, because the Tribunal found that there was no evidence that the Representation was even operative in Mr Roe's mind at the material time (see [11(b)], [11(c)], [11(e)] and [66] above; Award at [162(3)]). Mr Khoo sought to persuade me that the Tribunal's finding in the Award at [162(3)] was legally wrong,[143] but without needing to wade into the law on the tort of deceit, the short point is that this attempt was an impermissible attack on the merits of the Award.

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143 Tpt 19 Oct 2026 at pp 55:3–66:19.

Version No 1: 24 Nov 2026 (17:50 hrs)

(2) Concealment Allegation

93 I find that the Concealment Allegation fails *in limine* because the Roe Parties failed to prove that Acuity was, to begin with, obliged to disclose the three pieces of purported information which the Roe Parties alleged it had concealed, *viz*, that (a) concluded investigations against Mr Thambyrajah in Vietnam showed wrongdoing; (b) Mr Thambyrajah had been arrested in Vietnam for loan fraud; and (c) Mr Thambyrajah had been charged in Vietnam (see [73] above). Acuity did not seek to rely on these matters for its case, and the Roe Parties did not show that Acuity had a general obligation to disclose all information that could be relevant or material to the Arbitration.

94 Further, while it was common ground that Mr Thambyrajah had been investigated and arrested in Vietnam, it was not common ground that investigations had *concluded with wrongdoing found* or that Mr Thambyrajah had been *charged*, as the Roe Parties alleged. The Roe Parties relied solely on the online media articles to prove these pieces of purported information (see [74(a)] above), but for the reasons explained at [91(a)] above, I do not accept that the articles were *evidence* of the matters discussed therein. In other words, it is unclear that the purported information even existed such as to be capable of being concealed.

95 Finally, I find that the Roe Parties failed to establish the requisite causative link between the alleged fraud and the Tribunal's decision in favour of Acuity for the reasons explained at [91(b)] above (*viz*, the allegedly concealed information related to the separate and different Vietnamese transactions) and at [92] above (*viz*, even if Global Wise was not ready, willing and able to

Version No 1: 24 Nov 2026 (17:50 hrs)

provide funding, that would not alter the Tribunal's rejection of the Roe Parties' relevant defences).

Conclusion

96 I thus conclude that the Roe Parties' challenge to the Award under Ground 1 fails.

Ground 2: alleged breach of natural justice

The Roe Parties' case

97 The Roe Parties submitted that the Tribunal breached the fair hearing rule through four "interconnected" procedural decisions before the Hearing.[144]

Replacement Counsel Issue

98 First, the Tribunal refused the Roe Parties' request for a 30-day extension of time to find replacement counsel after SLB discharged themselves as the Roe Parties' solicitors ("Replacement Counsel Issue").[145]

99 The Roe Parties submitted that the Tribunal's refusal came "within 18 minutes" of their request being made.[146] The Tribunal did not engage with the substance of the request, *viz*, the Roe Parties' need for reasonable time to engage replacement counsel and allow that counsel to prepare a case involving complex issues of fraud.[147] Any inconvenience or prejudice to Acuity arising

144 CWS at para 22.

145 CWS at paras 24–25; BJR at para 85.

146 CWS at para 25; BJR at para 54.

147 CWS at para 25; BJR at paras 85.3–85.4 and 88.3.

Version No 1: 24 Nov 2026 (17:50 hrs)

from the requested adjournment could have been compensated by an award of costs or interest in respect of the delay in the resolution of what was a monetary claim.[148] Acuity had shown itself to be "entirely open" to the notion of the Hearing being postponed to 2026, as seen from its response on 29 May 2025 (see [16] above) and its application on 25 June 2025 for an extension of time (see [29] above).[149] The Tribunal was driven primarily by considerations of its scheduling convenience rather than a balanced assessment of the Roe Parties' procedural rights.[150] The commencement of the New York Proceedings on 2 July 2025 "pre-dated SLB's withdrawal" and the Tribunal erroneously treated the former as evidence of the Roe Parties' ability to secure substitute representation within a compressed timeframe (in the Award at [112]).[151]

100 The Roe Parties argued that *CGS v CGT* [2021] 3 SLR 672 ("*CGS*") (at [22] and [23]) supported a party's right to choose its legal representation,[152] and relied on *Lockman v Rancourt* [2017] OJ No 1752 ("*Lockman*") and *Coromandel Land Trust Ltd v Milkt Investments Ltd* [2009] NZHC 1753 ("*Coromandel*") as cases in which the courts had found that a breach of natural justice arose from the arbitral tribunals' refusal of adjournments for legal representation to be obtained.[153]

101 Without counsel, the Roe Parties were unable to test Acuity's defence on Global Wise's true capacity to lend and to conduct a proper legal defence.

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148 BJR at para 85.3.

149 BJR at paras 82 and 88.2.

150 BJR at para 88.1.

151 BJR at para 90.

152 CWS at para 29.

153 CWS at paras 31–38.

Version No 1: 24 Nov 2026 (17:50 hrs)

There was a real possibility that this could have affected the Tribunal's deliberations and, ultimately, the outcome of the Arbitration.[154]

GT Report Issue

102 Second, the Tribunal refused to admit into evidence the GT Report ("GT Report Issue").[155]

103 While there was some suggestion in the Roe Parties' written submissions and Mr Roe's affidavit filed in OA 96 that the Roe Parties were *also* complaining that they did not have the opportunity to introduce *Control Risks' report* into evidence,[156] the Roe Parties did not contemporaneously take this point up with the Tribunal during the Arbitration, and Mr Khoo expressly confirmed at the hearing of OA 96 that "[t]he non-inclusion of any report from Control Risks in the [A]rbitration [was] not part of any breach of natural justice ground now being relied on by the [Roe Parties] in OA 96".[157] I therefore focus only on the GT Report Issue.

104 The Roe Parties submitted that they had no reasonable opportunity to respond to Acuity's request on 10 July 2025 for the Tribunal to disregard the GT Report before the Tribunal's decision a "mere 6 hours" later that the GT Report would not form part of the evidence in the Arbitration given Ms Tan's withdrawal as a witness.[158] Acuity's application was procedurally

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154 CWS at paras 27, 39 and 73.1; BJR at paras 94–95.

155 CWS at paras 43–45.

156 CWS at paras 41–42 and 51; BJR at paras 83.2 and 107(a).

157 Tpt 15 Oct 2026 at pp 71:25–75:27, especially at p 75:13–24.

158 CWS at para 49.

Version No 1: 24 Nov 2026 (17:50 hrs)

irregular because Acuity did not comply with para 8.6 of PO1 to give notice to the Roe Parties and the Tribunal that it wished to cross-examine Ms Tan; it was only after such notice was given that the Roe Parties would be required under para 8.7 of PO1 to ensure that Ms Tan appeared at the Hearing to be cross-examined.[159] Any request for the cross-examination of Ms Tan could then have been facilitated by an application to the court for an order compelling her to attend before the Tribunal to give evidence if she did not co-operate.[160] The Tribunal could have at least given Mr Roe an opportunity to respond before making its decision on 10 July 2025 or the option to secure Ms Tan's attendance by subpoena before the Hearing, "failing which the GT Report would be excluded".[161]

105 The Roe Parties argued that *CBP v CBS* [2020] SGHC 23 ("*CBP*") showed that the failure of an arbitral tribunal to hear evidence from a party's witness could amount to a breach of the fair hearing rule.[162]

106 Had the GT Report been admitted, it could have led to a different outcome and the Roe Parties' fraud defence could have been established in the Arbitration.[163]

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159 CWS at para 49.1 and footnotes 71 and 72; BJR at para 96.

160 CWS at para 49.2; BJR at para 96.

161 CWS at para 51.

162 CWS at para 50.

163 CWS at paras 51 and 73.2.

Version No 1: 24 Nov 2026 (17:50 hrs)

Cross-examination Issue

107 Third, the Tribunal refused to excuse Mr Roe from cross-examination despite the Medical Report certifying that Mr Roe lacked mental capacity in respect of being a witness put under oral examination ("Cross-examination Issue").[164]

108 The Roe Parties submitted that they did not have the opportunity to respond to Acuity's 30 June 2025 submissions as their reply was due on 4 July 2025 but that was the day of SLB's discharge so no reply was filed.[165] The Tribunal conflated general mental capacity to instruct counsel and mental capacity in respect of being a witness under cross-examination; Dr Mir's opinion was directed specifically to the demands of the latter.[166] The Tribunal erred in finding that the source of information regarding Mr Roe's clinical history and the basis of Dr Mir's opinion were not stated in the Medical Report: the Medical Report referred to Dr Mir's doctor-patient relationship with Mr Roe since June 2023, an examination in April 2025 and Dr Mir's "office notes from 4/16/25" and "progress notes".[167] The Tribunal's concern about the date of the Medical Report was also unfounded: the Medical Report was dated 17 June 2025, close to the date of the last examination in April 2025.[168] The Tribunal inconsistently accepted Dr Mir's opinion that Mr Roe was unfit to fly to

164 CWS at paras 53–55; BJR at para 100.5.

165 CWS at para 56.1; BJR at para 100.1(d).

166 CWS at para 56.2; BJR at para 100.1.

167 CWS at para 56.3; BJR at para 100.2.

168 CWS at para 56.3; BJR at para 100.3.

Version No 1: 24 Nov 2026 (17:50 hrs)

Singapore while refusing to treat the Medical Report as conclusive on Mr Roe's capacity to undergo cross-examination.[169]

109 The Roe Parties relied on *Kanoria v Guinness* [2006] EWCA Civ 222 ("*Kanoria*") as a case where "the English Court of Appeal upheld the finding that a party's serious illness … meant that it was '*realistically impossible*' for him to instruct his legal representatives meaningfully and present his defence" [emphasis in original],[170] and on *Amutha Valli d/o Krishnan v Titular Superior of the Redemptorist Fathers in Singapore* [2009] 2 SLR(R) 1091 ("*Amutha*") as a case "address[ing] when cross-examination may be dispensed with where a witness suffers from sufficiently serious medical conditions".[171]

110 During the Hearing, Mr Roe "gave incoherent answers, appeared confused and appeared to have forgotten important events".[172] The Tribunal breached natural justice by refusing to excuse Mr Roe from cross-examination and by relying on his evidence in making its findings in the Award.[173] The breach was connected to the making of the Award and caused real prejudice. Had the Tribunal properly considered the Medical Report and the circumstances in which Mr Roe was required to give evidence, there was a real possibility that the Tribunal would have reached a different conclusion as to the manner in which Mr Roe's evidence should be received and, ultimately, the determination of the Roe Parties' case.[174]

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169 CWS at para 56.4; BJR at para 100.4.

170 CWS at para 57.

171 CWS at paras 59–61.

172 CWS at paras 58 and 62; BJR at paras 98–99.

173 CWS at para 62.

174 CWS at paras 63 and 73.3.

Version No 1: 24 Nov 2026 (17:50 hrs)

Korean Interpreter Issue

111 Fourth, the Tribunal refused to adjourn the Hearing to allow for a Korean interpreter for Mr Roe to be arranged ("Korean Interpreter Issue").[175] The Tribunal also "did not use the expedient of having Ms Roe testify under oath as a further witness".[176]

112 Ms Roe was not a qualified interpreter and Mr Roe struggled to follow the proceedings even with her assistance.[177] There was a real chance that the cumulative deficiencies of Mr Roe's cognitive impairment and the absence of proper interpretation affected the Tribunal's assessment of Mr Roe's evidence and its deliberations.[178]

Acuity's case

Replacement Counsel Issue

113 Acuity submitted that the Tribunal's decision not to grant the Roe Parties' request for a 30-day extension of time to find replacement counsel was justified.[179] Even until today, the Roe Parties had not explained SLB's discharge and what steps they took to secure replacement counsel or said that they had experienced difficulties in securing replacement counsel.[180] This must be viewed against the backdrop that the Roe Parties had no difficulties

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175 CWS at paras 64–65 and 68; BJR at para 102.

176 CWS at para 67; *cf*, BJR at para 101 and Tpt 15 Oct 2026 at pp 90:10–14 and 91:1–21.

177 CWS at paras 66–67; BJR at para 106.

178 CWS at paras 68 and 73.4.

179 RWS at paras 40–42.

180 RWS at para 43.

Version No 1: 24 Nov 2026 (17:50 hrs)

instructing US counsel to act in the New York Proceedings commenced on 2 July 2025, around the same time of SLB's discharge on 4 July 2025.[181] The Roe Parties' lack of legal representation at the Hearing was "entirely of their own doing".[182]

114 Further, there was no legal principle that a party to an arbitration had to have legal representation. To the contrary, r 23 of the SIAC Arbitration Rules (6th Ed, 1 August 2016) ("SIAC Rules") (which applied to the Arbitration[183]) provided that "[a]ny party may be represented by legal practitioners *or any other authorised representatives*" [emphasis added], which contemplated that a party did not necessarily have to be represented by legal practitioners.[184] Acuity also submitted that *CGS* (at [22]–[32]) made clear that the right to legal representation was not "absolute" and that it was not necessarily a breach of natural justice for an arbitral tribunal to proceed with a hearing where a party did not have legal representation.[185]

115 In any event, the Roe Parties' lack of legal representation at the Hearing did not cause them prejudice or affect the outcome of the Arbitration. Among other things, by the time SLB withdrew, all pleadings and witness statements had been filed. The Roe Parties were given every opportunity at the Hearing to make submissions and cross-examine Mr Thambyrajah, and the Tribunal also

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181 RWS at para 43.

182 RWS at para 44.

183 BJR at p 87: Award at [50(1)].

184 RWS at para 46.

185 RWS at para 47.

Version No 1: 24 Nov 2026 (17:50 hrs)

tested Acuity's case by posing questions to Acuity's counsel and Mr Thambyrajah.[186]

GT Report Issue

116 Acuity submitted that the Tribunal's decision not to admit the GT Report into evidence was justified since Ms Tan was not appearing to give evidence and be cross-examined at the Hearing.[187] Even until today, the Roe Parties had not explained why Ms Tan withdrew from the Arbitration. SLB had denied the Roe Parties' suggestion that SLB had stopped Ms Tan from appearing in the Arbitration.[188]

117 The Roe Parties had not shown that they suffered any prejudice that would have affected the outcome of the Arbitration. The Tribunal had found that even if the GT Report had been admitted into evidence, "in the absence of cross-examination and corroboration of its contents with available documentation, it would have carried little or no weight" (Award at [114]).[189]

Cross-examination Issue

118 Acuity submitted that the Tribunal's rejection of the Roe Parties' application for Mr Roe to be excused from cross-examination was justified.[190] The Roe Parties were impermissibly inviting the court to substitute its own

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186 RWS at para 48.

187 RWS at paras 49–52.

188 RWS at para 50.

189 RWS at para 52.

190 RWS at paras 54–57.

Version No 1: 24 Nov 2026 (17:50 hrs)

judgment for the Tribunal's views, formed after observing Mr Roe at the Hearing, as to Mr Roe's fitness for cross-examination.[191]

119 The Roe Parties had not shown what prejudice they suffered from Mr Roe being subject to cross-examination as compared to a scenario where he was not cross-examined.[192]

Korean Interpreter Issue

120 Acuity submitted that the Korean Interpreter Issue was a non-starter. The first time the Roe Parties had raised the need for a Korean interpreter was at the Hearing. They had the responsibility for arranging an interpreter under para 11.6 of PO1 but did not do so. They had not demonstrated that the lack of a Korean interpreter at the Hearing caused them prejudice; the purported difficulties faced by Mr Roe at the Hearing due to the lack of a Korean interpreter were clearly overstated.[193]

Decision

The applicable law

121 An applicant seeking to set aside an arbitral award on the ground of breach of natural justice must establish (a) the rule of natural justice breached; (b) how it was breached; (c) how the breach was connected to the making of the award; and (d) how the breach prejudiced his rights (*Soh Beng Tee & Co Pte Ltd v Fairmount Development Pte Ltd* [2007] 3 SLR(R) 86 at [29]).

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191 RWS at para 58.

192 RWS at paras 59–60.

193 RWS at paras 62–70.

Version No 1: 24 Nov 2026 (17:50 hrs)

122 A specific rule of natural justice is the fair hearing rule (*BZW v BZV* [2022] 1 SLR 1080 ("*BZW*") at [60]). An aspect of the right to a fair hearing is that a party must be given a reasonable opportunity to present his case (*BRQ v BRS* [2019] SGHC 260 at [62]).

123 There is no distinction between the right to be heard as an aspect of the rules of natural justice under s 24(*b*) of the IAA and as an aspect of being able to be heard within the meaning of Art 34(2)(*a*)(ii) of the Model Law (*ADG v ADI* [2014] 3 SLR 481 at [118]; *Triulzi Cesare SRL v Xinyi Group (Glass) Co Ltd* [2015] 1 SLR 114 ("*Triulzi*") at [123]). Both provisions involve a single inquiry as to whether the complainant was denied a reasonable opportunity to be heard (*Triulzi* at [125]). An application to set aside an arbitral award under these provisions is really brought on one and the same ground (*Government of the Republic of the Philippines v Philippine International Air Terminals Co, Inc* [2007] 1 SLR(R) 278 at [18]).

124 The parties' right to be heard is impliedly limited by considerations of reasonableness and fairness. This is especially relevant where the complaint is that the failure to grant some sort of procedural accommodation to a party adversely impacted his due process rights (*China Machine New Energy Corp v Jaguar Energy Guatemala LLC* [2020] 1 SLR 695 ("*China Machine*") at [97]).

125 In determining whether a party was denied his right to a fair hearing by the arbitral tribunal's conduct of the proceedings, the court will assess whether the tribunal's conduct/decision falls within the range of what a reasonable and fair-minded tribunal in those circumstances might have done (*China Machine* at [98]). There are two aspects to this fact-sensitive inquiry:

Version No 1: 24 Nov 2026 (17:50 hrs)

(a) First, the arbitral tribunal's conduct and decisions should only be assessed by reference to what was known to the tribunal at the material time. A tribunal cannot be criticised as having acted unfairly for failing to consider or address considerations or concerns which the complaining party did not bring to its attention (*China Machine* at [99] and [102]).

(b) Second, the court will accord a margin of deference to the arbitral tribunal in its exercise of procedural discretion and case management powers, recognising that (i) the tribunal takes into consideration a myriad of factors, including its obligation to conduct the arbitration fairly and expeditiously, (ii) the tribunal possesses a wide discretion to determine the arbitral procedure and (iii) that discretion is exercised within a highly specific and fact-intensive contextual milieu, the finer points of which the court may not be privy to (*China Machine* at [103]; *Triulzi* at [132]). The court will not micromanage the tribunal's procedural decision-making and will not intervene simply because the court might have done things differently, but will exercise its supervisory role with a light hand in a challenge on the basis of the fair hearing rule (*China Machine* at [103]; *Triulzi* at [132]). The threshold for judicial intervention is relatively high: the tribunal's conduct of the proceedings must have been so far removed from what could *reasonably* be expected of the arbitral process that it must be rectified (*China Machine* at [103]).

126 If a party intends to contend that there has been a fatal failure in the process of the arbitration, he must indicate to the arbitral tribunal that he intends to take that point at the appropriate time if the tribunal insists on proceeding. He cannot hedge against an adverse result in the arbitration by waiting until after

Version No 1: 24 Nov 2026 (17:50 hrs)

the arbitral award to decide whether to pursue the point (*China Machine* at [168] and [170]).

127 A breach of natural justice causes actual or real prejudice if complying with the rules of natural justice could reasonably have made a difference to the outcome of the arbitration (*BZW* at [63], citing *L W Infrastructure Pte Ltd v Lim Chin San Contractors Pte Ltd* [2013] 1 SLR 125 at [54]). While prejudice is not an element of the ground of setting aside under Art 34(2)(*a*)(ii) of the Model Law, the absence of prejudice remains a relevant consideration when the court decides whether to set aside an award (*CNQ v CNR* [2023] 4 SLR 1031 at [63], citing *CRW Joint Operation v PT Perusahaan Gas Negara (Persero) TBK* [2011] 4 SLR 305 at [98]–[100]).

Application of the law to the facts

(1) Replacement Counsel Issue

128 I begin by clearing up a point of fact. The Roe Parties alleged that the Tribunal refused their request for an extension of time to find replacement counsel "within 18 minutes" of their request being made (see [99] above). I do not think this is correct. In making this assertion, the Roe Parties relied on their exhibit of Mr Roe's standalone e-mail making the request dated 8 July 2025 and time-stamped 2.00pm[194] ("Standalone E-mail") and a separate exhibit of the Tribunal's e-mail refusing the request dated 8 July 2025 and time-stamped 2.18pm.[195] However, it was common ground that Mr Roe was operating in a different time zone from Acuity and the Tribunal. Comparing the date and

194 BJR at p 1481 (exh BJR-1, tab 32).

195 BJR at p 229 (exh BJR-1, tab 4).

Version No 1: 24 Nov 2026 (17:50 hrs)

time-stamp of the Standalone E-mail to that of the Tribunal's reply in a separate printout risked an inaccurate assessment of the timings of the e-mails relative to each other. Indeed, the problem with the Roe Parties' approach is borne out by Acuity's exhibit of Mr Roe's request and the Tribunal's reply within the same e-mail chain: here, Mr Roe's e-mail was dated 8 July 2025 and time-stamped 7.01pm while the Tribunal's e-mail was dated 9 July 2025 and time-stamped 2.19am (see [34]–[35] above).[196] I therefore see no good reason to depart from the Tribunal's account, in the Award at [80], which referred to Mr Roe's e-mail being sent to the Tribunal on 8 July 2025 and the Tribunal replying to the same on 9 July 2025. To be clear, even if the Tribunal had taken only 18 minutes to make its decision on Mr Roe's request, I do not think that the speed of the decision of itself would be indicative of its quality.

129 Turning to the substance of the Tribunal's decision, I find that the Tribunal's refusal of the Roe Parties' request for a 30-day extension of time to find replacement counsel falls within the range of what a reasonable and fair-minded tribunal in those circumstances might have done.

130 In the Tribunal's e-mail of 9 July 2025, the Tribunal articulated the following reasons for rejecting the request (see [35] above):

(a) An extension of 30 days would necessarily result in the postponement of the Hearing to 2026.

(b) The Tribunal was unaware of what led SLB to discharge themselves from acting for the Roe Parties. The potential effect of SLB's discharge must have been apparent to the Roe Parties.

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196 JT at pp 525–526 (exh JT-1, tab 16).

Version No 1: 24 Nov 2026 (17:50 hrs)

(c) No exceptional circumstances had been put forward for vacating the hearing dates that had been fixed.

131 The Tribunal elaborated on its reasons in the Award:

(a) The late withdrawal of a party's counsel did not automatically entitle that party to an adjournment or make it unfair or unjust to proceed with a scheduled hearing. In deciding whether to grant the adjournment, the arbitral tribunal had to have regard to fairness to both parties and the expeditious, economical and final resolution of their dispute (Award at [111]).

(b) The Roe Parties had adequate time to address the situation presented by SLB's discharge (Award at [112]). It was likely that they were told of SLB's decision by around the end of June 2025 (Award at [110]). They had about three to four weeks in which to find replacement counsel prior to the start of the Hearing on 23 July 2025 (and 19 days from 4 July 2025 when SLB notified the Tribunal of their discharge) (Award at [112]). They gave no reason for SLB's late withdrawal and did not state that it was not possible to engage other counsel for the Hearing in the time available (Award at [112]). In contrast, they had no difficulty in instructing US counsel at short notice to commence the New York Proceedings (Award at [112]).

(c) The grant of the extension of time would result in the postponement of the Hearing to 2026 (Award at [110]). This delay would have been unfair to Acuity, which was entitled to a determination of its claims without undue delay; would have resulted in additional

Version No 1: 24 Nov 2026 (17:50 hrs)

costs; and would not have been consistent with the Tribunal's obligation to ensure that the Arbitration proceeded efficiently (Award at [112]).

132 In my view, the Tribunal was entirely correct in its identification of the applicable principles guiding its consideration of the Roe Parties' request (at [131(a)] above). Rule 19.1 of the SIAC Rules (which the Tribunal also referenced in the Award at [109]) required the Tribunal to conduct the Arbitration in a manner that would ensure "the fair, expeditious, economical and final resolution of the dispute", and the Tribunal had to evaluate the Roe Parties' request for an extension of time against these objectives.

133 In my judgment, the Tribunal's assessment that, essentially, the Roe Parties had not shown that their ability to proceed with the Hearing was prejudiced by SLB's discharge (at [130(b)], [130(c)] and [131(b)] above) is an assessment that a reasonable and fair-minded tribunal in those circumstances might have reached. The Roe Parties must have known, in the lead-up to 4 July 2025, of SLB's imminent discharge. This left them at least several weeks to the start of the Hearing to find replacement counsel, which could reasonably be considered an adequate amount of time within which to do so. Yet it does not appear that the Roe Parties ever made any effort to find replacement counsel; they certainly did not indicate to the Tribunal that they had done so. This stands in stark and curious contrast to how, when the Roe Parties applied on 28 May 2025 for more time to file documents after Control Risks refused to give oral evidence, they conveyed to the Tribunal that they had, within a day of Control Risks' refusal, already reached out to potential replacement investigators and obtained feedback on the time the replacement investigators required (see [15(a)] above). It is unsurprising that the Tribunal found suspect the Roe Parties' lack of similar explanation when it came to their application for an

Version No 1: 24 Nov 2026 (17:50 hrs)

extension of time to find replacement counsel. In the same vein, it is not open to the Roe Parties to suggest that the Tribunal failed to consider that replacement counsel would require time "to prepare a case involving complex issues of fraud" (see [99] above) when there is no evidence that any potential replacement counsel had ever been contacted much less had ever indicated that they needed 30 days to prepare for the Hearing. Further belying this suggestion, after Control Risks' withdrawal on or around 28 May 2025, the Roe Parties were able to appoint replacement investigators (*viz*, Grant Thornton) by 4 June 2025 with a view to filing a report on the supposedly "complex issues of fraud" by 20 June 2025 (see [14], [15(a)], [18] and [19] above). As for the Tribunal's reference to the Roe Parties' appointment of US counsel for the New York Proceedings, I am mindful that the New York Proceedings may have been brought to the Tribunal's attention only on 17 July 2025 (see [44] above), *after* the Tribunal had decided on 9 July 2025 to reject the Roe Parties' request for an extension of time. If so, this factor could not have been an operative consideration in the Tribunal's mind when making its decision. Nevertheless, I think it is legitimate for the Tribunal to point to the Roe Parties' evident ability to appoint US counsel at short notice to commence the New York Proceedings as vindication of the Tribunal's contemporaneous doubts that the Roe Parties needed a 30-day extension of time to find replacement counsel for the Arbitration. I also find the Roe Parties' reliance on *CGS* misconceived (see [100] above). In *CGS*, the applicant's complaint was that the arbitral tribunal had not allowed the applicant's general manager to act alongside the applicant's external legal counsel in the arbitration (at [2]). The situation presented in *CGS* is thus different from the one at hand. Further, it does not assist the Roe Parties that the court in *CGS* pointed out that a party's right to legal representation is not absolute (at [22]).

Version No 1: 24 Nov 2026 (17:50 hrs)

134 In my judgment, the Tribunal's assessment that it would be unfair to Acuity and inconsistent with the efficient conduct of the Arbitration to push the Hearing to 2026 (at [130(a)] and [131(c)] above) is also an assessment that a reasonable and fair-minded tribunal in those circumstances might have reached. The Tribunal had indicated to the parties as far back as on 6 June 2025 that if the Hearing did not take place within the original hearing dates of 21 to 25 July 2025, the Hearing would have to be postponed to a date in the first quarter of 2026 (see [19] above). This was a delay of "at least six to nine months" (as noted in the Award at [112]), which could reasonably be considered prejudicial to Acuity. I think it is too pat for the Roe Parties to say that Acuity could have been compensated for the delay in the resolution of its "monetary claim" by an award of costs or interest (see [99] above). By that logic, there would never be an impediment to granting a defendant's request for an extension of time in "monetary claim" proceedings. The Roe Parties' assertion that Acuity was "entirely open" to a postponement of the Hearing to 2026 is also incorrect. It is correct that when the Roe Parties applied on 28 May 2025 for a three-week extension of time to file documents, Acuity opined on 29 May 2025 that that would mean having to start the Hearing at the earliest in the week of 11 August 2025 and proposed a case conference to re-fix the Hearing dates (see [15]–[16] above). However, Acuity did not mention a postponement to *2026*, and further, Acuity's position on 29 May 2025 was expressed *before* the Tribunal indicated on 6 June 2025 that any postponement of the Hearing would be to 2026 (see [17] and [19] above). It is also correct that Acuity applied on 25 June 2025 for an extension of time to 1 August 2025 to file documents (see [29] above). However, after the Tribunal declined on 1 July 2025 to grant such a long extension of time, pointing out that it would result in the Hearing not taking

Version No 1: 24 Nov 2026 (17:50 hrs)

place until "well into 2026" (see [30] above), Acuity did not press the point.[197] Acuity's contemporaneous conduct would not have led the Tribunal to think that Acuity was amenable to the Hearing being delayed to 2026, and it was reasonable for the Tribunal to consider that such a lengthy delay would be unfair to Acuity.

135 In my judgment, it is clear that the Tribunal balanced a myriad of factors, including its obligation to conduct the Arbitration fairly and expeditiously, before exercising its discretion to refuse the Roe Parties' request for a 30-day extension of time to find replacement counsel. The Roe Parties' assertion that the Tribunal was driven primarily by considerations of its scheduling convenience (see [99] above) is uncharitable and not borne out by the record of the proceedings. The balance struck by the Tribunal falls within the range of how a reasonable and fair-minded tribunal in those circumstances might have evaluated the Roe Parties' request, and the high threshold for judicial intervention in the Tribunal's procedural decision has not been crossed.

136 For completeness, I address the Roe Parties' reliance on *Lockman* and *Coromandel* (see [100] above). In principle, I do not think the court should be assessing whether the arbitral tribunal's procedural decision fell within the range of how a reasonable and fair-minded tribunal *in those circumstances* might have decided with reference to other cases in which other tribunals made procedural decisions of a similar nature *in different circumstances*. As the Court of Appeal emphasised in *China Machine*, the tribunal's discretion is exercised within a highly specific and fact-intensive contextual milieu (at [103]). That being so, another tribunal's approach in the different specific and fact-intensive

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197 Tpt 19 Oct 2026 at p 18:12–14.

Version No 1: 24 Nov 2026 (17:50 hrs)

contextual milieu of another arbitration will be of little relevance to the assessment before the court in the case at hand. Indeed, the circumstances in *Lockman* and *Coromandel* are not on all fours with those in the present case:

(a) In *Lockman*, the applicant had requested for an adjournment of the arbitral hearing on the basis that he had fired his lawyer (because, as he duly explained, of his lawyer's "incompetencies") and was intending to retain a new lawyer but was out of the country and would do so on his return (at [9] and [14]). The arbitrator rejected his request, stating that he had not explained why he was out of the country (at [13]). The court found that the arbitrator had failed to consider that the applicant's actual reason for requesting the adjournment was that he wanted the opportunity to retain new counsel (at [26]). In contrast to the finding in *Lockman* that the arbitrator had "not … put her mind to the question of whether [the applicant] was honestly seeking to exercise his right to counsel" (at [26]), I find that the Tribunal had expressly considered whether the Roe Parties' request for an extension of time to find replacement counsel was reasonable (see [133]–[135] above).

(b) In *Coromandel*, the applicant requested an adjournment of the arbitral hearing (which was refused), explaining that he had tried to obtain legal counsel "from Hawke's Bay, Cambridge and Whangarei with no success" (at [46]). The court formed the impression that the arbitrator was "not to be deterred" from his decision that the arbitration should proceed on the date fixed "whether or not [the applicant] had legal representation" (at [58]). While the applicant in *Coromandel* informed the arbitrator of his failed attempts to obtain replacement counsel, the Roe Parties did not demonstrate any inability to engage

Version No 1: 24 Nov 2026 (17:50 hrs)

replacement counsel in time for the Hearing and the Tribunal was entitled to factor this into its evaluation of their request for an extension of time (see [133] above).

In my view, any attempt to analogise the present case with *Lockman* and *Coromandel* would be futile.

137 Finally, and in any event, I am not persuaded that the Roe Parties have shown that their lack of legal representation caused actual or real prejudice to them. By the time of SLB's discharge, the Roe Parties had filed their pleadings and witness statements. Mr Roe also had the opportunity to cross-examine Mr Thambyrajah at the Hearing but declined to do so. The Roe Parties' asserted prejudice was thus essentially limited to not having *a lawyer* "test" Acuity's evidence at the Hearing (see [101] above). However, the Roe Parties had to go beyond making a bare suggestion that the conduct of Mr Thambyrajah's cross-examination by a lawyer could reasonably have made a difference to the outcome of the Arbitration. They had to show what, reasonably, a lawyer could have elicited from Mr Thambyrajah; which decision in the Award could reasonably have been affected by the putative evidence elicited by the lawyer and how the decision could have been affected; and the basis for the foregoing contentions. The Roe Parties failed to demonstrate any of these matters.

(2) GT Report Issue

138 I find that the Tribunal's decision not to admit the GT Report into evidence falls within the range of what a reasonable and fair-minded tribunal in those circumstances might have done.

Version No 1: 24 Nov 2026 (17:50 hrs)

139 In the Tribunal's e-mail of 10 July 2025, the Tribunal stated that the GT Report would not form part of the evidence in the Arbitration on the basis that Ms Tan had indicated her withdrawal as the Roe Parties' witness in the Arbitration (see [40] above). The Tribunal elaborated on its reasons for this decision in the Award at [113]–[114]:

> (a) Paragraph 8.9 of PO1 provided that if a witness did not appear despite being called, his evidence may be disregarded altogether or the weight thereof reduced, in the Tribunal's discretion, depending on the reasons for the witness not attending. Paragraph 8.10 of PO1 provided for the Tribunal to be guided by the IBA Rules in all matters pertaining to the evidence of fact witnesses not expressly provided for in para 8 of PO1. Article 4.7 of the IBA Rules provided that if a witness whose appearance had been requested failed without a valid reason to appear for testimony at the evidentiary hearing, the arbitral tribunal shall disregard any witness statement by that witness unless, in exceptional circumstances, the tribunal decided otherwise.
>
> (b) Having regard to these provisions, the Tribunal exercised its discretion to exclude Ms Tan's witness statement and the GT Report exhibited thereto from the evidence in the Arbitration as it would have been unfair to admit this evidence in circumstances where Acuity would be unable to cross-examine Ms Tan on it. Even if the GT Report were to be admitted into evidence, in the absence of cross-examination and corroboration of its contents, it would have carried little or no weight. The Roe Parties had advanced no exceptional circumstances to justify the Tribunal adopting a different approach.

Version No 1: 24 Nov 2026 (17:50 hrs)

140 In my view, the Tribunal correctly identified para 8.9 of PO1 as guiding how it should determine whether to admit the GT Report. I am less certain about the Tribunal's reliance on Art 4.7 of the IBA Rules. As the Tribunal itself previously pointed out in para 15 of its e-mail to the parties dated 6 July 2025 (in the similar context of the Roe Parties seeking to admit Mr Roe's WS into evidence without him appearing for cross-examination), the effect of para 8.10 of PO1 was that the Tribunal would only be guided by the IBA Rules in all matters pertaining to factual evidence where para 8 of PO1 made no express provision, but para 8.9 of PO1 *had* made express provision and so Art 4.7 of the IBA Rules did not apply (see [28] above). However, this is an inconsequential point since the Tribunal did in any event have regard to para 8.9 of PO1 in making its decision.

141 In my judgment, a reasonable and fair-minded tribunal is likely to have concluded as the Tribunal did that the GT Report should not be admitted into evidence as it was unfair to Acuity to do so when Ms Tan would not be present at the Hearing for Acuity to cross-examine her on the same. The Roe Parties in fact did not contest this basic principle of fairness. Instead, they raised unmeritorious technical objections to the Tribunal's decision (see [104] above):

> (a) The Roe Parties asserted that they had no reasonable opportunity to respond to Acuity's request on 10 July 2025 for the Tribunal to disregard the GT Report before the Tribunal made its decision to do so. This protest is unconvincing. As evidenced by Mr Roe's e-mail to the Tribunal dated 18 July 2025 applying to admit the GT Report into evidence despite the Tribunal's previous ruling (which the Tribunal again declined to do on 20 July 2025) (see [48(d)] and [53] above), the Roe Parties felt at liberty to seek to re-open the Tribunal's decision of

Version No 1: 24 Nov 2026 (17:50 hrs)

10 July 2025, did seek to do so on 18 July 2025, and had their request declined after consideration by the Tribunal.

(b) The Roe Parties also argued that they were not required under para 8.7 of PO1 to ensure that Ms Tan appeared at the Hearing to be cross-examined because Acuity did not give notice under para 8.6 of PO1 that it wished to cross-examine her. This argument is a non-starter. By WongP's e-mail dated 10 July 2025 stating Acuity's position that the GT Report should be excluded from the evidence in the Arbitration given that Ms Tan was not presenting herself for cross-examination (see [39] above), Acuity had implicitly notified the Tribunal and the Roe Parties that Acuity wished to cross-examine Ms Tan, in accordance with para 8.6 of PO1 and before the deadline of 15 July 2025 for Acuity to do so under PO4 (see [21(a)] above).

(c) The Roe Parties further complained that they were not given the option to secure Ms Tan's attendance at the Hearing by subpoena. I do not see what this complaint has to do with the Tribunal or Acuity. The Roe Parties were always at liberty to pursue that course if they wished.

(d) More fundamentally, all of the foregoing objections raised by the Roe Parties (i) are not directed towards the non-admission of the GT Report into evidence *per se* and (ii) were not contemporaneously raised before the Tribunal. Instead, they are peripheral quarrels over an alleged lack of opportunity to respond to Acuity's position that the GT Report should not be admitted into evidence. However, it was never the Roe Parties' complaint during the Arbitration that they did not have enough time to respond to Acuity or that they did not have the opportunity to apply for a subpoena. This is a classic case of

Version No 1: 24 Nov 2026 (17:50 hrs)

impermissible hedging, and the Roe Parties cannot now take these points when they had not done so before the Tribunal (see [126] above).

142 I also find the Roe Parties' reliance on *CBP* misconceived (see [105] above). *CBP* is a case concerning an arbitral tribunal's witness gating powers, which is a completely different issue from a tribunal exercising its discretion not to admit a witness statement if that witness does not appear to give evidence and be cross-examined at the evidentiary hearing.

143 Finally, I find that the Roe Parties failed to prove that the admission of the GT Report into evidence could reasonably have made a difference to the outcome of the Arbitration. This is because the Tribunal already expressed its view that even if the GT Report were admitted into evidence, it would have carried little or no weight in the absence of cross-examination of Ms Tan on its contents (Award at [114]).

(3) Cross-examination Issue

144 I find that the Tribunal's refusal to waive the requirement for Mr Roe to attend and present himself for cross-examination at the Hearing falls within the range of what a reasonable and fair-minded tribunal in those circumstances might have done.

145 In the Tribunal's e-mail of 6 July 2025, the Tribunal articulated the reasons for its decision, which may be summarised as follows (see [28] above):

(a) The parties agreed that Mr Roe's evidence was of critical importance.

Version No 1: 24 Nov 2026 (17:50 hrs)

(b) The Medical Report contained insufficient basis for Dr Mir's opinion regarding Mr Roe's mental capacity to be cross-examined as a witness.

(c) Mr Roe's presence as a witness would let the Tribunal evaluate the impact of the slow cognition and poor recall reported by Dr Mir, and to assess what weight to give to his evidence.

146 The Tribunal elaborated on its reasons in the Award:

(a) There was no indication that Mr Roe had been unable to follow advice and provide instructions to his counsel. The Medical Report did not constitute clear or compelling evidence that Mr Roe was unable to participate in the Arbitration (Award at [115]).

(b) Having heard from Mr Roe at the Hearing, the Tribunal did not accept that he lacked the mental capacity to participate in the proceedings; there was an element of exaggeration in Mr Roe's answers in cross-examination that he did not understand the questions and he displayed no difficulty in understanding Ms Roe in the exchanges between them (Award at [116]).

147 In my judgment, a reasonable and fair-minded tribunal is likely to have concluded, as the Tribunal did, that the Medical Report did not provide justification for excusing Mr Roe from cross-examination. Dr Mir's supposed opinion that Mr Roe lacked mental capacity for oral examination comprised merely checked "No" boxes to a series of questions without any elaboration (see [24(f)]–[24(g)] above). The Roe Parties' assertion that Dr Mir's opinion was supposedly substantiated by his "office notes" and "progress notes" is a bare

Version No 1: 24 Nov 2026 (17:50 hrs)

one (see [108] above) because those supposed notes were not exhibited to the Medical Report and were *never* placed before the Tribunal (see [25] above). It is trite law that an expert must provide the reasoning behind his conclusions; an expert report that states conclusions without reasons and which cannot be probed or evaluated is useless and prone to be rejected (*Public Prosecutor v Chia Kee Chen* [2018] 2 SLR 249 at [118]). In particular, for a medical report to be relevant or helpful, the doctor's methodology, diagnostic criteria, clinical observations and substantiation for his conclusions should be provided (see *Miya Manik v Public Prosecutor* [2021] 2 SLR 1169 at [56]). It cannot be gainsaid that the Medical Report fell far short of what was required to establish Mr Roe's alleged lack of mental capacity for cross-examination. The checked "No" boxes were tantamount to bare conclusory statements. While there were references to Mr Roe's medical history of "two ischemic strokes and a left basal ganglia intracerebral hemorrhage" and Dr Mir's observations of "[s]low cognition" and "poor recall" on Mr Roe's part, no link was drawn (much less substantiated) in the Medical Report between these indications and Mr Roe's alleged lack of mental capacity for cross-examination. The Roe Parties argued that the Tribunal inconsistently accepted Dr Mir's opinion that Mr Roe was unfit to fly while refusing to accept Dr Mir's opinion on Mr Roe's mental capacity (see [108] above). This is a misguided objection: Dr Mir's opinion regarding Mr Roe's unfitness to fly was substantiated in the Medical Report with reference to Mr Roe's *physical condition* (see [24(h)] above); in contrast, Dr Mir's opinion on Mr Roe's mental capacity was not substantiated in the Medical Report. The Roe Parties also argued that the Tribunal had conflated general mental capacity to instruct counsel and mental capacity to be cross-examined as a witness (see [108] above). However, if they purported to draw such a distinction, the burden lay on them to show (which they did not)

Version No 1: 24 Nov 2026 (17:50 hrs)

that there was a medical basis for the purported distinction. In the absence of such evidence and in the absence of substantiation in the Medical Report of Mr Roe's supposed lack of mental capacity for oral examination, it was reasonable for the Tribunal to look holistically at Mr Roe's conduct of the Arbitration and infer from his ability to instruct counsel that it was appropriate for him to be subject to cross-examination.

148 While the Roe Parties invited me to assess Mr Roe's performance at the Hearing based on the Hearing transcript (see [110] above), I do not think the court is entitled to substitute its opinion for the assessment of the Tribunal which heard directly from Mr Roe. In my judgment, the Tribunal's assessment, after seeing and hearing from Mr Roe, that he could withstand cross-examination falls within the range of how a reasonable and fair-minded tribunal in those circumstances might have proceeded at the Hearing.

149 I also consider the Roe Parties' reading of *Kanoria* as a case where "the English Court of Appeal upheld the finding that a party's serious illness … meant that it was 'realistically impossible' for him to instruct his legal representatives meaningfully and present his defence" to be erroneous (see [109] above). While the first instance court had set aside the order for enforcement of the arbitral award on the ground that the first defendant ("Mr Guinness") was under a medical incapacity at the relevant time and unable to present his case, on appeal against the first instance decision, the English Court of Appeal declined to resolve the challenge to that ground of decision, considering it unnecessary to do so (at [19]). Instead, the English Court of Appeal upheld the setting aside of the enforcement order on the different ground that Mr Guinness had not been given notice of certain allegations made at the arbitral hearing, based on which the award had been made against him (at [20]–

Version No 1: 24 Nov 2026 (17:50 hrs)

[22], [26]–[27] and [31]–[34]). In any event, the first instance court found that Mr Guinness was under a medical incapacity based on the particular facts of and evidence available in that case (at [18]). This has no bearing on the reasonableness and fairness of the Tribunal's assessment in the present case that nothing warranted excusing Mr Roe from cross-examination.

150 The Roe Parties' reliance on *Amutha* also adds nothing to their case (see [109] above). In fact, in *Amutha*, the dispensation of cross-examination was granted only *after* the witness had broken down and given "patently incoherent" answers on the stand and (after an adjournment of the trial) had been certified unfit to give evidence in court (at [9]–[10]). If anything, this supports the Tribunal's approach (at [145(c)] above) of deciding that Mr Roe should appear at the Hearing so that the Tribunal could evaluate his ability to give oral evidence. The Tribunal's evaluation after hearing from Mr Roe that he did not lack the mental capacity to participate in the proceedings is not, as I have explained at [148] above, for the court to second-guess.

151 For completeness, I also reject the Roe Parties' complaint that they did not have the opportunity to respond to Acuity's 30 June 2025 submissions opposing their application for Mr Roe to be excused from cross-examination (see [108] above). First, it is factually inaccurate that they had no opportunity to respond: they simply missed the deadline to do so without seeking more time to respond (see [27] above). Second, this complaint was not contemporaneously raised before the Tribunal and cannot be belatedly advanced now.

152 Finally, I find that the Roe Parties failed to prove that the non-dispensation of Mr Roe's cross-examination could reasonably have made a difference to the outcome of the Arbitration. This is because the Tribunal based

Version No 1: 24 Nov 2026 (17:50 hrs)

its findings primarily on the documentary evidence, noted that Mr Roe's (written) evidence "in large part consisted of a recitation of the documents", and found that "Mr Roe's cross-examination did not to any significant degree take matters forward" (Award at [122]). In other words, Mr Roe's answers in cross-examination had no prejudicial effect on the Tribunal's substantive determination of the claim and defences in the Arbitration. To the contrary, Mr Roe's attendance and cross-examination at the Hearing entitled Mr Roe's WS (and the documents exhibited thereto) to be admitted into evidence and taken into account by the Tribunal.

(4) Korean Interpreter Issue

153 I find that the Tribunal's decision to proceed with the Hearing notwithstanding Mr Roe's indication at the Hearing that he required a Korean interpreter falls within the range of what a reasonable and fair-minded tribunal in those circumstances might have done.

154 The Tribunal explained, in summary, that:

(a) Prior to the Hearing, there was no indication that Mr Roe required any Korean translation or interpretation in the Arbitration (Award at [117]).

(b) Mr Roe also had no need for a Korean interpreter at the New York Meeting, at which business was discussed, prior to the commencement of the Arbitration (Award at [118]).

(c) Mr Roe had no difficulty understanding Ms Roe when she spoke in English during the Hearing, reading documents written in English and understanding written English (Award at [119]).

Version No 1: 24 Nov 2026 (17:50 hrs)

155 In gist, the Tribunal took the view that no prejudice would be caused to Mr Roe by proceeding with the Hearing without a Korean interpreter present because Mr Roe was able to follow and participate in the Hearing without a Korean interpreter. In my judgment, a reasonable and fair-minded tribunal is likely to have made the same assessment. I also do not think it lies in the Roe Parties' mouth to allege that they were denied the opportunity to present their case due to the absence of a Korean interpreter at the Hearing when, under para 11.6 of PO1, it was their responsibility to engage a Korean interpreter for the Hearing if they so wished (see [12] above). They did not even notify the Tribunal and Acuity, as required under para 11.6 of PO1 and PO4, that Mr Roe was going to give his oral evidence in Korean (see [21(b)] above). Their failure to so notify the Tribunal and Acuity and to engage a Korean interpreter for the Hearing suggests that Mr Roe's purported need for a Korean interpreter was raised as a belated afterthought, in turn belying the purported need itself.

156 For completeness, I reject the Roe Parties' complaint that the Tribunal "did not use the expedient of having Ms Roe testify under oath as a further witness" in the course of her assisting Mr Roe during the Hearing (see [111] above). Neither Mr Roe nor Ms Roe asked at the Hearing for Ms Roe to be permitted to give evidence and it is impermissible for the Roe Parties to take this tack out of left field now. Compounding the egregiousness of their conduct, the complaint was not made in the Roe Parties' supporting affidavit for OA 96 and was impermissibly advanced only in their submissions for OA 96 (see *The Tata Power Co Ltd v Kleros Capital Partners Ltd* [2026] SGHC(I) 15 at [57]–[59]; *Prometheus Marine Pte Ltd v King, Ann Rita* [2018] 1 SLR 1 at [52]).

157 Finally, for reasons similar to those at [152] above, I find that the Roe Parties failed to prove that the absence of a Korean interpreter at the

Version No 1: 24 Nov 2026 (17:50 hrs)

Hearing could reasonably have made a difference to the outcome of the Arbitration: Mr Roe had no difficulty reading his oral opening and closing submissions, and, as the Tribunal indicated, little turned on his oral evidence (Award at [122]).

Conclusion

158 I thus conclude that the Roe Parties' challenge to the Award under Ground 2 fails.

Ground 3: alleged unequal treatment

The Roe Parties' case

159 The Roe Parties submitted that Art 18 of the Model Law functioned as a codified facet of the rules of natural justice and was not a freestanding ground for setting aside an arbitral award. They cited *China Machine* (at [104]) for the proposition that an arbitral award obtained in proceedings conducted in breach of Art 18 was susceptible to being set aside under Art 34(2)(*a*)(ii) and/or s 24(*b*) of the IAA.[198]

160 The Roe Parties submitted that the Tribunal did not treat the parties with equality within the meaning of Art 18 of the Model Law and that the Award should be set aside under Art 34(2)(*a*)(ii) and/or s 24(*b*) of the IAA on this basis. Mr Khoo expressly confirmed that the unequal treatment alleged by the Roe Parties was limited to the two instances described in paras 76.1 and 76.2 of their written submissions, *viz*:[199]

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198 CWS at para 74.

199 Tpt 15 Oct 2026 at p 93:1–6.

Version No 1: 24 Nov 2026 (17:50 hrs)

(a) The Tribunal characterised the Roe Parties' various requests as "tactics". Despite valid and legitimate circumstances for their requests, including seeking more time to find replacement counsel and a Korean interpreter, the Tribunal insisted that the Hearing proceed and stated in the Award at [108] that it was "concerned generally that the [Roe Parties] ha[d] been engaging in tactics designed to put off the Hearing".[200]

(b) The Tribunal drew no equivalent inference against Acuity's own postponement requests. On 25 June 2025, Acuity applied for an extension of time from 11 July 2025 to 1 August 2025 to file its amended Reply and factual witness statements. Even though the Tribunal found that Acuity had not provided any detailed explanation of why the requested extension was required, the Tribunal granted Acuity a short extension of time to a mutually agreeable date (which was eventually that of 15 July 2025).[201]

Acuity's case

161 Acuity rejected the Roe Parties' assertion of unequal treatment arising from the Tribunal not drawing the same inference against Acuity of engaging in tactics to delay the Hearing. There were significant differences between the conduct of Acuity and the Roe Parties, and it was the series of steps taken by the latter that led to the Tribunal's observation that they had engaged in delay tactics.[202] In any case, nothing turned on this observation because the Tribunal

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200 CWS at para 76.1.

201 CWS at para 76.2.

202 JT at paras 97(b)–97(c); Tpt 15 Oct 2026 at pp 129:2–6 and 132:13–133:3.

Version No 1: 24 Nov 2026 (17:50 hrs)

did not find against the Roe Parties on any substantive point on account of this; the Tribunal gave detailed reasons for its procedural decisions in respect of the Roe Parties' four complaints of unfairness (under Ground 2) and those decisions were justified.[203]

Decision

The applicable law

162 Article 18 of the Model Law states: "The parties shall be treated with equality and each party shall be given a full opportunity of presenting his case".

163 The Roe Parties' challenge under Ground 3 focuses on the Tribunal's alleged unequal treatment of the parties. In *Triulzi*, Belinda Ang J (as she then was) emphasised that the term "equality" must be interpreted reasonably in regulating the procedural aspects of the arbitration: Art 18 of the Model Law did not require the arbitral tribunal to ensure that the parties were treated identically, but rather, was about the tribunal applying similar standards to the parties throughout the arbitral process (at [112]). Further, equality of treatment is ultimately considered together with the requirement that each party be given a full opportunity to present his case: if the parties are accorded a full opportunity to present their case, the tribunal is not concerned with whether or not an exactly equal time or an exact equal number of pleadings or speeches is accorded to each party (*Triulzi* at [112], citing *Singapore International Arbitration: Law & Practice* (David Joseph and David Foxton gen eds) (LexisNexis, 2014) at para 2.13). An arbitral award obtained in proceedings conducted in breach of Art 18 is thus susceptible to being set aside under

[203] JT at paras 97(d) and 98; Tpt 15 Oct 2026 at pp 131:17–132:9 and 133:4–11.

Version No 1: 24 Nov 2026 (17:50 hrs)

Art 34(2)(*a*)(ii) and/or s 24(*b*) of the IAA on the ground that the applicant did not have a reasonable opportunity to present his case (*China Machine* at [104(a)]; *Triulzi* at [124]). Indeed, this is how the Roe Parties have premised their challenge under Ground 3.

Application of the law to the facts

164 In my judgment, there is no merit to the Roe Parties' contention that the Tribunal treated the parties unequally in so far as it took the view that the Roe Parties had engaged in delay tactics but did not draw a similar inference against Acuity (see [160] above). The Tribunal was entitled to take the view that the procedural conduct of the Roe Parties and Acuity in the Arbitration differed qualitatively, and to draw different inferences from their respective conduct. This cannot reasonably amount to unequal treatment of the parties.

165 To the extent the Roe Parties relied on the same complaints of breach of natural justice under Ground 2, their challenge under Ground 3 was superfluous and added nothing. As Ang J pointed out in *Triulzi*, "there is in effect no need to rely on Art 18 [of the Model Law] since the principles there accord with the principles of natural justice in both s 24(*b*) of the IAA and Art 34(2)(*a*)(ii)" (at [124]).

Conclusion

166 I thus conclude that the Roe Parties' challenge to the Award under Ground 3 fails.

Version No 1: 24 Nov 2026 (17:50 hrs)

Conclusion

167 I have found that all the Roe Parties' grounds of challenge to the Award fail. Consequently, OA 96 is dismissed.

Costs

168 Mr Khoo and Mr Tiong accepted that costs should follow the event.[204] Costs should thus be awarded to Acuity as the successful party in OA 96.

169 Acuity sought indemnity costs on the basis that it had made a *Calderbank* offer to the Roe Parties on 14 August 2026 to settle the matter on the basis that the Roe Parties pay to Acuity the sums of US$9,008,278.84 and S$749,274.08. Acuity's offer remained open for acceptance until 28 August 2026.[205] While I accept that the Roe Parties would have had to make an overall lower quantum of payment to Acuity under the terms of Acuity's offer as compared to that under the Award (see [64] above) and that Acuity's offer was thus more favourable than the outcome obtained by the Roe Parties in OA 96 given my dismissal of their application, I decline to order indemnity costs against the Roe Parties given that Acuity's offer was open for only a relatively short period and has long been withdrawn.

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204 Tpt 19 Oct 2026 at p 79:13–16.

205 RWS at para 79.

Version No 1: 24 Nov 2026 (17:50 hrs)

170 I therefore order that costs of OA 96 be paid on a standard basis by the Roe Parties jointly and severally to Acuity. I will issue further directions regarding the fixing of the quantum of costs.

- Sgd -
Kristy Tan
Judge of the High Court

Randolph Khoo, Phyllis Chin and Swan Low (Drew & Napier LLC) for the claimants;
Tiong Teck Wee, Samuel Teo, Frederick Teo and Koh Chiu Hwee (WongPartnership LLP) for the respondent.

Version No 1: 24 Nov 2026 (17:50 hrs)