ORDERS FOR SECURITY FOR COSTS AND INTERNATIONAL ARBITRATIONS IN SINGAPORE

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Introduction

As Singapore gains recognition as an arbitration venue and centre, it is imperative that a clear role of the local courts in relation to the arbitration process be maintained. The legislation for international arbitrations has attempted to do this, setting out the respective powers of arbitrator and judge in the hope that the two would, together, promote the objective of attracting arbitrations.

The International Arbitration Act 1 incorpo­rates the UNCITRAL Model Law, which simultaneously gives generous powers to arbitrators while allowing a national court to retain powers to assist the arbitration process where required. However, it is not always easy to know when and how the court may assist. Recently, the question has arisen in relation to the ordering of security for costs in an arbitration falling within the IAA.

This article will examine some recent cases relating to applications for security for costs under the IAA which raise a number of important issues.

Terms attached to stay for international arbitrations

As case law on the IAA begins to build up, it offers interesting opportunities to observe the court’s exercise of its powers under the Act.

Section 6 of the IAA, the stay provision, states:

“(1) Without prejudice to Article 8 of the Model Law, where any party to an arbitration agreement to which this Act applies institutes any legal proceedings in any court in Singapore against any other party to the agreement in respect of any matter which is the subject of the agreement, any party to the agreement may, at any time after appearance and before delivering any pleadings or taking any other steps in the proceedings, apply to that court to stay the proceedings.

(2) The court to which an application has been made in accordance with subsection (1) shall make an order, upon such terms or conditions as it may think fit, staying the proceedings unless it is satisfied that the arbitration agreement is null and void, inoperative or incapable of being performed.

(3) Where a court makes an order under subsection (2), the court may, for the purpose of preserving the rights of the parties, make such interim or supplementary orders as it may think fit in relation to any property which is the subject of the dispute to which the order under that subsection relates.

(4) For the purposes of subsections (1), (2) and (3), a reference to a party includes a reference to any person claiming through or under such party.”

In two recent cases decided by Lai Siu Chiu J. in the Singapore High Court, the power to order terms or conditions conferred by section 6(2) of the IAA has been put to use. The language used by the court in both cases is interesting, as it greatly resembles that used when considering an application for summary judgment. While it has been pointed out that application of summary judgment principles may be appropriate in cases relating to the domestic Act,3 it is questionable whether the same principles or considerations need apply in the case of a stay application under the IAA.

In P.T. Budi Semesta Satria v. Concordia Agritrading Pte Ltd,4 the plaintiffs were sellers and the defendants buyers of goods. The contract incorporated the terms, conditions and rules of contract no. 119 of the Grain and Feed Trade Association (GAFTA). This included an arbitration agreement in clause 30. The parties apparently had places of business in different jurisdictions and the arbitration agreement therefore fell within the purview of the IAA. The parties’ dispute arose in relation to the condition of the cargo of goods shipped by the plaintiffs.

2. See Fost v. Specialty Laboratories Asia Pte Ltd (No. 1) [1999] 4 S.L.R. 488, echoing the sentiment in Kuan Im Tong Chinese Temple & Anor v. Fong Choon Hung Construction Pte Ltd [1998] 2 S.L.R. 137. This approach allows the court, in considering a stay application under section 7, to apply summary judgment principles, although these should not provide the exclusive means of weighing the claims. The court is not to embark on an examination of the validity of the dispute as if it were a summary judgment application.


The defendants argued that, due to deficiencies therein, their sub-buyers had rejected the goods and were in fact in arbitration with them over the same. The plaintiffs commenced action in Singapore against the defendants, who applied for a stay, arguing that they were entitled to arbitration. The assistant registrar who heard the application granted the stay; upon appeal, Lai J. affirmed the stay order, but imposed a number of terms on it.

In coming to her decision, Lai J. held, quite rightly, under section 6 of the IAA that a stay was mandatory unless the arbitration agreement was null and void, inoperative or incapable of being performed. The learned judge went further to utilise the unique provisions of section 6 (unique because they are not found in Article 8 of the UNCITRAL Model Law in the First Schedule, from which section 6 derives) to impose terms on the stay order. Those terms included a requirement that the defendants furnish security for the sum of U.S.$76,068.75 (being the balance of the cargo price remaining unpaid) to the plaintiffs by way of solicitor's undertaking or bank guarantee unless and until the defendants showed that they had proceeded with the GAFRA arbitration. Lai J. further ordered that if GAFRA refused or rejected arbitration of the matter, the plaintiffs would be at liberty to restore the summary judgment application which they had filed earlier. It was the learned judge's view that the defendants had "no defence to the plaintiff's claim save for the defendants' cross claims" (which were already under arbitration).

While the discretion to impose terms with a stay order certainly exists under section 6, it is interesting to note the actual use of the discretion. As mentioned, the power to impose terms upon a stay is not found in Article 8 of the UNCITRAL Model Law. A perusal of the Explanatory Statement to the International Arbitration Bill does not shed any light on why this power was included in section 6. Nor does the reason for the inclusion appear in the report of the Law Reform Committee's Sub-Committee on Review of Arbitration Laws, which led to enactment of the Act.

In view of this, it is open to the court to determine what terms and conditions to impose. Indeed, in Lai J.'s view, the court has "absolute discretion to impose terms and conditions as appear reasonable or required by the ties of justice".

While one might not be able to fault this upon a literal reading of section 6, the language used by Lai J. is noteworthy. In imposing the terms as the learned judge did, she indicated that, in her opinion, "there was no defence to the plaintiffs' claim save for the cross claims . . ." This is somewhat reminiscent of the approach of the courts in dealing with a defendant's application for leave to defend in summary judgment applications.

This approach of the court in relation to section 6 is made even clearer in a later judgment by the same judge, in Spilosia Plobo International Shipping & Chartering d.o.o. v. Adria Orient Line Pte Ltd. The plaintiffs were a company incorporated in Slovenia, while the defendants were a company incorporated in Singapore. The plaintiffs sued the defendants for alleged breach of a charter-party, claiming unpaid charter-hire, port charges and bunker disbursements. The defendants disputed these claims.

Clause 17 of the charter-party required disputes to be referred to arbitration by three persons in London. The charter-party was governed by English law. By the time of the suit, the majority shareholder of the defendants had died. His personal representatives, through the solicitors of the deceased, apparently instructed the defendant's counsel to take no further steps to defend the proceedings nor to pursue arbitration in London. At the same time, it appeared that the deceased had, prior to death, limited the mandate of the defendants' minority shareholder/director/managing director, one Schlotzer. Schlotzer controlled the second defendant company. There was therefore a question as to whether the defendants' authority to continue in the arbitration proceedings had therefore been revoked. Lai J. allowed the defendants to challenge the purported revocation of their authority. There were two other concurrent applications: the plaintiffs had applied for summary judgment, while the defendants had applied for a stay of court proceedings under the IAA, in favour of arbitration in London. Schlotzer filed an affidavit in support of this application.

As in the previous case, the Lai J. allowed a stay of proceedings under section 6 while imposing rather similar terms. However, in this case, the judge "pierced" the corporate veil to impose the security requirement on Schlotzer, the defendants' minority shareholder. In view of the fact that this individual was ordered to furnish the security, the learned judge reduced the amount of security originally ordered by the assistant registrar (U.S.$458,000) to U.S.$50,000.

The learned judge reiterated her view in the previous case, stating that the court had an unfettered discretion under section 6 in imposing terms on a stay. In the present case, she went a step further, to lift the defendants' corporate veil, to order personal security by Schlotzer, the minority shareholder/managing director. This is significant as the order was therefore made against an individual who was not a party named in the court proceedings.

There are no statutory guidelines for the exercise of the discretion to order security for costs (or, indeed, any

4. Lai J.'s judgment indicates that her decision was under appeal at the time of her writing it.
5. Choo Han Teck J.C. also approved of the use of section 6 to impose a condition for provision security in The ICL Mahendra [1999] 1 S.L.R. 529, at p. 533, para. 15; this extends to an admiralty proceeding which is stayed under section 6, p. 331 at para. H. 6. The Explanatory Statement merely states, in relation to Clause 6 of the Bill: "Clause 6 prescribes the conditions under which the court is required to stay proceedings before it where there is an agreement between the parties that the dispute should be submitted to arbitration."
other terms) under section 6 of the IAA. Security for costs in general court proceedings, on the other hand, are subject to the guidelines on security for costs found in Order 23, Rule 1 of the Rules of Court. More will be said about the desirability of guidelines in the next section.

What is also significant is that the Lai J.'s approach bore an even greater resemblance to that in summary judgment applications here, stating that the defendant had "raised no triable issues". The need to impose such terms may stem from the indignation of the court in having to grant a mandatory stay despite what it perceives to be a "no-defence" claim by the plaintiff. If so, it is sensible that the court has been allowed this power to prevent abuse of the system through reliance on the mandatory stay. However, a word of caution must be sounded. The mandatory stay was intended to be a clear direction to courts having to apply Article 8 that they should refuse stay only if the arbitration agreement itself was null and void, inoperative or incapable of being performed. This meant that the consideration of whether there was a dispute or a real defence (which could be taken into account in domestic arbitration) should not be taken into account in a section 6 stay. The Law Reform Committee's Sub-Committee Report indicates clearly that this distinction was to be preserved between international and domestic arbitrations in Singapore.

One might view this to be a position of happy compromise. The courts observe the mandatory stay requirement under the UNCITRAL Model Law, yet retain discretion via section 6 to "sieve out" cases where the defendant obviously has no intention to take up arbitration, but is merely using the arbitration agreement as a subterfuge to avoid court proceedings.

However, the wide power in section 6 may give rise to some discomfort. Although the two decisions by Lai J. do not in form contravene Article 8 in that the mandatory stay was ordered, the question arises as to whether exercise of the power to impose an order for security (for sums which are not necessarily small) may become a back-door method of making it difficult or impossible for defendants to maintain the stay condition. If, for instance, the defendants had been unable to furnish the security, the mandatory stay under section 6 would in effect have been circumvented. The dim view held by the court of the defendant's defence in both these cases was obvious, indicating that the intention of the security orders was to ensure that the defendants would make a bona fide attempt to proceed with arbitration, failing which they would not have the benefit of the stay. This resembles the granting of conditional leave to defend in summary judgment applications. Given the width of the power of the court under section 6, the court is certainly in the position to "do justice" this way.

Moreover, it is evident that, for the sake of determining the orders, the learned judge had to entertain the complicated arguments relating to the merits of the plaintiffs' claim, and the bona fide intentions or lack thereof, of the minority shareholder. Under the simple approach of Article 8, the court's task would have been to determine if the arbitration agreement was null and void, inoperative, or incapable of being performed. If it does not fall within these categories, a mandatory stay would be ordered. No arguments as to merit need be entertained. The present approach to section 6, however, appears to have opened Pandora's box which Article 8 sought to avoid in the first place.

Even in the context of domestic arbitrations, caution against going into the merits of the case has been sounded. As Browne-Wilkinson J.L. said in Porzelack K.G. v. Porzelack (U.K.) Ltd:

"Undoubtedly, if it can be clearly demonstrated that the plaintiff is likely to succeed, in the sense that there is a very high probability of success, then that is a matter that can be properly weighed in the balance. Similarly, if it can be shown that there is a very high probability that the defendant will succeed, that is a matter that can be weighed. But for myself I deplore the attempt to go into the merits of the case unless it can be clearly demonstrated in one way or another that there is a high degree of probability of success or failure." (emphasis added)

It is submitted that a fortiori, attempts to look into the merits of the case should be frowned upon in international arbitrations.

11. Article 9 of the Model Law provides: "It is not incompatible with an arbitration agreement for a party to request, before or during arbitral proceedings, from a court an interim measure of protection and for a court to grant such a measure." It is therefore presumably acceptable for a party in an international arbitration to seek an order for security for costs as such a measure of protection for himself. It is submitted that what should not be done is to open up an enquiry on the merits of the case under dispute, nor to use the measure to disable the claimant from proceeding in the arbitration; both points will be discussed subsequently.


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8. Order 69A of the Rules of Court, which deal with international arbitrations, is silent on the manner of exercise of the discretion.

9. It would appear that the court was not referred to the English cases of Aiden Shipping Co. Ltd v. The Vimiera [1989] 2 All E.R. 409, H.L.; Taylor v. Pacif [1991] B.C.C. 406, CA; Symphony Group plc v. Hodgson [1993] 4 All E.R. 143, CA; and Metallloys Supplies Ltd v. M.A. (U.K.) Ltd [1997] 1 All E.R. 418, CA. These cases deal with the English court's power under section 5(1) of the Supreme Court Act 1981 to order costs (as opposed to security for costs) against non-parties to court proceedings; they provide guidelines as to the circumstances which must exist before such an order can be made. Although these cases do not relate to security for costs orders, the points raised in relation to persons who are non-parties may be of interest. (In Singapore, the equivalent provisions giving the High Court the power to award costs is found in paragraph 15 of the First Schedule, Supreme Court of Judithicure Act, Cap. 322, 1999 Rev. Ed. and Order 59, Rule 2(2), Rules of Court.) See generally, Pinaler, Civil procedure (Butterworths Asia, 1994), pp. 769-771; for the discretion to order security for costs, see ibid., pp. 815-819.

It may be argued that, as long as the discretion is exercised in a reasonable manner, such as requiring a manageable sum to be furnished in security, it would in practice not give rise to too many problems. After all, Lai J. indicated in Bilia that the power in section 6 would be exercised to impose such terms "as appear reasonable or required by the ties of justice." However, what are the implications of such a general yardstick? More clarity in defining the circumstances of use of the section 6(2) power is necessary.

It should be cautioned that terms which would in effect thwart a bona fide defendant's chance at proceedings with arbitration ought not to be imposed. Nor should the existence of the discretion under section 6 introduce considerations as to merit, in keeping with the spirit of Article 8 of the Model Law.

Security for costs orders other than in relation to stays

Apart from the above, there have been other developments on the subject of security for costs where a foreign party was involved in an arbitration. One of these is Bilia A.B. v. Te Pte Ltd & Others, which considered the court's discretion to grant an order for security for costs under a provision of the Companies Act.

Bilia, the plaintiff was a Swedish corporation. It took legal proceedings against the first, second and third defendants under a sale agreement relating to shares in the third defendant. The plaintiff sought an order that the defendants provide certain documents to the independent valuers and for the valuers to have access to the third defendants' auditors to obtain such information and documents as were necessary. The first defendant, on the other hand, commenced arbitration proceedings against the plaintiffs pursuant to an arbitration in the sale agreement. The arbitration was subject to the Rules of Arbitration of the International Chamber of Commerce. The plaintiffs sought an order for security by bank guarantee for their costs in the arbitration proceedings; this order was granted by the assistant registrar hearing the application.

In considering the power of the court to order security, the learned judicial commissioner referred to section 388(1) of the Companies Act, which states:

"Where a corporation is a plaintiff in any action or other legal proceeding the court having jurisdiction in the matter may, if it appears by credible testimony that there is reason to believe that the company will be unable to pay the costs of the defendant if successful in his defence, require sufficient security to be given for those costs and stay all proceedings until the security is given."

Bilia, the plaintiff in the court proceedings, was the party seeking security, so a plain reading of the provision would not have assisted them. Hence, the court had to read section 388(1) with the first defendant as the "plaintiff", being the claimant in the arbitration proceedings. On the facts, the court was of the view that the first defendants would be unable to pay costs should Bilia succeed in their defence in the arbitration proceedings. The assistant registrar's order for security of S$150,000 made against the first defendants was affirmed by the court.

It is curious that the court did not refer to either the domestic Arbitration Act or the IAA. In view of the fact that the plaintiff was a party having its place of business outside Singapore, the IAA could have applied. If so, it would have been appropriate to refer to the Act on the question of security for costs in relation to the arbitration proceedings. After all, section 12(1)(a) of the Act gives an arbitral tribunal the power to order, inter alia, security for costs. Section 12(6) provides that the High Court or a judge thereof has the same powers in relation to an arbitration for making orders in section 12(1) (and therefore includes orders for security) as it has for actions or matters in court. Similarly, had the domestic Arbitration Act applied, section 27(1) and Schedule 2 would have given the court the power to grant security for costs.

The equivalent of section 388(1) in England is section 726 of the Companies Act 1985. In the cases where section 726 has been raised, the courts appear to have treated that section as a secondary test in cases where the dispute was under arbitration, to decide whether or not to exercise their discretion to order security. The test in section 726 was whether there was credible testimony to show that the plaintiff/claimant would be unable to pay the defendant's costs in the event that the latter succeeded.

It is submitted that it only serves to confuse matters to utilise section 388(1) of the Companies Act when

18. At the same time, the court said that it was "well settled that security may be ordered against a claimant in arbitration", citing three cases in support.
19. The arbitration clause and the place of arbitration were not given in the judgment.
considering a security for costs application arising from a matter under arbitration. It may be appropriate to clarify legislative intent under section 388(1) in respect of security for costs in arbitrations. Security for costs is intended to apply to arbitration proceedings, since Singapore arbitration legislation makes its own provisions for orders for security for costs. In that case, what would also be desirable would be for guidelines for ordering security for costs in arbitrations (whether or not they be the same as those in Order 23 of the Rules of Court), particularly for international arbitrations.

The court in *Bilia* made reference to the English case of *Bank Mellat v. Helliniki Techniki S.A.*, 21 which dealt with the court's discretion in ordering security for costs where a foreign claimant was involved. In that case, Goff L.J. drew a distinction between international arbitrations and "general commercial arbitrations". The latter were described as those "regularly held in London under standard English forms of contract generally governed by English law, and so have a very close connection with the English jurisdiction". For such arbitrations, it was the practice to award security for costs. In the former, i.e. international arbitrations where the parties were usually resident outside England, they chose England as a forum on "purely private terms" and perhaps even due to "pure accident"; in these arbitrations, security for costs would be ordered against a foreign claimant only in "special circumstances".

In *Bilia*, Lim J.C. read "international arbitrations of this kind" to mean, in Singapore's context, those where parties have the closest connection with Singapore. On the facts, he found that the case fell within the class of "general commercial arbitrations" in Goff L.J.'s judgment. In the result, Lim J.C. held that exceptional circumstances were not required to be shown in the instant case, before an order for security for costs could be ordered.

It would seem from the judgment that the court in *Bilia* was not referred to the later House of Lords decision of *Coppee-Lavalin v. Ken-Ren Chemicals Ltd.*, 22 In that case, the House of Lords discussed the general approach to the exercise of its jurisdiction to order security for costs in arbitration matters. It discussed the distinction made by Kerr L.J. in *Bank Mellat*, between "general commercial arbitrations" and international arbitrations where London was chosen as a forum merely for convenience, with no intention by the parties to embrace all aspects of English law to govern their arbitration. It went on to hold that, since arbitration was a consensual process, the discretion to make an order for security for costs depended on whether or not doing so would be inconsistent with the parties' arbitration agreement. This was to ensure that the court played its role in being supportive of the arbitration process, without unnecessary encroachment. Moreover, mere lack of means of the plaintiff/claimant would not generally be sufficient to justify such an order. 23

The *Coppee-Lavalin* case lays down guidelines for ordering security for costs in the context of section 12 of the Arbitration Act 1950 (the equivalent of section 27 and the Second Schedule powers in Singapore's Arbitration Act); the case was decided prior to the enactment of the English Arbitration Act 1996. 24

*Bilia* does show that the Singapore court was prepared to accept Kerr L.J.'s distinction in *Bank Mellat* between general commercial arbitrations closely tied to the forum country, and international arbitrations with little to do with that forum. *Bilia* did not, unfortunately, deal with the later House of Lords decision in *Coppee-Lavalin*, which discusses the issues in further detail. Together with the *Bank Mellat* case, *Coppee-Lavalin* could provide a good starting point for consideration of the approach to adopt.

**Conclusion**

As the Singapore regime on international arbitrations is separate from the domestic one, there is a need for clear guidelines as to how and when a court should order a stay of proceedings in the former. The need is made more acute because of the apparently unlimited discretion of the court to make orders incidental to stays under section 6 of the IAA. This can be seen from the cases of *Budi* and *Spolens*. Requiring that terms be such "as appear reasonable or required by the ties of justice" may not be a satisfactory guide. If that discretion were to be exercised without clear guidelines, it may in effect defeat the spirit of Article 8 of the Model Law, which is to exclude any investigation of merit in stay applications. An order for security involving a sum which the claimant is unable to meet may also be used as a monetary means to override his right to arbitration under the arbitration agreement. As Mustill L.J. cautioned in *Coppee-Lavalin*:

"... an order for security will prohibit the claimant from proceeding with a validly constituted arbitra-

23. On the facts, Mustill L.J. and Browne-Wilkinson L.J. dissented in holding that the case did not justify exercise of that discretion. The majority was of the view that it was an exceptional situation which called for its exercise. This conclusion was reached in view of the fact that besides being insolvent, the respondent-claimant was funded by a third party (the Kenyan government) which would gain on the respondent's success in the arbitration, but would bear no responsibility for costs if it failed. The majority was concerned that this latter situation would leave the appellant with a mere paper order for costs in its favour.
24. The case also concerned, as did *Bank Mellat*, the question of whether the parties' choice of arbitration under the auspices of the International Chamber of Commerce signalled their intention that it would be inconsistent to have an order for security for costs, available under English law as curial law. The House of Lords in *Coppee-Lavalin* decided that such a choice did not necessarily show such an intention, though it showed that parties wished to have their arbitration to be as independent from the national system of the place of arbitration as possible.
One solution is to "de-link" the granting of stay, and the ordering of such protective terms by the court. Under an IAA arbitration, a respondent can apply to the arbitrator for an order for security for costs, as the arbitrator has power to make such an order under section 12(1)(a). Such an order by the arbitrator is, with the leave of the court, enforceable in the same manner as if it were an order made by the court.26 This would allow the court in ordering a mandatory stay under section 6, to be freed of the task of deciding the security for costs issue, as well as of any need to look at the merits of the claim, leaving these to the arbitrator. In this way, the court faced with a stay application need not involve itself in balancing the needs of a claimant (for stay) against those of a respondent (security for costs from the claimant).

In considering any guidelines for section 6(2), and for ordering of security for costs in international arbitrations generally, the following questions, raised by the cases discussed, need to be addressed:

- whether there should be a difference in the court's attitude to an application for costs in a domestic and an international arbitration;
- if so, what the respective approaches should be;
- if not, what the general approach should be;
- when the discretion under each Arbitration Act should be exercised;
- when a court might "pierce the corporate veil" to require a non-party to the court proceedings to furnish security for costs;
- the role of section 388(1) of the Companies Act in relation to matters under arbitration; and
- in an international arbitration, how adoption of a particular code of procedure (e.g. International Chamber of Commerce Rules) may reflect the parties' intention regarding judicial orders for security for costs.27

As Bingham L.J. in K/S A/S Bani v. Korea Shipbuilding & Engineering Corp held:

"While the existence of any discretion necessarily means that there is an area within which the Judge's decision is final and unchallengeable, it is highly desirable that the general lines on which a familiar discretion will be exercised should be generally known and broadly predictable."28

This is all the more true of an unfamiliar discretion such as that in section 6(2).

In addition, the House of Lords' suggestion of the court's need to be supportive of arbitration without unduly encroaching on the process is a useful one.29 As Mustill L.J. put it:

"... a local court ... should aim to be at the same time supportive [of arbitration] but sparing in the use of its powers."30

That must, of course, be viewed in the light of Mustill L.J.'s acknowledgement in Coppée-Lavalin, that "... palatable or not, ... it is only a court possessing coercive powers which can rescue the arbitration if it is in danger of foundering, and ... the only court which possesses these powers is the municipal court of an individual state."

A fine balance is therefore needed in determining the role of the court in international arbitrations under Singapore law. Finally, as Singapore aims to attract such arbitrations, Woolf L.J.'s words in Coppée-Lavalin, are most pertinent:

"... it is important, if the courts are going to play a proper role in supporting international arbitrations, that the situation not be left ... where it is not reasonably clear what are the circumstances in which an order for security for costs is likely to be or not to be granted."32

25. [1994] 2 All E.R. 449 at 470, paras f-g. Woolf L.J. was not persuaded by this but it is submitted, with respect, that he did not provide a convincing rebuttal of it—p. 477, paras c–d.
26. Section 12(5) of the IAA.
27. This issue was considered in Coppée-Lavalin. Additionally, since under section 15 of the IAA, parties may "opt out" of the Act's regime if they so indicate their intention, a further question under Singapore law is whether the choice of a particular set of procedural rules indicates such an intention to opt out. See Coppée International Pte Ltd v. Ebel S.A. [1998] 3 S.I.R. 670, and an article by this writer, "Section 15 of the Singapore International Arbitration Act—What are the Options?" [1999] Int.A.L.R. 17.
29. The Law Lords in Coppée-Lavalin were also mindful that an order for security for costs was not a procedure available under many national arbitration law systems—see, e.g. Mustill L.J. at 468, para. b, and Woolf L.J. at 473, para. c.
32. At p. 475, para. d.