



# Prayers for relief in international arbitration

*Infra petita and ultra petita*

“Deciding only what was asked, and nothing more”

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# Ultra petita

- When does it come up?
  - Annulment proceedings (ground for setting aside)
  - Enforcement proceedings (ground for refusal to enforce)

# Ultra petita

Ground for annulment / set aside

# Swiss PIL Act 1987, Art 190(2)(c)

*“2 The award may only be annulled:*

*[...]*

*b) if the arbitral tribunal wrongly accepted or declined jurisdiction;*

*c) if the arbitral tribunal's decision went beyond the claims submitted to it, or failed to decide one of the items of the claim;*

*d) if the principle of equal treatment of the parties or the right of the parties to be heard was violated;*

*e) if the award is incompatible with public policy.*

# Swiss Supreme Court, 4A 440/2010

*“[...] According to case law however, the arbitral tribunal does not go beyond the claims if ultimately it does not award more than **the total amount sought by the claimant**, yet assesses some of the elements of the claim differently from that party [...].*

*[...] They are accordingly entitled to resort to **arguments** which were not invoked because that is **not a new claim** or **a different claim** but merely a new qualification of the facts of the case.”*

# UNCITRAL Model Law, Art 34

*(2) An arbitral award may be set aside by the court specified in article 6, only if:*

*(a) the party making the application furnishes proof that:*

*[...]*

*(iii) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside; [...]"*

# English Arbitration Act 1996, s. 68(2)(b)

*(2) Serious irregularity means an irregularity of one or more of the following kinds which the court considers has caused or will cause substantial injustice to the applicant—*

*[...]*

*(b) the tribunal exceeding its powers (otherwise than by exceeding its substantive jurisdiction: see section 67);*

*[...]*

*(d) failure by the tribunal to deal with all the issues that were put to it  
[...]"*

# Ultra petita

Ground for refusal to enforce

# New York Convention, Art V(1)(c)

*“1. Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that:*

*[...]*

*(c) The award deals with a difference 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 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 recognized and enforced; [...]*”

# Convention de New York, Art V(i)(c)

« 1. La reconnaissance et l'exécution de la sentence ne seront refusées, sur requête de la partie contre laquelle elle est invoquée, que si cette partie fournit à l'autorité compétente du pays où la reconnaissance et l'exécution sont demandées la preuve:

(c) *Que la sentence porte sur un différend non visé dans le compromis ou n'entrant pas dans les prévisions de la clause compromissoire, ou qu'elle contient des décisions qui dépassent les termes du compromis ou de la clause compromissoire; toutefois, si les dispositions de la sentence qui ont trait à des questions soumises à l'arbitrage peuvent être dissociées de celles qui ont trait à des questions non soumises à l'arbitrage, les premières pourront être reconnues et exécutées; [...] »*

# Infra petita

- When does it come up?
  - Annulment proceedings (ground for setting aside)?
  - Enforcement proceedings (ground for refusal to enforce)?

# Infra petita

- Generally not an express ground for annulment / setting aside / refusal to enforce
- Unique feature

# English Arbitration Act 1996, s. 68(2)(d)

*(2) Serious irregularity means an irregularity of one or more of the following kinds which the court considers has caused or will cause substantial injustice to the applicant—*

*[...]*

*(b) the tribunal exceeding its powers (otherwise than by exceeding its substantive jurisdiction: see section 67);*

*[...]*

*(d) failure by the tribunal to deal with all the issues that were put to it  
[...]"*

# SSHD v Raytheon Systems Ltd\*

*“There must be a “failure by the tribunal to deal” with all of the “issues” that were “put” to it.*

*There is a distinction to be drawn between “issues” on the one hand and “arguments”, “points”, “lines of reasoning” or “steps” in an argument, [...]*

*there will be a failure to deal with an “issue” where the determination of that “issue” is essential to the decision reached in the award”*

\* [2014] EWHC 4375 (TCC)

# Swiss PIL Act 1987, Art 190(2)(c)

*“2 The award may only be annulled:*

*[...]*

*b) if the arbitral tribunal wrongly accepted or declined jurisdiction;*

*c) if the arbitral tribunal's decision went beyond the claims submitted to it, **or failed to decide one of the heads of claim\***;*

*d) if the principle of equal treatment of the parties or the right of the parties to be heard was violated;*

*e) if the award is incompatible with public policy.*

*\* “un des chefs de la demande”*

# Swiss Supreme Court, 4A\_218/2015

*“[...] the award can be challenged when the arbitral tribunal omitted to rule on one of the heads of claim. The omission to rule concerns a formal denial of justice. [...]. By ‘heads of claim’ (‘Rechtsbegehren’, determinate conclusioni’, ‘claims’), one must understand the claims or the pleadings of the parties”.*

# Model Law

- No provision providing for annulment in case of *infra petita*
  - Ways around it?
  - Not always
  - Other remedy?

# UNCITRAL Model Law, Art 33(3)

*“(3) Unless otherwise agreed by the parties, a party, with notice to the other party, may request, within thirty days of receipt of the award, the arbitral tribunal to make an **additional award as to claims presented in the arbitral proceedings but omitted from the award**. If the arbitral tribunal considers the request to be justified, it shall make the additional award within sixty days.”*

# Court of Appeal of Singapore\*

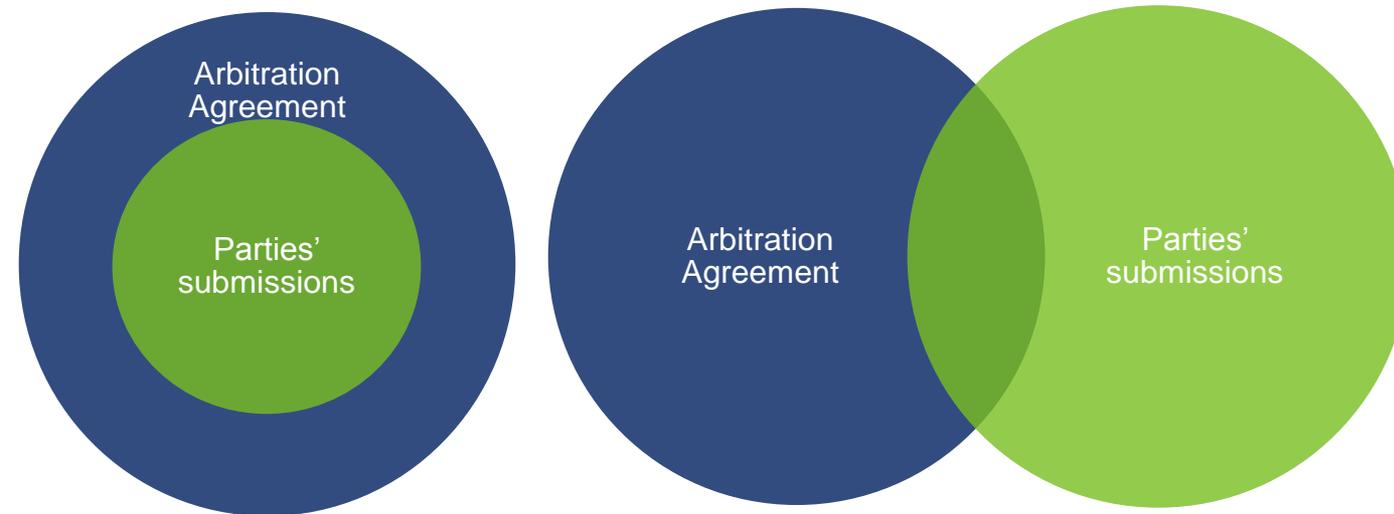
*“[...] the Judge erred at the first step when he held that a generic claim for damages was not broad enough to encompass a claim that might be characterised as one for loss of a chance. A generic claim for damages is nothing more than a particular manner of asserting a **right to damages**. We agree with the second and third steps in the Judge’s reasoning; but, as shall shortly become apparent, these go to issues such as **fair process, notice and natural justice, rather than to jurisdiction.**”*

*\*AKN and another v ALC and others and other appeals [2015] SGCA 18*

What can we make out of this?

# Ultra petita

- Excess of authority or jurisdiction or both?
- Arbitration agreement  $><$  parties' submissions



# Ultra petita

- Limitation in amount >< limitation in legal qualification of claim
- Ultra petita >< opportunity to present one's case?
- Ultra petita >< public policy?

# Infra petita

- Infra petita >< natural justice?
- Infra petita >< excess of authority?

# Prayers for relief

- Prayers for relief >< parties' submissions / pleadings
- Claim / heads of claim >< issue >< argument / point
- Drafting takeaways?

# Thank you

Questions?

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