

BOOK REVIEW

by Albert Monichino, SC

Singapore Law on Arbitral Awards, by Chan Leng Sun, SC
(Academy Publishing, 2011); 376pp, softcover;
ISBN 978-981-08-8812-1

Singapore is widely regarded as the leading international arbitration hub in the Asia-Pacific region for the resolution of cross-border disputes. Like many jurisdictions in Asia-Pacific, its International Arbitration Act ('IAA') is based on the UNCITRAL Model Law on International Commercial Arbitration ('Model Law'). Its phenomenal success in large part is due to a concerted collaborative effort by all stakeholders – the Singapore Government (which has committed a huge amount of resources in building up the arbitration infrastructure in Singapore), the judiciary (which has demonstrated a sophisticated appreciation of the needs of arbitration users) and the legislature (which is not averse to introducing statutory amendments in order to ensure that Singapore's arbitral law at all times reflects international best practice).

It is therefore opportune to review the recent book by Chan Leng Sun (Mr Chan) who co-heads the Dispute Resolution practice group of the Singapore office of Baker & McKenzie, Wong & Leow. Mr Chan is a Senior Counsel, arbitrator and adjudicator, and Vice President of the Singapore Institute of Arbitrators (SI Arb).

As the title reflects, the book is not a general treatise on arbitration. Rather, it focuses on the Singapore law on arbitral awards from the perspective of awards made in Singapore, alternatively outside of Singapore but sought to be enforced in Singapore. The recently appointed Chief Justice of Singapore (then the Attorney-General of Singapore, Sundaresh Menon, SC) relates the importance and depth of the book in its Foreword. It comprises seven chapters. Each chapter is logically structured and divided into numbered paragraphs, and there is a helpful Table of Contents and Index. Throughout the book, detailed references are made to Singaporean, Hong Kong, Australian and English case law.

Chapter 1 (entitled 'Introduction') contains an introduction to the legislative framework of the Singapore arbitration system. It explains that the IAA is largely based on the Model Law and implements the Convention on the Recognition and Enforcement of Foreign Arbitral Awards ('New York Convention'). As well as the IAA, Singapore has a domestic Arbitration Act. The texts of both Acts are appended to the book.

Chapter 2 (entitled 'Interim, Partial and Final Awards') begins by defining an 'award'. It analyses the distinction between interim, partial and final awards. It considers whether rulings on jurisdiction (both negative and positive) and orders for interim measures are, properly considered, an award. The author concludes that an award should be limited to decisions on substantive matters as opposed to decisions on jurisdiction, procedure or interim measures. The chapter then discusses the grant of interim measures by the arbitral tribunal and the court, and the enforcement of interim measures.

Chapter 3 (entitled 'Form and Contents of Award') covers the legal requirements for a valid arbitral award, including writing, signature, reasons, date, place (ie seat), delivery, interest and costs. The chapter contains a discussion of the considerations that an arbitrator must bear in mind in producing an enforceable award. Mr Chan notes that the award should only deal with disputes submitted to arbitration and that the parties should not be left in any doubt as to what has been decided, and who is to pay or do what. This chapter, like Chapter 2, serves as a valuable reference for arbitrators.

Chapter 4 (entitled 'Effect of an Award') explains the 'final and binding' effect of the award, the slip rule and remission of the award (under Article 34(4) of the Model Law).

In my view, Chapters 5 to 7 are the most useful parts of the book. They deal with the important questions of setting aside arbitral awards (under Article 34 of the Model Law) and enforcement of arbitral awards (under Articles IV and V of the New York Convention, which find their counterpart in Articles 35 and 36 of the Model Law). Applications for setting aside, alternatively enforcement, are in many cases very hard fought. Chapters 5 to 7 identify relevant Singaporean case law in respect of each ground of challenge, which is quite developed in this area.

Chapter 5 (entitled 'Enforcement of the Award') considers the procedural aspects for the enforcement of awards in Singapore. Awards made in Singapore and foreign awards are treated separately. The chapter considers, amongst many issues, the distinction between recognition and enforcement. Mr Chan explains the two-stage process of enforcement in Singapore. Mr Chan discusses the thorny question of the nature of the onus cast on the award creditor at the first stage of the enforcement process where enforcement is sought against a non-signatory to the arbitration agreement who disputes

that there is any valid arbitration agreement between the award creditor and the award debtor. This chapter also considers alternative means of enforcing a foreign award other than through the New York Convention, including by common law action on the award. These alternative means are preserved by section 33(1) of the IAA.

Chapter 6 (entitled 'Recourse against an Award') separately considers recourse against an award under the domestic Singapore arbitration Act and under the IAA. Under the domestic Act, an appeal may be brought on a question of law arising out of an award, either with the parties' agreement or with the leave of the Court. On the other hand, the ability to set aside an arbitral award under the IAA is extremely limited. The award debtor must establish one of the exhaustive grounds set out in Article 34 of the Model Law. Each of these specific grounds is considered in turn with reference to Singaporean and international case law.

The final chapter, Chapter 7 (entitled 'Resisting Recognition and Enforcement'), considers the grounds for resisting recognition and enforcement of awards. The focus is on New York Convention awards (ie awards made in New York Convention signatory States). Before considering each of the limited grounds for resisting enforcement (under Article V of the New York Convention), Mr Chan considers some tricky questions. One such question is whether an award debtor who has mounted an unsuccessful challenge to set aside the award before the supervisory court at the seat of the arbitration may resist enforcement of the award before the enforcement court by raising the same grounds of objection, or whether some form of estoppel arises.

Mr Chan's book is both a scholarly work and a practical guide. It makes a valuable contribution to the development of international arbitration law and practice in the Asia-Pacific region. It is of great assistance not only to those involved or interested in arbitrations seated in Singapore, but also to those involved or interested in arbitrations seated in other Model Law jurisdictions. This includes practitioners, judges, academics and students alike. I have no hesitation in recommending it.

