

Insights

POWERS OF CORRECTION: THE TRIBUNAL'S POWER TO CORRECT AWARDS

A HONG KONG SAR AND SINGAPOREAN PERSPECTIVE

Nov 05, 2020

Everybody makes mistakes and arbitral tribunals are no exception. Awards may contain typographical or arithmetical errors that require correction. In some cases, the wording of the award may be ambiguous and the parties may require additional clarification from the tribunal in order to be able to give effect to the award.

Unlike most national courts, a tribunal's jurisdiction and mandate with respect to a particular issue expires once it has made an award on that issue. This is the *functus officio* doctrine and under it, technically, a tribunal would no longer have any jurisdiction to correct errors in an award after issuance. For this reason, most arbitration rules and most jurisdictions' arbitration law include some sort of "slip rule" – a provision giving the tribunal limited powers to correct awards.

The arbitration laws in Hong Kong SAR and Singapore adopt the UNCITRAL Model Law and this blog considers how the courts of Hong Kong SAR and Singapore have interpreted the power to correct awards under Article 33(1)(a) of the Model Law.

UNCITRAL Model Law

Article 33(1) (a) provides: *"a party, with notice to the other party, may request the arbitral tribunal to correct in the award any errors in computation, any clerical or typographical errors or any errors of similar nature"*.

Hong Kong SAR

Section 69 of the Hong Kong Arbitration Ordinance (Cap 609) adopts Article 33 of the Model Law.

The Hong Kong Court of First Instance ("HKCFI") has recently considered the scope of this power in the case of SC v OE1 [2020] HKCFI 2065.

The case concerned applications to set aside a corrected final award issued in an arbitration seated in Hong Kong. The tribunal corrected an omission of a requested relief in the final award. Even

though the HKCFI dismissed the applications to set aside the final award, Madam Justice Mimmie Chan held that a mistaken omission in an award does not fall within Article 33(1)(a) of the Model Law and instead upheld the addendum issued as an additional award under Article 33(3) of the Model Law. In upholding the addendum as an additional award, Justice Chan interpreted and held that (a) the original statement in the final award dismissing all other claims and reliefs (“*All other claims and reliefs sought by the Parties are rejected.*”) (the “Dismissal Proviso”) was not a dismissal or rejection of the omitted relief; and (b) the tribunal was accordingly entitled to issue the addendum as an additional award under Article 33(3) of the Model Law.

The SC v OE1 [2020] HKCFI 2065 decision clarified the scope of tribunals’ power to correct awards under Hong Kong SAR arbitration law and is notably a departure from the position under English law; Section 57(3) of the English Arbitration Act of 1996 specifically provides for a power to correct “*any clerical mistake or error arising from an accidental slip or omission*”. Justice Chan noted the absence of reference to “*accidental slip or omission*” in Article 33(1)(a) of the Model Law and distinguished English law authorities on a tribunal’s power to correct awards.

As a tribunal’s power to issue additional awards can be limited by the parties’ agreement and the *functus officio* doctrine, such narrow interpretation of the power to correct awards may result in situations where there is no effective remedy to correct unintended mistakes or omissions in arbitral awards. However, as can be seen from Justice Chan’s interpretation of the Dismissal Proviso, the Hong Kong courts remain supportive of arbitration and, save in extreme cases or mistakes with respect to errors in judgment, will likely hold that a mistake in an award would fall under either the power to correct in Article 33(1)(a) or the power to issue an additional award in Article 33(3) of the Model Law.

Singapore

Under Singapore’s statutory regime, the Arbitration Act (Cap 10) (“AA”) and the International Arbitration Act (Cap 143A) (“IAA”) govern domestic and international arbitrations respectively and both are aligned to the Model Law. Specifically, Article 33 of the Model Law has been adopted in the AA (at s 43) and incorporated verbatim into the IAA (at s 19B(2)).

In Singapore, a tribunal’s power to correct an award under Article 33(1)(a) of the Model Law has been narrowly interpreted.

The tribunal’s Article 33(1)(a) Model Law powers of correction have been considered by the Singapore courts in the context of domestic arbitrations. Judith Prakash J considered the corrective powers of s 43(1)(a) AA in *Tay Eng Chuan v United Overseas Insurance Ltd* [2009] SGHC 193 (“*Tay Eng Chuan*”) and later in *Econ Piling Pte Ltd and Anor. v Shanghai Tunnel Engineering Co Ltd* [2010] SGHC 253 (“*Econ Piling*”).

In *Tay Eng Chuan*, Prakash J held that s 43(1)(a) “*allowed for the correction of obvious errors in calculation or phraseology or reference*” and not to correct mistakes of fact or law in an arbitrator’s

findings.

In Econ Piling, she cited paragraph 2.32.1 of the Singapore Law Reform and Revision Division 2001 report to support her interpretation of the s 43(1)(a) AA corrective powers:

*"2.32.1 [...] The power to correct an award relates to both clerical mistakes and other such statements or mis-statements made which were never intended by the tribunal. **Such errors would include mistakes arising out of miscalculations, use of wrong data in calculations, omission of data in calculations and clerical or typographical errors made in the course of typing or drafting the award.** [...] However, mistakes or errors of judgment, whether of law or fact cannot be corrected by the invocation of this rule. [...]"*

Where, however, the tribunal has omitted to determine a claim presented in the proceedings in its award, a party is entitled under s 43(4) AA (mirroring Art 33(3) of the Model Law) and upon notice to the other party to request the tribunal to make an additional award to correct the omission.

Since s 43 AA is based on Article 33 of the Model Law and given the statutory intent for the AA and IAA to be aligned to the Model Law, it is generally expected that the Singapore courts would take a consistent and narrow approach in interpreting s 19B(2) IAA, thereby also limiting corrections to calculation, clerical, typographical or similar errors or all arbitration awards.

Conclusion

From the brief foray above, both Hong Kong SAR and Singapore have adopted the Model Law into their statutory regime and their courts have taken the view that the power to correct an award under Article 33(1) of the Model Law should be strictly confined to computational, clerical, typographical or other similar types of errors. However, despite this narrow interpretation, given their supportive attitude towards arbitration, the Hong Kong and Singaporean courts will strive to give effect to any correction of a mistake in an award under Article 33 of the Model Law.

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This article first appeared as post on Practical Law Arbitration on 2 November 2020.

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