SINGAPORE INSTITUTE OF ARBITRATORS

NEWSLETTER

MCI (P) 113/09/2013 **JUNE** 2014 **ISSUES** NO. 10

THE PRESIDENT'S COLUMN

I would like to start this issue by thanking the dedicated trainers, led by our Hon. Secretary Mr Naresh Mahtani, who completed yet another successful International Entry Course (**IEC**) in April 2014. Council members observed that we are seeing an increase in participation from outside Singapore, not just in the IEC but generally in the activities of the SIArb. For instance, 20% of the IEC candidates this year were from outside Singapore. For the Fellowship Assessment Course (**FAC**), we had 19% of the candidates who flew in for the course. We expect a healthy number of foreign candidates for this year's FAC too, which is scheduled for 24 and 25 October 2014.

This is part of a wider, encouraging trend. In the last couple of issues of the SIArb Newsletter, we have had the benefit of reading contributions from French and Australian contributors. In this issue, we have articles from Mr Attalah and Dr Respondek, representing the Middle East and Germany respectively. Well, Dr Respondek is not really foreign to Singapore or Asia, but he personifies the cross-border and cross-cultural dimensions of international arbitration. Our membership now stands at 702. 19% of our Members and 29% of our Fellows are from outside Singapore.

It is heartening to see the larger arbitration community becoming part of the SIArb family and seeing value in our services. This dovetails with the increasing prominence of Singapore as an arbitration hub.

I believe that it reflects a positive development of a larger dimension. That is, the growth of Asian arbitration. While harmonisation is a crucial ingredient in the success of international arbitration, the nuances of local arbitration laws and even the idiosyncrasies of culture are important considerations in the planning and conduct of an arbitration. Experienced practitioners and arbitrators are alive to this fact. In this regard, SIArb stands at an important crossroad. Its mix of a strong Asian component combined with the wealth of experience that its Western members bring enable SIArb to offer activities and training that are extremely relevant to this part of the world.

This is what we continue to strive towards - an Institute that serves the context that we are operating in with an eye to building an even better environment for arbitration in the future.

12 June 2014

ANNOUNCEMENTS UPDATES & UPCOMING EVENTS

1. Arbitration in Singapore – Some Recent Developments (2 July 2014, 5.30pm – 8.15pm)
2. SIArb Commercial Arbitration Symposium 2014, followed by Cocktails (31 July 2014, 12pm – 9.30pm)
3. Regional Arbitral Institutes Forum (RAIF) Conference 2014, followed by Gala Dinner (1 August 2014, 8.30am – 10pm)
4. Fellowship Assessment Course (FAC) (10, 17 – 18 & 20 October 2014, 8.30pm – 5.00pm)

NEW MEMBERS

The Institute extends a warm welcome to the following new associates, members and fellows

Members

1. Tan Weiyi
2. Roderick Grant Noble
3. Prakash Pillai
4. Andreas D Blattmann
5. Bettina V Diggelmann

Fellows

1. Tan Poh Ling Wendy
2. Tan Puay Boon
3. Frederick Damian Baptist
4. Huang Bo
5. Md Harun Ar Rashid
6. Nandakumar Renganathan

PANEL ARBITRATORS

Primary Panel of Arbitrators

1. Chia Ho Choon
2. David Laurence Kreider

Secondary Panel of Arbitrators

1. S.Magintharan
2. Tan Chau Yee

COUNCIL – 2013/2014

President
Chan Leng Sun, SC

Vice-President
Chia Ho Choon

Hon. Secretary
Naresh Mahtani

Hon. Treasurer
Yang Yung Chong

Immediate Past President
Mohan Pillay

Council Members
Kelvin Aw (co-opted)
Ganesh Chandru
Dinesh Dhillon
Steven Lim Yew Huat
Audrey Perez (co-opted)
Sundareswara Sharma (co-opted)
Johnny Tan Cheng Hye
Tay Yu Jin

PUBLICATIONS COMMITTEE

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Editor
Kelvin Aw / Gan Kam Yuin

Committee Members
Chew Yee Teck, Eric
Ganesh Chandru
Dinesh Dhillon
Margaret Joan Ling
Tan Weiyi

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Singapore Institute of Arbitrators

proudly presents

SIArb

Commercial Arbitration Symposium 2014

Organised by the SIArb Arbitration Bar Committee
The Old Parliament House, 1 Old Parliament Lane, Singapore 179429
Thursday, 31 July 2014
12.00pm - 9.30pm

SILE Accredited CPD Activity

4.5 CPD Public Points

Symposium Format

The SIArb Commercial Arbitration Symposium provides a distinctive and interactive forum for participants to discuss current issues and developments in the field of commercial arbitration.

The success of the Symposium depends on free-flowing discussion among the participants of current issues in commercial arbitration practice, all under the guidance of the experienced Co-Chairs, each of which is a leading individual in the field. Rather than set-piece speeches and pre-arranged speaking slots, participants are invited to submit topics in advance. The topics submitted will be grouped into themes and allocated to one of the 3 working sessions, at which participants will be invited to introduce their topics. The titles of each session are not prescriptive; participants are encouraged to submit and present questions on any topic relevant to the practice of commercial arbitration.

There are limited places available for this Symposium so as to maintain the efficiency of the format and preserve the quality of the discussion. However, there is no requirement or expectation to have any particular level of practical experience in arbitration, and participants from private practice, in-house practice, the business community and academia, at all levels, are strongly encouraged to attend and share their views.

As this year's Symposium will be held in conjunction with SIArb's hosting of the 8th RAIF Conference (Regional Arbitral Institutes Forum), SIArb expects to welcome a significant turnout of delegates from the Asia-Pacific region, including for the networking cocktails that will serve also as the pre-event for the RAIF Conference. The 2014 Symposium thus will be an excellent opportunity not only to raise and discuss specific issues facing international arbitration in Asia, but for participants to get to know their peers and colleagues throughout the region.

Programme

1200 - 1300 **Registration and networking lunch**

1300 - 1305 **Opening Remarks**
Mr. Chan Leng Sun, SC - President, Singapore Institute of Arbitrators

1305 - 1430 **Session 1: The Arbitration - Conduct, Practice & Procedure**
Co-Chairs:
Mr. Tan Chuan Thye
Partner, Stamford Law Corporation (Singapore)
Dr. Christopher Boog
Partner, Schellenberg Wittmer (Zurich/Singapore)

1430 - 1500 **Coffee Break**

1500 - 1630 **Session 2: The Tribunal - Jurisdiction, Power & Duties**
Co-Chairs:
Mr. Steven Lim
Managing Director, Clasis LLC; Partner, Clyde & Co Clasis Singapore
Mr. Raymond Cox, QC
Barrister, Fountain Court Chambers (London)

1630 - 1700 **Coffee Break**

1700 - 1830 **Session 3: The Courts - Role, Support and Enforcement**
Co-Chairs:
Mr. Harpreet Singh Nehal, SC
Partner, Clifford Chance ; Managing Partner, Covenagh Law LLP (Singapore)
Professor Anselmo Reyes, SC
Professor of Legal Practice (Hong Kong University)
Fmr. Judge of the Court of First Instance (Hong Kong)

1830 - 2130 **Networking Reception / Opening Reception (RAIF)**

Who should attend

Arbitrators, arbitration counsel, litigators, transaction counsel, in-house counsel, academics and members of the business community interested in current developments and best practices in the rapidly developing field of commercial arbitration.

Reception Sponsor

SCHELLENBERG WITTMER

Session 1: The Arbitration - Conduct, Practice & Procedure

Mr. Tan Chuan Thye
Partner, Stamford Law Corporation (Singapore)

Chuan Thye has extensive experience in dispute resolution work. His broad cross-border dispute resolution practice includes insolvency and restructuring work, banking, construction, energy, technology and investment disputes. Chuan Thye contributed the section on lending and security in Halsbury's Laws of Singapore (Vol. 12) on Banking and Finance, the liquidation section in the Law and Practice of Corporate Insolvency (2005), and the chapter on sureties in the "Law Relating to Specific Contracts in Singapore" (Thomson, 2008).

Chuan Thye is a fellow of the Chartered Institute of Arbitrators and of the Singapore Institute of Arbitrators. He sits on the panel of arbitrators of the Singapore International Arbitration Centre and the Kuala Lumpur Regional Centre for Arbitration. He is also active in the Singapore legal profession and sits on various committees of the Singapore Academy of Law, and is a member of the Disciplinary Panel established under the Singapore Legal Profession Act.

Dr. Christopher Boog
Partner, Schellenberg Wittmer (Zurich/Singapore)

Christopher Boog is a Partner in Schellenberg Wittmer's International Arbitration Group based in Singapore and Zurich. He specializes in international arbitration and represents clients and acts as an arbitrator in commercial disputes related to construction and engineering projects, research and development, sales contracts including post-M&A disputes, the energy sector (including oil&gas) and the pharmaceutical and automotive industries.

Christopher graduated from the law schools of the Universities of Amsterdam and Fribourg, was a Visiting Scholar at Columbia Law School in New York and obtained a doctorate in law (summa cum laude) from the University of Zurich. He regularly publishes and speaks in the fields of international arbitration and transnational litigation and teaches International Arbitration at EBS Law School in Wiesbaden, Germany.

Session 2: The Tribunal - Jurisdiction, Power & Duties

Mr. Steven Lim
Managing Director, Clasis LLC ;
Partner, Clyde & Co Clasis Singapore

Steven Lim is the Managing Director of Clasis LLC and a Partner with Clyde & Co Clasis Singapore. Steven has more than 20 years' experience in international commercial disputes and arbitration. He has represented clients in large and complex international arbitrations before several arbitral institutions, including the ICC, LCIA and SIAC and under the UNCITRAL rules. Steven also sits as an arbitrator. He is a member of the ICDR's International Panel of Arbitrators, the SIAC Panel of Arbitrators and the KLRCA Panel of International Arbitrators and sits as an arbitrator for ICC cases. Steven has been appointed an emergency arbitrator by the SIAC. He is a fellow of the Singapore Institute of Arbitrators.

Steven has experience with a broad range of commercial disputes covering private equity investments, M&A, banking, insolvency, hotel management, trading, energy, oil and gas, offshore services and engineering, ship building and construction disputes.

Steven has received recognition as a leading individual in international arbitration and in international dispute resolution in Singapore, Hong Kong and Asia-wide in the Chambers Global and Chambers Asia directories where he has been described as "a prominent counsel in arbitration", "is well known as a high quality individual", for his "very extensive arbitration experience both as counsel and as an arbitrator...and is respected for his incisive mind and in-depth research", "a pragmatic international arbitration professional who turns out quality work every time", "an excellent communicator - he identifies the salient issues to pursue and lets you know what the game plan is. He focuses people's minds on those issues", "meticulous, technically minded and excellent at assessing the merits of a client's position", and "well known for energy disputes, and commended as a lawyer who strives to better his understanding of client needs", and also in Asia Pacific Legal 500 and Global Arbitration Review.

Mr. Raymond Cox, QC
Barrister, Fountain Court Chambers (London)

Raymond Cox QC is a barrister at Fountain Court Chambers. Raymond's practice covers the whole breadth of law and practice of banking, financial services, and regulation. His expertise includes arbitration, conflicts of law, company, fraud, reinsurance and insurance. Much of his work is international. Raymond is recommended as a "recognised leading light in the banking litigation field" by Chambers & Partners. He is listed as a leading QC in Commercial, Banking and Finance, and Insurance and Reinsurance, Legal 500, 2013; and Banking and Finance, and Insurance, Chambers & Partners, 2014.

Session 3: The Courts - Role, Support and Enforcement

Mr. Harpreet Singh Nehal, SC
Partner, Clifford Chance ,
Managing Partner, Covenagh Law LLP (Singapore)

Harpreet is concurrently a Partner with Clifford Chance & Managing Partner of Covenagh Law LLP, which recently entered into a formal law alliance with Clifford Chance. He was made Senior Counsel in 2007. He has extensive international arbitration and litigation experience across a wide spectrum of commercial disputes including banking and finance, commercial contracts, company law, equity and trusts. His trial and appellate experience covers a wide range of large and complex commercial disputes involving significant international elements and multi-jurisdictional issues. Harpreet received his LLB from the National University of Singapore and LLM from Harvard Law School.

Professor Anselmo Reyes, SC
Professor of Legal Practice (Hong Kong University);
Fmr. Judge of the Court of First Instance (Hong Kong)

Anselmo Reyes has been Professor of Legal Practice at Hong Kong University since October 2012. Before that, he was a judge of the High Court of Hong Kong from 2003-12. As judge, he ran the Construction and Arbitration List (2004-8) and the Commercial and Admiralty Lists (2008-12). He was called to the Hong Kong Bar in 1986, taking silk in May 2001. He was admitted to the Singapore Bar in 1995. In April 2013, he became Representative of the Asia-Pacific Regional Office of the Hague Conference on Private International Law. He also practises as a commercial arbitrator.

Practice Area: Alternative Dispute Resolution
Training Level: General
Public CPD Points: 4.5
(Based on 100% attendance)

SILE Attendance Policy

Participants who wish to claim CPD Points are reminded that they must comply strictly with the Attendance Policy set out in the CPD Guidelines. This includes signing-in on arrival and signing-out at the conclusion of the activity in the manner required by the organiser, and not being absent from the entire activity for more than 15 minutes. Participants who do not comply with the Attendance Policy will not be able to obtain CPD Points for attending the activity. Please refer to http://www.sileCPDcentre.sg for more information.

Developments in Arbitration Case Law in Singapore

In this issue, two cases are reviewed. The cases are:

(1) R1 International Pte Ltd v Lonstroff AG [2014] SGHC 69; and

(2) Beijing Sinozonto Mining Investment Co Ltd v Goldenray Consortium (Singapore) Pte Ltd [2013] SGHC 248.

R1 International Pte Ltd v Lonstroff AG concerns an application for a permanent anti-suit injunction in relation to foreign proceedings. The Singapore High Court's judgment in that case touched on the source of the Court's jurisdiction to grant a permanent anti-suit injunction in support of international arbitration, and the principles the Court will apply in considering whether to make such a grant.

Beijing Sinozonto Mining Investment Co Ltd v Goldenray Consortium (Singapore) Pte Ltd concerns an application to refuse enforcement of an arbitral award on the basis that it would be contrary to Singapore's public policy as the award had allegedly been tainted by fraud and corruption. The Singapore High Court's judgment in that case touched on what constitutes public policy in Singapore, and the standard of proof required when a party seeks to prevent enforcement of an arbitral award on the basis of fraud and corruption.

(Please note that Beijing Sinozonto Mining Investment Co Ltd v Goldenray Consortium (Singapore) Pte Ltd was fixed to have been heard by the Singapore Court of Appeal in the week beginning 7 April 2014. At the time this article was written however, no written judgment had been released by the Singapore Court of Appeal.)

R1 International Pte Ltd v Lonstroff AG
[2014] SGHC 69 [Judith Prakash J]

1. The plaintiff, R1 International Pte Ltd ("**R1**") applied for a permanent injunction to restrain the defendant, Lonstroff AG ("**LAG**") from continuing with a law suit filed in the courts of Switzerland. The Singapore High Court's judgment can essentially be split into 3 parts: 1) whether an arbitration clause had been incorporated into a contract concluded between R1 and LAG ("**Part One**"); 2) whether the Singapore Courts can grant a permanent anti-suit injunction supporting international arbitration either under section 12A(2) read with section 12(1)(i) of the International Arbitration Act ("**IAA**") or under any other part ("**Part Two**"); and 3) if such a power exists, when should it be exercised ("**Part Three**"). This case note focusses on Parts Two and Three.

Background facts

2. R1 was a Singapore company in the business of wholesale trading and brokering of rubber. LAG was a Swiss company in the business of processing natural rubber and plastics. R1 dealt with LAG through its authorized agent, R1 Europe GmbH ("**R1 Europe**").

3. Between 2012 and early 2013, R1 supplied natural rubber to LAG via R1 Europe. There were five orders in total. The 5 orders were separately negotiated and concluded in a similar manner: (1) there would be sales negotiations between LAG and R1 Europe via e-mail; (2) acceptance of R1's offers would then be communicated to R1 Europe via telephone; (3) R1 Europe would send an e-mail to LAG confirming the sale; and (4) R1 would then send a signed sales contract for LAG's signature, but LAG would not sign it.

4. The first order was carried out in the manner stated above. After sales negotiations were concluded between LAG and R1 Europe, on 24 January 2012, R1 Europe sent an e-mail to LAG thanking them for the contract and setting out several terms of the contract. In that e-mail, no mention of any arbitration agreement was made. On 1 February 2012, R1 Europe sent an e-mail to LAG requesting them to sign a sales contract dated 27 January 2012. That contract had been pre-signed by R1 and included a term stating *"Subject to the terms, conditions and rules (including the arbitration clauses and rules) of the International Rubber Association Contract for technically specified rubber in force at date of contract"*. Clause 12(c) of the Index to the International Rubber Association Contract ("**IRAC terms**") specified that any dispute arising out of the contract shall be settled at the designated centre of arbitration which, in respect of shipments to Europe would be London unless the parties agreed otherwise. LAG did not sign the sales contract but accepted delivery of the order and made payment to R1.

5. The second order was carried out in a similar manner, and was concluded on or around 15 August 2012. After sales negotiations concluded, R1 Europe again sent an e-mail to LAG thanking them for the purchase and stating several terms on which the contract was concluded. No mention of arbitration being the dispute resolution mechanism or of an arbitration agreement was made in that e-mail. The order was delivered to and accepted by LAG on 27 August 2012, and 4 days later, R1 Europe sent an e-mail on behalf of R1 to LAG with a sales contract pre-signed by R1. The contract contained the same clause referring to IRAC terms, but, immediately below that, also had the following additional clause ("**the SICOM arbitration agreement**"): *"In the event of any arbitration, it will be conducted in Singapore"*. LAG again did not sign the sales contract.

6. Orders 3 to 5 were made after the first and second orders. In each case, R1 sent out a sales contract containing the IRAC clause and the SICOM arbitration clause.

7. The dispute giving rise to the Suit arose from the second order. On 20 September 2012, LAG e-mailed R1 Europe alleging that R1 had breached the contract because the rubber supplied emitted a foul smell that made them unsuitable for LAG's use. LAG commenced legal proceedings against R1 in Switzerland, and R1 requested that the Singapore Commodity Exchange ("**SICOM**") set

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up an arbitration tribunal to resolve the dispute. SICOM replied that it would only consider the request when it was confirmed that the Swiss proceedings had been suspended and that both parties agreed to refer the dispute to it. R1 then commenced legal proceedings in Singapore to obtain an anti-suit injunction preventing LAG from continuing legal proceedings in the Swiss courts.

Part One

8. R1 argued that: 1) the SICOM arbitration agreement was part of the contract for the second order on the basis of trade custom; and 2) alternatively, the IRAC term providing for arbitration in London was part of the contract having been incorporated in it by a previous course of dealing.

9. The Singapore High Court examined the facts and evidence before it and rejected R1's arguments on incorporation by trade custom and incorporation by previous course of dealing. Although the arbitration agreement had not been incorporated into the parties' contract, the Singapore High Court nonetheless went on to examine whether the Singapore Courts can grant a permanent anti-suit injunction, and if so, the principles governing such a decision.

Part Two

10. The Singapore High Court held that its power to grant permanent anti-suit injunctions supporting international arbitration arises from section 4(10) of the Civil Law Act ("**CLA**") and not section 12A of the IAA. The power granted under section 12A of the IAA was limited to that of granting interim injunctions in aid of both domestic and foreign international arbitration. The Singapore Courts' power to grant permanent anti-suit injunctions in aid of local court proceedings stems from the CLA, and there was no reason why this power could not be exercised to make permanent anti-suit injunctions in aid of domestic international arbitration proceedings. The Court's general powers under section 4(10) of the CLA were also not limited or qualified in any way by Section 12A of the IAA. Clear words would be needed to abrogate the Court's general jurisdiction to grant anti-suit injunctions and the IAA did not have the required clarity in language to cut down the Court's powers under section 4(10) of the CLA.

Part Three

11. After holding that the Singapore Courts have the power, under section 4(10) of the CLA, to grant a permanent anti-suit injunction supporting international arbitration, the Singapore High Court then proceeded to examine the principles governing when this power should be exercised.

12. In relation to a permanent anti-suit injunction in favour of international arbitration in Singapore, the Singapore High Court noted the principles concerning the grant of permanent anti-suit injunctions were established in *Societe Nationale Industrielle Aerospatiale v Lee Kui Jak* [1987] AC 879, and had been adopted in relation to arbitration proceedings by the Singapore Court of Appeal in *Maldives Airports Co Ltd and another v GMR Male International Airport Pte Ltd* [2013] 2 SLR 449. Where an arbitration agreement provides for international arbitration in Singapore, the innocent party could seek a permanent anti-suit injunction under the court's general power to grant an injunction, and such an injunction would be granted provided the required elements were established.

13. In relation to a permanent anti-suit injunction in favour of foreign international arbitration however, the Court adopted a more cautious view. It noted that while it would be logical and consistent with its power under section 12A(2) read with section 12(1)(i) of the IAA to find that, under section 4(10) of the CLA, it can issue permanent anti-suit injunctions in aid of foreign intentional arbitrations, logic alone was insufficient to extend the court's powers beyond what is in the IAA to parties who have agreed to arbitrate abroad. Any such extension of power would have the potential to affect more situations than simply those concerned with arbitration and policy considerations would come into play. Given that the parties in the matter had not placed full arguments before the Court, the Court declined to express an opinion. In any case, it is only when strong reasons are present that the Courts would intervene with a permanent anti-suit injunction to support foreign international arbitration.

14. It should be noted that the Court's observations in Part Two and Part Three of the judgment were merely dicta, given its finding that an arbitration agreement had not been incorporated into the contract entered into between R1 and LAG. A substantive ruling on the issues touched by the Singapore High Court in Parts Two and Three will have to be given in the future.

Beijing Sinozonto Mining Investment Co Ltd v Goldenray Consortium (Singapore) Pte Ltd [2013] SGHC 248

1. The respondent, Beijing Sinozonto Mining Investment Co Ltd ("**BSM**"), was granted leave by the Singapore Courts to enforce an arbitral award in Singapore. The appellant, Goldenray Consortium (Singapore) Pte Ltd ("**GCP**"), commenced action to set aside the Court order granting leave.

Background facts

2. At some time in April 2011, BSM and GCP agreed to enter into a joint venture to develop a crocodile farm in Beijing. The company involved in the joint venture was Beijing Goldenray Eco-Technology Development Co Ltd ("**Beijing Goldenray**"). GCP and BSM each owned 45% of the shares in Beijing Goldenray. The joint investment produced four agreements, of which the

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relevant agreement to the dispute was a loan agreement between BSM and GCP, whereby BSM granted to GCP a loan of RMB 50.2 million secured by a pledge of shares comprising GCP's 45% shareholding in Beijing Goldenray and a personal guarantee furnished by GCP's director ("**BSM / GCP Loan Agreement**").

3. Subsequently, differences arose between BSM and GCP under the BSM / GCP Loan Agreement. BSM submitted a request for arbitration under the China International Economic and Trade Arbitration Commission ("**CIETAC**") rules. An arbitral tribunal was accordingly constituted, and an arbitration was fixed for hearing. Even though BSM had submitted the request for arbitration, the parties held settlement discussions without suspending the arbitral process put in motion by BSM.

4. Settlement talks failed and an arbitration hearing was held on 18 January 2012. In the course of the hearing, the Tribunal purportedly asked the lawyers for BSM and GCP ("**the PRC lawyers**") whether they could reach a settlement. The PRC lawyers agreed to try and were successful. On 20 January 2012, a settlement agreement was signed. The Tribunal subsequently issued an arbitral award in accordance with the terms of the settlement agreement. One of the terms of the arbitral award was that GCP was to pay BSM a certain sum of money, in instalments, and in return, BSM would transfer its 45% shareholding in Beijing Goldenray to GCP.

5. After GCP failed to pay to BSM some of the required instalments under the Award, BSM took out enforcement proceedings in relation to the arbitral award in the People's Republic of China and in Singapore. The Singapore Court granted BSM leave to enforce the award against GCP in Singapore. GCP subsequently brought proceedings in Singapore to contest the leave granted to BSM on the basis that the arbitral award was tainted by fraud or corruption. It alleged that allowing BSM to enforce the arbitral award in Singapore would be contrary to the public policy of Singapore. The Court ought to refuse to allow BSM to enforce the award pursuant to section 31(4)(b) of the IAA. GCP relied on evidence it said showed that BSM and / or its representatives or intermediaries had unilaterally entered into an improper arrangement with the Tribunal to get the Tribunal to issue an award that supported BSM's claim as soon as possible.

The High Court's decision

6. The Singapore High Court dismissed GCP's appeal.

7. The Singapore High Court found that an award obtained by corruption, bribery or fraud would violate the basic notions of morality and justice and amount to a breach of the public policy of Singapore. In doing so, the Singapore High Court made reference to the Singapore Court of Appeal's definition of public policy in *PT Asuransi Jasa Indonesia (Persero) v Dexia Bank SA* [2007] 1 SLR(R) 597 ("**Dexia**"). In that case, the Singapore Court of Appeal stated that the concept of "public policy" under the IAA is to be given a narrow scope of operation. It operates in instances where the upholding of an arbitral award would shock the conscience, was clearly injurious to the public good or wholly offensive to the ordinary reasonable and fully informed member of the public, or would violate the forum state's most basic notions of morality and justice. The Singapore High Court noted that while Dexia concerned the setting aside of an award made in a Singapore-seated arbitration, its enumerated principles were equally applicable to a case where the enforcement of a foreign arbitral award is being resisted under section 31(4)(b) of the IAA. An award obtained by corruption, bribery or fraud would violate the basic notions of morality and justice and amount to a breach of the public policy of Singapore.

8. The Singapore High Court then went on to examine the standard of proof required. The events alleged to constitute a breach of public policy have to be proved to the Court's satisfaction on the balance of probabilities. The burden of proof lies with the party alleging the breach. GCP had to provide cogent evidence of the alleged improper arrangements. The Court was entitled to take into consideration the inherent probability or improbability of an event in deciding whether the balance of probabilities had been met. The more improbable the event, the stronger must be the evidence. Given that fraud is one of the most serious types of wrongful conduct, it would take more to persuade the Court, on a balance of probabilities, that an allegation of fraud is true than if it were one of negligence. The complainant must adduce clear and convincing evidence, in light of the gravity and seriousness of the allegation, before the Court will find that the allegation is true.

9. Examining the facts and evidence before it, the Singapore High Court found that there was insufficient evidence to constitute cogent proof of fraud. In particular, it noted that it was highly unlikely for the lawyers involved in the CIETAC arbitration to descend to fraud given that the nature of the dispute was straightforward and that it was highly unlikely that lawyers would document in black and white their involvement in improperly influencing the Tribunal. Further, the fact that the arbitral award and the aborted settlement contained terms that were substantially the same made it more improbable that fraud had indeed been committed.

10. As such, the Singapore High Court dismissed GCP's appeal.

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Multi-Tiered Dispute Resolution Clauses

By CHEW Yee Teck, Eric and TAN Weiyi

Introduction

Alternative dispute resolution ("**ADR**") mechanisms have gained recognition and acceptance. Common types of ADR include mediation, neutral evaluation and arbitration, which generally provide more flexibility when compared with litigation. Commercially, it is in parties' interests to resolve disputes amicably through mediation or negotiations, preserving relationships and saving costs. This increased recognition and acceptance of ADR mechanisms may have led to many contracts providing for multi-tiered dispute resolution mechanisms. Examples include clauses which provide that disputes are first to be resolved by negotiations, followed by neutral evaluation if the former is unsuccessful, or perhaps for disputes to be resolved by mediation, followed by arbitration if mediation fails.

This article discusses recent case law on the enforceability of multi-tiered dispute resolution clauses. While there may be advantages from a commercial perspective to be derived from multi-tiered dispute resolution clauses, there are also potential pitfalls which parties should be wary of when negotiating and drafting such clauses.

Enforceability of Multi-Tiered Dispute Resolution Clauses in Singapore

The Singapore Court of Appeal decision in *International Research Corp PLC v Lufthansa Systems Asia Pacific Pte Ltd* [2014] 1 SLR 130 ("**Lufthansa**") clarified issues of enforceability, interpretation and performance of a multi-tiered dispute resolution clause.

Lufthansa concerned an application to challenge an arbitral tribunal's ruling that it had jurisdiction to resolve a dispute. One of the issues that impacted upon the tribunal's jurisdiction was whether the preconditions for the commencement of arbitration in the multi-tiered dispute resolution clause were enforceable, and if so, whether they had been satisfied.

The dispute resolution mechanism in *Lufthansa* provided that parties shall commence arbitration if the disputes cannot be settled by negotiations in accordance with the process stipulated. In particular, it contemplated that a dispute would be escalated up the hierarchies of the respective parties with representatives of increasing seniority attempting a resolution.

In determining if the tribunal had jurisdiction over the dispute, it took the view that the requirement for negotiation in the multi-tiered jurisdiction clause was too uncertain to be enforceable and deemed it unnecessary to consider if the negotiation process had been adhered to as a precondition to arbitration.

The Singapore High Court and the Court of Appeal took a different view. Both Courts held that the requirement for negotiation was not too uncertain to be enforceable applying the principles set out in the Court of Appeal's decision of *HSBC Institutional Trust Services (Singapore) Ltd v Toshin Development Singapore Pte Ltd* [2012] SGCA 48 ("**Toshin**").

The issue in *Toshin* was whether an express term, obliging parties to negotiate in good faith, is valid and enforceable. The appellant argued that it is much too uncertain to be enforceable. The Court of Appeal disagreed and held that the said obligation was certain and capable of being observed by parties. At its core, it encompasses a requirement that parties:

(i) Act honestly; and
(ii) Observe accepted commercial standards of fair dealing in the performance of identified obligations. This includes a duty to act fairly, having regard to the legitimate interests of the other party.

The Court of Appeal further opined that the choice made by contracting parties on how they wanted to resolve potential differences between them should be respected, and Courts should not be overly concerned with the inability of the law to compel parties to negotiate in good faith in order to reach a mutually acceptable outcome.

Performance of the Multi-Tiered Jurisdiction Clause

Whilst the Court of Appeal in *Lufthansa* agreed with the High Court on the issue of enforceability of the dispute resolution clause, it disagreed on the High Court's finding that the process had been complied with. The clause provided that the dispute would be escalated through three committees comprising specific representatives, before parties resort to arbitration. The Court of Appeal found that this was not done, even though there were some meetings between the parties prior to arbitration.

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Implications

In Singapore, it appears that agreements to negotiate or mediate are generally enforceable. Courts are likely to respect parties' choice of dispute resolution mechanism and give effect to such agreements, without being overly concerned about the inability of the law to compel parties to negotiate in good faith. Where parties choose to stipulate that they would negotiate or mediate prior to commencing arbitration, they will be expected to abide by the agreement, failing which the arbitral tribunal will not have jurisdiction over the dispute.

Therefore, if parties insert a multi-tiered dispute resolution clause in their contract, they should ensure that any preconditions to arbitration are carefully considered and not unnecessarily onerous. When in doubt, it may be advisable not to include too much detail in the process, which may affect parties' ability to commence arbitration when they want to. Taking *Lufthansa* as an example, the dispute resolution clauses contemplated that a dispute would be escalated through three committees, comprising specific persons, including the Respondent's Director Customer Relations and the Respondent's Managing Director. While there were some meetings between some representatives of parties to negotiate a resolution of the dispute, parties did not abide by the process set out in the agreement prior to commencing arbitration. The Court of Appeal consequently held that the tribunal did not have jurisdiction.

Other Jurisdictions on Enforceability of Agreements to Mediate/Negotiate

In contrast, the English courts take a stringent approach. In *Sulamerica CIA Nacional De Seguros S.A. and others v Enesa Engenharia S.A. and others* [2012] 1 Lloyd's Rep 671 ("**Sulamerica**"), the English Court of Appeal held that an enforceable agreement to mediate must define the parties' rights and obligations with sufficient certainty. It found the following mediation clause unenforceable as it did not set out any defined mediation process or refer to the procedure of a specific mediation provider. The clause provided as follows:

> "*if any dispute or difference of whatsoever nature arises out of or in connection with this Policy including any question regarding its existence, validity or termination, hereafter termed as Dispute, the parties undertake that, prior to a reference to arbitration, they will seek to have the Dispute resolved amicably by mediation…*"

The English High Court in *Wah (aka Tan) v Grant Thornton International Ltd and Others* [2012] EWHC 3198 (Ch) ("**Wah**") set out the following criteria for a mediation clause to be binding:

(i) It must contain a sufficiently clear commitment to go to mediation;
(ii) It must explain what each party must do to start the mediation;
(iii) It must be sufficiently clear for a court to determine:
  (a) how much the parties must participate, as a minimum, in the mediation; and
  (b) when the parties can end the mediation without breaching the agreement.

This seems to be in stark contrast to the Singapore position, which leans towards enforcing mediation agreements to give effect to parties' choice, even though they may not have specified a detailed process at the time of entering into the contract.

In Australia, it was held in *Aiton Australia Pty Ltd v Transfield Pty Ltd* [1999] NSWSC 998 ("**Aiton**") that dispute resolution clauses "*expressed as a condition precedent*" to litigation do not oust the Court's jurisdiction, but merely postpone parties' rights and are enforced by forbidding parties from using other procedures until the end of the ADR procedures.

The New South Wales Supreme Court ("**NSWSC**") held that equity would not order specific performance of dispute resolution clauses as supervising such performance is untenable, but the NSWSC would exercise its inherent jurisdiction to prevent abuse by adjourning or staying proceedings in favour of ADR procedures. The NSWSC held that commencing litigation "*in the face of an enforceable*" ADR agreement may be "*an instance of abuse of process*".

However, the NSWSC also held that such stays would only be granted if the ADR procedures are sufficiently detailed to be meaningfully enforced. The NSWSC held that the following minimum requirements must be met for a dispute resolution clause to be enforceable:

(i) It must make completion of the dispute resolution process a condition precedent to commencement of court or arbitration proceedings;
(ii) The process established by the clause must be certain. "*There cannot be stages in the process where agreement is needed on some course of action before the process can proceed because if the parties cannot agree, the clause will amount to an agreement to agree and will not be enforceable due to inherent uncertainty*";
(iii) "*The administrative processes for selecting a mediator and in determining the mediator's remuneration should be included in the clause" and if parties cannot agree, "a mechanism for a third party to make the selection will be necessary"*; and
(iv) The clause should set out in detail the processes or incorporate rules by reference.

Continued from page 8

In *Aiton* the mediation clause was unenforceable because it failed to state how the mediators' costs was to be paid and as this clause was not "*severable from the negotiation clause, the agreement to negotiate is also unenforceable*".

10 years later, the parties in *United Group Rail Services Limited v Rail Corporation New South Wales* [2009] NSWCA 177 ("**United**") agreed that a mediation clause was void for uncertainty because the "*nominated dispute centre did not exist*".

4 more years on, in *WTE Co-Generation and Visy Energy Pty Ltd v RCR Energy Pty Ltd and RCR Tomlinson Ltd* [2013] VSC 314 ("**WTE**"), the Victoria Supreme Court ("**VSC**") took a more liberal approach, albeit marginally, holding that the following principles also applied in deciding the enforceability of multi-tiered dispute resolution clauses:

(i) Such clauses should be construed robustly to give them commercial effect. The bargain should be upheld by *"eschewing a narrow or pedantic approach in favour of commercially sensible construction, unless irremediable obscurity or a like fundamental flaw indicates there is, in fact, no agreement";*
(ii) *"If business people are prepared in the exercise of their commercial judgment to constrain themselves by reference to express words that are broad and general, but which nevertheless have sensible and ascribable meaning*", the Courts must give effect to them;
(iii) Public policy in "*promoting efficient dispute resolution*" requires that "*enforceable content be given to contractual dispute resolution clauses*";
(iv) Recent authority favours construing dispute resolution clauses in a way that makes them work rather than declare them void for uncertainty or as an attempt to oust the Court's jurisdiction;
(v) *"The Court does not need to see a set of rules set out in advance by which the agreement, if any, between the parties may in fact be achieved. The process need not be overly structured. However, the process from which consent might come must be sufficiently certain to be enforceable"*.

Nevertheless, despite the change in judicial attitude, the VSC still held the clause in WTE to be unenforceable as the clause concerned provided for "*senior executives*" to "*meet to attempt to resolve the dispute or to agree on methods of doing so*" and this was uncertain because there was no "*process prescribed to determine which option is to be pursued*" and "*no method of resolving the dispute [was] prescribed*". The Court summarised at [46] as follows:

> *"It is one thing for a court to strive to give commercial effect to an imperfectly drafted contractual clause, which is well accepted as the approach to construction of contractual terms. It is also accepted that a valid dispute resolution clause does not require a set of rules to be sent out in advance which directs the parties how an agreement is to be achieved, if agreement is possible. But, as a minimum, what is necessary for a valid dispute resolution clause, is to set out the process or model to be employed, and in a manner which does not leave this to further agreement. It is not for the Court to substitute its own mechanism where the parties failed to agree on it in their contract".*

On the issue of "*good faith*" negotiations, in 2009, the NSWCA in United recognized the fact that the "*place of good faith in the law of contracts"* is not settled in Australia, but in New South Wales, it is a part of the law of performance of contracts and went on to hold at [68] that a *"negotiating process can be constrained by an obligation on a party to conduct itself in good faith*".

What constitutes "*good faith*"? The NSWSC held that it depends on the circumstances, but involves "*honest and genuine negotiation, within the framework of fidelity to the bargain*" and does not involve fiduciary obligations or duties to act in the other party's interests.

Hence, whilst Australia is being more liberal in its enforcement of multi-tiered dispute resolution clauses, it is yet to be as liberal as the Singapore Courts.

Possible Reason for the Differences

A possible reason for the difference in judicial attitudes towards the enforcement of multi-tiered dispute resolution clauses could be due to Singapore's push to become a center for resolving disputes in line with its metamorphosis into a service based economy.

Singapore is already fast becoming an established regional and international arbitration center with many firmly established arbitral institutes. With the upcoming International Commercial Court and alongside it, the Singapore International Mediation Centre ("**SIMC**"), a strict approach towards the enforcement of mediation clauses would not aid in Singapore's development as a leading international dispute resolution center.

Perhaps, the judiciary's view of arbitration, as captured in "*Tjong Very Sumito v Antig Investments Pte Ltd* [2009] 4 SLR(R) 732 at [28] *that arbitration is today no longer "viewed disdainfully as an inferior process of justice" and there is now "[a]n unequivocal judicial policy of facilitating and promoting arbitration"* (as cited at [27] of *Lufthansa*) is now being accorded to mediation or any other methods of alternative dispute resolution as well.

Regional Arbitral Institutes Forum
CONFERENCE 2014

01.08.2014 Friday

Hilton Hotel
581 Orchard Rd

RAIF PARTNERS

RAIF 2014

Since the Singapore Institute of Arbitrators (SIArb) hosted the inaugural RAIF Conference in July 2007, RAIF partners have taken turns to host this key feature in the annual arbitration event calendar. SIArb is pleased to be hosting this 8th RAIF Conference.

The programme features a host of speakers from the participating jurisdictions providing an update on key arbitration developments in their countries, as well an current topics relating to arbitration.

Issues to be discussed include:

1) Country Reports – Significant developments in International Arbitration in RAIF Member Countries
2) Ethical Concerns – Searching beyond the IBA Guidelines on Conflicts of Interest – A common playing field: fair trade for parties and party representatives
3) Going beyond the ICC Guidelines on Time and Costs – What can we really do to address the time and costs of arbitration?
4) Looking beyond current developments – The future of the theory and practice of commercial arbitration in the Asia Pacific Region

RAIF 2014 promises to be an important meeting point for arbitration practitioners in the region, as well as anyone interested in the vibrant dispute resolution industry in the region.

We are indeed honoured to have The Honourable Justice Quentin Loh grace the occasion as our Guest-of-Honour.

We very much look forward to seeing you at this year's RAIF Conference.

Mr. Chan Leng Sun SC
President, Singapore Institute of Arbitrators

Mr. Chia Ho Choon
Chairman, Organising Committee

WHO SHOULD ATTEND

- Arbitrators
- Consultants
- In-house counsel
- Lawyers
- Law academics
- Other users and professionals involved in arbitrations

GUEST OF HONOUR

The Honourable Justice Quentin Loh
Judge, Supreme Court of Singapore

Quentin Loh was appointed a Judicial Commissioner of the Supreme Court of Singapore on 1 September 2009 and a Supreme Court Judge on 1 June 2010. Prior to his joining the Bench, he was the Deputy Managing Partner of Rajah & Tann LLP from December 2003 to 12 August 2009. He was a key member of its international arbitration group as well as head of the Construction & Projects and Insurance and Reinsurance practice groups. Prior to joining Rajah & Tann in 2001 as a member of its Executive Committee, he was Managing Partner of Cooma Lau & Loh, a firm he co-founded in 1978. He was appointed Senior Counsel in 1999. Until his appointment as a Judicial Commissioner, he was also a director of Maxwell Chambers, a dedicated building for holding arbitrations.

ABOUT RAIF

The RAIF is a regional arbitral organisation founded in 2007 by the Singapore Institute of Arbitrators, the Malaysian Institutes of Arbitrators, the Institute of Arbitrators and Mediators Australia, the Hong Kong Institute of Arbitrators, the BANI Arbitration Centre and the Arbitration Association of Brunei Darussalam.

The RAIF was established to allow its members to collaborate on certain common objectives, including serving the educational and social needs of members of the arbitral institutes, facilitating the exchange and dissemination of information on arbitration and promoting understanding and co-operation between their respective institutes.

Currently the members of RAIF are the national arbitration bodies of the following countries:

1. Australia - Institute of Arbitrators & Mediators Australia (IAMA)
2. Brunei - Arbitration Association of Brunei Darussalam (AABD)
3. Hong Kong - Hong Kong Institute of Arbitrators (HKIArb)
4. Indonesia - Indonesian Arbitrators Institute (IArbI)
5. Malaysia - Malaysian Institute of Arbitrators (MIArb)
6. Philippines - Philippine Institute of Arbitrators (PIArb)
7. Singapore - Singapore Institute of Arbitrators (SIArb)

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CONFERENCE PROGRAMME

0830am - 0900am
Registration (of Local & Foreign Delegates) & Refreshments

0900am - 0910am
Welcome Address
Mr. Chan Leng Sun SC
President, SIArb

0910am - 0930am
Conference Opening Address by Guest of Honour
The Honourable Justice Quentin Loh
Judge Supreme Court of Singapore

0930am - 0945am
Conference Opening Ceremony
Signing of MOA, photo-taking with and Presentation of Tokens to Guest-of-Honour and Representatives of RAIF Partners

0945am - 1115am

SESSION 1: COUNTRY REPORTS
Significant developments in International Arbitration in RAIF Member Countries

- Opening Remarks by Session Chair
- Presentations by Representatives of RAIF Partners
- Panel Discussion and Question & Answer Session moderated by the Session Chair

Session Chair:
Mr. Chan Leng Sun SC – President, SIArb

Speakers:
- (Yang Amat Mulia) Pengiran Indera Negara Pengiran Anak Dato Haji Puteh – Arbitration Association of Brunei Darussalam (AABD)
- Ms Sylvia Siu – President, Hong Kong Institute of Arbitrators (HKIArb)
- Mr. Anangga W. Roosdiono – Chairman, Indonesian Arbitrators Institute (IArbI)
- Ms Rowena McNally – National President, Institute of Arbitrators & Mediators Australia (IAMA)
- Mr. Lam Ko Luen – President, Malaysian Institute of Arbitrators (MIArb)
- Mr. Teodoro Kalaw IV – President, Philippine Institute of Arbitrators (PIArb)
- Mr. Chan Leng Sun SC – President, SIArb

1115am - 1130am
Morning Break

1130am - 0800pm

SESSION 2: ETHICAL CONCERNS
Searching beyond the IBA Guidelines on Conflicts of Interest – A common playing field: fair trade for parties and party representatives

- Opening Remarks by Session Chair
- Issues to be Addressed:
  - Independence and impartiality – putting meat on these sacred bones – is party selection inherently incompatible with true independence and impartiality?
  - Repeat appointments – how much is too often?
  - Disclosure – beyond theory to practical reality
  - Whither the call for regulation?
  - Widening the arbitrator pool – what can institutes do beyond training and certification to get its members out into the field?
  - Common ground – ethical standards for parties and party representatives in international arbitration – what arbitration practitioners should or should not do
- Panel Discussion and Question & Answer Session moderated by the Session Chair

Session Chair:
The Honourable Justice Vinodh Coomaraswamy – Judge, Supreme Court of Singapore

Speakers:
- Mr. Peter Chow – Vice President, HKArb; Partner & Head of IDR/Arbitration (Asia-Pacific) – Squire Sanders, Hong Kong/Singapore
- Prof. Hucla Adolf – Board Member, IArbI
- Speaker from MIArb
- Mr. Lok Vi Ming SC – President, The Law Society of Singapore; Partner, Rodyk & Davidson LLP

0100pm - 0200pm
Lunch

0200pm - 0330pm

SESSION 3: GOING BEYOND THE ICC GUIDELINES ON TIME AND COSTS
What can we really do to address the time and costs of arbitration? (Round Table Panel)

- Opening Remarks by Session Chair
- Issues to be Addressed:
  - Is arbitration too long and too expensive? Should it be quick and cheap? What do parties want? Is there a happy medium?
  - The arbitrator's armory – getting tough – what can arbitrators really do to control time and costs – saving parties from themselves or their counsel: is this the arbitrator's duty?
  - Tailor made – designing processes to save time and cost – an empirical examination reporting from the trenches – what works best – memorial system vs traditional pleadings: too much, too little, too early, too late – cross examination vs witness conferencing – innovating beyond this

Session Chair:
Mr. Michael Hwang SC – Senior Counsel & Arbitrator

Speakers:
- Dr. Colin Ong – President, AABD; Managing Partner, Dr. Colin Ong Legal Services
- Ms Ruth Stackpool-Moore – Managing Counsel, Hong Kong International Arbitration Centre (HKIAC)
- Mr Russell Thirgood – National Councillor, IAMA; Partner, McCullough Robertson Lawyers
- Ms Sylvia Tee – Director, Arbitration & ADR – International Chamber of Commerce (ICC)
- Prof. Datuk Sundra Rajoo – Director, Kuala Lumpur Regional Centre for Arbitration (KLRCA)
- Mr. Ricardo Ma. P.G. Ongkiko – Executive Vice-President, PIArb
- Ms Tan Ai Leen – Registrar, Singapore International Arbitration Centre (SIAC)

0330pm - 0345pm
Afternoon Break

0345pm - 0515pm

SESSION 4: LOOKING BEYOND CURRENT DEVELOPMENTS
The future of the theory and practice of commercial arbitration in the Asia Pacific Region

- Opening Remarks by Session Chair
- Panel Discussion and Question & Answer Session moderated by the Session Chair

Session Chair:
Prof. Anselmo Reyes – Professor of Legal Practice, Hong Kong University

Speakers:
- Mr. Kanaga Dharmananda SC – Member, Fountain Court
  - Through a Glass Darkly: Future Challenges from inside and out to International Arbitration in the Asia-Pacific Region
- Mr. Leslie Chew SC – Consultant, Litigation Department, KhattarWong LLP
  - Two is company, three is a crowd? Is there scope for third parties in arbitrations?
- Mr. Andre Yeap SC – Senior Partner, Rajah & Tann LLP

0515pm - 0530pm
Closing Remarks

0530pm - 0630pm
RAIF Council Meeting

0700pm - 1000pm
Handover to Host of RAIF Conference 2015
Gala Dinner

Continued from page 9

Another reason for the Singapore judiciary's adoption of the less stringent approach could also be the judiciary's recognition of the age old tradition in Asian cultures of resolving disputes amicably and its benefits to Singapore society, as highlighted by the Court of Appeal in *Toshin* at [40], the key part of which states as follows:

> *"We think that the "friendly negotiation" and "confer in good faith" clauses……are consistent with our cultural value of promoting consensus whenever possible. Clearly it is in the wider public interest in Singapore as well to promote such an approach towards resolving differences".*

Drafting Multi-Tiered Jurisdiction Clauses

Given the different judicial attitudes to the enforcement of mediation agreements, how should parties draft a mediation agreement?

First, lawyers need to pay closer attention to all forms of dispute resolution clauses. These "*midnight clauses*" or "*4am clauses*" can no longer be drafted with impunity and on the basis that they can be ignored. It is common to find a party to a contract with a multi-tiered dispute resolution clause ignoring the early stages of the dispute resolution process calling for negotiations or mediation and proceeding immediately to arbitration or litigation, albeit in a fit of anger or with a genuine desire to get a final binding resolution of the dispute speedily.

Parties have to be carefully advised on the procedure, time and costs involved in all levels of dispute resolution before a suitable clause may be crafted.

Parties who are after quick, efficient and low costs methods of dispute resolution may well be advised to adopt many of the fast track arbitration schemes available in the market rather than adopt a multi-tiered dispute resolution procedure.

Having said the above, if parties are serious about negotiations and mediation as a part of their dispute resolution process then, in terms of legal criteria, they are well advised to draft their dispute resolution clauses in accordance with the VSC's guidelines in *WTE*.

The VSC's criteria are tough to satisfy, but once satisfied the mediation agreement is highly likely to be binding in England, Singapore and Australia.

Assuming that the parties want to mediate in Singapore, the simplest method of satisfying the VSC's criteria may be to choose institutional mediation where the various institutes have their standard set of mediation procedures.

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Minimizing Delays in International Arbitration Proceedings

By Dr. Andreas RESPONDEK

Arbitration has long been heralded as the cheaper and faster alternative to lengthy, drawn-out court proceedings. The original goal of arbitration proceedings was to provide the parties an alternative venue for a speedy resolution of their commercial disputes. Several recent surveys seem to suggest however that somewhere along the line, arbitration may have gone off track. Delays in arbitration seem to have become an increasing feature of international arbitration proceedings.

The latest Queen Mary Report[1] has confirmed that the users of international arbitration proceedings have serious concerns about the increasing delays in international arbitration proceedings. Other recent studies[2] reached identical results and identified "*delay*" as the main drawback of international arbitration proceedings. The Chief Justice of Singapore, Chief Justice Sundaresh Menon, identified similar and related issues in his keynote address at the Chartered Institute of Arbitrators' International Arbitration Conference held on August 2013 in Penang[3], including increased costs caused by delay. This prompts the question: Are international arbitration proceedings still up to speed and are the rules of international arbitration institutions still fulfilling the stakeholders' expectations and adequately addressing the issue of "*delay*"? What should be the consequences from the Queen Mary report and other reports' findings?

Continued from page 12

The possible sources of delays in arbitration

Typically, delays in arbitration can be caused by all parties involved in the arbitration, i.e. the parties to the dispute, their counsel and also the arbitral institution. The following summary tries to deal with all three potential sources of delay and propose remedies.

How delays can be minimized by arbitral institutions

A typical source of delay occurs at the final stage of the arbitration proceedings with regard to the late drafting of arbitral awards. I have encountered several international arbitration matters where we had to wait for an award (even preliminary awards) for more than a year. This is not acceptable. What should be remembered in this respect is the old saying: "*Justice delayed is justice denied*". And apart from the fact that such delays are clearly at variance with the parties' justified expectations in arbitration proceedings, they raise also ethical questions about the arbitrator(s) attitude involved in the matter.

There are two measures arbitration institutions could implement to address this type of unacceptable behaviour. Firstly, arbitration institutions should grant extensions for the rendering of agreed award deadlines only; if there are compelling reasons present. An arbitrator's "*work overload*" should never qualify as a valid reason for an extension of any deadline. Experienced arbitrators should be in a position to manage their workload just like everybody else. Routine extensions of award deadlines should never take place.

Secondly, the probably more powerful measure would be to introduce serious financial disincentives for arbitrators for rendering an award late. Any delay in rendering an award should be combined with and lead to an automatic decrease of the arbitrator's fees payable to him by the institution. For instance, the first deadline extension could lead to an automatic decrease of the arbitrator's fees of 10 % and each subsequent extension could be similarly sanctioned. To implement this proposal, institutional fee schedules should be amended to reflect automatic fee reductions in case of award delays. It is submitted that this financial disincentive would be a powerful tool to assist the parties in obtaining their awards on time.

Another feature that might help to reign in delays is to make the overall average lengths of the proceedings by arbitral institutions more transparent. Undoubtedly there are international arbitration institutions that do a more efficient job in administering the cases submitted to them than others. Such differentiation with regard to the average length of the proceedings would help arbitration users to obtain a clearer picture as to what timeframe to expect and enable them to select arbitral institutions that have a shorter average length of proceedings than other institutions. How could this be accomplished? This could be arranged by having arbitral institutions publish the average length of the proceedings under their administration on their website, from the date notice of arbitration has been submitted until the date final award has been rendered.

As of today, there does not seem to be any arbitration institution which publishes such data. This is surprising, because the average length of proceedings can be considered a key performance indicator of the overall success of an arbitral institution. Publishing this important information could work as a marketing tool for institutions to differentiate themselves from other institutions competing in the same market segment. Parties and their counsel would obviously in all likelihood choose an institution that is more efficient in case administration as proven by its record of shorter overall proceedings.

Last not least there is another area that the existing rules of most international arbitration institutions do not seem to sufficiently address: arbitrator misconduct. While arbitrator misconduct is certainly the exception rather than the rule, nevertheless misconduct does occur. I was recently involved in an international arbitration proceedings administered by a European institution where two (renowned) international arbitrators simply disappeared and could not be contacted any more. The institution involved seemed rather generous by sending repeated reminder emails, letters and faxes to the respective "*defecting*" arbitrators for more than a year. Parties deserve better. There should be clear deadlines in the procedural rules that institutions must replace arbitrators if an arbitrator fails to react within a certain time period, e.g. one month. In addition, to make sure that wayward arbitrators cannot hide under the guise of confidentiality of the proceedings, institutional rules should make an exception from confidentiality of the proceedings with regard to arbitrator misconduct. Otherwise confidentiality could become an efficient means to protect arbitrators that have engaged in professional misconduct.

In addition, arbitral institutions might consider introducing performance evaluations of arbitrators by the parties' respective counsel to an arbitration after the award had been rendered. This might help to identify efficient arbitrators

1 Queen Mary, University of London and PWC: International Arbitration Survey 2013 - Corporate choices in International Arbitration **http://www.pwc.com/gx/en/arbitration-dispute-resolution/index.jhtml**

2 Debevoise & Plimpton LLP: Protocol to promote Efficiency in International Arbitration (2010): **http://www.debevoise.com/files/News/2cd13af2-2530-40de-808a-a903f5813bad/Presentation/NewsAttachment/79302949-69b6-49eb-9a75-a9ebf1675572/DebevoiseProtocolToPromoteEfficiencyinInternationalArbitration.pdf; Ben Giaretta, The evolution of international arbitration (March 2014), http://www.ashurst.com/publication-item.aspx?id_Content=10197; Ousting the arbitrator for delaying proceedings? http://www.prell-lawyers.com/index.php?page=newsletter&lang=en&id=35; Berwin, Leighton, Paisner: Research based report on perceived delay in the arbitration process, July 2012 https://www.blplaw.com/media/pdfs/Reports/BLP_International_Arbitration_Survey_Delay_in_the_Arbitration_Process_July_2012.pdf**

3 Arbitration Vol. 79 (November 2013), 393-406

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who follow the original ideas why arbitration had been introduced in the first place.

How delays can be minimized by the tribunals and counsel

A party whose prospect of winning an ongoing arbitration are not the best might have an incentive to delay the proceedings and may employ procedural tactics and even criminal acts in order to avoid or delay the smooth operation of the arbitral proceedings and the rendering of a final award. When times get rough, tactics sometimes get dirty and the so-called "*guerrilla tactics*" may emerge. "*Guerrilla tactics*" is essentially unscrupulous behaviour or conduct of the parties' counsel intended to gain a competitive advantage by trying to obstruct, delay or derail an arbitration. They can range from mere delay tactics (e.g. interjecting excessive objections, bullying witnesses on cross-examination, concocting creative interpretations of legal rules and strategically jockeying for procedural advantages) to unjustified challenges of arbitrators or the withholding of evidence. Another means is that a party with greater financial resources may try to conduct more discovery or motion practice than needed to gain the upper hand over a party with lesser financial means by driving the costs of the proceedings above what one party can afford. The most common form of "*guerrilla tactics*" and the one that poses the most frequent problem for arbitrators are ethically borderline tactics.

In this respect, in his 2013 ClArb Penang address[4], Chief Justice Menon pointed out some parties' counsels' attitude, may not always identify with the ethical standards that traditional practitioners take for granted. What a majority of the practitioners might qualify as "*guerrilla tactics*" might be defended by others as a legitimate strategy, or even as part of an attorney's obligation to diligently represent the client's interests.

One tactic that is often used by counsel to justify their "*guerrilla tactics*" is to claim that if their respective applications are not followed, then they would be deprived a fair opportunity to present their case. Some tribunals seem to be too reluctant to reign in the behaviour of a party who abuses the rules, often relying on the need to ensure that they are not seen to curtail a party's presentation of its case.

There is no doubt that parties should be treated fairly, and given an equal opportunity to present their case. However, it appears that not a single law or arbitration rule provides that a party should be afforded "*every opportunity*" to present its case, with most rules and laws choosing instead to set the bar at a "*reasonable opportunity*". A "*reasonable opportunity*" certainly does not require the tribunal to accept any and all of a party's applications, what seems to be sometimes overlooked by tribunals.

It is important that arbitrators are cautious and recognize the fine line between a party's legitimate demand for due process and "*guerrilla tactics*". Therefore, the most effective weapon against "*arbitration guerrillas*" is an experienced tribunal. In addition, tribunals could implement measures to eliminate the basis for "*guerrilla tactics*" that always lead to procedural delays, such as tribunals putting more emphasis on initial case management conferences like those foreseen under Art. 24 of the ICC Rules. A case management conference could address and help to prevent such "*guerrilla tactics*" and the delays resulting from them by introducing for instance the "*IBA Guidelines on Party Representation in International Arbitration*" for part of the proceedings and stipulate sanctions for using "*guerrilla tactics*".

Also in this respect the most helpful tool to minimize the use of "*guerrilla tactics*" might be a financial one. The arbitral tribunal's most effective tool for regulating party's misconduct leading to procedural delays is the award of costs in the final award. Tribunals should make it clear from the outset that they will use the "*cost weapon*" against party misconduct which causes delays.

How delays can be minimized by the parties themselves

More often than not parties to an arbitration seem to have unrealistic expectations of what they can achieve through an arbitration and what the ultimate outcome of the proceedings might be. Their assessment of the legal merits of their case may be incomplete, overoptimistic or at least unrealistic. If parties do not have a realistic appraisal of the legal merits of their case, parties may tend to push their counsel for unnecessary applications or instruct them to submit spurious arguments.

It is a major task of the parties' counsel to prevent such unnecessary time consuming steps in an arbitration by providing their parties with a realistic assessment of the legal merits of their case and the likely outcome and results.

Summary

All three stakeholders in institutional arbitration proceedings (institution, counsel, parties) can make substantial contributions in order to prevent delays and to streamline and speed up arbitration proceedings. For the institution, the following rule changes should be pursued: An amendment to the institutional rules would further help to speed up proceedings and maintain arbitration's competitive edge over other forms of dispute resolution forum. These could include amending fee schedules (automatic decrease of an

4 See footnote 3 above

Continued from page 14

arbitrator's fees in case of delays), abstaining from granting routine extensions of deadlines for rendering arbitral awards, publishing the average length of proceedings on an institution's website and introducing arbitrator performance evaluations. With regard to the parties' counsel, increased emphasis on the use of case management conferences should be followed to lay down the foundation rules to avoid and eventually sanction delay, prevent the use of "*guerrilla tactics*" by creating mandatory adequate ground rules in the agreed procedural rules and give counsel a "*reasonable opportunity*" to represent their case, instead of "*every opportunity*". Last not least, the parties themselves can contribute to speedy proceedings provided they have received a realistic assessment of the legal merits of their case through realistic and straightforward feedback from their counsel and as a consequence thereof, abstain from supporting any procedural applications without real merit.

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International Arbitration in 2020: An Alarming Prediction

by Abdelhak ATTALAH*

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During the FIIAI (Fidération Internationale des Institutions de l'Arbitrage International) extraordinary conference held in Paris to commemorate its 2nd anniversary, under the theme ''*Back to the Future*", a revolutionary recommendation, which relates to the qualification to act as arbitrator, was unanimously enacted by its working group which states verbatim that ''arbitrators must pass routine periodic examinations known as Cognitive Reflection Test (CRT)[1] developed by Shane Frederick in 2005 –which is a three item measure shown to predict susceptibility to decision-making biases, in order to retain the minimum scores accreditation that qualify them to arbitrate".

To get a summary idea on what might happen in an arbitrator's mind during decision-making, the answers to the CRT three questions might be helpful:

Question 1: A bat and a ball cost $1.10 in total. The bat costs $1.00 more than the ball. How much does the ball cost?

Question 2: If it takes 5 machines 5 minutes to make 5 widgets, how long would it take 100 machines to make 100 widgets?

Question 3: In a lake, there is a patch of lily pads. Every day, the patch doubles in size. If it takes 48 days for the patch to cover the entire lake, how long would it take for the patch to cover half of the lake?

Each of the three questions has an intuitive answer which immediately jumps to mind, but incorrect, which are respectively:

1 Shane Frederick, 'Cognitive Reflection and Decision Making' (2005) 19(4) Journal of Economic Perspectives 25-42.

Answer 1: 10 cents,
Answer 2: 100 minutes
Answer 3: 24 days

Indeed, if the ball costs 10 cents, and the bat costs $1.00 more, then the total for the two is $1.20, not $1.10 as the problem stipulates. If we reflect upon the three questions for even a moment we would recognize that the correct answer for the first question is that the ball costs five cents, the bat costs $1.00 more i.e. $1.05, and together, they cost $1.10. And by assuming that each machine makes the same widgets at the same rate, therefore, each machine produces one widget in 5 minutes. Consequently, only 5 minutes are needed for 100 machines to make the 100 widgets. Finally, the patch will cover half of the lake the day before it should cover the entire lake which is the 47th day.

This new form of accreditation system by which arbitrators are gauged for their skills by the arbitral institutions should be an essential complement to the prevalent recruitment based on the CV only. Arbitral institutions should go further by developing a scheme of periodic review and evaluation of its arbitrators using a CRT to measure the impact of cognitive ability on judgment and decision making, commented the secretary general of the FIIAI, by arguing that the CRT has been used to assess the decision making processes of professional groups such as judges and financial planners.[2]

Although the above news is pure imagination, it might be a plausible response to the call of the Honourable the Chief Justice Sundaresh Menon[3] during the ICCA 2012 congress held in Singapore, who claimed that "there needs to be a structured programme of continuing professional

2 Eva I. Hoppe and David J. Kusterer, 'Behavioral biases and cognitive reflection' (2009) 2, fn1 <http://ssrn.com/abstract=1488752 or http://dx.doi.org/10.2139/ssrn.1488752> accessed 11 January 2014.

3 ICCA Congress 2012 Opening Plenary Session International Arbitration: The Coming of a New Age for Asia (and Elsewhere)

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development for experienced arbitrators and lawyers engaging in arbitration practice."

One crucial reason which might justify such recommendations is the exponential increase of document production by parties in international arbitration, especially in complex and fact-intensive cases involving large volumes of documentary evidence as testified by many practitioners.[4]

This increase is aggravated by the current standards of self-submission of documents attached to the statement of claim and the statement of defense filed prior to the evidentiary hearing, which are neither set forth in national arbitration legislations such as Article 23(1) of the UNCITRAL Model Law nor in institutional arbitration rules such as Articles 20(4) and 21(2) of the UNICITRAL Arbitration Rules, Article 15(6) of LCIA[5], Articles 16(3) and 17(4) of HKIAC[6] and Articles 23(3) and 24(2) of DIAC[7] which use vague wordings such as "*all essential documents*" or "*all documents he deems relevant*" whithout giving any guidance on tests which should apply to determine the extent of "*all*", "*essential*" and "*relevant*".

Similarly, Article 3(1) of the IBA Rules on the Taking of Evidence in International Arbitration states that "each party shall submit to the Arbitral Tribunal and to the other Parties all Documents available to it on which it relies." Again, the expressions "all documents available" and alike lead us to conclude that joining the relevant documents which include, but not exclusively, witnesses' testimonies, documentary exhibits and expert's opinions to their written submissions, is a matter of the parties' freedom. This is confirmed by arbitration practitioners that "[i]t is not rare for arbitrators to specify in the procedural rules that they adopt at the beginning of the proceedings that the parties shall, to the extent possible, produce *all the documents on which they intend to rely* with their first briefs, i.e. the statement of claim for the claimant and the statement of defence for the respondent."[8]

In the light of these current statutory standards which keep fully open the door to parties to submit "all documents available" and knowing that almost all businesses are "managed in a wide variety of electronic formats, including spreadsheet programs, databases and computer aided design tools"[9] in addition to the widespread use of communication through email which "has become the dominant form of inter-office and intra-office communication"[10] to the extent that 90 percent of new information annually created all over the world is digital.[11]

This is not without consequences unfortunately. As a practitioner witnessed that "[n]umbers mentioned by a small sample of colleagues at a recent meeting of arbitration practitioners included: a single exhibit of several tens of thousands of pages, a single submission accompanied by 780 lever arch files, documentary evidence of altogether 1.2 million pages in one arbitration".[12] In terms of sheer volume, according to the industry standard[13] there are approximately 10,000 documents in one gigabyte; although this depends on the file types, one gigabyte can contain 150,000 pages of emails files[14]. Assuming that an arbitrator can review 400 documents during a full working day (at 50 documents per hour) – of course, the review speed depends on many factors, amongst them the arbitrators themselves, who are doing more than simply review, but they mark sensitive information, analyze, compare, and review several times- therefore, to review ten gigabytes of data submitted in some arbitration cases as witnessed by several practitioners,[15] it would require 250 full working days which is more than one full year after considering the week-ends and holidays, just to review the submissions. Particularly when the contents of e-mails are requested, it is not difficult for even appropriately[16] moderated submission to result in a large amount of information.

This would be a crucial problem for arbitrators especially when it is aggravated by the ease and relatively low costs of document production processing due to its possible outsourcing when it is appropriate, through the use of Indian based support services as is commonplace in common law legal markets, especially in the US and UK. Consequently, one might ask which strategy is available to address this problem?

The predictions for the future are alarming if we consider that in 2012[17] alone it was estimated that 2.8 zettabytes[18] of digital information were created by the world constituting the combination of all computer hard drives space existing on the earth. This number is projected to increase to reach 40 zettabytes[19] by 2020; these 40 zettabytes are equivalent to 57[20] times the amount of all the grains of sand on all the beaches on earth as calculated by a group of mathematicians from the university of Hawaii.[21]

How might the greatness of these figures affect arbitration? The phenomenon of excessive documents submission by parties in international arbitration is reaching alarming limits causing cognitive illusions effects on arbitrators during the process of making their awards, as attested by

4 Michael E. Schneider, 'The Paper Tsunami in International Arbitration: Problems, Risks for the Arbitrators' Decision Making and Possible Solutions' in Teresa Giovannini and Alexis Mourre (eds), Written Evidence and Discovery in International Arbitration (ICC Publication 2009) 365; Gabrielle Kaufmann-Kohler and Philippe Bärtsch, 'Discovery in international arbitration: How much is too much?' SchiedsVZ, 2004, Heft 1, 13.

5 The London Court of International Arbitration

6 The Hong Kong International Arbitration Centre

7 Dubai International Arbitration Centre

8 Anne Véronique Schlaepfer and Philippe Bärtsch, 'A Few Reflections on the Assessment of Evidence by International Arbitrators', RDAI/IBLJ, Issue 3, 2010, fn 15 (emphasis added).

9 Robert L. Levy and Patricia L. Casey, 'Electronic Evidence and the Large Document Case: Common Evidence Problems Discovery for a New Millennium' (2006) 1 <http://www.immagic.com/eLibrary/ARCHIVES/GENERAL/GENREF/H060727L.pdf> accessed 26 January 2014.

10 ibid.

11 How Much Information? (2003) <http://www2.sims.berkeley.edu/research/projects/how-much-info-2003/> accessed 11 January 2014.

12 ibid 4.

13 David Degnan 'Accounting for the Costs of Electronic Discovery' (2011) 12(1) Minnesota Journal of Law, Science & Technology 151-190.

14 How Many Pages in a Gigabyte? <http://www.lexisnexis.com/applieddiscovery/lawlibrary/whitepapers/adi_fs_pagesinagigabyte.pdf> accessed 11 January 2014.

15 Hilmar Raeschke-Kessler, 'Art. 3 IBA-Rules of Evidence - a Commentary on the Production of Documents in International Arbitration' (2009) < http://www.zrk-rabgh.de/downloads/lbadubai5fuerwebsite.pdf> accessed 11 January 2014.

16 Doug Jones, 'The cost, time and process implications of the new IBA Rules of Evidence' (Paper presented at the Financial Review of International Dispute Resolution Conference, Sydney, 15 October 2010) 13.

17 International Data Corporation (IDC) <http://www.emc.com/collateral/analyst-reports/expanding-digital-idc-white-paper.pdf> accessed 11 January 2014.

18 The prefix zetta indicates the seventh power of 1000 and means 1021

19 International Data Corporation (IDC) <http://www.emc.com/about/news/press/2012/20121211-01.htm>

20 ibid.

21 <Hawaii.edu/suremath/jsand.html> accessed 18 January 2014.

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several scholars such as Drahozal,[22] Frederick,[23] Diamond[24] and Guthrie[25] based on the 2002 Nobel prized Kahneman[26] researches. This was confirmed by Frederic's three questions CRT where only 17% of the subjects gave full correct answers to the three questions.

The answer to the above question is as simple as the adoption of the CRT by the arbitration institutions. Indeed, the CRT will give the arbitration institutions and arbitrators alike, a tool to gauge arbitrators against the unavoidable cognitive illusions to which they are and will be exposed during the exercise of their function of arbitrators while their brains are and will be submerged by gigabytes of data which surely will seep from the 40 zettabytes of the coming 2020.

Arbitration institutions should not only institute the CRT as a unified system in the selection of arbitrators by the institutions, but should go further by developing a scheme of periodic review and evaluation of their arbitrators using a CRT to measure the impact of cognitive ability on decision making, especially since the CRT has been used to assess the decision making processes of professional groups such as judges and financial planners[27] thus, why not the arbitrators? There is no reason why this significant step in the improvement of international arbitration should not be taken.

This new test for cognitive illusions assessment should be the result of extensive research and input from a wide range of experts, which in addition to assessing arbitrators, will educate those who get low scores in the CRT in order to prevent cognitive illusions effects being exacerbated, for the simple reason that arbitrating with a low score in CRT might have the potential for serious consequences, just as it is unsafe to fly with a pilot who is medically compromised.

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22 Christopher R. Drahozal, 'Behavioral Analysis of Private Judging' (2004) 67 Law & Contemp. Probs. 105 <http://scholarship.law.duke.edu/lcp/vol67/iss1/5> accessed 11 January 2014.

23 ibid 2.

24 Shari Seidman Diamond, The Psychological Aspects of Dispute Resolution: Issues for International Arbitration, in International Commercial Arbitration: Important Contemporary Questions 327, 342 (Albert Jan van den Berg ed., 2003)

25 Chris Guthrie et al., 'Inside the Judicial Mind', (2001) 86 Cornell L. Rev. 777

26 Daniel Kahneman, Thinking, Fast and Slow, (Farrar Straus and Giroux 2011).

27 ibid 1.

Amendments to Constitution and Bye-Laws

Dear Members,

The Council would like to inform members of 2 matters relating to the Institute's Constitution and Bye-Laws.

1. Amendments to the Constitution of the Singapore Institute of Arbitrators - Approval by the Registry of Societies ("ROS")

At our Annual General Meeting (**AGM**) on 28 August 2013, members had approved the following amendments to the Constitution:

Clause No.	Previous Provision	Proposed Amendments
7.2.1	Subject to Clause 7.2.4 every member of the Council shall be a Singapore Citizen or Permanent Resident and shall either be a Fellow or Member of the Institute for at least two (2) years prior to being elected as member of the Council or being a Fellow or Member of the Institute, has prior to being so elected:	Subject to Clause 7.2.4 every member of the Council shall be a Singapore Citizen or Permanent Resident or ordinarily resident in Singapore and shall either be a Fellow or Member of the Institute for at least two (2) years prior to being elected as member of the Council or being a Fellow or Member of the Institute, has prior to being so elected:
7.2.4	An office-bearer shall be a Singapore Citizen or Permanent Resident and shall have served as a member of the Council for at least one full term (2 years) prior to being elected as an office-bearer.	An office-bearer shall be a Singapore Citizen or Permanent Resident or ordinarily resident in Singapore and shall have served as a member of the Council for at least one full term (2 years) prior to being elected as an office-bearer.
7.2.5	None	For the purposes of this clause, a person is "ordinarily resident in Singapore" if he has resided in Singapore for a period of at least 183 days in the period of one year immediately preceding the date of his nomination as a council member or office-bearer.

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Clause No.	Previous Provision	Proposed Amendments
10.1.1	An Annual General Meeting of the Institute shall be held within three months after 31st March in each and every year on a date to be fixed by the Council. All general meetings other than the Annual General Meetings shall be called Extra-ordinary General Meetings.	An Annual General Meeting of the Institute shall be held before the 31st day of December in each and every year on a date to be fixed by the Council. All general meetings other than the Annual General Meetings shall be called Extra-ordinary General Meetings.
10.5.1	No business shall be transacted at any Annual General Meeting unless a quorum is present at the time when the meeting proceeds to business. Save as is herein otherwise expressly provided, at least 25% of the total membership of the Institute as at the date of the Annual General Meeting or forty members present in person, whichever is less, shall form a quorum.	Save as provided in Article 10.5.2, no business shall be transacted at any Annual General Meeting unless a quorum is present at the time when the meeting proceeds to business. Save as is herein otherwise expressly provided, at least 25% of the total membership of the Institute as at the date of the Annual General Meeting or forty members present in person, whichever is less, shall form a quorum.
10.5.2	If within fifteen minutes from the time appointed for the holding of the meeting a quorum is not present, the meeting shall be adjourned for a further period of fifteen minutes and if at that time a quorum is not present, the members present whatever their number shall form a quorum, but shall have no power to alter, amend or make additions to the existing Constitution.	If within fifteen minutes from the time appointed for the holding of the meeting a quorum is not present, the meeting shall be adjourned for a further period of fifteen minutes and if at that time a quorum is still not present, the members present whatever their number may proceed with the business of the meeting, but shall have no power to alter, amend or make additions to the existing Constitution.

The Council of the Institute is pleased to inform members that ROS has approved all the proposed amendments, save that Clause 10.1.1 should be amended to read instead as follows:

> "An Annual General Meeting of the Institute shall be ***held within six months*** [*emphases added*] after 31st March in each and every year on a date to be fixed by the Council. All general meetings other than the Annual General Meetings shall be called Extraordinary General Meetings."

Council has approved the same and trusts that members have no objections to this re-amendment to Clause 10.1.1. Accordingly, this amendment will be ratified at the upcoming AGM.

2. "RETIRED" FELLOWS AND MEMBERS

Under the Constitution (Article 5.7) of the Institute, when Fellows or Members attain the age of sixty-five (65) years and *"are not still engaged in any occupation directly or indirectly concerned with arbitration"*, they can opt for the status of a "*Retired*" Fellow and Member.

As "*Retired*" Fellows or Members have no right to vote at general meetings or take part in the management or to be elected as council members of the Institute, they need not continue paying the full subscriptions applicable to Fellow or Members.

At the Council Meeting of 29 May 2014, the Council amended clause 1.3.1 of the Institute's Bye-Laws to clarify that, with effect from 2015, provided that they inform the Hon. Secretary that they wish to have "*retired*" status for the upcoming subscription year, Retired Fellows and Members need only pay an annual subscription of S$60.00 (compared to S$175.00 and S$110.00 respectively for active Fellows and Members). They would also have to state their status as "**FSiArb (Retd)**" or "**MSiArb (Retd)**", as the case may be.

However, it must be noted that, as provided in Article 5.8 of the Constitution, if Retired Fellows or Members subsequently engage in any income earning activities as arbitrator, they shall forthwith give written notice to the Hon. Secretary; and if they wish to remain as a member of the Institute, they shall apply for reinstatement as a Fellow or as a Member; and pay the applicable subscriptions accordingly.

SIArb Council, 2013-2014

Call for Contribution of Articles

The SIArb Newsletter is a publication of the Singapore Institute of Arbitrators aimed to be an educational resource for members and associated organisations and institutions of higher learning. Readers of the newsletter are welcome to submit to the Secretariat at secretariat@siarb.org.sg well-researched manuscripts of merit relating to the subject matter of arbitration and dispute resolution. Submissions should be unpublished works between 1,500 to 2,500 words and are subject to the review of the editorial team.

Investment Treaty Arbitration – An Introduction



Date	Event
22 April 2014	Investment Treaty Arbitration – An Introduction

On 22 April 2014, members and guests were privileged to hear from Mr Sean Wilken QC, who delivered an introduction to investment treaty arbitration with reference to the bi-lateral investment treaties Singapore has negotiated. He also spoke on the standard procedures of an international investment arbitration and recent developments in this area. The talk was chaired by Mr Tay Yu-Jin.

International Entry Course




Date	Event
25, 26 & 28 April 2014	International Entry Course

The Institute's annual International Entry Course spanned 25 and 26 April 2014 and culminated in a written examination on 28 April 2014. Participants received invaluable insight and learning from various stalwarts in the arbitration community, who generously gave of their time and expertise to conduct the lectures and tutorials.

Members' Nite





Date	Event
29 April 2014	Members' Nite

The Members' Nite is a regular feature in the Institute's annual calendar. On 29 April 2014, members took time out in the middle of a busy work week to be at The Pelican Seafood Bar & Grill where they enjoyed the invigorating free flow of spirited conversation and other kinds of spirits!

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