SINGAPORE INSTITUTE OF ARBITRATORS
NEWSLETTER
MCI (P) 113/09/2013 **MARCH** 2014 **ISSUES** NO. 9

THE PRESIDENT'S COLUMN

In the President's Column of the December 2013 Newsletter, I informed members of the intended move from our then office in Maxwell Chambers to the office of Intellitrain. We have vacated Maxwell Chambers as of 1 January 2014. Maxwell Chambers has been kind enough not to take issue with the early termination of our lease. Intellitrain is working hard to help us with the transition. There have been numerous matters that required urgent and close attention from both Intellitrain and the Council during this period of transition. I commend June and Gabriel from Intellitrain, as well as their team, for hitting the ground running once they took over. I am, as always, grateful for the commitment and time from our volunteer Council members and Office Bearers. Much of the work they do is not visible. The brevity of this issue's message belies the tremendous amount of work done behind the scenes from December to-date.

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ANNOUNCEMENTS UPDATES & UPCOMING EVENTS

1. Investment Treaty Arbitration – An Introduction (22 April 2014, 5.30-7.30pm)
2. International Entry Course (25, 26 & 28 April 2014, 9.00am-5.30pm)
3. This year's International Entry Course 2014 will be held on 25 and 26 April 2014 with an examination on 28 April 2014. Candidates who pass an examination at the end of this Course may apply to be Members of the Institute and use the abbreviation "MSIArb" as part of their credentials.
4. The Members' Nite (29 April 2014, 6.00 - 8.00pm, The Pelican Seafood Bar & Grill)
5. SIArb Commercial Arbitration Symposium 2014 followed by cocktails (31 July 2014, 12-8.30pm)
6. Regional Arbitral Institutes Forum (1 August 2014, 8.30am-6pm)
7. Fellowship Assessment Course (October 2014)

NEW MEMBERS

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

Associate

1. Katherine Mcmenamin

Fellows

1. James Edward Baker
2. Chew Kei-Jin
3. Vivek Chandra
4. Chua Kee Loon
5. Goh Heng Hoon
6. Desmond Ho Jong Jan
7. Heng Gwee Nam Henry
8. Hirth Rene Alexander
9. David Lawrence Kreider
10. Koh Keen Chuan Jerry
11. Lim Soon Hock
12. Veeda Vashti Maraj
13. Maurice Nhan
14. Ong Choon Kim
15. Ong Saw Lay
16. Pham Linh
17. Stephens Michael Allen
18. Teo Lang Lang Jean
19. Damian John Watkin
20. Wong Kien Keong
21. Christopher Yeo Choon Min
22. Yeo Boon Tat
23. Lim Chin Leng
24. Lim Sing Shiong Charles
25. Ong Boon Hwee William

Members

1. Fayth Kuah Hiunan
2. Earl Joyce Dolera
3. Eddie Luar
4. Hoon Shu Mei Sumathi
5. Soo Weng Keong
6. Michael Weatherley
7. Vadivelu Gangadharan
8. Margaret Joan Ling

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The President's Column (Continued)

Such work includes a review of past records as well as the improvement of our communication and record-keeping systems. We are also looking into the facilitation of online renewals and payments. In this regard, I request that members bear with us if Intellitrain has to occasionally call up or write to some of you as part of the process of verifying the records Intellitrain has inherited.

By the time this Newsletter is printed, a team of SIArb trainers would have conducted an award writing course of the first batch of arbitrators of the Cambodia National Arbitration Centre (CNAC). This is part of an ongoing training programme that SIArb has been appointed by the World Bank to conduct for CNAC.

On 25 March 2014, we will have a talk by Prof. Lawrence Boo on Review of Awards – Have We Got The Balance Right? Prof. Boo's annual review of arbitration cases last year was very popular. No doubt, his talk this year will be just as substantive and well-received.

A talk on Investment Treaty Arbitration by Mr Sean Wilkens is scheduled for 22 April 2014. Later that month, on 25 and 26 April, SIArb will be conducting its International Entry Course followed by a written examination on 28 April. Subject to other requirements, a pass in this course qualifies one for the status of Member, or MSIArb.

Some of you might have ideas on topics and speakers for our Continuing Professional Development (CPD) series. Please feel free to write to the secretariat or contact our CPD Chair, Mr Dinesh Dhillon, with your suggestions.

On a lighter note, our Member's Night is on 29 April 2014. You have worked hard. Let's unwind a little and shoot the breeze with us at the Pelican. I look forward to seeing you then.

DEVELOPMENTS IN ARBITRATION LAW AND PROCEDURES

In this issue, we review 2 cases as follows:

(A) HABAS SINAI VE TIBBI GAZLAR ISTHISAL ENDUSTRISI AS v VSC STEEL COMPANY LTD [2013] EWHC 4071 (Comm); and

(B) ANWAR SIRAJ AND ANOTHER v TEO HEE LAI BUILDING CONSTRUCTION PTE LTD [2013] SGHC 200.

(A) HABAS SINAI VE TIBBI GAZLAR ISTHISAL ENDUSTRISI AS v VSC STEEL COMPANY LTD [2013] EWHC 4071 (Comm)("Habas v VSC")

Introduction

Habas v VSC involves an application to set aside an arbitration award under Section 67 of the English Arbitration Act 1996 (the "**1996 Act**") and deals with issues of:

(i) When grounds for objecting to an arbitrator's jurisdiction have to be raised; and

(ii) How applicable laws of arbitration agreements are determined.

Brief Summary of Facts

Habas and VSC concluded a contract for the sale and purchase of steel reinforcement bars (the "**Steel**") through commission agents Steel Park ("**SP**") and Charter Alpha ("**CA**") (the "**Contract**"). At all times, the chain of communication was between Habas and SP, SP and CA then CA and VSC and vice versa. Habas also issued a letter appointing SP and CA as their agents.

Initial drafts of the Contract exchanged between the parties, using the abovementioned chain of communication, provided for Turkish arbitration with Turkish law to apply and Hong Kong arbitration with "British" law to apply. A

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penultimate draft, signed by SP "*acting as agents on behalf of [Habas]*", provided for ICC arbitration in Paris with no express choice of law clause. The penultimate draft was then unilaterally amended by VSC to provide for ICC arbitration in London with no express choice of law clause. The final draft was sent to SP for comments, but no further comments were made.

Some 20 days after the final draft was sent to SP for comments, VSC requested for and received the original Contract, which VSC countersigned and returned. The original contract provided for ICC arbitration in London with no express choice of law clause, by way of handwritten amendments, which VSC stamped.

Subsequently, the Steel was not delivered, VSC commenced arbitration in London and obtained an award in its favour. Habas challenged the tribunal's jurisdiction and the award pursuant to section 67 of the 1996 Act on the grounds that:

(i) SP and/or CA did not have actual or ostensible authority to conclude the London arbitration agreement on behalf of Habas; and

(ii) There was no binding consensus on the terms of the London arbitration agreement.

Issues before the Court

Two of the issues which came up for the Court's decision were:

(i) Whether and, if so, to what extent Habas had lost its right to object to the tribunal's jurisdiction; and

(ii) What was the applicable law of the arbitration agreement?

Habas' right to object to the tribunal's jurisdiction. At the arbitration, Habas did not rely on any issues of Turkish law. Hence, VSC contended that Habas' contention that Turkish law governed the arbitration agreement and that SP and CA had no requisite authority was a new ground of objection to jurisdiction which Habas was not entitled to rely on.

VSC relied on section 73 of the 1996 Act which provides that "*if a party takes part, or continues to take part, in proceedings without making……any objection (a) that the tribunal lacks substantive jurisdiction……he may not raise that objection later……*"

Relying on earlier authorities such as ***Primetrade AG v Ythan Ltd*** [2006] 1 Lloyd's Rep 457 and ***JSC Zestafoni G Nikoladze Ferroalloy Plant v Ronly Holding Ltd*** [2004] 2 Lloyd's Rep 335, the Court held that the term "*objection*" in section 73 of the 1996 Act referred to "*any ground of objection*" and as such, it was not sufficient for Habas to merely raise an objection to the tribunal's jurisdiction, but it had also to state the ground(s) of such objection (see paragraph 85 of the Judgment).

Nevertheless, the Court also went on to hold that in deciding if a new ground was raised, the grounds of objection had to be examined broadly and not "*closely as if a pleading*" – raising different and broader arguments or new evidence is not tantamount to raising a new ground.

Applicable law of the arbitration agreement. On the issue of what the applicable law of the arbitration agreement would be, the Court applied the six principles in ***Sul America Cia Nacional De Seguros S.A. and others v Enesa Engenharia S.A.*** [2012] 1 Lloyd's Rep 671 ("***Sul America***"). A case summarised in the December 2013 issue of this publication.

As there was no choice of law clause in the Contract, the Court held that *Sul America* clearly provided that the applicable law of the arbitration agreement would be the law of the country of the seat.

Habas however argued that the Court should "*disregard the seat of the arbitration when identifying the law with which it has the closest connection*" because the seat of the arbitration – London – was agreed to by agents, namely SP and CA, in excess of their actual authority to do so and but for the agents' *ultra vires* actions, London would not have been the seat of the arbitration. Habas argues then that the law of the arbitration agreement should be Turkish law as that is the law that has the closest and most real connection with the Contract.

In support of its contention, Habas relied on:

(i) An approach suggested by *Dicey, Morris & Collins (15th Edition) at 33-447 where it is stated* that it is unlikely for a person to be bound by a choice of law selected by an agent who acted in excess of his authority and where an agent exceeds his authority in choosing the law to govern a contract with a third party, the principal would be bound only if he were so bound under the applicable law in the absence of choice.

(ii) The contention that "*If one applied without modification the normal definition of governing law to the questions of capacity, one would arrive at the result that a minor could, by agreeing to the choiceof a system of law as the law of the contract, confer contractual capacity upon himself. For this purpose, it is submitted that the criterion should be the connection*

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of the contract with a given system of law, i.e. the system of law with which the contact is most closely connected"; and

(iii) *Article 8(2) of the Rome Convention recognises an exception to application of the putative applicable law to determine the validity of the contract under Article 8(1) in the following circumstances:*

"2. Nevertheless a party may rely upon the law of the country in which he has his habitual residence to establish that he did not consent if it appears from the circumstances that it would not be reasonable to determine the effect of his conduct in accordance with the law specified in the preceding paragraph"

The Court rejected Habas' novel argument on ten grounds, namely that:

(i) Habas' submission to adopt *Dicey, Morris & Collins suggestion at paragraph 33-447 of the 15th Edition* is too "*far reaching*" as the suggestion only applies to "the agreement to a choice of law clause" whereas Habas' contention "*applies to the agreement to any clause which determines or affects implied choice or the system law with which the contract has its closest connection*";

(ii) "*There is no logical or principled link between the issue of authority and the issue of the law with which a contract has its closest connection*". The "*latter question involves a consideration of the terms of the contract as made, rather than the authority with which it was made*";

(iii) Habas' submission "*potentially makes major and uncertain inroads into the well established common law doctrine that validity is determined by the putative proper law of the contract*";

(iv) Habas' submission "*involves English law according special treatment to actual authority for conflicts of laws purposes*" where English law draws no distinction between actual or ostensible authority;

(v) Habas' submission "*would potentially affect the validity of many contracts which would otherwise be valid and binding because the agent has ostensible authority as a matter of English law as the putative applicable law, and for reasons outside the knowledge and control of the third party and contrary to the representations made to him as to that authority*";

(vi) Habas' submission "*presupposes that there is a question of validity which needs to be considered prior to any determination of the applicable law*";

(vii) "*The problem*" identified in *Dicey, Morris & Collins* is not identified in the leading text on agency – *Bowstead & Reynolds on Agency*;

(viii) There is no case law supporting Habas' submission;

(ix) There are decisions in which "*ostensible authority has been treated as being governed by English law as the result of putative agreement to a clause in a contract without any consideration of actual authority to agree that clause and notwithstanding that it was being alleged that there was no actual authority to enter into the contract"; and*

(x) Habas' submissions have been rejected in authoritative decisions such as ***The Parouth*** [1982] 2 Lloyd's Rep. 351.

Conclusion

In conclusion, in arbitrations under English law, the grounds of a challenge to an arbitrator's jurisdiction shall be identified at the outset and in the absence of an express choice of law to govern the arbitration agreement the principles in *Sul America* apply in determining the said law.

(B) ANWAR SIRAJ AND ANOTHER v TEO HEE LAI BUILDING CONSTRUCTION PTE LTD [2013] SGHC 200 ("Anwar Siraj No.2").

Introduction

In *Anwar Siraj No.2*, the Singapore High Court deals with the issues of:

(i) An arbitrator's right to resign; and

(ii) The proper procedures for the discharge or resignation of arbitrators.

Brief Summary of Facts

The Plaintiff and the Defendants had a dispute over construction works carried out to the Plaintiff's house. The dispute was referred to arbitration, but the award in the said arbitration was set aside by the Singapore High Court.

Subsequent to setting aside the said arbitration award and pursuant to the Plaintiffs' application, the Singapore High Court appointed another arbitrator to arbitrate the dispute between the Plaintiff and the Defendants.

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The second arbitration "*also became stormy*" and the relationship between the Plaintiff and the arbitrator "*deteriorated*". The arbitrator sought to resign and applied to the Court to do so.

Issues before the Court

The main issues were whether an arbitrator had a right to resign and if so, what was the procedure for so doing?

Right to Resign. On the issue of an arbitrator's right to resign, the Court adopted the English position and held that an arbitrator's rights and obligations are derived "*from a conjunction of contract and status", where "his acceptance of appoint gives rise to a trilateral contract, in which the arbitrator becomes a party to a previously bilateral arbitration agreement between the parties*". Hence, an arbitrator may resign:

(i) "*In any circumstances specified in the contract*";

(ii) "*Where parties are in repudiatory breach*"; or

(iii) "*For good cause, just cause, justifiable reasons or reasonable cause*".

In *Anwar Siraj (No.2)*, the Court held that the arbitrator had "*good and justifiable*" cause to resign because the Plaintiff's relationship with him had "*deteriorated and become very acrimonious*" through no fault of the arbitrator. The Court's finding was based on the contents of contemporaneous correspondence between the Plaintiffs and the arbitrator which contained:

(i) Accusations that the arbitrator "*ignored and/or neglected and/or refused to respond*" to letters;

(ii) Accusations that the arbitrator "*selected to ignore the matters and/or neglected to act fairly, impartially, expeditiously and economically for the resolution of the disputes at hand*";

(iii) Demands that the arbitrator provide "*a written assurance to the parties that he would not have any sight of the "corruptive" documents improperly and unlawfully handed over by the previous arbitrator*";

(iv) Demands that the arbitrator "*sealed the "corruptive*" documents in the presence of the parties;

(v) Accusations that the arbitrator failed to carry out his duties with due diligence;

(vi) A demand that the arbitrator "*give reasons for requesting a further deposit of $40,000 and alluded to the possibility of taking out an application to tax*" the fees if the reasons were not satisfactory;

(vii) Accusations that arbitrator's "*demand for further deposits may be construed as an act of oppression, and, indeed, obstruction to the course of justice*";

(viii) Doubts being cast on the arbitrator's impartiality; and

(ix) Accusations of the arbitrator "*entering further into the arena and becoming embroiled in the fray as well as taking sides, which placed*" the Plaintiff "*in a disadvantageous position contrary to natural justice*".

The Plaintiff even concluded in 1 of their letters thus – "*[w]e do not expect the Tribunal to add to our sorrows but rather resolve the disputes with the sense of justice and fairness*".

The Court found that the Plaintiff had "*lost their trust, quite unjustifiably*", in the arbitrator's "*ability to conduct the arbitration in a fair and efficient manner*".

Resignation Procedure. On the issue of how an arbitrator is to resign, the Court held that it was sufficient for the arbitrator to send "*a letter to the parties clearly stating that the arbitrator wished to resign or resigns*".

In relation to an arbitrator's reasons for resigning, the Court found that there is no general requirement for an arbitrator to state his reasons for resigning, but it is good practice to do so.

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FCIArb, FSIArb, FMIArb, FIPAS, MSID

Inaugural SIArb National Arbitration Conference:

The Golden Age of Arbitration – A Multi-Stakeholder Perspective

Arbitration; an Engineer Participant's Perspective

Peter Lalas B.Eng (Aero), MIEAust, CPEng, AMIAMA

Introduction

1. I have been asked to comment on the process of arbitration in accordance with my experience as an engineer expert witness. At the outset I would like to state that the opinions expressed in this paper are my own. In making my comments in this paper, many of my observations will be obvious to the experienced legal practitioner, but I make them to lead into another observation. For background information for this paper, I read several papers from the journal of the Institution of Arbitrators and Mediators Australia. I also reviewed the results of a survey conducted by Unisearch Ltd - Expert Opinion Services in 2004/2005.

2. My dispute resolution experience has been exclusively in the construction industry and with facades, i.e. the external walls of buildings. These are typically medium to high-rise buildings and the main issue is usually water leaks. I point out here that, as an expert witness during proceedings, my first loyalty is to the tribunal and not to my client. However, this is overridden, as a responsible professional engineer, by my responsibility to the public; if I believe that an installation is unsafe then I must say so and inform the relevant authorities, even against my client's wishes.

3. As a newbuild façade consultant in the construction industry, I was the façade consultant, in Singapore for UOB Plaza, Republic Plaza, UE Square and the Maybank building, for the pyramid on top of Central Plaza in Hong Kong, the KLCC Twin Towers in Kuala Lumpur and Rialto Towers in Melbourne, to name a few.

4. My first case as an expert witness was in 1992 but most of my cases have been in this century.

5. I have been involved in 62 cases, including arbitrations in Singapore, Hong Kong, Australia and New Zealand.

The following table gives a summary of my case types and outcomes to date:

Proceedings type	Settled prior to formal proceedings	Completed	Ongoing	Totals
Arbitration	2	2		4
Court Case	33	7	15	55
Reference (from court)		1		1
Tribunal (Department of Housing etc.)	1	1		2
Totals	**36**	**11**	**15**	**62**

6. The two largest numbers in the totals column indicate that 55 out of 62 cases (i.e. 90%) are court cases, compared with 7% being arbitrations. It is also worth noting that many of the court cases involved mediations and/or judicial hearings (which invariably failed) before they went to court.

7. Of these cases, 55 were court cases, 4 were arbitrations, 1 was a reference from court and 2 were in other tribunals. Of these 62 cases, 7 completed in a tribunal and 11 are ongoing, with the (approximately 80%) balance settled. Most of these cases were in court, indicating that going to court is still much more popular than arbitration. It may also indicate that there are few arbitration agreements included in contracts.

8. There is an obvious question here as to why so few of these cases are arbitrations. There are several technical explanations as well as ones of preference.

9. Technical explanations include the following:
   a. Most of the cases in which I am involved are between the builder and the subsequent owners (usually a body corporate). The owners invariably have had no connection and therefore no arbitration agreement with the builder. If an

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   arbitration agreement ever existed, then it was between the builder and the developer.
   b. In New Zealand there is a chronic problem with leaky homes; "The leaky homes Crisis" is said to involve $NZ 25 billion of residences. The New Zealand Department of Housing and Construction has set up a special tribunal to deal with these cases. When one party is unhappy with their deliberation, then their recourse is to court.

10. With respect to explanations of preference there is, in my experience, a perception in Australia and New Zealand that arbitrations do not provide a substantially different form of dispute resolution to court proceedings. When a case is first discussed with the plaintiff's lawyer and there is no arbitration agreement (which is the case much more often than not) then the lawyer is much more likely to suggest court proceedings.

Forms of ADR

11. As we know, Alternative Dispute Resolution can take many forms. We know that both the litigious process of the court and arbitration vary from other ADR processes in that they are determined in accordance with the law and that both a judgement and Arbitrator's award is binding. Arbitration may also be determined using rules of fairness if there is an arbitration agreement to that effect.

12. The attributes which a user values most of any ADR or litigious process are savings in time and cost. Savings in time refers to the time from start to finish of the process and numbers of hours involving participants (lawyers, experts, tribunal time & etc.) which have to be paid for. Therefore it follows that the most popular ADR or litigious process is the shortest and least costly and for arbitration to remain relevant and (hopefully) become more relevant, it must offer savings in cost and time not available in the litigious process.

13. As an engineer expert witness, the problems on which I have to comment are engineering problems, usually in the form of water leaks, materials failures and structural inadequacies. In any ADR or litigious process involving solicitors and barristers, I have to spend a great deal of time explaining engineering processes, procedure and design to the lawyers so that they can present the issues to a judge or arbitrator and cross-examine witnesses and experts. There would be a great deal of savings in time if this process can be eliminated.

14. This is possible in an arbitration, but not in court. However, for this to eventuate, the lawyers have to take a step back in construction engineering matters and the Arbitrator must have a good working knowledge of the subject under scrutiny.

15. About 20 years ago there was a move in Australia to have professionals such as myself trained as Arbitrators. I did my course with the University of Adelaide and the Institute of Arbitrators Australia in Sydney in 1999. In Sydney there is only a small group of non-lawyer arbitrators (engineers, architects and builders) who are recommended by the Institute and none of them is a specialist in the façade work that I do.

Reference

16. I firmly believe that the best way to deal with engineering problems is by engineers without the input of lawyers. There are several ways in which this can be done. One is as a reference which can be directed either by a judge or an Arbitrator. The referee must also be an experienced engineer with pertinent skills in the engineering issues being arbitrated. As such, the referee will have the ability to assess the evidence in chief (which can be written submissions) and to assess the experts.

17. I was involved in a reference in 1993, which became a landmark case involving a building firm Triden and Lend Lease; the case involved a building which was part of a portfolio and imminent sale of the builder. The issue involved a poorly-built curtainwall and roof. The referee was an experienced structural engineer and Arbitrator. The proceedings were held without lawyers and engineer experts representing the plaintiff and 2 defendants "cross examining" each other. The proceedings were completed in 8 working days and the referee reported back to the court with his findings in 2 weeks after that. The judge said that had the technical issue been determined through the court process, then it would have taken 3 months. I believe that we suffered because the referee had no understanding of sealants and weatherproofing of buildings. One of the referee's findings was that the curtainwall was weatherproof, against my opinion; within 2 weeks of his findings being published, there were 3 major leaks

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in the curtainwall, requiring buckets to catch the water.

18. What I find remarkable in this case is that this reference process is seldom followed. Both a judge and an Arbitrator can direct a reference to be executed on the agreement of the parties. My question is why such a proceeding which is obviously so efficient, is seldom adopted. I believe that the answer at least partly involves the lawyers' desire to retain control of proceedings.

Conclaves, Hot-Tubbing and Judicial Hearings

19. I am in favour of conclaves, hot–tubbing and judicial hearings, which allow the parties to debate their positions in less formal surroundings.

20. Conclaves appear unfavourable to the lawyers as engineers, such as myself, may agree to findings and decisions over which the lawyers have no control. I have been guilty of agreeing that installations must be repaired and/or instantly must be made safe.
21. In one conclave which involved large aluminium panels falling off a building into a carpark during high winds, I represented the builder defendant. At the conclave I agreed the following with the owner's engineer experts:
    a. the current installation of panels was dangerous and required immediate attention and we agreed what immediate actions were required
    b. we agreed in principle how a full, long-term rectification could be carried out and gave an estimate of the cost of this process
    c. we did not make any statement on liability

    We made a written agreement which we all signed and gave back to our parties. My briefing solicitor was most unhappy with this statement saying that I had exceeded my instructions. My reply was that, as a CPEng (Chartered Professional Engineer) my duty was to the public at large and not our client. The outcome of this case was that my client went into liquidation and the owners took me on as their expert against my previous client's insurers.

Bias of Experts

22. I would like to make a few comments on bias of experts. I make a note of this issue here as bias in experts does appear in many tribunals, no matter what the local "Rules for Experts".

23. There are some expert witnesses who do act as a hired gun ready to present arguments in favour of their client, giving one argument for a builder on one building and the opposite argument for an owner client on the same issue on another building. We have another expert who issues different CVs in different countries; the CV is much more impressive in countries where he is less likely to be questioned.

24. Bias of experts remains, in my opinion, the main reason for cross-examination. In my arbitration experience with the Orchard Building façade, the other side's barrister (a QC) spent more time attacking me than in really trying to determine the truth of the issues being arbitrated. This was a straight personal attack, which preceded an attempt to disprove my ability to properly asses the issues. I believe that part of the reason for this attack on the personal integrity and ability of experts is that these are issues more readily within the understanding of the legal cross-examiner; if the expert's evidence can be eliminated on these grounds then this is much easier for the cross-examiner, rather than on technical aspects of the expert's evidence, which the cross-examiner does not really understand anyway. This personal attack on the expert witness during cross-examination appears to be common practice in both arbitration and court in all jurisdictions. The Arbitrator in this case was a senior officer of a major property owner in Singapore and had no engineering qualifications and no understanding of weatherproofing issues which was the main single issue in debate. This lack of the understanding on the part of the Arbitrator was a distinct disadvantage to the plaintiff, for whom I acted.

25. The Unisearch survey of experts indicated that those who thought there was substantial bias considered it to exist because of the nature of the adversarial system or due to hiring arrangements. Many others considered that bias largely emerged from the nature of the instructions and information given by solicitors to their experts. What appears to be bias, may also not be bias because it may reflect lack of knowledge, or differences in academic and practical training. There may also be the unconscious bias of hindsight bias, particularly in relation to medicine where innovation and knowledge develops rapidly.

26. However, if an Arbitrator (or referee) is fully skilled

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in the subject being arbitrated and he has adequate inquisitorial powers, then the Arbitrator can determine for himself whether any of the experts is biased.

Arbitrations

27. I have indicated above, that from my own experience, arbitrations are far from being the preferred method of dispute resolution. My opinion of this lack of preference for arbitration is that it is generally not seen as a dispute resolution method which offers substantial benefits, compared with litigation in court. This may be an unfair perception and it is more common that end-users are not substantially in favour of any dispute resolution system, preferring to avoid any tribunal and almost any cost.

28. For arbitration to become a much more preferred method of dispute resolution the process must be speeded up and costs reduced. To this end 'fast-track' rules were introduced in Australia and in New Zealand in 2007. These procedures set out predetermined time limits for procedural steps in arbitration. Purely from my experience, these fast-track rules do not appear to have increased the use of arbitration.

29. If arbitrations remain very similar to court cases, they will retain this unpopularity. Arbitrations will not be improved while the lawyers remain intimately involved in every aspect of the case, including instruction of the experts, spending an inordinate amount of time in an impossible effort to understand the technical issues and then running the proceedings.

30. Arbitrations will be improved by allowing the technical experts to run their part of the case. This can be achieved by adopting one of the following procedures:

    a. Have a 'technical' (rather than legal) Arbitrator who is fully knowledgeable with the issues, so is or has been a practitioner in that field; the Arbitrator should be able to hear the technical issues without the lawyers in the room and should have inquisitorial powers as required to allow him to fully understand the capabilities and evidence of the experts. In such a case evidence in chief may be accepted in writing without being presented in the tribunal in full, except where the Arbitrator requires further clarifications.

    b. Have two Arbitrators, one being a legal officer and the second being as described in a. above.

    c. The legal Arbitrator appoints a referee acceptable to the parties, to adjudicate the technical aspects of the case, without the need for the lawyers to be in the room.

THE FELLOWSHIP ASSESSMENT COURSE 2013

The Fellowship Assessment Course ("FAC") 2013 was conducted on 30 October 2013, 8 to 9 and 11 November 2013. It attracted almost 20 candidates from diverse backgrounds, although (as is often the case) the bulk seemed to be from the legal fraternity. We, the publications team of this newsletter, thought you would like an informal introduction to some of these candidates. To this end, we posed 5 tongue-in-cheek questions to each of them and present here a selection of candid responses.

Q1 – What is one (1) thing you wish you had known before you signed up for the Fellowship Assessment Course ("FAC")?

"Practise your penmanship. Mr. Raymond Chan will suddenly ask you to start writing an Order for Directions by hand on Day One".... Chin Leng Lim, Barrister, Keating Chambers

*"That the success of the course was measured in the one award writing exercise, it was probably mentioned in the course description material, but I must have missed it. Not that this would have changed anything but I might have approached the information received during the other two days differently"...*James E Baker, General Counsel, Chemoil Energy Limited

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Q2 – There were too many tea breaks during the FAC. Discuss.

"Tea breaks are good, coffee breaks are better. To be fair to drinkers of either beverages, we should have equal number of tea and coffee breaks which would double the number of breaks. I must be against the proposition"….. Gooi Chi Duan, Partner, Donaldson & Burkinshaw

"There were a reasonable number of tea breaks responding to the used standards. However, they were short in duration, which would not allow to candidates to interact between them sufficiently"…Abdelhak ATTALAH LL.M, In-house counsel, Global Logistics Partner

Q3 – An arbitrator, a mediator, a judge and a counsel were trapped in a burning building. Whom should the rescue workers save first and why?

"A counsel without any hesitation, at least because he used to advise people on how to get a good end to their cases either through mediation, arbitration or litigation therefore, it is his turn to be the first to be guided to the emergency exit, by gratitude at least"…. Abdelhak ATTALAH LL.M, In-house counsel, Global Logistics Partner

"The workers should save the counsel first. In the event of a future law suit arising from the rescue, the assistance of a grateful counsel would be much more valuable than an arbitrator, mediator or judge who will be conflicted out of the law suit due to the Nightingale effect"…. Desmond Ho, Partner, Allen & Gledhill LLP

"an arbitrator should be saved first because:-

(i) don't save a counsel first because after she/he is saved, he/she will only tell one side of the story (either true or untrue); and

(ii) don't save a judge first because after she/he is saved, he/she will ask for this document or that document (in a fire, all the documents will be gone !) for proof and will often lengthen the proceedings and he/she may not have the commercial knowledge to understand in time of emergency/fire; and

(iii) don't save a mediator first because after she/he is saved, she/he will need to talk to both sides to achieve a mutual acceptable settlement. Often the settlement is a compromised position of both parties and normally not one party is entirely satisfied but only suffice for the parties to "live" with the settlement. Also, after the fire maybe, he can't talk to any parties anymore as either one or both parties would have been trapped and burnt in the building !

(iv) save the arbitrator, after considering all the above, as he/she is vested with the power to exercise discretion in time of such, not requiring voluminous documents in Discovery proceeding and generally independent and be fair to both parties and hence higher chance to tell a truthful story after being rescued !"….. Rebecca CC Tai, Director of Legal, Rongsheng Offshore & Marine Pte. Ltd.

Q4 – What kept you smiling when you first started in your chosen profession and what keeps you smiling today?

"Fridays. Fridays"….. Gooi Chi Duan, Partner, Donaldson & Burkinshaw

"When I first started: Having an exciting job that dealt with fast moving issues on a global basis. Now: Having an exciting job that deals with fast moving issues on a global basis"…. James E Baker, General Counsel, Chemoil Energy Limited

Q5 – Fill in the blank : During the FAC, I never wanted _____ to end.

"During the FAC, I never wanted SDJ Leslie Chew's impromptu exposition on law, life and the limits of cross-examination to end"… Chin Leng Lim, Barrister, Keating Chambers

"The air conditioning and coffee"… Desmond Ho, Partner, Allen & Gledhill LLP

AWARD WRITING COURSE – CAMBODIA, NATIONAL COMMERCIAL ARBITRATION CENTRE

Date	Event
12 to 14 March 2014	Award Writing Course – Cambodia, National Commercial Arbitration Centre

SIArb continues with training for the Cambodia, National Commercial Arbitration Centre (NCAC) from 12 to 14 March 2014. The training for the NCAC began in 2010. In this recent programme, SIArb held an Award Writing Course for 42 participants from the NCAC with 15 of the participants taking the written award writing examinations. Trainers include Mr Raymond Chan, Mr Johnny Tan, Mr Chia Ho Choon, Mr Steven Lim and Mr Alastair Henderson. Mr Ben Giaretta was the examiner for the award writing examinations.

Review of Awards – Have we got the balance right?


Date	Event
25 March 2014	Review of Awards – Have we got the balance right?

SIArb was honoured to have Professor Lawrence Boo, Head of Arbitration Chambers, Singapore share his observations and insights on the judicial decisions rendered in 2013, including the highly regarded Court of Appeal judgment in PT First Media TBK v Astro Nusantara International BV and others [2013] SGCA 57. In particular, Professor Boo suggested certain welcoming trends in Singapore's judicial thinking regarding review of arbitral awards. Participants were also treated to an exposition to the United Nations Convention on the Use of Electronic Communications in International Contracts which came into force 1 March 2013 (Singapore ratification). The session closed with a lively question and answer segment chaired by Mr Ganesh Chandru.

RELOCATION OF THE SIARB SECRETARIAT

Please note that with effect from 1 January 2014, the SIArb Secretariat has relocated to the offices of Intellitrain at Level 3, 146 Robinson Road, Singapore 068909. Please see location map below.

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