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This issue of *Asian Dispute Review* commences with an article by Albert Monichino QC analysing the high-profile *Astro v Lippo* dispute and related line of court decisions from Singapore and Hong Kong regarding the enforcement of five arbitral awards made in Singapore. This is followed by an article by Peter J Pettibone discussing the Prague Rules on the Efficient Conduct of Proceedings in International Arbitration 2018, how they relate to the IBA Rules on the Taking of Evidence in International Arbitration 2010 and how they may serve the needs of parties, particularly those from the PRC, who are more familiar with a civil law-type procedure.

Tom Villalón then explores how ICSID’s latest review of its Arbitration Rules may be assisted by recent editions of procedural rules adopted by arbitral institutions in East Asia. This is followed by the ‘In-house Counsel Focus’ article by Joe Liu on the most salient provisions of the HKIAC’s recently adopted Administered Arbitration Rules 2018, which are helpfully explained through the use of a case scenario.

The ‘Jurisdiction Focus’ article by Nominchimeg Odsuren discusses important changes made to international arbitration in Mongolia by the Revised Arbitration Law of 2017 and key cases decided under it in 2018 by Mongolia’s Court of Civil Appeals.

The issue concludes with a book review by Professor Leon Trakman of Anna G Tevini’s treatise, *Regional Economic Integration and Dispute Settlement in East Asia: The Evolving Legal Framework*.

We take this opportunity to wish you all the very best for 2019 and look forward to providing you with more insights into the world of dispute resolution in the Asian region in the year ahead – which will mark the 20th anniversary of *Asian Dispute Review*.
Lessons for Enforcement Across Jurisdictions: Reflections on *Astro v Lippo*

Albert Monichino QC*

This article reviews the line of decisions from the courts of Singapore (2012-2013) and Hong Kong (2010-2017) arising out of the enforcement of five international arbitral awards made in Singapore. It discusses the active and passive remedies that are available to judgment debtors under the UNCITRAL Model Law, the application of the ‘good faith’ principle to the enforcement of awards and whether art 16(3) of the Model Law has a preclusive effect where awards are challenged for lack of jurisdiction.

Introduction

Now that the dust has settled in the titanic *Astro v Lippo* saga, it is opportune to reflect on the major lessons to be learned from the string of Singapore and Hong Kong cases which culminated in the decision of the Hong Kong Court of Final Appeal (HKCFA) handed down on 11 April 2018.¹ After briefly outlining the facts and the series of court decisions,² this article explores three major themes that flow from those decisions:

1. The choice of active and passive remedies that lie at the heart of the UNCITRAL Model Law on International Commercial Arbitration (the Model Law);
2. The ‘good faith’ principle that underlies the enforcement of awards under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (the New York Convention)³ and the Model Law; and
3. The preclusive effect of art 16(3) of the Model Law vis-à-vis setting aside or resisting the enforcement of an award.
award made on the merits on the ground of an arbitral tribunal’s lack of jurisdiction.

The facts
Back in 2005, Indonesian conglomerate Lippo and Malaysian media group Astro entered into a joint venture (JV) to provide satellite television services in Indonesia. The JV was the subject of a subscription and shareholders’ agreement (SSA) governed by Singaporean law. The SSA contained an arbitration agreement providing for arbitration in Singapore in accordance with the SIAC Rules. In anticipation of closing, the JV was funded by certain companies associated with Astro but not party to the SSA (the ‘Additional Astro Parties’). When the JV did not close, a dispute arose over funding. In October 2008, Astro initiated arbitral proceedings in Singapore under the 2007 SIAC Rules, as permitted by the SSA.

At the outset, Astro applied to join the Additional Astro Parties (which consented) as co-claimants in the arbitration. Despite Lippo’s objections, the arbitral tribunal granted the joinder application and held in a preliminary award that it had jurisdiction to entertain the claims sought to be advanced by the Additional Astro Parties. At a second preliminary hearing, Lippo’s senior counsel told the tribunal that it had no challenge to the preliminary award. However, in its subsequent statement of defence, Lippo stated that its actions were to be taken “without prejudice to [Lippo’s] position” that the tribunal lacked jurisdiction to hear and determine claims brought by the Additional Astro Parties.

Notably, Lippo did not apply for court review of the preliminary ruling on jurisdiction pursuant to art 16(3) of the Model Law as enacted in Singapore. Instead, Lippo purported to “strictly reserve” its rights with regard to jurisdiction and continued to participate in the arbitration. Lippo ultimately lost the arbitration, with several awards on the merits leaving it liable for more than US$130 million – nearly all of it payable to the Additional Astro Parties.

The Additional Astro Parties applied to enforce the awards in Singapore, Hong Kong and elsewhere. Lippo, which did not seek to set aside the awards, resisted their enforcement in Singapore on the basis that the tribunal lacked jurisdiction to grant relief in favour of the Additional Astro Parties.

Proceedings in Singapore
In October 2012, Belinda Ang J of the Singapore High Court enforced the awards in favour of the Additional Astro Parties. Her Honour found Lippo’s reservation of rights in the arbitration to be ineffective. As Lippo remained an active participant in the arbitration, she held that it was precluded from resisting enforcement of the awards on the basis of a jurisdictional objection that had been determined against it by the arbitral tribunal. This was so because Lippo could have requested the court at the seat to review the tribunal’s preliminary ruling on jurisdiction under art 16(3) of the Model Law, but had not done so.

In October 2013, the Singapore Court of Appeal reversed Belinda Ang J’s decision, holding, on the basis of the true construction of the joinder provision contained in the 2007 SIAC Rules, that the tribunal lacked jurisdiction over the Additional Astro Parties. In so doing, the Court of Appeal underlined the existence of ‘active’ and ‘passive’ remedies available to an award debtor under the Model Law. It rejected the argument that Lippo had waived its rights to rely on the jurisdictional objection by virtue of its continued participation in the arbitration.

The upshot was that Lippo’s decision not to seek review of the tribunal’s preliminary ruling on jurisdiction under art 16(3) of the Model Law (an active remedy) did not prevent it from resisting enforcement of the awards in Singapore (a passive remedy).

Proceedings in Hong Kong
At the same time that they sought to enforce the awards in Singapore, the Additional Astro Parties attempted to enforce them in Hong Kong. Initially, Lippo did not resist enforcement of the awards in Hong Kong, believing that it
did not have assets there. A default judgment enforcing all five awards was entered in Hong Kong in December 2010. When, in July 2011, the Additional Astro Parties learned of a US$55 million loan made by Lippo to its parent company in Hong Kong, they brought garnishee proceedings. This led Lippo, in January 2012, to apply – 14 months out of time – to the Hong Kong High Court to seek leave to set aside the ex parte orders granting leave to enforce the awards and the consequent default judgment. In March 2012, the Hong Kong proceedings were stayed pending determination of the Singapore proceedings.

... [T]he Court of Appeal underlined the existence of ‘active’ and ‘passive’ remedies available to an award debtor under the Model Law. It rejected the argument that Lippo had waived its rights to rely on the jurisdictional objection by virtue of its continued participation in the arbitration. ... Lippo’s decision not to seek review of the tribunal’s preliminary ruling on jurisdiction under art 16(3) of the Model Law (an active remedy) therefore did not prevent it from resisting enforcement of the awards in Singapore.  

Following the Singapore Court of Appeal’s decision, the Hong Kong proceedings were re-activated. The Hong Kong High Court stayed execution of the garnishee order. Upholding the decision below, the Hong Kong Court of Appeal (HKCA) observed that it would be “remarkable” if the Additional Astro Parties were able to enforce in Hong Kong awards made without jurisdiction.

Nevertheless, in February 2015, Chow J of the Hong Kong High Court dismissed Lippo’s application to set aside the ex parte orders and the default judgment enforcing the awards. The primary basis of Chow J’s decision was that Lippo had not acted in ‘good faith’ during the Singapore arbitration – in particular, by continuing to participate in the arbitration following the adverse preliminary ruling on jurisdiction without availing itself of the right under art 16(3) of the Model Law to seek immediate court review of that ruling. According to Chow J, Lippo was precluded from relying on s 44(2) of the Arbitration Ordinance (Cap 609) (the Ordinance) to resist enforcement of the awards in Hong Kong. Separately, His Honour held that he was not prepared to exercise the discretion to extend time to allow Lippo to apply to set aside the ex parte orders and default judgment out of time.

In December 2016, the HKCA (Kwan JA and Lok J) affirmed Chow J’s decision on limited grounds. While the Court found that Chow J had not erred in refusing to extend time for Lippo to apply to resist enforcement of the awards, it disagreed with Chow J’s application of the ‘good faith’ principle. In particular, it considered that Chow J had failed to accord proper weight to the fact that the so-called ‘bad faith’ conduct was conduct that the Singapore Court of Appeal considered to be acceptable under Singapore law (ie the law of the seat).

In August 2017, the HKCFA granted Lippo leave to appeal on limited grounds, in particular:

1. the proper test for determining whether an extension of time should be granted for the purposes of resisting enforcement of a New York Convention award, and
2. whether the fact that an award had not been set aside at the arbitral seat was a relevant factor in exercising the discretion whether or not to extend time.
In April 2018, the HKCFA (Ma CJ, Ribeiro, Tang and Fok PJJ and Lord Reed NPJ) reversed the decisions below and granted Lippo’s application for an extension of time to apply for leave to set aside the *ex parte* orders and default judgement. It is now inevitable that the *ex parte* orders and default judgment enforcing the five Singapore awards will be set aside when the matter comes back before Chow J.

Choice of remedies: active and passive remedies

According to the Singapore Court of Appeal:

1. articles 16(3) and 34 of the Model Law are ‘active’ remedies that enable award debtors to take a positive step in challenging an arbitrator’s jurisdiction, while
2. article 36 of the Model Law involves a ‘passive’ remedy. That is, the award debtor can wait until the award creditor brings an enforcement application and then challenge the arbitral tribunal’s jurisdiction.

The Singapore Court of Appeal considered that the Model Law’s *travaux préparatoires* made clear that the “choice of remedies” lies at “the heart of [the Model Law’s] entire enforcement regime”. As such, an award debtor is *prima facie* entitled to choose to apply to set aside an award at the arbitral seat or wait to resist any application for enforcement (whether at the seat or abroad).

In Hong Kong, the High Court, the HKCA and the HKCFA all accepted the choice of remedies principle, holding that it was part of Hong Kong law. However, the HKCA considered that whether the award had been set aside at the arbitral seat was a relevant factor in deciding whether to exercise the discretion to extend time to challenge the enforcement of an award in Hong Kong. The HKCFA disagreed, saying that this view eroded the choice of remedies principle by punishing an award debtor for not applying to set aside the award at the seat.

The jurisprudence from the Singapore Court of Appeal and the HKCFA therefore establishes that a choice of remedies principle operates under the Model Law and the New York Convention.
“Good faith’ principle

The idea that good faith may inform the enforcement of arbitral awards was first raised in Hong Kong by Kaplan J in the *China Nanhai* case\(^\text{23}\) and was endorsed by the HKCFA in the *Hebei v Polytek* case.\(^\text{24}\)

At first instance, Chow J, citing *China Nanhai* and *Hebei*, acknowledged that the good faith principle was distinct from, but related to, estoppel.\(^\text{25}\) Notwithstanding that Lippo’s jurisdictional objection had been fairly raised with the arbitral tribunal, Chow J considered that Lippo had not acted in good faith – in particular, by failing to activate its right of review under art 16(3) of the Model Law and instead continuing to participate in the arbitration and only seeking to challenge the jurisdictional ruling in court proceedings once it had lost the arbitration.\(^\text{26}\)

Chow J dealt with good faith and the statutory discretion under s 44(2) of the Ordinance as two separate matters. For His Honour, a breach of the good faith principle operated to estop Lippo from relying on one of the grounds for resisting enforcement contained in s 44(2). In other words, it was preliminary to, and separate from, the exercise of the residual discretion contained in s 44(2)\(^\text{27}\) to enforce an award notwithstanding that one or more of the grounds for resisting enforcement had been made out.

Chow J acknowledged that the Singapore Court of Appeal had held the awards to be unenforceable in Singapore on the grounds of lack of jurisdiction (which holding His Honour acknowledged he was bound to follow).\(^\text{28}\) In his view, however, Lippo could not resist enforcement of the awards in Hong Kong (assuming that leave was granted to challenge enforcement of the awards out of time).

While the HKCA accepted that good faith operated in relation to the enforcement of Convention awards and was related to estoppel,\(^\text{29}\) it disagreed with Chow J regarding the application of the principle.

Firstly, while Chow J acknowledged that the concept of good faith could not be considered in a legal vacuum, he had given insufficient weight to the fact that the Singapore Court of Appeal had ruled that (as a matter of the law of the seat) Lippo was perfectly entitled to act as it did in Singapore.\(^\text{30}\) The HKCA did observe more generally that good faith should not be applied dogmatically and that it –

\[\text{would not subscribe to the view that the principle would have no application to the omission to bring a challenge under Article 16(3) in any circumstances.}\]

(\(^\text{31}\) emphasis added).

Secondly, the HKCA held that Chow J’s approach to ‘good faith’ was erroneous. That is, if applicable, a lack of good faith informed the exercise of the single discretion in s 44(2) of the Ordinance whether or not to refuse enforcement of an award. It did not operate independently of the exercise of that discretion.\(^\text{32}\)
‘The HKCA … observed … that good faith should not be applied dogmatically and that … a lack of good faith informed the exercise of the single discretion in s 44(2) of the Ordinance whether or not to refuse enforcement of an award. It did not operate independently of the exercise of that discretion. … [The Court] also … considered that the ‘good faith’ and the ‘choice of remedies’ principles were “not mutually exclusive but complementary”. … By way of obiter, the HKCFA endorsed the HKCA’s approach to good faith.’

Notably, the HKCA considered that the ‘good faith’ and the ‘choice of remedies’ principles were “not mutually exclusive but complementary”. That is, good faith should not undermine the choice of remedies principle.

So far as the exercise of discretion was concerned, the HKCA considered that the fact that the Singapore Court of Appeal had refused to enforce the awards on the basis that they had been made without jurisdiction (which the HKCA considered to be a “fundamental defect”) strongly militated against exercising the discretion to enforce the awards in Hong Kong.

By way of obiter, the HKCFA endorsed the HKCA’s approach to good faith. In particular, the HKCFA considered that a decision of the court at the seat was “of central importance” when considering the application of the good faith principle.

It did not displace the lower courts’ conclusions regarding the relationship between estoppel and good faith.

Three main conclusions can be drawn from the Hong Kong proceedings.

Firstly, in considering whether a party to an arbitration has breached the good faith principle, it is of paramount importance to consider the views of the supervisory court at the seat in so far as the alleged offending conduct is concerned.

Secondly, the good faith principle operates to inform the residual discretion whether or not to enforce Convention awards.

Finally, good faith is complementary to the choice of remedies principle – it does not undermine an award debtor’s ability to resist the enforcement of an award, notwithstanding that it has not sought to set aside the award at the arbitral seat.

Preclusive effect of article 16(3) of the Model Law

As previously stated, the Singapore Court of Appeal held that where an arbitral tribunal has made a preliminary ruling on jurisdiction, an award debtor which fails to seek art 16(3) review would not be precluded from resisting enforcement of the award under art 36 of the Model Law on jurisdictional grounds. The Singapore Court of Appeal opined (without deciding) that in such a situation the award debtor would, however, be barred from raising a jurisdictional objection under art 34 of the Model Law at the setting aside stage.

The Court of Appeal’s comments were made in the context of a party, like Lippo, that continued to participate in the arbitration following a preliminary ruling on jurisdiction. There is a question whether a party that does not participate in the arbitration at all or, alternatively, boycotts the arbitration following a preliminary ruling on jurisdiction, would be similarly barred from later applying to set aside an award on the basis that the tribunal lacked jurisdiction.
In *obiter* comments, Belinda Ang J, relying on the *travaux préparatoires* to the Model Law, suggested that boycotting parties would be able to rely later on a jurisdictional objection to set aside or resist the enforcement of an award.\(^{41}\) Her Honour’s comments were not doubted by the Singapore Court of Appeal. Indeed, the Court of Appeal did not consider the position of non-participating or boycotting parties.

However, in *Rakna Arakshaka Lanka Ltd v Avant Garde Maritime Services (Private) Ltd*,\(^{42}\) Loh J recently held that art 16(3) of the Model Law would have a preclusive effect on non-participating parties.\(^{43}\) Extrapolating from the Singapore Court of Appeal’s *obiter*,\(^{44}\) His Honour held that art 16(3) has a preclusive effect in relation to non-participating parties. His Honour implicitly regarded Belinda Ang J’s *obiter* comments as wrong. *Rakna* is now under appeal.

In the author’s view, *Rakna* was wrongly decided. Firstly, the Singapore Court of Appeal did not consider the position of non-participating or boycotting parties. Secondly, Loh J did not directly engage with the *Analytical Commentary* relied on by Belinda Ang J, in particular:

> “[Article 34 and Article 36] would remain applicable and of practical relevance to those cases where a party raised the plea in time but without success or where a party did not participate in the arbitration, at least not submit a statement or take part in hearings on the substance of the dispute.”\(^{45}\) (Emphasis added)

The better view is that the reference to “a party [who] raised the plea in time but without success” is a reference to a boycotting party. On the other hand, the reference to “a party [who] did not participate in the arbitration” is clearly a reference to a non-participating party.

Thirdly, there is no good reason why art 16(3) should have a preclusive effect in relation to a non-participating party. Loh J highlighted wasted costs, wasted time and preventing dilatory tactics as reasons why art 16(3) should operate preclusively.\(^{46}\) These vices cannot, however, be levelled at a boycotting party, let alone one that does not participate in the arbitration at all.

Accordingly, Singaporean case law on the preclusive effect of art 16(3) of the Model Law is presently unresolved. \[... [T]here is no good reason why art 16(3) should have a preclusive effect in relation to a non-participating party. Loh J [in the *Rakna* case] highlighted wasted costs, wasted time and preventing dilatory tactics as reasons why art 16(3) should operate preclusively. These vices cannot, however, be levelled at a boycotting party, let alone one that does not participate in the arbitration at all.\]

**Conclusion**

*Astro v Lippo* has spawned a series of important cases in both Singapore and Hong Kong that inform the interpretation and application of the Model Law and the New York Convention in the Asia-Pacific. Given the emerging regional convergence, this jurisprudence is likely to be followed in Australia.\(^{47}\)
That said, a number of important issues remain unresolved, notably:

(1) when, if at all, an award debtor’s failure to apply to review a preliminary ruling on jurisdiction under art 16(3) will amount to a breach of good faith for the purposes of art 36 of the Model Law or art V of the New York Convention;

(2) when, if at all, an enforcement court should exercise the discretion contained in art 36 of the Model Law or art V of the New York Convention to enforce an award made without jurisdiction (ie, an award suffering from a fundamental defect) if the award debtor has not acted in good faith; and

(3) whether art 16(3) has a preclusive effect vis à vis art 34 of the Model Law in respect of a non-participating or boycotting party.

* The author gratefully acknowledges the valuable assistance of Alan de Rochefort-Reynolds, MIR (Melb), JD (Melb) in the preparation of this article.

1 Astro Nusantara International BV v PT Ayunda Prima Mitra (2018) 21 HKCFAR 118.
2 Some of which (other than the HKCFA decision) have been the subject of discussion in earlier articles published in this journal. See Mark Mangan & Darius Chan, The Singapore Court of Appeal’s Decision in Astro: Providing Clarity or Causing Uncertainty? [2014] Asian DR 89-93; Alfred Wu & Daniel Ng, The Hong Kong Courts’ Approach to the Enforcement of Foreign Arbitral Awards [2017] Asian DR 125-130 at 129-130; and Cameron Hassall & Thomas Walsh, Hong Kong Update [2017] Asian DR 87-92 at 89.
4 The tribunal found that rule 24(b) of the 2007 SIAC Rules (which read: “The Tribunal shall have the power to . . . allow other parties to be joined in the arbitration with their express consent and make a single final award determining all disputes among the parties to the arbitration.”) enabled any parties that were not parties to an arbitration agreement to become parties to it so long as they consented to being joined.
5 Under s 10 of Singapore’s International Arbitration Act (Cap 143A), a party may apply to the supervisory court to review both a positive and a negative preliminary ruling on jurisdiction. By contrast, art 16(3) of the Model Law only permits court review of a positive preliminary ruling on jurisdiction.
6 The awards made in favour of Astro were satisfied.
8 PT First Media TBK v Astro Nusantara International BV [2014] 1 SLR 372. Whether or not a Hong Kong court would have come to the same view remains to be seen.
9 Astro Nusantara International BV v PT Ayunda Prima Mitra (note 1 above), at [13].
12 Which gives effect to art V of the New York Convention in Hong Kong.
13 Astro Nusantara International BV v PT Ayunda Prima Mitra (note 11 above), at [91].
16 Astro Nusantara International BV v PT Ayunda Prima Mitra (note 1 above).
17 Article 16(3) provides that: “The arbitral tribunal may rule on a plea referred to in paragraph (2) of this article either as a preliminary question or in an award on the merits. If the arbitral tribunal rules as a preliminary question that it has jurisdiction, any party may request, within thirty days after having received notice of that ruling, the court specified in article 6 to decide the matter, which decision shall be subject to no appeal; while such a request is pending, the arbitral tribunal may continue the arbitral proceedings and make an award.” (Emphasis added)
18 PT First Media TBK v Astro Nusantara International BV (note 8 above), at [65]-[74]. Editorial note: It is not, however, clear why the Court of Appeal focused on art 36 of the Model Law, given that this provision does not apply in Singapore (see s 3(1) of the International Arbitration Act (Cap 143A) (as acknowledged by the Court at [18]). There is no provision having equivalent effect in the International Arbitration Act with regard to the enforcement of Singapore of a Singapore-seated international award. By contrast, this problem does not arise in relation to Hong Kong-seated international awards because of the existence of s 87 of the Arbitration Ordinance (Cap 609).
19 Ibid, at [65].
20 Astro Nusantara International BV v PT Ayunda Prima Mitra (note 11 above), at [83]-[84]; Astro Nusantara International BV v PT Ayunda Prima Mitra (note 14 above), at [69]; Astro Nusantara International BV v PT Ayunda Prima Mitra (note 1 above), at [74]-[76].
21 Astro Nusantara International BV v PT Ayunda Prima Mitra (note 14 above), at [85].
22 Astro Nusantara International BV v PT Ayunda Prima Mitra (note 1 above), at [76]. “[T]he decisions of the Courts below to treat the fact that the awards have not been set aside in Singapore as a major factor in refusing a time extension come into conflict with the choice of remedies principle.”
25. Astro Nusantara International BV v PT Ayunda Prima Mitra (note 11 above), at [77]–[87].

26. Ibid, at [91].

27. Reflecting art V of the New York Convention.

28. Astro Nusantara International BV v PT Ayunda Prima Mitra (note 11 above), at [93].

29. Astro Nusantara International BV v PT Ayunda Prima Mitra (note 14 above), at [37], [57].

30. Ibid, at [47].

31. Ibid, at [68].

32. Ibid, at [53].

33. Ibid, at [68].

34. Ibid, at [69].

35. Ibid, at [59]. The HKCA endorsed the comments made by the Court of Appeal (England & Wales) in Dallah Estate and Tourism Holding Company v Ministry of Religious Affairs, Government of Pakistan [2010] 2 WLR 805, in particular at [87] (per Rix LJ) and [61] (per Moore-Bick LJ) and the UK Supreme Court in Dallah Real Estate and Tourism Holding Company v Ministry of Religious Affairs, Government of Pakistan [2011] 1 AC 763, in particular at [68] (per Lord Mance).

36. Astro Nusantara International BV v PT Ayunda Prima Mitra (note 1 above), at [41]. Given the limited nature of the appeal, the good faith principle was not squarely before the Court.

37. Ibid, at [40].

38. Ibid, at [37]–[44].

39. See, however, the Editorial Note at note 18 above.

40. PT First Media TBK v Astro Nusantara International BV (note 8 above), at [130].

41. Astro Nusantara International BV v PT Ayunda Prima Mitra (note 7 above), at [133], [141].

42. [2018] SGHC 78.

43. Ibid, at [71].

44. Ibid, at [63], citing PT First Media TBK v Astro Nusantara International BV (note 8 above), at [130], [132].


46. Rakna Arakshaka Lanka Ltd v Avant Garde Maritime Services (Private) Ltd (note 42 above), at [71].

47. TCL Air Conditioner (Zhongshan) Co Ltd v Castel Electronics Pty Ltd (2014) 311 ALR 387, at [75] (Allsop C.J, Middleton and Foster JJ): “[I]t is not only appropriate, but essential, to pay due regard to the reasoned decisions of other countries where their laws are either based on, or take their content from, international conventions or instruments such as the New York Convention and the Model Law. It is of the first importance to attempt to create or maintain … a degree of international harmony and concordance of approach to international commercial arbitration. This is especially so by reference to the reasoned judgments of common law countries in the region, such as Singapore, Hong Kong and New Zealand. Such is a reflection of the growing recognition of the harmony of what can be seen as the ‘law of international commerce’.”