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

[2026] SGHC 97

Originating Application No 535 of 2025 (Summons No 2132 of 2025)

Between

(1) Medipas LLC
(2) Medical International Promotion Association

… *Applicants*

And

Erdenet Mining Corporation SOE

… *Respondent*

JUDGMENT

[Arbitration — Agreement — Governing law]
[Arbitration — Arbitrability and public policy]
[Arbitration — Conflict of laws — Governing law of arbitration agreement]
[Arbitration — Conflict of laws — Governing law of underlying contract]
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v
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Wong Li Kok, Alex J:

Introduction

1 The parties to this application (HC/OA 535/2025 ("OA 535")) were contractual counterparties to a series of agreements in Mongolia for the operations and management of a hospital. The applicants ("Applicants"), who were prospective operators of the hospital, claimed for, amongst other things, a breach of these agreements by the respondent ("Respondent"), the owner of the hospital. The Applicants commenced arbitration ("Arbitration") against the Respondent in Singapore and under the Arbitration Rules of the Singapore International Arbitration Centre (6th Edition, 1 August 2016) ("SIAC Rules 2016"). The tribunal ("Tribunal") ruled in favour of the Applicants and the Applicants successfully applied for leave to enforce the award ("Final Award") in OA 535.

2 In HC/SUM 2132/2025 ("SUM 2132"), the Respondent is seeking to set aside the order granting leave. At the core of the Respondent's arguments is the contention that there was no valid arbitration agreement between the parties. That being the case, the Tribunal had erred in concluding that such an agreement existed. The Respondent further contends that enforcing the Final Award would be tantamount to condoning criminality in Mongolia and thus against Singapore's public policy.

Facts

The parties

3 The first applicant ("First Applicant") is a limited liability company incorporated under Mongolian law for the purpose of performing hospital-related services under the agreements which I will detail below.[1] The second applicant ("Second Applicant") is the parent organisation of the First Applicant and is an association incorporated under Japanese law.[2]

4 The Respondent is a state-owned entity incorporated under Mongolian law. It operates a copper mine near Erdenet City, Mongolia.[3]

Background to the dispute

5 The parties had entered into a "General Agreement Regarding the Operations of Erdenet Medical Hospital" dated 25 September 2015 ("General Agreement"). Four sub-agreements were also entered into between the parties

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1 Rooman Bundy's second affidavit dated 12 September 2025 ("RB-2") at paragraphs 11 and 19; Tugsbayar Daalkhai's second affidavit dated 1 August 2025 ("TD-2") at paragraph 7.

2 RB-2 at paragraph 17; TD-2 at paragraph 7; Final Award at [8].

3 RB-2 at paragraph 10; TD-2 at paragraph 7.

on the same day (together with the General Agreement, "Agreements").[4] Under the Agreements, the Respondent was to transfer certain immovable property, medical equipment and other assets ("Relevant Properties") to the First Applicant, in consideration of which the Applicants were to provide hospital-related services.[5]

6 However, while the implementation of the Agreements was underway, on 6 May 2019, the Mongolian Agency for Policy Coordination on State Property ("State Property Agency") demanded that the Respondent terminate the Agreements.[6] On 8 July 2019, the Respondent sent the Applicants a notice of termination.[7] Subsequently on 24 February 2022 and 15 March 2022, the First Applicant transferred the Relevant Properties back to the Respondent.[8]

7 At this point, I pause to note that the executed version of the General Agreement is in two languages – Mongolian and Japanese. The parties also referred to several earlier drafts of the General Agreement during negotiations.[9] For the purposes of this judgment, "General Agreement" will refer to the executed version.

8 As the parties failed to settle the dispute amicably,[10] on 28 January 2020, the Applicants invoked Clause 10.3 of the General Agreement ("Clause 10.3"), which they alleged was an arbitration agreement, and commenced arbitration in

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4 RB-2 at paragraphs 13 and 27–28; TD-2 at paragraphs 8 and 33.

5 TD-2 at paragraph 31 and pages 757–805.

6 RB-2 at paragraph 46; TD-2 at paragraph 44 and pages 5009–5016.

7 RB-2 at paragraph 47; TD-2 at paragraph 46 and pages 912–914.

8 RB-2 at paragraphs 58–59; TD-2 at page 149.

9 RB-2 at paragraphs 22–26; TD-2 at paragraphs 15–25.

10 RB-2 at paragraphs 48–51; TD-2 at paragraphs 47–51.

Singapore under the auspices of the Singapore International Arbitration Centre ("SIAC").[11] The Applicants argued that the Respondent was in breach of the Agreements by failing to transfer the Relevant Properties to the Applicants and that the Respondent's subsequent termination of these Agreements was wrongful and in repudiatory breach of these Agreements.[12] The Applicants thus sought damages for breach of the Agreements and wrongful termination.[13]

9 Before addressing the procedural history of the dispute between the parties, one other pertinent point relates to two individuals who played important roles for the parties in the negotiations and initial implementation of the Agreements. Mr Enkhchuluun Yadamsuren ("Mr Yadamsuren") was the Applicants' Director[14] and Mr Tserevsamba Davaatseren ("Mr Davaatseren") was the Respondent's former General Director.[15] Mr Davaatseren is currently facing prosecution in Mongolia,[16] and Mr Yadamsuren has fled Mongolia and is under an Interpol Blue Notice for investigations.[17] The scope of these inquiries is disputed but they form the basis of the Respondent's arguments to set aside the order granting leave on public policy grounds.

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11 RB-2 at paragraph 51; TD-2 at paragraph 59.

12 TD-2 at pages 388–389.

13 TD-2 at page 390.

14 TD-2 at page 9482.

15 TD-2 at paragraph 32.

16 Legal Expert Report of Bayer Purevdorj dated 5 February 2026 annexed to Bayar Purevdorj's first affidavit dated 6 February 2026 ("BP-1") at pages 113–309.

17 TD-2 at pages 11461–11463.

Procedural history

10 The Tribunal comprised a sole arbitrator appointed by the Vice President of the SIAC Court of Arbitration.[18] The Respondent raised substantially the same grounds of jurisdictional challenge as in these proceedings at a preliminary hearing before the Tribunal. The Tribunal bifurcated the arbitral proceedings, with the first phase addressing the jurisdictional challenge and the second dealing with the merits of the claim.[19]

11 At the conclusion of the first phase ("Jurisdiction Hearing"), the Tribunal found that there was a binding arbitration agreement between the parties and that it had the jurisdiction to hear the claim.[20]

12 At the conclusion of the second phase, the Tribunal ruled in favour of the Applicants. The Respondent was ordered to pay the Applicants US$17,500,000.00, MNT10,875,436,308.00 as well as interest and costs in the Final Award.[21]

13 The Applicants sought permission to enforce the Final Award through OA 535. That permission was granted on 28 May 2025 in HC/ORC 3087/2025 ("Leave Order"). On 1 August 2025, the Respondent applied in SUM 2132 to set aside the Leave Order.

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18 Tribunal's Decision on Jurisdiction dated 20 October 2021, annexed as Exhibit RB 3 to Rooman Bundy's first affidavit dated 23 May 2025 ("RB-1") at pages 238–300 ("Decision on Jurisdiction") at [22] (RB-1 at page 347).

19 Decision on Jurisdiction at [25] and [28] (RB-1 at page 248).

20 Decision on Jurisdiction at [195] (RB-1 at page 299).

21 Tribunal's Final Award dated 31 January 2024, annexed as Exhibit RB 3 to RB-1 at pages 33–237 ("Final Award") at [724].

The Tribunal's decision

14 At the heart of the parties' dispute on jurisdiction is the interpretation of the purported arbitration agreement in the General Agreement. This is contained in Clause 10 of the General Agreement, which I set out in full below:[22]

> **X. DISPUTE RESOLUTION**
>
> 10.1. In the event any dispute, disagreement, and controversy arise in relation to the implementation/performance of this general agreement and sub-agreements between the Parties, the Parties shall act in a manner of mutual respect and resolve it amicably through negotiations.
>
> 10.2. If the Parties fail to resolve the disagreements and dispute through mutual respect and amicable negotiations, the Parties shall have the right to have the dispute resolved by court and the party applying to the court shall deliver a written notice to the other party 3 months in advance and the party who received such notice shall respond within 2 months in writing.
>
> 10.3. Any dispute arising out of the implementation/performance of this general agreement and the sub-agreements shall be resolved by the International Arbitration Court of Singapore, pursuant to international laws and regulations.

15 The Japanese version states that:[23]

> **X. DISPUTE RESOLUTION**
>
> 10.1. In the event any dispute, disagreement, and controversy arise in relation to the implementation/performance of this general agreement and sub-agreements between the Parties, the Parties shall act in a manner of mutual respect and resolve it amicably through negotiations.
>
> 10.2. If the Parties fail to resolve the disagreements and dispute through mutual respect and amicable negotiations, the Parties shall have the right to have the dispute resolved by court and the party applying to the court shall deliver a written notice to the other party 3 months in advance and the party who received such notice shall respond within 2 months in writing.

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22 TD-2 at page 767.

23 TD-2 at page 767.

> 10.3. Any dispute arising out of the implementation/performance of this general agreement and the sub-agreements shall be resolved by conciliation or judgment of the Dispute Resolution and Commercial Arbitration of Singapore.

16 Having considered the parties' submissions in the Jurisdiction Hearing, the Tribunal concluded that Singapore law was the governing law of the purported arbitration agreement such that Clause 10.3 should be interpreted in accordance with Singapore law.[24]

17 On that basis, the Tribunal also concluded that the parties had a common intention to resolve their disputes under the Agreements through arbitration. In reaching this conclusion, the Tribunal considered the various drafts of the General Agreement culminating in the executed version as well as the wording of the executed General Agreement.[25]

18 Given its finding that Singapore law was the governing law of Clause 10.3, the Tribunal took the position that it did not need to consider whether Mongolian law affected the arbitrability of the dispute. In this regard, the Tribunal also pointed out that the parties' respective experts on Mongolian law had agreed that the Applicants' claims in the Arbitration were arbitrable even under Mongolian law.[26]

19 The Tribunal's reasoning will be explored in greater detail below in the context of the specific grounds of jurisdictional challenge raised by the Respondent and parties' arguments.

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[24] Decision on Jurisdiction at [138] (RB-1 at page 281).

[25] Decision on Jurisdiction at [179] (RB-1 at page 295).

[26] Decision on Jurisdiction at [180] and [184] (RB-1 at pages 296–297).

The parties' cases

20 In its arguments before me, the Respondent's case on jurisdiction tracks its approach in the Jurisdiction Hearing with two additional factors. The Respondent insists that the Leave Order should be set aside. I summarise its case below:[27]

(a) There is no valid arbitration agreement between the parties, whether under Mongolian law or Singapore law.

(b) Article 190.1.1 of the Civil Procedure Code 2002 (Mongolia) ("Mongolian Civil Procedure Code") requires the dispute in question, which the Respondent alleges involves immovable property in Mongolia, to be resolved exclusively by the Mongolian courts. The subject matter of the dispute is thus not arbitrable.

(c) The Respondent has not agreed to arbitrate pursuant to the SIAC Rules 2016 and thus has not agreed to the arbitral procedure.

(d) Enforcing the Final Award would be contrary to Singapore's public policy as it would amount to condoning criminal acts underlying the Agreements. This is demonstrated by the criminal proceedings against Mr Davaatseren and investigations involving Mr Yadamsuren.

21 I also summarise the Applicants' arguments in favour of allowing the enforcement of the Final Award:

(a) The arbitration agreement between the parties is governed by Singapore law and, consequently, a valid arbitration agreement exists

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27 Respondent's Written Submissions dated 5 March 2026 ("RWS") at paragraph 2.

between the parties. The same conclusion would be reached even if the arbitration agreement were governed by Mongolian law.[28]

(b) The dispute is not quarantined under Article 190.1.1 to be resolved exclusively by the Mongolian courts, as it concerns breach of contract claims instead of ownership, possession or use of immovable property in Mongolia.[29] The dispute is therefore arbitrable.

(c) The arbitral procedure is agreed between the parties and in accordance with Singapore law. The Respondent has adduced no evidence to establish that the composition of the Tribunal or the arbitral procedure was not in accordance with Singapore law.[30]

(d) Only allegations of criminal conduct have been made against Mr Mr Davaatseren and Mr Yadamsuren. No finding of guilt has been established and thus any public policy objections are unfounded.[31]

Issues to be determined

22 The parties submitted a list of issues dated 10 February 2026 ("Issues List") in advance of the Judge Case Conference.[32] Following the parties' written and oral submissions, I have condensed the issues to be addressed in this decision as follows:

(a) what is the governing law of Clause 10.3;

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28 Applicants' Written Submissions dated 5 March 2026 ("AWS") at Part VI.

29 AWS at paragraphs 69–70.

30 AWS at paragraphs 80–81.

31 AWS at paragraphs 85 and 87.

32 List of Issues in SUM 2132 dated 10 February 2026 ("Issues List").

(b) whether there is a valid arbitration agreement between the parties;

(c) whether the subject matter of the Arbitration is arbitrable;

(d) whether the Arbitration was conducted in accordance with parties' agreement; and

(e) whether the Final Award violates Singapore public policy.

23 I also note that, although waiver appears in the Issues List,[33] the Applicants' counsel clarified during the hearing that he did not raise waiver as a separate ground for resisting the Respondent's application, but only in relation to the Respondent's intention to arbitrate.[34] I therefore do not need to address it as a separate issue.

The law on the enforcement of arbitral awards

Jurisdictional challenges are considered de novo

24 As a preliminary point, the enforcement court can undertake a fresh examination of the issues to determine whether the alleged grounds for refusing enforcement exist (*PT First Media TBK v Astro Nusantara International BV* [2014] 1 SLR 372 ("*First Media*") at [164]).

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33 Issues List at S/No 10.

34 Minute Sheet dated 12 March 2026 ("MS") at page 15.

Grounds for resisting enforcement under the International Arbitration Act 1994

25 The Respondent relies on s 19 of the International Arbitration Act 1994 (2020 Rev Ed) ("IAA") read with Article 36(1) of the UNCITRAL Model Law on International Commercial Arbitration ("Article 36(1)"), which has the force of law in Singapore pursuant to s 3 of the IAA, to set aside the Leave Order. I set them out below and, for brevity, only the grounds relied on by the Respondent[35] in Article 36(1) have been reproduced:

> **Enforcement of awards**
>
> 19. An award on an arbitration agreement may, by permission of the General Division of the High Court, be enforced in the same manner as a judgment or an order to the same effect and, where permission is so given, judgment may be entered in terms of the award.
>
> *Article 36. Grounds for refusing recognition or enforcement*
>
> (1) Recognition or enforcement of an arbitral award, irrespective of the country in which it was made, may be refused only:
>
> (*a*) at the request of the party against whom it is invoked, if that party furnishes to the competent court where recognition or enforcement is sought proof that:
>
> (i) a party to the arbitration agreement referred to in Article 7 was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or
>
> (ii) …
>
> (iii) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the

[35] RWS at paragraph 5.

> submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognised and enforced; or
>
> (iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or
>
> …
>
> (*b*) if the court finds that:
>
> (i) the subject-matter of the dispute is not capable of settlement by arbitration under the law of this State; or
>
> (ii) the recognition or enforcement of the award would be contrary to the public policy of this State.

Singapore law is the governing law of Clause 10.3

26 The existence and interpretation of an arbitration agreement is determined by the governing law of the arbitration agreement (*BCY v BCZ* [2017] 3 SLR 357 ("*BCY*") at [38]). I thus begin my analysis with the question of which law governs Clause 10.3. I will address whether Clause 10.3 constitutes an arbitration agreement later in the judgment.

27 Before I delve into the discussion proper, I explain my approach to the two versions of Clause 10.3 in Japanese and Mongolian. Pursuant to Clause 11.7 of the General Agreement, the Japanese version is an equally valid original. However, I agree with the Tribunal's conclusion that equal validity does not mean equal weight. The Tribunal noted and I agree that the General Agreement

does not provide for any version to take precedence over the other.[36] I am guided by the principle that specific terms should supersede general terms to the extent of their inconsistency (*Sintalow Hardware Pte Ltd v OSK Engineering Pte Ltd* [2017] 2 SLR 372 at [97]). It is apparent from the wording of the two versions that the Mongolian version of Clause 10.3 is more precise and instructive: the Mongolian version specifies dispute resolution by the "International Arbitration Court of Singapore", whereas the Japanese version refers more generally to "Dispute Resolution and Commercial Arbitration". The preference for the Mongolian version is in line with the rationale of the abovementioned canon of interpretation that, as a default rule and in the absence of contrary evidence, the more precise language in the Mongolian version better reflects the parties' objectively ascertained intention (Goh Yihan, *The Interpretation of Contracts in Singapore* (Sweet & Maxwell, 2018) at paragraph 10.033). I also note that parties preferred and concentrated their analysis on the Mongolian version in both their written and oral submissions,[37] as did the Tribunal.[38]

28 On the governing law of Clause 10.3, parties agree that the applicable test is the three-step framework set out in *BCY*, which was affirmed by the Court of Appeal in *Anupam Mittal v Westbridge Ventures II Investment Holdings* [2023] 1 SLR 349 ("*Anupam Mittal*") at [62]:[39]

> 62 The three-stage test to determine the proper law of an arbitration agreement was laid down in *BCY v BCZ* [2017] 3 SLR 357 ("*BCY*") and involves considering at:
>
> (a) Stage 1: Whether parties expressly chose the proper law of the arbitration agreement.

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36 Decision on Jurisdiction at [161] (RB-1 at pages 289–290).

37 TD-2 at paragraphs 16–17; Decision on Jurisdiction at [98] (RB-1 at pages 268–269); Issues List at S/No 7.

38 Decision on Jurisdiction at [161] (RB-1 at page 290).

39 AWS at paragraph 20; RWS at paragraph 10.

> (b) Stage 2: In the absence of an express choice, whether parties made an implied choice of the proper law to govern the arbitration agreement, with the starting point for determining the implied choice of law being the law of the contract.
>
> (c) Stage 3: If neither an express choice nor an implied choice can be discerned, which is the system of law with which the arbitration agreement has its closest and most real connection.

The three-step framework follows the "established common law rules for ascertaining the proper law" of contracts in general and also applies to the choice of law for jurisdiction agreements (*Sulamérica Cia Nacional de Seguros SA v Enesa Engelharia SA* [2013] 1 WLR 102 ("*Sulamérica*") at [9]; Yeo Tiong Min, "The Contractual Basis of the Enforcement of Exclusive and Non-Exclusive Choice of Court Agreements" (2005) 17 SAcLJ 306 at paragraph 17).

29 It is common ground that, under Stage 1, parties did not expressly choose the governing law of Clause 10.3.[40] However, it is a point of contention whether, under Stage 2, they have nonetheless made an implied choice of the governing law of Clause 10.3.

30 Stage 2 aims to ascertain "the implied choice of the parties as gleaned from their intentions at the time of contracting" (*BCY* at [40]). As held at [62] of *Anupam Mittal* (at [28] above), the starting point is the governing law of the main contract. Clause 10.3 notes that the governing law of the General Agreement is "international laws and regulations". Even though this might be a valid choice of law in other jurisdictions, a choice of international law is not valid under Singapore conflict of laws rules, which require the choice of a "national system of law" (*BCY* at [54]; Yeo Tiong Min, *Commercial Conflict of*

[40] AWS at paragraph 34; RWS at paragraph 9.

Laws (Academy Publishing, 2023) ("*Commercial Conflict of Laws*") at paragraph 12.019).

31 The Respondent argues that Clause 6.1 of the General Agreement ("Clause 6.1") constitutes an express choice of Mongolian law as the governing law of the Agreements, because it governs the rights and obligations of the parties.[41] The English translations of its Mongolian and Japanese versions contain identical wording:[42]

> If one of the Parties of this general agreement and sub-agreement fails to perform its obligations under the law, regulations and the agreements, or delayed its obligations, it shall bear responsibilities for such breach, rectify or cure such breach and compensate for the damages and penalties incurred to the other party pursuant to these agreements, the Civil Code and other relevant laws.

The Respondent refers to Clauses 3.6.15 and 11.5 of the General Agreement which refer to Mongolian law, and Clause 11.4 of the General Agreement which refers to the Civil Code of Mongolia, to argue that "Civil Code" in Clause 10.3 is only capable of meaning the Civil Code of Mongolia.[43]

32 The Tribunal concluded that Clause 6.1 was not an express choice of Mongolian law for the Agreements.[44] While Clause 11.4 of the General Agreement clearly refers to the "Civil Code of Mongolia", Clause 6.1 does not.[45] Further, since parties had expressly agreed to resolve any dispute in accordance

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41 RWS at paragraph 15.

42 TD-2 at page 765.

43 RWS at paragraph 15(b).

44 Decision on Jurisdiction at [127]–[129] (RB-1 at page 279).

45 Decision on Jurisdiction at [130] (RB-1 at pages 279–280).

with "international laws and regulations", there was a clear inference that Mongolian law was at least not an express choice.[46]

33 Whether Clause 6.1 is an express choice of law clause is determined by the conflict of laws rules in the forum, here Singapore (*Commercial Conflict of Laws* at paragraph 12.05; Adrian Briggs, "The Formation of International Contracts" [1990] LMCLQ 192). Neither party seems to dispute this in their submissions. In my judgment, Clause 6.1 is not an express choice of law clause for the Agreements under Singapore law, which requires a "national system of law" to be specified (*BCY* at [54]). Although Mongolian law is strictly speaking not relevant to the question of whether Clause 6.1 constitutes an express choice of law for the Agreements, the Respondent's own expert, Dr Bayar Purevdorj ("Dr Purevdorj"), states in no uncertain terms that Clause 6.1 fails to specify a country.[47] Furthermore, I note that Clause 6.1 refers to "other relevant laws", which may mean the relevant laws that govern the parties' rights and obligations in, for example, Japan.

34 The Respondent's Dr Purevdorj opines that Clause 6.1 nonetheless constitutes an implied choice of Mongolian law for the Agreements under a Mongolian choice of law analysis.[48] I first note that the system of choice of law rules which applies to determine the governing law of a contract is that of the forum (*Shanghai Turbo Enterprises Ltd v Liu Ming* [2018] SGHC 172 at [27]), here Singapore. Further, the Respondent's counsel do not appear to have made submissions on this. In any event, case law suggests that only an express choice of law in the main contract can give rise to the presumption that the arbitration

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46 Decision on Jurisdiction at [131] (RB-1 at page 280).

47 BP-1 at paragraph 9.

48 BP-1 at paragraphs 12–22.

agreement is governed by the same law (*BCY* at [49]; *Sulamérica* at [25]). This requirement is logical and squares with the rationale behind implying the governing law of the main contract into the arbitration agreement, namely that the former would be a "strong indication of the parties' intentions in relation to the agreement to arbitrate" (*BCY* at [44(b)]; *Sulamérica* at [26]). If the governing law of the main contract itself was not expressly chosen but had to be implied, then that implied choice would not be a "strong indication of the parties' intentions" to support the further implication of that law into the arbitration agreement. Therefore, to the extent that the Respondent cannot show an express choice of Mongolian law for the Agreements, its argument that there is an implied choice of Mongolian law for Clause 10.3 fails.

35 The Applicants, on the other hand, rely on the "validation principle". In other words, they take the position that an arbitration agreement's putative invalidity under a system of laws negates the inference that parties intended that system of laws to apply to the arbitration agreement (*Enka Insaat Ve Sanayi AS v OOO Insurance Company Chubb* [2020] 1 WLR 4117 ("*Enka*") at [95]–[97]). According to the Applicants, the Respondent's submission that the dispute is not arbitrable under Mongolian law "points strongly away" from Mongolian law and suggests an implied choice of Singapore law as the governing law of Clause 10.3. Therefore, even if Mongolian law governs Clause 10.3, it will be displaced (pursuant to the validation principle) by Singapore law, under which the subject matter of the Arbitration is arbitrable.[49]

36 I agree with the Respondent's submission that, as made clear in *BNA v BNB* [2020] 1 SLR 456 ("*BNA*"), the application of the validation principle requires that "the parties were, at the very least, *aware* that the choice of proper

[49] AWS at paragraphs 42–43; MS at pages 23–24.

law of the arbitration agreement could have an impact upon the validity of the arbitration agreement" (emphasis in original at [90]).[50] In *BNA*, the main contract was governed by the laws of the People's Republic of China ("PRC") and parties agreed to submit their disputes to "the Singapore International Arbitration Centre (SIAC) for arbitration in Shanghai". However, the arbitration agreement would be invalid under the laws of the PRC as PRC law did not allow a foreign arbitral institution to administer an arbitration seated in the PRC or which arose from a purely domestic dispute. The Court of Appeal at [90] rejected the respondent's argument that the validation principle applied to displace PRC law in favour of Singapore law, on the ground that no evidence suggested that parties were aware of the invalidating effect of PRC law on their arbitration agreement. Analogously, as there is no evidence that parties in the present case addressed their mind to the question of the governing law of Clause 10.3 or were aware of its impact at any point in time, the validation principle cannot apply.

37 As neither a valid express or implied choice can be discerned, I go on to Stage 3 of the analysis to examine with which system of laws the purported arbitration agreement has the closest and most real connection. As the Court of Appeal clarified in *BNA* at [48]:

> 48 … this last step does involve the judicial imputation of a choice of law for the arbitration agreement, because the court only arrives at this stage of the analysis if it has found that the parties have entirely failed to select a proper law themselves, whether expressly or impliedly … this judicial imputation is justified, however, because it rests on the underlying premise that the parties would have, if they had addressed their minds to it, selected the law which has the closest and most real connection to the arbitration agreement. …

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50 RWS at paragraph 19; MS at pages 17 and 38.

38 The Applicants submit that Stage 3 clearly points to Singapore law, as Singapore is expressly named as the place of dispute resolution. It is both a compromise and a neutral jurisdiction.[51]

39 The Tribunal accepted the Applicants' submissions and found that Singapore was a deliberate choice between the parties for a neutral dispute resolution forum. Singapore was also the only jurisdiction mentioned in Clause 10.3.[52] On these bases, the Tribunal held that Singapore law was the governing law of Clause 10.3.[53]

40 I now turn to my analysis. It is correct that, as the Respondent pointed out,[54] the General Agreement contains several references to Mongolian law (see Clauses 3.6.15, 11.4 and 11.5 of the General Agreement). However, this point is balanced out by the reference to Japanese law in the General Agreement, such as in Clause 5.2 of the General Agreement.[55] The parties' identities also do not point strongly to Mongolia, with one Mongolian party on the one side and one Japanese party (*ie*, the Second Applicant) and its Mongolian-incorporated subsidiary (*ie*, the First Applicant) on the other. As to the fact that Mongolia was the place of performance, I agree with the UK Supreme Court's remark in *Enka* at [122]:

> 122. By contrast, there is no reason to regard the place of performance of the substantive obligations created by the contract as a significant connection for the purpose of determining the law applicable to the arbitration agreement (as opposed to for the purpose of determining what law the

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51 AWS at paragraphs 39–41.

52 Decision on Jurisdiction at [137] (RB-1 at page 281).

53 Decision on Jurisdiction at [138] (RB-1 at page 282).

54 RWS at paragraph 15(b).

55 TD-2 at page 764.

> arbitrators should apply in deciding a dispute). This is because … the subject matter and purpose of an arbitration agreement are different from those of the contract in which it is incorporated. The irrelevance of the place of performance of the main contract is illustrated by the fact that seats of arbitration are frequently chosen which have no connection with where the parties' substantive obligations are to be performed (or otherwise with the contract) and sometimes precisely because they have no such connection. …

41 The significant connecting factor is, in my judgment, the law most closely related to the dispute resolution, whether Clause 10.3 is a jurisdiction agreement or an arbitration agreement. The Court of Appeal in *Anupam Mittal* at [75] held that the law having the most real and substantial connection with the arbitration agreement was the law of the seat, which governs the procedure of the arbitration (see also *Enka* at [118]–[146] and *Singapore International Arbitration Law and Practice* (David Joseph QC and David Foxton QC gen eds) (LexisNexis, 2nd Ed, 2018) at paragraph 3.11). Although Clause 10.3 has not yet been established as an arbitration agreement at this stage of the analysis, Singapore is the only jurisdiction mentioned in the context of dispute resolution. This is also the case in the Japanese version, which provides for "Dispute Resolution and Commercial Arbitration of Singapore".[56] For the sake of argument, if Clause 10.3 were interpreted not as an agreement to arbitrate at the SIAC, but a jurisdiction agreement to litigate in the Singapore International Commercial Court ("SICC"), the rules and procedure of the SICC would govern the dispute resolution process (O 1 r 2(2) of the Singapore International Commercial Court Rules 2021). Since Singapore as the dispute resolution forum has the closest and most real connection to the function of dispute resolution, parties objectively intended the procedural aspects of their dispute resolution, whether in the form of litigation or arbitration, to be governed by Singapore law.

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[56] TD-2 at page 767.

Therefore, I agree with the Applicants and the Tribunal that Singapore law is the governing law of Clause 10.3.

Clause 10.3 is a valid arbitration agreement under Singapore law

42 The first plank of the Respondent's argument is that there is no valid arbitration agreement between the parties, so the Leave Order should be set aside under Article 36(1)(*a*)(i) of the Model Law.[57]

43 Under Article 36(1)(*a*)(i), the validity of an arbitration agreement is determined "under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made". I note that the Respondent's argument relates to the existence of an arbitration agreement, which is subsumed under the issue of validity and is also governed by the law of the arbitration agreement (*First Media* at [156]). Given my conclusion above at [41] that the governing law of Clause 10.3 is Singapore law, the question is whether Clause 10.3 is a valid arbitration agreement under Singapore law. I do not need to consider whether there is a valid arbitration agreement under Mongolian law.

44 The relevant principles are elucidated by the Court of Appeal in *Insigma Technology Co Ltd v Alstom Technology Ltd* [2009] 3 SLR(R) 936 at [30]–[32] ("*Insigma*"), which I set out below:

> 30 … an arbitration agreement … should be construed like any other form of commercial agreement (see Julian D M Lew QC, Loukas A Mistelis & Stefan M Kröll, *Comparative International Commercial Arbitration* (Kluwer Law International, 2003) at para 7-60). The fundamental principle of documentary interpretation is to give effect to the intention of the parties as expressed in the document.

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57 RWS at paragraphs 2(a) and 30.

> 31 … where the parties have evinced a clear intention to settle any dispute by arbitration, the court should give effect to such intention, even if certain aspects of the agreement may be ambiguous, inconsistent, incomplete or lacking in certain particulars (see *Halsbury's Laws of Singapore*, vol 2 (LexisNexis, 2003 Reissue, 2003) at para 20.017) so long as the arbitration can be carried out without prejudice to the rights of either party and so long as giving effect to such intention does not result in an arbitration that is not within the contemplation of either party. …
>
> 32 A subsidiary principle to the principle of effective interpretation is the principle that an arbitration agreement should also not be interpreted restrictively or strictly. …

Thus, to determine whether Clause 10.3 is a valid arbitration agreement under Singapore law, the central question is whether parties have evinced a clear intention to resolve their disputes through arbitration. As Singapore law is the governing law of Clause 10.3, the interpretation of Clause 10.3 is to be conducted under Singapore law (Gary B Born, *International Commercial Arbitration* (Wolters Kluwer, 3rd Ed, 2021) at paragraph 9.05[B]). If such an intention is found, minor defects in drafting can be cured.

45 The Respondent argues that Clause 10.3 does not evince a clear, unequivocal and mutual intention to arbitrate. Its expert Dr Purevdorj opines that a Mongolian party or legal counsel would understand the reference to "International Arbitration Court of Singapore" to mean a court within the judicial system of Singapore, rather than an arbitral institution like the SIAC or *ad hoc* arbitration seated in Singapore.[58] Dr Purevdorj states that "no arbitral institution in Mongolia is registered using the term 'arbitration court'".[59] Further, in recent enforcement requests from the Ministry of Justice of the Russian Federation, decisions of the Kaliningrad Arbitration Court were

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58 BP-1 at paragraphs 60 and 73.

59 BP-1 at paragraphs 66–67 and 70–72.

"processed" as foreign court judgments, instead of arbitration awards.[60] I understand Dr Purevdorj to mean that Kaliningrad decisions were enforced in accordance with the enforcement procedure for foreign judgments. The Respondent also refers to the Applicants' expert report for the proposition that, prior to 1992, Mongolia followed Russia in having a specialised arbitration court within the state judiciary.[61]

46 Conversely, the Applicants rely on evidence from their expert, Dr Mendsaikhan Tumenjargal ("Dr Tumenjargal"), that "Arbitration Court" may refer to an arbitral institution in Mongolia.[62] Further, they contend that the reference to "International Arbitration Court of Singapore" needs to be understood in the context of dispute resolution in Singapore, where the only arbitral institution with a name that approximates the "International Arbitration Court of Singapore" is the SIAC,[63] which also has a body called the Court of Arbitration.[64]

47 The Tribunal found that Clause 10.3 was a valid arbitration agreement.[65] The Tribunal went through the earlier drafts of Clause 10.3, where parties oscillated between the national courts of Mongolia and Japan but eventually settled on the executed version, which provides for dispute resolution by the

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60 BP-1 at paragraph 68(c).

61 RWS at paragraph 27; Mendsaikhan Tumenjargal's Expert Report dated 5 February 2026 annexed to Mendsaikhan Tumenjargal's first affidavit dated 5 February 2026 ("MT-1") at paragraphs 42–43.

62 MT-1 at paragraphs 42–46.

63 MS at page 33.

64 AWS at paragraphs 58, 65 and 79.

65 Decision on Jurisdiction at [164] (RB-1 at pages 290–291).

"International Arbitration Court of Singapore".[66] The Tribunal opined that this history showed parties' compromise and preference for an alternative form of dispute resolution, namely arbitration.[67] Further, as both the Mongolian and Japanese version of the executed Clause 10.3 mention "shall" and "Arbitration",[68] Clause 10.3 imposes an obligation on the parties to arbitrate their disputes.

48 In my analysis, I disagree with the Respondent's submission. As pointed out by the Applicants' expert, the predecessor of the Mongolian International Arbitration Centre was the "Foreign Trade Arbitration Court".[69] It is therefore incorrect that "arbitration court" in the Mongolian context cannot mean an arbitral institution. Further, the article which Dr Purevdorj refers to does not support his assertion that decisions of the Kaliningrad Arbitration Court were enforced in accordance with the enforcement procedure for foreign court judgments. In this article authored by Dr Purevdorj himself, he opined that if the decision of the Kaliningrad Arbitration Court under discussion were to be enforced in Mongolia, the request to enforce it "would be transmitted to Mongolian courts through the Ministry of Justice and Internal Affairs of Mongolia".[70] It is unclear from this article whether this decision has been recognised and enforced as a foreign court judgment. In any event, even if I accept that the "Arbitration Court" is a specialised court in the Russian judicial system, without having to decide how far Mongolia's judicial system has departed from Russia's, there is no evidence that the Russian judicial system

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66 Decision on Jurisdiction at [143] and [151]–[155] (RB-1 at pages 283 and 287–288).

67 Decision on Jurisdiction at [156] (RB-1 at page 288).

68 Decision on Jurisdiction at [142] and [157] (RB-1 at pages 282–283 and 289).

69 MT-1 at paragraph 43 and page 165.

70 BP-1 at pages 106–107.

has "International Arbitration Courts". On an objective interpretation of Clause 10.3, I am persuaded by the Applicants' argument that the only dispute resolution institution in Singapore whose name approximates the "International Arbitration Court of Singapore" is the SIAC, which also has a body named the Court of Arbitration. I therefore find that parties have evinced an intention to arbitrate their dispute at the SIAC.

49 I also note of interest several testimonies in the unofficial English translation of an indictment conclusion purportedly issued by the Prosecutor's Office of Ulaanbaatar ("Indictment Conclusion"), which the Respondent submitted and relies on heavily for its arguments on public policy.[71] B. Namkhainyambuu, whose signature is affixed to each of the Agreements on behalf of the Respondent, testified that:[72]

> … We proposed resolving disputes through the Arbitration Court under the Mongolian National Chamber of Commerce and Industry, but the Japanese side said our interests would be too dominant and proposed their own Chamber's arbitration. We disagreed for a while, and eventually, the Japanese side suggested the Singapore International Arbitration Centre since it is an international agreement. … The Japanese explained that Mongolia's investment environment was unfavorable, laws were unstable, and the government was inconsistent; since it was an international agreement, they wanted to go through a court in a place with developed international law …

Further, G. Janchiv, the legal representative of the First Applicant, testified that "Article 10 of the General Agreement … specifies that if any dispute arises regarding this contract, the parties shall resolve it through the Singapore International Arbitration Centre."[73] Whilst no submissions have been made on

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71 BP-1 at pages 234–309.

72 BP-1 at page 275.

73 BP-1 at page 279.

these testimonies, it would appear that representatives on both sides understood the reference to the "International Arbitration Court of Singapore" to mean the SIAC. Namkhainyambuu's testimony even affirms the Applicants' argument that Singapore was chosen as a neutral dispute resolution forum and as a compromise between the parties.

50 I now briefly set out the negotiating history and address parties' arguments on the same:

(a) The first draft of the dispute resolution clause stipulated that disputes "shall be resolved by the court" and that the General Agreement shall be "governed by the laws of Mongolia and international treaties to which Mongolia is a party".[74]

(b) The second draft of the dispute resolution clause stipulated that disputes shall be "resolved by the courts of Mongolia".[75]

(c) The third draft provided for dispute resolution by the "courts of Japan".[76]

(d) The fourth draft provided for dispute resolution by the "Court of Japan, pursuant to Japanese laws and regulations".[77]

(e) The executed version, as set out above at [14], provides for dispute resolution "by the International Arbitration Court of Singapore, pursuant to international laws and regulations".

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74 RB-2 at paragraph 21; TD-2 at paragraph 15.

75 RB-2 at paragraph 23; TD-2 at paragraph 19 and page 1025.

76 RB-2 at paragraph 24; TD-2 at paragraph 21 and page 1046.

77 RB-2 at paragraph 25; TD-2 at paragraph 23 and page 1068.

51 However, the parties draw opposing inferences from the negotiating history on whether there is an intention to arbitrate. The Respondent argues that the parties' intention has consistently been to litigate in a national court, no matter of which country.[78] In contrast, the Applicants argue that parties' departure from the choice of national courts in the executed version shows their intention to arbitrate in a neutral forum, namely Singapore.[79]

52 Based on the test set out in *Zurich Insurance (Singapore) Pte Ltd v B-Gold Interior Design & Construction Pte Ltd* [2008] 3 SLR(R) 1029 ("*Zurich Insurance*"), the negotiating history is admissible as it is "relevant, reasonably available to all the contracting parties and relates to a clear or obvious context". However, the Court of Appeal also cautioned that "the extrinsic evidence must always go towards proof of what the parties, from an objective viewpoint, ultimately agreed upon" (at [132(d)]). On the present facts, I find that reference to the negotiating history offers limited assistance, as evidenced by the countervailing positions taken by the parties on the inferences to be drawn from the negotiating history. Both are plausible and neither party has adduced persuasive evidence to support their version of events. I therefore place little weight on this negotiating history in reaching my conclusion on the parties having evinced an intention to arbitrate.

53 The Respondent also relies heavily on the language of Clause 10.2 of the General Agreement ("Clause 10.2"), which provides that if parties fail to resolve their dispute through amicable negotiations, each party shall have the right to resolve their dispute by court. The party applying to the court shall give the other party three months' notice (see above at [14]). The Mongolian and

78 RWS at paragraphs 31–32 and 36.

79 AWS at paragraphs 39, 48 and 57.

Japanese versions contain the same wording. The Respondent argues that Clause 10.2 clearly shows that parties did not intend to resolve their dispute through arbitration.[80]

54 The Tribunal attempted to interpret Clause 10.2 harmoniously with Clause 10.3. Noting that Clause 10.2 remained unchanged throughout the negotiating history, the Tribunal concluded that since parties did not see a need to amend Clause 10.2, they must have intended it to serve the same function under the executed version as under previous versions.[81] Parties have an obligation to attempt amicable dispute resolution before commencing action under Clause 10.3, and the party invoking Clause 10.3 has an obligation to provide notice.[82]

55 On this issue, I derive guidance from *BXH v BXI* [2020] 1 SLR 1043 ("*BXH*"), which dealt with a contract containing both a jurisdiction agreement and an arbitration agreement (see also *PT Tri-MG Intra Asia Airlines v Norse Air Charter Limited* [2009] SGHC 13; *Paul Smith Ltd v H&S International Holding Inc* [1991] 2 Lloyd's Rep 127). The Court of Appeal opined that where the court finds that parties intend to arbitrate their dispute, notwithstanding minor inconsistencies between clauses, "a generous and harmonious interpretation should be given to the purportedly conflicting clauses such as to give effect to the parties' true intention" (*BXH* at [60]).

56 In line with the approach of harmonious interpretation, I agree with the Tribunal's analysis. Whereas the negotiating history offers limited insight into

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80 MS at pages 9, 12 and 39.

81 Decision on Jurisdiction at [172] (RB-1 at page 293).

82 Decision on Jurisdiction at [173] (RB-1 at pages 293–294).

parties' intention to arbitrate in Clause 10.3 (see above at [52]), the fact that the wording and position of Clause 10.2 in relation to Clause 10.3 have remained substantially the same from the second draft to the executed version sheds light on the parties' objectively ascertained intention with respect to Clause 10.2. Parties objectively intended Clause 10.2 to serve as the interim steps of amicable dispute resolution and notification, before any party commences action under Clause 10.3. In this regard, the word "court" in Clause 10.2 should be interpreted consistently with the reference to the "International Arbitration Court of Singapore" in Clause 10.3, which I interpret at [48] above as the SIAC. Viewed in this light, Clause 10.2 can be interpreted harmoniously with Clause 10.3 as providing for the obligations of amicable dispute resolution and notification before a party commences arbitration under Clause 10.3.

57 The Respondent also attempts to rely on Philip Jeyaretnam J's statement in *Re Shanghai Xinan Screenwall Building & Decoration Co, Ltd* [2022] 5 SLR 393 ("*Shanghai Xinan*") at [1] for the proposition that, for a defective arbitration agreement to be curable, parties must have both intended the same arbitral institution:[83]

> 1 When I bump into my childhood friend Ben and call him Bill, I am not inventing an imaginary friend, but simply mistaking his name. In the same way, when the name of the arbitral institution in an arbitration agreement does not precisely correspond with that of any existing arbitral institution, it is not that parties have chosen a non-existent institution. Rather, the question is whether they intended the same institution, whether they had in mind different ones or whether it is impossible to tell either way. Only in the latter two cases does the misnomer affect the validity of the arbitration agreement.

[83] RWS at paragraph 35.

58 To recall, given that arbitration agreements are to be interpreted in the same way as commercial contracts, the correct approach is that of objective interpretation (*Insigma* at [30]; *Zurich Insurance* at [1]). As such, whether the Respondent subjectively intended to submit its dispute with the Applicants to arbitration is immaterial. The question is whether an intention to arbitrate has been evinced on the face of Clause 10.3. For the reasons stated above, I consider that such an intention can be objectively ascertained.

59 I do not understand Jeyaretnam J's learned remark to go as far as to suggest that parties must have intended the same arbitral institution for an arbitration agreement to be given effect to. Parties only need to evince an intention to submit their disputes to arbitration. In any event, on the facts of *Shanghai Xinan*, Jeyaretnam J interpreted an arbitration agreement which provided for arbitration by "China International Arbitration Center", a non-existent arbitral institution, to mean that parties agreed to resolve their disputes by China International Economic and Trade Arbitration Commission. Jeyaretnam J based his decision on the fact that the words "China", "International" and "Arbitration" were used in the arbitration agreement, as well as the word "Center" in place of "Commission" (at [49]–[51]). This approach is echoed by my reasoning at [48] above. Given that three out of four key words in "International Arbitration Court of Singapore" mirror the full name of the SIAC, with the only difference being that the word "Court" was used instead of "Centre", applying the approach in *Shanghai Xinan*, I find that parties intended to submit their dispute to the SIAC.

60 The Respondent further relies on *Cheung Teck Cheong Richard v LVND Investments Pte Ltd* [2022] 3 SLR 502 ("*Richard Cheung*"). In its submissions, the Respondent takes the view that this case stands for the proposition that an isolated mention of the word "arbitration" does not suffice to evince the parties'

intention to arbitrate.[84] In *Richard Cheung*, the court found at [34] that there was no valid arbitration agreement because the dispute resolution clause merely provided for an obligation to mediate before referring the dispute to arbitration. The relevant clause, as set out below, is found at [5] of *Richard Cheung*:

> 20A. Mediation
>
> 20A.1 The Vendor and Purchaser agree that before they refer any dispute or difference relating to this Agreement to arbitration or court proceedings, they shall consider resolving the dispute or difference through mediation at the Singapore Mediation Centre in accordance with its prevailing prescribed forms, rules and procedures.

61 It is clear that Clause 10.3 is materially different as it provides that disputes "shall be resolved by the International Arbitration Court of Singapore". As I interpret this reference to mean the SIAC, in my judgment, the parties have agreed to resolve their dispute by arbitration.

Article 190.1.1 does not render Clause 10.3 invalid nor the subject matter of the Arbitration non-arbitrable

62 The Respondent further argues that the Leave Order should be set aside as Clause 10.3 is "incapable of being performed" under Article 190.1.1 of the Mongolian Civil Procedure Code.[85] The Respondent's counsel confirmed during the hearing that the Respondent's position is that this ground engages both

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84 RWS at paragraph 37.

85 RWS at paragraphs 2(b) and 45.

invalidity under Article 36(1)(*a*)(i) and non-arbitrability under Article 36(1)(*b*)(i) of the Model Law.[86]

63 As stated above at [43], Article 36(1)(*a*)(i) makes clear that invalidity of an arbitration agreement is assessed by "the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made".

64 Arbitrability, on the other hand, is assessed by the "law of this State", in other words, Singapore as the enforcement forum (s 3 of the IAA). Section 11(1) of the IAA provides that:

> **Public policy and arbitrability**
>
> 11.—(1) Any dispute which the parties have agreed to submit to arbitration under an arbitration agreement may be determined by arbitration unless it is contrary to public policy to do so.

65 The Court of Appeal decision of *Tomolugen Holdings Ltd v Silica Investors Ltd* [2016] 1 SLR 373 ("*Tomolugen*") further clarifies the test for determining whether a subject matter is arbitrable (at [76]):

> 76 In our judgment, the effect of s 11 of the IAA is that there will ordinarily be a presumption of arbitrability so long as a dispute falls within the scope of an arbitration clause. This presumption may be rebutted by showing that (*Larsen Oil v Petroprod* at [44]):
>
> (a) Parliament intended to preclude a particular type of dispute from being arbitrated (as evidenced by either the text or the legislative history of the statute in question); or
>
> (b) it would be contrary to the public policy considerations involved in that type of dispute to permit it to be resolved by arbitration.

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86 MS at pages 16–17.

66 I now turn to examine the parties' submissions. The Respondent relies on Article 190.1.1 of the Mongolian Civil Procedure Code, which provides that:[87]

> Article 190. Special jurisdiction of the Court of the case proceedings related to international civil law
>
> 190.1. In following cases a Court of Mongolia shall take a case with respect to international civil law under its special jurisdiction and conduct proceedings to resolve it:
>
> > 190.1.1.dispute with respect to ownership, possession and usage of a immovable property located on the territory of Mongolia;
> >
> > …

67 The Respondent's expert Dr Purevdorj opines that the language of Article 190.1.1 should be read expansively. He refers to an official interpretation issued by the Supreme Court of Mongolia:[88]

> Article 190 of the Civil Procedure Code of Mongolia governs the special (exclusive) jurisdiction of Mongolian courts in civil cases involving international private law. This exclusive jurisdiction applies to the following categories of disputes:
>
> Article 190.1.1 — Disputes concerning the ownership, possession, or use of immovable property located within the territory of Mongolia. Where the immovable property is situated in Mongolia, such disputes shall be resolved exclusively by Mongolian courts.
>
> Accordingly, where a dispute involving the ownership, possession, or use of land or other immovable property located in Mongolia is resolved by a foreign court, Mongolian courts have legal grounds to refuse recognition and enforcement of such a foreign decision.
>
> The exclusive jurisdiction of Mongolian courts further extends to all disputes arising out of legal relations connected with:
>
> - rights to own, possess, or use land in Mongolia;

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87 RWS at paragraphs 45–52.

88 BP-1 at paragraph 80.

- rent, lease, or use of buildings or other immovable property erected on such land;
- mortgages over immovable property;
- restrictions on ownership rights (servitudes); and
- use of immovable property subject to limitations (servitudes).

According to Dr Purevdorj, based on this official interpretation, the exclusive jurisdiction of Mongolian courts is not limited to disputes concerning the transfer of title to immovable property. Rather, it extends to all disputes arising out of legal relations connected with the ownership, possession, lease, use or other exploitation of immovable property located in Mongolia.[89]

68 On the basis of Dr Purevdorj's opinion, the Respondent argues that the following obligations on the Respondent's part in the General Agreement were caught under Article 190.1.1:[90]

> 3.3. to jointly pledge the Central Hospital's building, infrastructure, apartment, ownership certificates of the equipment, land possession agreement and land possession certificate transferred to [the First Applicant's] ownership to ensure the performance of the sub-agreement regarding the repayment of the investment and register such pledge with the properties registration office within 2 months
>
> 3.4. The Parties shall jointly organize and resolve the matter of obtaining the land rights for 10 hectare land area under the name of [the First Applicant] that is required for constructing the building necessary for the implementation of the second and third phases of the Central Hospital complex project.
>
> …
>
> 3.5.7. to execute the process of pledging the Central Hospital's building, infrastructure, apartment, ownership certificates of the equipment, land possession agreement and land possession certificate transferred to [the First Applicant's] ownership to ensure the performance of the sub-agreement regarding the

89 BP-1 at paragraph 81.

90 RWS at paragraph 52; TD-2 at pages 760–761 and 764.

> repayment of the investment and register such pledge with the properties registration office within 2 months
>
> …
>
> 4.5. All risks associated with properties that were transferred to [the First Applicant's] ownership and possession in accordance with the sub-agreement regarding the repayment of the investment shall be deemed to have been transferred to it, and as such, any expenses incurred in relation to their management, storage, repair, renewal, replacement and improvement shall fully borne by it.
>
> …

69 On the other hand, the Applicants argue that the subject matter of this Arbitration does not concern the transfer of title to the Relevant Properties. Instead, it concerns the Respondent's liability to pay damages for breach of contract and thus does not fall within the ambit of Article 190.1.1.[91] Further, Article 190.1.1 suggests that disputes falling within its ambit cannot be

[91] AWS at paragraphs 69–73.

determined by foreign courts but says nothing about determination by foreign arbitral tribunals.[92]

70 Before the Tribunal, the Respondent conceded that this ground would fail if the governing law of the arbitration agreement was not Mongolian law. On that basis, the Tribunal found that it did not need to deal with this ground.[93]

71 I note that the Respondent's counsel made the same concession during the hearing (*ie*, this ground would fail if the court were to conclude that Clause 10.3 was governed by Singapore law).[94]

72 For the question of validity, I have concluded above that the governing law of Clause 10.3 is Singapore law (above at [41]). That being the case, even if Clause 10.3 may be invalid under Article 190.1.1 of the Mongolian Civil Procedure Code, this does not affect its validity under Singapore law. As the Respondent makes no submission that Clause 10.3 is invalid under Singapore law, in my judgment, it is valid.

73 Turning now to the question of arbitrability, the subject matter of the Arbitration is, in my judgment, liability for the breach of a contract concerning the transfer of the Relevant Properties. This is common ground as the Applicants do not dispute that the Respondent's liability for breach of contract arose from its failure to transfer the Relevant Properties,[95] and the Respondent also framed

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92 AWS at paragraph 74.

93 Decision on Jurisdiction at [180] (RB-1 at page 296).

94 MS at page 17.

95 AWS at paragraphs 69–70.

the subject matter as arising out of "legal relations connected with" the Relevant Properties.[96]

74 Under the test in *Tomolugen* at [76], the subject matter of this Arbitration is presumptively arbitrable under Singapore law. I will elaborate below on why the Relevant Properties were not state property under the State and Local Property Law 1996 (Mongolia) ("State and Local Property Law"). There is no indication that Parliament intended to exclude this type of dispute (as formulated above at [73]) from being submitted to arbitration, or that Singapore public policy disallows it to be resolved by arbitration. The focus of public policy in the context of arbitrability is whether "public policy considerations involved in [a] type of dispute" permit it to be resolved by arbitration (*Tomolugen* at [76(b)]). The Respondent's argument in these proceedings with respect to public policy, as will be discussed in greater detail below, is that the facts of the present case concern criminality in Mongolia. The Respondent does not take the position that Singapore public policy disallows disputes concerning a breach of contract where alleged state property was to be transferred to be resolved by arbitration. Therefore, absent contrary indications, the subject matter of this Arbitration is arbitrable under Singapore law.

75 Further, the proposition that Mongolian courts have exclusive jurisdiction over disputes concerning legal relations connected with ownership or other rights in immovable property in Mongolia under Mongolian law, even if established, does not affect the arbitrability of such disputes under Singapore law. In *Anupam Mittal*, the National Company Law Tribunal in India had exclusive jurisdiction over oppression and mismanagement disputes. However, the dispute in that case, which concerned corporate oppression, was held to be

[96] RWS at paragraph 52.

arbitrable under Singapore law. Similarly, whether or not the subject matter of this Arbitration falls within the exclusive jurisdiction of the Mongolian courts does not *per se* affect its arbitrability in Singapore law.

The Arbitration was conducted in accordance with the parties' agreement

76 The next ground that the Respondent relies on to set aside the Leave Order is that the parties did not consent to arbitrate under the SIAC Rules 2016.[97] This corresponds to Article 36(1)(*a*)(iv) of the Model Law (*ie*, the arbitral procedure was not in accordance with the parties' agreement).

77 The Respondent maintains its position that parties did not agree to arbitrate in accordance with the procedure set out in the SIAC Rules 2016.[98] Neither the Mongolian nor the Japanese version of the General Agreement mentions the SIAC, much less its rules or procedure.[99] Further, the Respondent claims that when it found out that the Applicants' Notice of Arbitration referred to the SIAC Rules 2016, it had to translate the SIAC Rules 2016 into Mongolian for the first time.[100]

78 In response, the Applicants repeat their arguments that the reference to "International Arbitration Court of Singapore" means the SIAC.[101] To the extent that the court finds that there was no agreement with respect to the arbitral procedure, the question under Article 36(1)(*a*)(iv) of the Model Law is whether the arbitral procedure or the composition of the Tribunal was nonetheless "in

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97 RWS at paragraphs 2(c) and 55.

98 RWS at paragraph 56.

99 RWS at paragraph 57.

100 RWS at paragraph 58.

101 AWS at paragraphs 77–79.

accordance with the law of the country where the arbitration took place".[102] The Applicants submit that the Respondent has not shown that the procedure of the Arbitration was not in accordance with Singapore law.[103]

79 Although the Respondent couches this ground of challenge under Article 36(1)(*a*)(iv), evidently, its real grievance is not that the Arbitration was not conducted in accordance with the parties' agreement. Rather, it is really the same contention advanced above (at [42]) that there is no valid arbitration agreement between the parties.[104] To this extent, given my finding above (at [48]) that parties did consent to arbitrate their dispute, I reject the Respondent's argument.

80 To the extent that the Respondent's grievance is that parties did not expressly agree to the application of the SIAC Rules 2016,[105] I reject this argument as well. It is clear that "the mere absence of an agreement on the seat of arbitration, arbitral rules, or arbitral institution does not affect the validity of the agreement to arbitrate" (*Richard Cheung* at [28]). Again, what matters is that parties have evinced an intention to be bound to arbitrate (*Dyna-Jet Pte Ltd v Wilson Taylor Asia Pacific Pte Ltd* [2017] 3 SLR 267 at [37]), which I find they have (at [48]). It is telling that the only case that the Respondent could refer to in support of its position was *Richard Cheung*,[106] which does not establish the specific proposition that the failure to specify a set of institutional rules is a ground to refuse the enforcement of an award.

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102 AWS at paragraph 80.

103 AWS at paragraph 81.

104 RWS at paragraphs 56–60.

105 RWS at paragraph 58.

106 MS at page 22.

81 In any event, Rule 1.1 of the SIAC Rules 2016 provides that:

> Where the parties have agreed to refer their disputes to SIAC for arbitration or to arbitration in accordance with the SIAC Rules, the parties shall be deemed to have agreed that the arbitration shall be conducted pursuant to and administered by SIAC in accordance with these Rules.

As such, by agreeing to arbitrate under the auspices of the SIAC, parties are taken to have consented to the application of the SIAC Rules 2016.

Enforcing the Final Award is not contrary to Singapore public policy

82 Finally, the Respondent argues that enforcing the Final Award would violate Singapore public policy under Article 36(1)(*b*)(ii) of the Model Law.[107]

83 Parties agree that the standard for invoking the public policy exception is clarified in *PT Asuransi Jasa Indonesia (Persero) v Dexia Bank SA* [2007] 1 SLR(R) 597 ("*PT Asuransi*") at [59] (subsequently cited in *Gokul Patnaik v Nine Rivers Capital Ltd* [2021] 3 SLR 22 ("*Gokul*") at [204]–[206]):[108]

> 59 … public policy under the Act … should only operate in instances where the upholding of an arbitral award would "shock the conscience" (see *Downer Connect* ([58] *supra*) at [136]), or is "clearly injurious to the public good or … wholly offensive to the ordinary reasonable and fully informed member of the public" (see *Deutsche Schachbau v Shell International Petroleum Co Ltd* [1987] 2 Lloyds' Rep 246 at 254, per Sir John Donaldson MR), or where it violates the forum's most basic notion of morality and justice: see *Parsons & Whittemore Overseas Co Inc v Societe Generale de L'Industrie du Papier (RAKTA)* 508 F 2d, 969 (2nd Cir, 1974) at 974. …

107 RWS at paragraphs 2(d) and 62.

108 AWS at paragraph 28; RWS at paragraph 63.

84 It is also not in dispute that the relevant public policy for refusing enforcement under Article 36(1)(*b*)(i) is Singapore public policy.[109]

85 The Respondent argues that since Mr Davaatseren and Mr Yadamsuren have committed criminal acts by unlawfully transferring the Relevant Properties under the Agreements, allowing the Final Award to be enforced would be tantamount to condoning their actions in violation of Singapore public policy.[110]

86 In relation to Mr Davaatseren, the Respondent relies on the Indictment Conclusion issued by the Prosecutor's Office of Ulaanbaatar:[111]

> 2.2. Illegal Asset Transfer and International Arbitration Costs: While serving as General Director, Ts. Davaatseren further abused his authority by bypassing the Law on State and Local Property (Articles 11 and 30) and the Company Law. He exercised powers not granted to him by transferring state property without the decision of the competent authority.
>
> On September 25, 2015, he signed General Agreement No. 5/2621-15 and four subsequent sub-agreements to transfer the "Erdenet Medical" hospital—built with 100% investment from Erdenet Mining Corporation—to "Medipas" LLC. On March 1, 2016, he issued Order A/108 to write off assets, transferring the hospital (valued at 64,871,553,622 MNT) to Medipas LLC, causing a direct loss of that amount to the state.
>
> Furthermore, following a dispute over these agreements, "Medipas" LLC and the "Medipas" Association (Japan) filed a claim against "Erdenet Mining Corporation" SOE at the Singapore International Arbitration Centre (SIAC). On January 31, 2024, the arbitration tribunal ruled against Erdenet Mining Corporation, ordering the payment of:
>
> - $17,500,000 USD and 10,875,436,308 MNT for contract breaches.
> - Legal and other costs totaling over $1.13 million USD, and various amounts in JPY, KRW, and SGD.

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109 AWS at paragraph 26; RWS at paragraph 62.

110 RWS at paragraph 62.

111 RWS at paragraph 63; BP-1 at page 235.

> • The total additional harm caused to the state due to this arbitration reached 74,704,435,572.15 MNT.
>
> By these actions, the defendant is charged with the repeated commission of the crime of abuse of official power or position as a public official.

87 In addition to the abovementioned "crime of abuse of official power or position as a public official", the Respondent also alleges that Mr Davaatseren has "committed criminal offences of … unjustified enrichment and money laundering".[112]

88 Further, according to the Respondent, Mr Yadamsuren has fled Mongolia and is currently the subject of an Interpol Blue Notice:[113]

> The Anti-Corruption Agency of Mongolia is conducting criminal investigation on criminal case 1902007040331 initiated for the crimes stipulated in Articles 263.2 (Abuse of Official Position) and 22.10 (Illicit Enrichment) of the Penal Code of Mongolia. During the investigation, it was established that the subject instigated public officials into signing the below mentioned agreements without the consent the board of the state-owned company on 25 September 2015 and transferred the ownership of assets (hospital, medical equipment and apartments), which were procured based on these agreements, only to MEDIPASS LLC. …

89 In response, the Applicants argue that neither Mr Davaatseren nor Mr Yadamsuren has been convicted in Mongolia.[114] The Interpol Blue Notice is also not proof of Mr Yadamsuren's alleged violation of Mongolian law.[115]

90 I agree with the Applicants that neither Mr Davaatseren nor Mr Yadamsuren has been found guilty of the alleged offences in Mongolia. Even

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112 RWS at paragraph 62(a).

113 RWS at paragraph 63(b); TD-2 at pages 11462–11463.

114 AWS at paragraphs 84–87.

115 AWS at paragraph 92.

the Respondent's own expert Dr Purevdorj confirms that the issuance of the Indictment Conclusion only marks the completion of investigation and prosecutorial review.[116] Until a final judgment establishes criminality, no person is considered convicted under Mongolian law.[117] I also agree that it is plain on the face of the Interpol Blue Notice that it serves to gather information about Mr Yadamsuren and to locate him, rather than to urge member states to arrest him.[118] The Respondent has, in this respect, overstated Mr Davaatseren and Mr Yadamsuren's alleged criminality.

91 However, even though it is clear that neither Mr Davaatseren nor Mr Yadamsuren has been convicted, the analysis does not end here. There is a further question of whether the existing evidence on their actions nonetheless suffices to invoke the public policy exception. It is to this that I now turn.

92 Before an enforcement court can discuss whether upholding an award would "shock the conscience" or be "clearly injurious to public good" (*PT Asuransi* at [59]), there is an antecedent question of whether it can even reopen the tribunal's findings of law and fact. On this, the Court of Appeal's guidance in *AJU v AJT* [2011] 4 SLR 739 ("*AJU*") is instructive. AJT commenced arbitration against AJU. Shortly after, AJU made a complaint of fraud against three entities associated with AJT, which led to the Thai prosecution authority commencing investigations against them on charges of joint fraud, joint forgery and the use of a forged document. AJU then entered into a settlement agreement with AJT and these three entities. Pursuant to this settlement agreement, upon AJU receiving the evidence of withdrawal and/or discontinuation of all criminal

116 BP-1 at paragraph 102.

117 BP-1 at paragraph 103.

118 TD-2 at page 11463.

proceedings from the Thai prosecution authority, AJU agreed to pay AJT a sum of US$470,000. Subject to AJT's receipt of the sum, each party to the settlement agreement was to irrevocably discontinue all actions against each other, including the arbitration in question. Parties subsequently referred the question of whether the settlement agreement should be set aside on the grounds of duress, undue influence and/or illegality to the tribunal.

93 The tribunal in its interim award held that, upon its examination of the terms, the settlement agreement was valid and enforceable. The tribunal's conclusion was based mainly on the finding that the settlement agreement, on its face, did not require any illegal acts to be done. AJT then applied to the High Court to set aside the interim award. The judge in the setting aside application took the view that the settlement agreement was illegal and set aside the interim award for violation of Singapore's public policy.

94 The Court of Appeal overturned the judge's decision. It noted at [58] that there were two competing approaches in the English courts on the question of when an enforcement court can go behind an arbitral award and reopen the tribunal's finding on illegality. One approach was represented by Colman J's decision in *Westacre Investments Inc v Jugoimport-SPDR Holding Co Ltd* [1999] QB 740 ("*Westacre (HC)*") as upheld by the majority on appeal in *Westacre Investments Inc v Jugoimport-SPDR Holding Co Ltd* [2000] 1 QB 288 ("*Westacre (CA)*"), the other by the English Court of Appeal decision in *Soleimany v Soleimany* [1999] QB 785 ("*Soleimany*") and Waller LJ's dissenting judgment in *Westacre (CA)*.

95 The approach in *Westacre (HC)* and *Westacre (CA)* is stricter: the tribunal's finding on illegality is ordinarily final, and parties can only challenge

the enforcement of the award on the basis of new evidence. I set out the relevant principles below (*Westacre (HC)* at 767H–768A):

> (v) If the court concluded that the arbitration agreement conferred jurisdiction to determine whether the underlying contract was illegal and by the award the arbitrators determined that it was not illegal, prima facie the court would enforce the resulting award. (vi) If the party against whom the award was made then sought to challenge enforcement of the award on the grounds that, on the basis of facts not placed before the arbitrators, the contract was indeed illegal, the enforcement court would have to consider whether the public policy against the enforcement of illegal contracts outweighed the countervailing public policy in support of the finality of awards in general and of awards in respect of the same issue in particular.

96 In contrast, in *Soleimany* and Waller LJ's dissent in *Westacre (CA)*, an enforcement court may reopen the tribunal's finding of illegality if there is evidence that the contract was illegal (*Westacre (CA)* at 314F–314G):

> … there will be circumstances in which, despite the prima facie position of an award preventing a party [from] reopening matters either decided by the arbitrators or which the party had every opportunity of raising before the arbitrators, the English court will allow a re-opening. The court is in this instance performing a balancing exercise between the competing public policies of finality and illegality; between the finality that should prima facie exist particularly for those that agree to have their disputes arbitrated, against the policy of ensuring that the executive power of the English court is not abused. …

97 The Court of Appeal held that the majority's approach in *Westacre (CA)*, which endorsed Colman J's approach in *Westacre (HC)*, should be adopted in Singapore (*AJU* at [60]). On the facts of *AJU*, the Court of Appeal held:

> 64 In our view, this was not an appropriate case for the Judge to reopen the Tribunal's finding that the Concluding Agreement was valid and enforceable. **The Tribunal did not ignore palpable and indisputable illegality** (as the Beth Din did in *Soleimany*) ([23] *supra*). The Concluding Agreement does not, on its face, … suggest, much less require, the doing of any illegal act by either the Appellant or the Respondent to trigger

> each other's obligations. … In short, this case is not a *Soleimany*-type case involving an underlying contract clearly tainted by illegality, but a *Westacre (CA)* or *OTV*-type case, where the respective arbitral tribunals found that the underlying contracts in question did not involve the giving of bribes to, but merely the lobbying of, government officials, which lobbying was not contrary to English public policy (*ie*, the public policy of the Enforcing State).
>
> 65 In our view, the Judge was not entitled to reject the Tribunal's findings and substitute his own findings for them. …
>
> …
>
> 69 In our view, **limiting the application of the public policy objection in Art 34(2)(b)(ii) of the Model Law to findings of *law* made by an arbitral tribunal – to the *exclusion* of findings of *fact*** … would be consistent with the legislative objective of the IAA that, as far as possible, the international arbitration regime should exist as an autonomous system of private dispute resolution to meet the needs of the international business community. …
>
> [emphasis in italics in original; emphasis in bold added]

98 This distinction between errors of law and fact was further explored by Anselmo Reyes IJ in *CBX v CBZ* [2020] 5 SLR 184 ("*CBX*") at [66]–[67]:

> 66 The Court of Appeal (in *AJU v AJT* at [62]) drew a helpful distinction between errors of fact and errors of law in arbitral awards and held that, where it is a question of the latter, the Singapore court would in appropriate circumstances be "entitled to decide for itself whether [an agreement underlying an award] is illegal and to set aside the [award] if it is tainted with illegality". …
>
> 67 … Lastly, on the assumption that the Tribunal erred as a matter of Thai law, there is the present situation. That is one where the governing law of a contract is foreign law and a tribunal wrongly concludes that the contract is not illegal under that law. It seems to me that, in this type of case, where there is "palpable and indisputable illegality" on the face of the award, it may be appropriate for the Singapore court to intervene as a matter of Singapore public policy, because not to do so would be to ignore or condone obvious criminality (*AJU v AJT* at [67]). That the Court of Appeal in *AJU v AJT* was confining its observations on intervention in the fourth type of situation to cases of "palpable and indisputable illegality" may be inferred from its comment (at [64]) that the relevant tribunal had not

> ignored "palpable and indisputable illegality". If, on the face of an award, obvious criminality is not involved, it should not normally be warranted for a supervisory court to consider evidence or submissions on the question of illegality under foreign law with a view to possibly intervening. That would be tantamount to re-opening and rehearing the merits of an arbitration. A supervisory court should not readily accede to such an exercise in a setting-aside application.

99 Although both cases concerned applications to set aside the awards in question, the approach to public policy in the setting-aside and enforcement contexts is identical (*AJU* at [37]). Two principles can be distilled from the discussions in *AJU* and *CBX*:

(a) The tribunal's findings of fact in respect of alleged violations of public policy are ordinarily binding on the parties, and a party resisting enforcement on the public policy ground can only rely on new evidence that was not placed before the tribunal for the enforcement proceedings.

(b) The tribunal's findings of law on the legality of the acts allegedly violating public policy, if under foreign law, can only be reopened if there is "palpable and indisputable illegality" on the face of the award.

100 I now turn to examine the Respondent's challenge to the Final Award on the basis of the Indictment Conclusion, which it says only emerged after the Final Award had been issued, implying that this is new evidence not before the Tribunal.[119]

101 As a preliminary observation, according to the Indictment Conclusion, the crimes of abuse of power (in relation to Achit Ikht LLC), unjustified enrichment and money laundering which Mr Davaatseren allegedly committed

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119 RWS at paragraph 64.

relate to the Respondent's dealings with other entities.[120] They did not arise from the facts which are before this court and do not assist the Respondent in showing that enforcing the Final Award would violate Singapore public policy. Relevantly for our purposes, in respect of the Respondent's dealings with the Applicants, Mr Davaatseren is charged with the "crime of abuse of official power or position as a public official" on the ground that he "bypass[ed] the Law on State and Local Property (Articles 11 and 30) and the Company Law".[121]

102 In relation to the allegation that Mr Davaatseren bypassed the State and Local Property Law, the Tribunal concluded in the relevant part of the Final Award that:[122]

> (a) According to Dr Tumenjargal's expert report in the Arbitration, which was not rebutted by the Respondent's then expert, the Respondent was not a state-owned enterprise at the time the parties signed the Agreements.
>
> (b) Therefore, the State and Local Property Law was not applicable to the Respondent and there was no issue of compliance with the State and Local Property Law.

103 For context, Dr Tumenjargal's expert report in the Arbitration stated:[123]

> 30 At the time the Agreements were concluded, the Respondent's Charter was effective and the Government of Mongolia held 51% of its shares. According to Article 21.1 of the State and Local Property Law, the Respondent was a legal entity with participation of state property. The State property policy

120 BP-1 at pages 234–236.

121 BP-1 at page 235.

122 Final Award at [194] (RB-1 at page 92).

123 TD-2 at page 9802.

> and regulation office (formerly known as State Property Committee) is involved in the operations of the company only through the exercise of its shareholder rights. At the time the Agreements were concluded, the Respondent was not a 100% State-owned entity and transfer of its property was not subject to approval by the State Property Committee.

I note that he also maintained the same position in the present proceedings.[124]

104 Having reviewed the part of the Indictment Conclusion relevant to the Respondent's dealings with the Applicants, I do not find any new fact or evidence which contradicts the Tribunal's findings with respect to the State and Local Property Law.

105 I identified two testimonies relevant to the question of whether the Respondent was a state-owned enterprise at the time the Agreements were entered into. The first testimony is that of L. Narantuya, a representative of the State Property Agency:[125]

> … At that time, the Mongolian side owned 51 percent of Erdenet Mining LLC. Therefore, any decisions related to assets must be made in accordance with the Law on State and Local Property. In other words, the right to conduct transactions, establish agreements, and issue orders regarding the transfer of fixed assets arises only after obtaining permission from the Government of Mongolia and the State Property Committee (as named at the time). …

Evidently, Narantuya asserted that provisions in the State and Local Property Law applied to the Respondent, without setting out the legal basis for the assertion that a 51% stake held by the Mongolian state necessarily meant that the Respondent was a state-owned enterprise at the material time.

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124 MT-1 at paragraph 61(6).

125 BP-1 at page 257.

106 There is also a testimony from O. Batbaatar, a Senior Specialist in charge of Monitoring at the State Property Registration and Monitoring Department:[126]

> … 'Erdenet Mining' LLC was operating according to the 2015 agreement established between the governments of two countries—that is, international treaty operations. That agreement specifies that it will operate following domestic legislation.
>
> Therefore, in the event of transferring, writing off, or decommissioning assets registered as fixed assets of 'Erdenet Mining' LLC, permission must be obtained from the State Property Committee in accordance with the Law on State and Local Property. …

Similarly, Batbaatar also did not explain the legal basis on which the Respondent could be considered a state-owned enterprise at the material time. The fact that the Respondent was established by the Mongolian and Russian states does not mean that it was a state-owned enterprise for the purpose of the State and Local Property Law at the time the Agreements were entered into.

107 Nor did Dr Purevdorj provide any opinion evidence in his expert report in the present proceedings to show that the Respondent was indeed a state-owned enterprise at the material time and hence was subject to the State and Local Property Law. In light of the foregoing, there is no basis for me to overturn the Tribunal's findings of fact or law in relation to the alleged violation of the State and Local Property Law.

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126 BP-1 at page 270.

108 In relation to the allegation that Mr Davaatseren bypassed the Company Law 2011 (Mongolia) ("Mongolian Company Law"), the Tribunal concluded in the Final Award that:[127]

(a) Article 83.1 of the Mongolian Company Law provides that:

> Executive management shall manage day-to-day operations of the company within the scope of the authority established under the company's charter and the agreement made with the board of directors (in its absence, the shareholders' meeting).

(b) Under the Respondent's charter, Mr Davaatseren as the Respondent's then General Director had the authority to:

> decide all matters related to all types of transactions, financial liabilities affecting the interests of the Negotiating Parties and major transactions with value of more than US$10 million upon agreement with the 1st Deputy Director.
>
> [Tribunal's emphasis omitted]

(c) All of the signature pages of the Agreements contain the signatures of Mr Davaatseren and Roy I. V., the Respondent's First Deputy Director. Further, the following senior executives and heads of departments also affixed their signatures on the back of the last page of each of the Agreements: (i) Deputy Director for Development Issues, Namkhainyambuu B.; (ii) Deputy Director for Finance and Economics, Altankhuyag B.; (iii) Head of the Legal Department, Tserensodnom A.; (iv) Head of the Economics and Marketing Division, Dmitriev A.A.; and (v) General Accountant, Platanov M.V.

(d) The Respondent's reliance on Article 11.6.8 of its charter was misplaced. Article 11.6.8 provides that the Respondent's Board "shall

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127 Final Award at [239]–[258] (RB-1 at pages 106–112).

> have exclusive authority to … determine the criteria of major transactions in accordance with laws and regulations of Mongolia and authorize to conclude such transactions." The Respondent did not present any evidence that Article 11.6.8 therefore subjected the transactions under the Agreements to the Board's approval.
>
> (e) Therefore, Mr Davaatseren did have authority to enter into the Agreements on behalf of the Respondent.

109 In my judgment, the testimonies and other evidence in the Indictment Conclusion do not undermine the Tribunal's findings. Instead, the testimonies of those who signed the Agreements suggest that they either were not sure whether Mr Davaatseren needed the Board's approval or thought that he had the right to enter into the Agreements.[128]

110 I reproduce a few testimonies here to illustrate this point. D. Davaasambuun was the Deputy Director for Production and signed the General Agreement on behalf of the First Deputy Director Roy, who was absent at the time. Davaasambuun testified that:[129]

> … I don't know well whether the Board granted authority or not … I am not an entity with the right to represent Erdenet Mining and sign contracts. My signing means that I am giving an opinion on the contract and agreeing to it by signing … We do not grant the General Director the right to establish contracts; the General Director himself has the right to represent the plant and establish contracts. We are subordinates to that person, so we are not the subjects with the power to grant authority. Our signing means we are giving our opinion on the contract; it does not mean we are giving permission to the General Director. We are not the people who give permission to the General Director; the General Director is the one who goes ahead and makes the

128 BP-1 at pages 274 and 277–278.

129 BP-1 at page 278.

> contracts … I did not participate in the negotiation of the contract terms, so I don't know how the terms were agreed upon … other than signing the contract, I did not participate in this work. I don't know about this contract. Since I don't remember this contract at all now, I probably never even read it … All the people from below have signed it, so I must have signed it because I was substituting for Director Roy. …

111 Namkhainyambuu, former Deputy Director for Development Issues of the Respondent, also signed on the General Agreement and testified that:[130]

> The decision to establish this contract was made by the Russian 1st Deputy Director Roy and General Director Davatseren [*sic*], based on research and choices from the previous director's term … I do not have the right to represent Erdenet Mining LLC in establishing contracts with others; only the General Director has that right. According to the division of duties, I and the directors of the legal and economic departments sign the back of the contract to indicate consultation. I signed according to that procedure … I don't grant such rights … Only the Board gives permission. The General Director of Erdenet Mining LLC decides matters within his authority. …

112 Furthermore, with respect to findings of law, the Tribunal did not ignore "palpable and indisputable illegality" in arriving at its interpretations of the relevant Mongolian laws and the Respondent's charter. The Final Award referred to, *inter alia*, the Statement of Defence in the Arbitration in the footnote:[131]

> 74. Mr Ts Davaatseren is currently subject to a criminal prosecution in Mongolia for misusing his authority and position as the General Director of the Respondent in executing the Agreements and passing the decision to cancel assets from the balance sheet without approval of the Respondent's Board. Medipas LLC is a civil defendant to the criminal proceeding.

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130 BP-1 at page 274.

131 TD-2 at page 574.

Clearly, the Tribunal reached its findings while alive to the criminal allegations against Mr Davaatseren and took the view that they did not have an impact on its conclusion.[132]

113 In light of the foregoing discussions, there is no basis for me to overturn the findings of law or fact made by the Tribunal in relations to allegations made against Mr Davaatseren under both the State and Local Property Law and the Mongolian Company Law. The new facts that the Respondent seeks to rely on do not cross the threshold of "shock[ing] the conscience" and "violat[ing] the forum's most basic notion of morality and justice" (*PT Asuransi* at [59]; *Gokul* at [204]–[206]). Nor did the Tribunal ignore "palpable and indisputable illegality" in coming to its findings of law (*AJU* at [64]). Thus, the public policy exception to enforcement is not made out.

Conclusion

114 In conclusion, I dismiss the Respondent's application and uphold the Leave Order.

115 Parties are to file their written submissions on costs and disbursements not exceeding five pages within one week of this decision.

Wong Li Kok, Alex
Judge of the High Court

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132 Final Award at [247] (RB-1 at page 109).

Samuel Richard Sharpe (Sharpe & Jagger LLC) for the applicants;
Mahesh Rai s/o Vedprakash Rai, Loh Tian Kai, Loh Renn Lee, Daniel and John Thomas George (Drew & Napier LLC) for the respondent.
