SINGAPORE INSTITUTE OF ARBITRATORS

NEWSLETTER

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THE PRESIDENT'S COLUMN

December is often a month of reflection. 2015 has been eventful for Singapore. Its umbilical cord was severed with the passing of its founder. In the dispute resolution space, however, the world paid attention as January witnessed the birth of the Singapore International Commercial Court. The SIAC Court of Arbitration has a new President, whom you will read more about below.

For the Council members of SIArb, the tremendous housekeeping required following the transition of our secretariat from an internal one-man show to the excellent Intellitrain was eventful enough and we were grateful to see calmer seas in 2015.

We continued to run our flagship International Entry and Fellowship Assessment Courses along with a series of thought-provoking seminars. The recent SIArb Commercial Arbitration Symposium has become something of an institution in the calendar of Singapore arbitration events. Attendees enjoyed the sort of high level discourse that they have come to expect, this year from a sterling cast

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ANNOUNCEMENTS UPDATES & UPCOMING EVENTS

1. The Impact of Cross Border Insolvency on Arbitration (25 February 2016)
2. International Entry Course (22, 23 and 25 April 2016)
3. SIArb Members Nite (26 April 2016)
4. Fellowship Assessment Course 2016 (14, 21 and 23 October 2016 with an examination on 24 October 2016). Candidates who pass an examination at the end of this Course may apply to be Fellows of the Institute and subject to meeting membership requirements may use the abbreviation "FSIArb" as part of their credentials.

NEW MEMBERS

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

Members

1. H. Barkin Yazicioglu
2. Yip Yau Kit Colin
3. Rendy Tan Howe Choong
4. Goh Mui Ngim Mabel
5. Benjamin Feng
6. Wong Siew Hong
7. Wong Yit Ming
8. Tay Kuan Seng Charles
9. Voltaire Jr Acosta
10. Trevor George De Silva

Fellows

1. Mohamed Faizal S/O Mohamed Abdul Kadir
2. Barry Koh
3. Adrienne Louise Beatrice Kouwenhoven
4. Ng King To
5. Subramanian Ananthanarayanan
6. Yap Li Ngah
7. Chun Wai Seng
8. Sridhar Venkataraman

PANEL ARBITRATORS

The Institute congratulates the following on their admission to the panel of arbitrators

Secondary Panel of Arbitrators

1. Jaya Prakash

Secondary Panel of Arbitrators

1. Dr Wong Kien Keong
2. Kalidass Murugaiyan

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with the likes of Sir Bernard Eder, Mr Stephen Moriarty QC, Mr Cavinder Bull SC, Mr Cao Lijun, Prof Benjamin Hughes and our own Mr Steven Lim steering the discussions. Since last year, SIArb had also started conducting a mock arbitration training. This year, we based it on the SIAC mock arbitration video.

I thank members who turned up to join us for the Annual General Meeting in September 2015. Those who attended were rewarded with a pre-AGM talk by Ms Loretta Malintoppi. The talk was capped by exchanges between her and Mr Michael Hwang, SC from the floor as they both shared their considerable experience in common law and civil law approaches to arbitration procedure.

A new Council took office after the AGM. I am afraid that members of SIArb will have to put up with my column for another two years. I thank Mr Yang Yung Chong who retired as Treasurer but thankfully remains in the Council to serve. Mr Dinesh Dhillon, who takes over as Treasurer, is doing double duty as Chairman of the Continuing Professional Development Committee as well.

I also thank Mr Kelvin Aw who completed serving his term as a co-opted Council member. Mr Aw had also done an excellent job as Chairman of the Publications Committee. He remains in the Committee, which is now helmed by our new co-opted Council member, Ms Margaret Joan Ling. This issue marks her first as Chairman of the Publications Committee. Margaret has already served for a couple of years in the Committee prior to this. I appreciate her stepping forward to serve in both the Council and in the Publications Committee.

You will see the names of the new Council members and the various Committee Chairs in this issue. The secretariat has sent out invitations to interested members to serve on the committees. We hope that more will take an active role in shaping SIArb initiatives. The institute has benefited a lot from its increasing and diverse membership. There is much talent that we can draw on to make this institute even more relevant and interesting to our members.

I am pleased to say that SIArb and the Japan Association of Arbitrators (JAA) have agreed on a Memorandum of Understanding to foster collaboration in education and training, and to encourage interaction between our members. This adds to the reach of SIArb that has already been extended through the instrument of the Regional Arbitral Institutes Forum (RAIF). To-date, about 20% of our 832 members reside out of Singapore, in the following countries:

1. Australia
2. Bangladesh
3. Brunei
4. Cambodia
5. China
6. Germany
7. Hong Kong, China
8. India
9. Indonesia
10. Korea/ South Korea
11. Malaysia
12. Myanmar
13. New Zealand
14. Pakistan
15. Philippines
16. Qatar
17. Switzerland
18. Thailand
19. The Netherlands
20. United Arab Emirates
21. United Kingdom
22. USA
23. Vietnam

I believe that those who attended our Gala Dinner in November thoroughly enjoyed themselves. We must thank the new President of the SIAC Court of Arbitration, Mr Gary Born, who regaled the audience with behind-the-scenes stories on the Rainbow Warrior and the Eritrea-Yemen arbitration. This was followed by his passionate defence of the party-nominated arbitrator. A note of thanks also to our Vice-President, Mr Chia Ho Choon, for his tireless efforts in organizing the annual dinner yet again, this time with help from Mr Yeo Boon Tat and Ms Sapna Jhangiani. Much laughter was generated by the quiz that was ably conducted by Sapna. It proved convincingly that arbitrators are terrible historians with poor memory. This might actually be of comfort to a counsel who fluffs a hearing - all will be forgotten quickly.

2016 will be the 35th Anniversary of SIArb. I wish you all a phenomenal year ahead.

Chan Leng Sun, SC
4 September 2015

Case Summaries

***Cassa di Risparmio di Parma e Piacenza SpA v Rals International Pte Ltd* [2015] SGHC 264**

By Teh Shiying, Senior Associate, Allen & Gledhill LLP

Introduction

The Singapore High Court (the "**Court**"), in the recent decision of *Cassa di Risparmio di Parma e Piacenza SpA v Rals International Pte Ltd* [2015] SGHC 264, had to address two fundamental competing principles:

1. First, that arbitration is founded on the parties' consent, and no person should be compelled to arbitrate unless he has agreed to do so. In addition, one who has agreed to arbitrate should not be permitted to resile from such agreement.
2. Second, that a promissory note is the equivalent of cash, and it is essential for commerce to have certainty that such a bill of exchange be convertible into cash quickly, simply and effectively.

Facts

Oltremare SRL ("**Oltremare**") and Rals International Pte Ltd ("**Rals**") entered into two agreements in which Oltremare agreed to manufacture and deliver to Rals equipment (the "**Supply Contract**"), and to assemble and commission at Rals' factory the equipment sold under the Supply Contract (the "**Services Contract**"). Both the Supply Contract and Services Contract contained an arbitration agreement. In addition, the Supply Contract provided that the payment mechanism for the eight instalments of the purchase price was in the form of promissory notes.

Subsequently, Oltremare negotiated the notes to Cassa di Risparmio di Parma e Piacenza SpA, a bank carrying on business in Italy (the "**Bank**"). Oltremare also assigned to the Bank, its contractual right to receive payment for the goods from Rals. When the Bank presented several notes for payment, however, they were dishonoured.

The Bank thereafter commenced an action against Rals in the Singapore Courts, in its capacity as the indorsee and holder of the notes (as opposed to its capacity as the assignee of the contractual right to payment under the underlying contract). Rals sought to stay the action under s 6 of the International Arbitration Act (Cap 143A, 2002 Rev Ed) (the "**IAA**").

In summary, the Court held that Oltemare's assignment to the Bank of its right to receive payment from Rals, carried with it to the Bank, both the benefit and the burden of the arbitration agreement between Oltemare and Rals. Hence, while the Bank was not a party to the arbitration agreement in the Supply Contract, it was a party claiming through or under Oltremare, which was a party to the arbitration agreement. However, the Court held that the Bank's claim against Rals, which it had confined to its rights as the holder of the promissory notes, was not within the scope of the arbitration agreement. On this basis, the Court declined to stay the court proceedings, with the result that the Bank's claim against Rals on the promissory notes would be resolved in court and not by arbitration.

Reasoning of the Court

Whether the Bank was bound by the arbitration agreement contained in the underlying contract

On the facts, the Court held that only Oltremare and Rals were parties in the contractual sense to the agreement, since only they had the meeting of minds out of which sprang the Supply

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Agreement, of which the arbitration agreement was an integral, albeit separate, component. As an assignee, the Bank did not, simply by taking an assignment of rights of the assignor (Oltremare) against the obligor (Rals) under the Supply Contract, become a party to the Supply contract. Further, the Bank's knowledge that Oltremare and Rals had agreed to arbitrate their dispute did not render the Bank a party to the Supply Contract.

However, the Court considered that the Bank was a party "*claiming through or under*" another party (Oltremare) to the arbitration agreement. Under Section 6(1) of the IAA (read with Section 6(5)(a)), the Bank could apply for a stay of the court proceedings.

The Court considered that, subject to any contrary express or implied agreement, an assignee was bound by an arbitration agreement found in the underlying contract. The Court noted that an arbitration agreement may be seen as a benefit or a burden, depending on whether the party wishes to arbitrate. Where the assignor and obligor of a contractual right have entered into an arbitration agreement, an assignee would be both entitled but also obliged to submit to arbitration all disputes falling within the scope of the arbitration agreement. This was notwithstanding the rule that an assignment can convey to the assignee only contractual benefits and never burdens.

As such, Oltremare's assignment to the Bank of its right to receive payment from Rals under the Supply Contract carried with it both the benefit and the burden of the arbitration agreement in the said contract.

According to the Court, there were four consequences which followed from the above analysis:

(1) What the assignor and assignee agree to in the agreement between them is irrelevant to the analysis. The assignor and assignee cannot break apart the right and the remedy which the assignor and obligor have created *ab initio* as a single, indivisible whole in their contract, at least not without the obligor's consent.

(2) The legal basis of the assignee's obligation to arbitrate is fixed *before* any agreement between the assignor and the assignee, at the time the obligor and the assignee enter into the agreement.

(3) It is not necessary for the assignee to consent independently to, or to have notice of, the arbitration agreement, in order for it to be bound to arbitrate. Nothing which the assignee does or knows can result in him receiving or rejecting the obligation to arbitrate separately from receiving the assigned right.

(4) The assignee's consent to take the benefit of the substantive right in question operates in itself to bring along with it the obligation to arbitrate.

The Court opined that its analysis did not undermine the consensual nature of arbitration, taking the view that conceptually, arbitration is a consensual dispute resolution procedure only in the contractual sense, not in the subjective sense. Thus, the court which holds a party to perform its contractual promise to arbitrate, does so for the same reason that it holds a party to any other contractual promise. A party may thus find itself contractually bound to arbitrate, even in the absence of a subjective intention or desire to arbitrate.

The Court also highlighted that on a practical level, the Bank would have had the opportunity to review the Supply Contract (which contained the arbitration agreement) prior to taking the assignment, and to take all necessary steps, with the benefit of professional advice if necessary, to ascertain its position post-assignment, and bargain for protection against any post-assignment risks which it was unwilling to take (such as the risk of being bound by an arbitration agreement).

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In the circumstances, the Court held that the Bank was contractually bound to arbitrate all disputes which fell within the scope of the arbitration agreement in the Supply Contract.

Whether the claim on the promissory notes fell within the scope of the arbitration agreement

The next issue was thus whether the Bank's claim founded on the promissory notes fell within the scope of the arbitration agreement. The Court rejected Rals' argument that the Bank's claim on the promissory notes did so. It was held that the Supply Contract, and the rights and obligations arising under it, were separate and independent from the statutory contract represented by the notes.

Reaffirming the established position that the commercial purpose of a bill of exchange is to function as a substitute for cash, the Court held that once drawn and delivered, a bill of exchange (and thus a promissory note) in and of itself obliges the drawer to the payee. A payee is entitled to ignore any underlying contractual dispute with the drawer and make its claim on the note alone.

Having examined the case law from various Commonwealth jurisdictions, the Court agreed with the proposition that whether a claim on a bill of exchange falls within the scope of an arbitration agreement, is to be resolved by construing the arbitration agreement in accordance with the ordinarily contextual approach to contractual construction, in order to give effect to the parties' intention objectively ascertained.

The Court held that the commercial purpose behind stipulating a bill of exchange as a payment mechanism ordinarily leads to the conclusion that a claim on a bill falls outside the scope of an arbitration agreement, even if this conclusion attributes to the parties an intent to fragment the resolution of disputes. Two exceptions to this, however, are as follows: (1) the parties' arbitration agreement makes an express provision which brings the claim on a bill of exchange within the scope of the arbitration agreement; or (2) where the payee's action while framed as being confined to the bill of exchange, is fundamentally and inextricably linked to a wider dispute between the parties which falls within the scope of the arbitration agreement.

The Court distinguished the present case from a previous Singapore High Court decision in *Piallo GmbH v Yafriro International Pte Ltd* [2014] 1 SLR 1028 ("**Piallo**"). In *Piallo*, a manufacturer and a distributor signed a distributorship agreement which contained an arbitration agreement. In settlement of a dispute, the distributor drew and delivered 15 post-dated cheques to the manufacturer. The manufacturer commenced an action on the cheques which were dishonoured when they were countermanded before presentation. The High Court in *Piallo* granted the stay and held that the claim in respect of the cheques fell within the scope of the arbitration agreement.

According to the Court, *Piallo* was distinguishable for various reasons: First, the Bank here was not a payee of the promissory notes but an indorsee (in contrast the parties in *Piallo* were the payee and drawer of the cheques and also the parties to the underlying distributorship agreement). The Court took the view that it was unlikely that the Bank and Rals could have intended to bring claims by indorsees on the bill within the scope of the arbitration agreement. The Court also opined that any right-thinking merchant is unlikely to give up his rights (in terms of enforcement and/or dispute resolution) on a dishonoured bill of exchange. On the facts, the Court noted that the choice of promissory notes as their payment mechanism appeared to have been a considered commercial decision by Oltremare and Rals, which strongly suggested that it would have been in their interests to maximise the procedural rights of Oltremare's indorsee to claim on the notes. In particular, the notes facilitated Oltremare's agreement to give Rals four years' credit to pay the purchase price while at the same time releasing Rals from any more onerous and expensive obligation to

provide security to Oltremare. Moreover, the length of the period of credit made it more likely that Oltremare would monetise Rals' deferred payment obligation under the notes through negotiation, and less likely that a merchant in Oltremare's position would agree to anything in its arbitration agreement with Rals which would make that prospect more difficult or less valuable.

A further point of distinction of the present case from *Piallo* was that the Bank's claim and Rals' potential defences raised (in particular that the Bank was not a holder in due course of the notes) fell within the four corners of the Bills of Exchange Act, and would not require an inquiry into the Supply Agreement or the obligations under it or the merits of Rals' allegations against Oltremare. The only relevant considerations were the circumstances under which Oltremare had negotiated the notes to the Bank. The Court further held that Rals' other potential defences (of total failure of consideration or a partial quantified failure of consideration) had not been sufficiently made out as defences, and in any case could only be invoked between the immediate parties on the notes, and not by a drawer of a note as against a holder (such as the Bank). The Court concluded that it was unarguable that the Bank's claim and Rals' potential defences were in respect of matters which were the subject of the arbitration agreement.

Thus the Court dismissed Rals' application to have the court proceedings stayed in favour of arbitration.

Conclusion

In summary, the Court held that subject to any express or implied agreement to the contrary, arbitration agreements are assigned together with the contractual rights in the underlying contract. However, in the context of bills of exchange, the commercial purpose behind stipulating a bill of exchange as a payment mechanism ordinarily leads to the conclusion that a claim on the bill of exchange falls outside the scope of an arbitration agreement.

Rals has been granted leave to appeal, in acknowledgement that the decision may be conceptually irreconcilable with *Piallo*.

The Court of Appeal's decision will be of interest, this being the first instance the Court of Appeal will consider the interplay between two fundamental principles of commercial law – that arbitration is a consensual dispute resolution procedure, and that promissory notes or bills of exchange function as a substitute for cash. The Court of Appeal's decision will have significant bearing on the impact of an arbitration clause contained in an underlying contract on assignments to third-party assignees of rights in the underlying contract as well as disputes relating to claims made by an indorsee and holder on bills of exchange. This will in turn influence how parties deal with negotiable instruments and structure their payment and dispute resolution obligations in such transactions.

***AMZ v AXX* [2015] SGHC 283**

Introduction

In the recent decision of *AMZ v AXX* [2015] SGHC 283, the Singapore High Court dismissed an application to set aside an arbitral award on the basis that the arbitral tribunal had breached the rules of natural justice, decided matters outside the submission to arbitration, and had not conducted the proceedings in accordance with the parties' agreement.

Facts

Contracts between the parties

The Plaintiff is engaged in the sale of oil products. The Defendant is engaged in processing oil and manufacturing chemicals, and owns a petrochemical development plant in a province ("**Cloud City**"). Pursuant to a contract dated 1 December 2010, the Plaintiff contracted to sell 600,000 barrels of a crude oil called Dar Blend to the Defendant at the prevailing price for Brent crude oil, in the second half of January 2011, and subject to a discount of US$3.50 per barrel (the "**Supply Contract**").

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The relevant clauses in the Supply Contract were as follows:

(1) Clause 4, which obliged the Plaintiff to deliver the Dar Blend to the Defendant during a ten-day delivery window between 10 and 20 January 2011 in Cloud City;

(2) Clause 6, which obliged the Defendant to open an irrevocable letter of credit in the Plaintiff's favour by 16 December 2010 (the "**Due Date**");

(3) Clause 11, which obliged the Defendant to arrange for customs clearance of the Dar Blend in Cloud City.

Simultaneously, the parties entered into a Buy-back Contract whereby the Plaintiff would buy the Dar Blend back from the Defendant at the prevailing price for Brent crude oil in the second half of January 2011, subject to a discount of US$2.50 per barrel on FOB terms should the Defendant fail to take delivery of the Dar Blend during the delivery window because it lacked a crude oil import licence.

The Plaintiff alleged that the Defendant breached the above three clauses of the Supply Contract, and that these breaches amounted to a repudiatory breach of the Supply Contract.

Commencement of arbitration proceedings

The Plaintiff commenced arbitration proceedings against the Defendant, and a three-man tribunal (the "**Tribunal**") was constituted.

The material issues in the arbitration were framed by the Tribunal in the following manner:

(1) If the Supply Contract did bind the Defendant, did the Defendant breach the Supply Contract by:

   (a) failing to provide a letter of credit or other appropriate security;

   (b) failing to obtain a crude oil import licence;

   (c) failing to take delivery of the consignment; and/or

   (d) Were any such breaches, individually or together, repudiatory breaches of the Supply Contract, and if so, did the Plaintiff validly accept the Defendant's repudiatory breach(es)?

("**Issue 1**")

(2) If the Defendant did breach and/or repudiate the Supply Contract, what damages, if any, were the Plaintiff entitled to? ("**Issue 2**")

Tribunal's award and findings

In respect of Issue 1, the Tribunal found as follows:

(1) The Defendant's alleged failure to provide a letter of credit or other appropriate security:

   While the Defendant's failure to issue a letter of credit or other appropriate security (the "**Payment Undertaking**") by the Due Date amounted to a breach, the Plaintiff chose to perform its obligations under the Supply Contract in December 2010. In particular, it was only in early January 2011 that the Plaintiff decided to divert the Dar Blend from its intended destination at Cloud City. Having affirmed the Defendant's breach of Clause 6 of the Supply Contract, the Plaintiff lost the opportunity in December 2010 to treat the Defendant's breach of clause 6 as terminating the Plaintiff's own delivery obligation under the Supply Contract. This made it unnecessary for the Tribunal to decide whether the breach of clause 6 constituted a repudiatory breach.

(2) The Defendant's alleged failure to obtain a crude oil licence: The Tribunal held that the Defendant's failure to secure a crude oil import licence (the "**Licence**") did not amount to a breach of the Supply Contract. While the Defendant had sole responsibility to obtain

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the Licence and could not rely on a lack of the Licence as an excuse for non-performance, this did not impose a contractual obligation on the Defendant to secure the Licence. Further, it was unnecessary for the Defendant to have the Licence in order to perform its obligation to take delivery, because the Supply Contract provided alternative ways for the Defendant to take delivery which did not require possession of the Licence.

(3) The Defendant's alleged failure to take delivery of the consignment:

(a) The Tribunal opined that the Defendant's performance of its obligation to take delivery was dependent upon the Plaintiff's performance of its obligation to deliver. As such, the Defendant's failure to take delivery could not be a breach, unless the Plaintiff's failure to deliver was not itself a breach. Since the Tribunal had already held that the Defendant's failure to secure the Licence was not a breach of the Supply Contract (which the Plaintiff had cited as the main reason for the non-delivery), the Plaintiff did not have a contractual justification for failing to deliver.

(b) The remaining question was thus that of whether the Plaintiff's failure to deliver resulted from the Defendant's failure to provide the Payment Undertaking. On the facts and evidence, the Tribunal found that the Defendant's failure to provide the Payment Undertaking was not the reason for the Plaintiff's failure to deliver, and that the failure to deliver was a voluntary decision by the Plaintiff. In coming to this conclusion, the Tribunal preferred the evidence of one of the Plaintiff's witnesses (Owen) given at the jurisdictional hearing over that of another witness (Beru) at the merits hearing.

(4) In view of the above matters, the Tribunal concluded that the Plaintiff had no contractual justification for its failure to perform its obligation to deliver, and had no reasonable factual basis in early January 2011 to anticipate that the Defendant would breach its obligation to take delivery. The Tribunal thus held that the Defendant was not in repudiatory breach of the Supply Contract. As the Plaintiff had not presented an alternative case on a breach falling short of repudiatory breach, the Plaintiff's case on liability was dismissed.

While it was unnecessary to consider Issue 2 (given the tribunal's finding that there was no repudiatory breach of the Contract), the Tribunal nonetheless went on to consider and deliver its findings on Issue 2:

(1) First, the Plaintiff was not entitled to claim the contract price as the Plaintiff suffered no recoverable loss arising from the Defendant's repudiatory breach. On the contrary, the Plaintiff was in fact better off since the Defendant did not take delivery of Dar Blend in January 2011. For instance, the Plaintiff earned a higher profit through the sale of Dar Blend to a third party in March 2011.

(2) Second, the Plaintiff was also not entitled to recover any losses on hedging contracts. The requirements in *Hadley v Baxendale* had not been satisfied as the Defendant could not have reasonably foreseen the Plaintiff's hedging losses, and further, there was no basis for the hedging losses to be recovered as consequential loss given that the Supply Contract expressly excluded liability for consequential losses.

The setting-aside application before the Singapore High Court

The Plaintiff sought to set aside the Tribunal's award on the following grounds:

(1) First, under s 24(b) of the International Arbitration Act – The Plaintiff claimed that

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the Tribunal breached the rules of natural justice and prejudiced the Plaintiff's rights. It also argued that it was unable to present its case within the meaning of Article 34(2)(a)(ii) of the United Nations Commission on International Trade Law Model Law on International Commercial Arbitration (the "**Model Law**"), and that the Tribunal failed to extend equal treatment to the Plaintiff within the meaning of Article 18 of the Model Law;

(2) Second, under Article 34(2)(a)(iii) of the Model Law – According to the Plaintiff, the Tribunal dealt with a dispute or decided matters outside the submission to arbitration. In particular, the Plaintiff took issue with the fact that when dealing with the Buy-back Contract, the Tribunal decided that the Defendant was under no obligation to secure the Licence, and that the Plaintiff had suffered no recoverable loss;

(3) Third, under Article 34(2)(a)(iv) of the Model Law – The Plaintiff argued that the arbitral procedure was not in accordance with the parties' agreement, because the Tribunal failed to grant equal weight to the evidence of the Plaintiff's witnesses when making its determination. The Plaintiff also contended that there existed a reasonable suspicion that the Defendant's nominated arbitrator was biased against the Plaintiff, and that his bias had influenced the other two members of the Tribunal against the Plaintiff.

The Court dismissed the Plaintiff's application and declined to set aside the award.

The Plaintiff submitted that the Tribunal breached natural justice in arriving at the following findings in determining whether the Defendant breached clause 6, or alternatively, that the Plaintiff was unable to present its case in respect of these findings:

(1) First, that the Plaintiff only suspended its performance under the Supply Contract in January 2011.

The Plaintiff submitted that its evidence, submissions and arguments were that in response to the Defendant's breach of clause 6, it suspended performance as early as 16 December 2010. It said the Tribunal denied it natural justice by not applying its mind to such evidence and submissions (that it suspended performance as early as 16 December 2010). The Court rejected this argument and held that the Tribunal had made a decision between the two conflicting cases before it, and specifically found that the Plaintiff's decision on 18 December 2010 to instruct the vessel to sail towards Cloud City amounted to an election to proceed with performance of its delivery obligation and thereby to affirm the Supply Contract. The Tribunal had simply preferred the Defendant's case over the Plaintiff's, which did not amount to a breach of natural justice.

(2) Second, that the Defendant's breach of clause 6 was not a repudiatory breach of the Supply Contract.

The Plaintiff submitted that the Tribunal, in finding that the Plaintiff did not accept the Defendant's failure to furnish security by 16 December 2010 as repudiation of the Supply Contract, had expressly declined to decide the critical threshold issue of whether the Defendant's breach was in fact a repudiatory breach. The Court dismissed such submission as misconceived. The Tribunal's reasoning was that *even if* the Defendant's breach of clause 6 were a repudiatory breach of the Supply Contract, the Plaintiff continued its performance and thus did not accept the breach as bringing its delivery obligation to an end. The need to decide on the issue of whether the breach of clause 6 was in fact a repudiatory breach therefore fell away. The Court emphasised that for a tribunal to decline to express a view on an issue which its chain of reasoning renders unnecessary, is not a breach of natural justice.

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(3) Third, that the Defendant's breach of clause 6 of the Supply Contract did not cause the Plaintiff any recoverable loss.

The Plaintiff submitted that the Tribunal had breached natural justice by failing to afford the Plaintiff an opportunity to show the losses suffered as a result of the Defendant's breach of clause 6 alone. Rejecting this submission, the Court stated that the Plaintiff had chosen to present an all-or-nothing case on liability, namely, that the Defendant's three breaches put it in repudiatory breach. The result of the Plaintiff framing its case in such a manner was that the Plaintiff would lose on liability if the Tribunal found that the Defendant was either (a) not in breach of the Supply Contract at all, or (b) in breach of the Supply Contract, but that what the Tribuanl said on the issue of damages had no effect on the ultimate decision on liability, and the Plaintiff therefore suffered no actual prejudice. On the contrary, the Defendant would have strong grounds to set aside the award, if the Tribunal awarded the Plaintiff damages for the Defendant's breach of clause 6 alone, because such decision would have gone beyond the Plaintiff's case.

The Plaintiff also took issue with the Tribunal's finding that the Defendant was not in anticipatory breach, arguing that anticipatory breach was never the Plaintiff's case. The Court rejected the Plaintiff's submission, observing that the Tribunal had expressed its view on anticipatory breach only *after* having determined liability based on the Plaintiff's case. The Court opined that the Plaintiff's true complaint was that the Tribunal had failed to invite or advise the Plaintiff to present an improved case, and that this could not conceivably amount to a breach of natural justice.

The Plaintiff further submitted that the Tribunal breached natural justice in finding that the Plaintiff was not contractually entitled to withhold delivery. In this regard, the Plaintiff alleged that the Tribunal had deviated from the agreed arbitral procedure, by failing to accord equal weight to the evidence given by Owen and Beru. The Court disagreed with the Plaintiff. The Tribunal had, after considering both witnesses' evidence and weighing the two conflicting accounts, come to a reasoned decision to prefer Owen's evidence over Beru's. The Tribunal had simply concluded that Owen's evidence was more credible. The Tribunal's reliance on the absence of corroborating documentary evidence in preferring Owen's evidence over Beru's was part of the ordinary procedure of testing oral evidence of a witness against inherent probabilities and the documentary record. Finally, the Court pointed out that it is not the Tribunal's function to settle the parties' witness list, and any adverse finding resulting from the Plaintiff's not calling Owen at the merits hearing was no fault of the Tribunal, much less a breach of natural justice.

The Plaintiff also asserted that the Tribunal had gone beyond the scope of the submission, in determining in respect of the Buy-back Contract whether the Defendant was obliged to obtain a Licence, and whether the Plaintiff suffered loss and damage. The Court rejected the Plaintiff's argument as lacking merit, and held that the Tribunal had not determined any issue in respect of the Buy-back Contract, but had merely relied on the existence and effect of the Buy-back Contract as support for its findings on the issues. The Tribunal's reliance on the Buy-back Contract could not have taken the Plaintiff by surprise, since it was germane to the issues before the Tribunal. Further, its reference to the Buy-back Contract caused no actual prejudice to the Plaintiff.

Finally, the Court dismissed as being absolutely without basis the allegation that the conduct of the Defendant-nominated arbitrator gave rise to a reasonable suspicion of bias.

Having rejected each of the Plaintiff's grounds of challenge, the Plaintiff's application was dismissed with costs.

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Conclusion

The Court's finding reaffirms the high threshold to be crossed in an application to set aside an arbitral award. A party contemplating an application to set aside an arbitral award, should consider whether actual prejudice was caused as a result of the alleged breach of natural justice or procedural defect in the tribunal's decision. For instance, where a tribunal's finding does not form the substantive basis for its ultimate decision, this may weigh against a finding of there being actual prejudice.

Tomolugen Holdings Ltd and Another v Silica Investors Ltd and other Appeals [2015] SGCA 57

By Earl J Rivera-Dolera[1]
The Arbitration Chambers (Singapore)
FSIArb, MCIArb, MPIArb
SIAC Panel of Arbitrators (Reserve List)
BSc, LLB (Philippines), LLM (Singapore)
Attorney-at-law (Philippines)

Introduction

This case relates to the appeals made against the Singapore High Court's decision in *Silica Investors Ltd v Tomolugen Holdings Ltd* [2014] 3 SLR 815.

Background facts

The plaintiff, Silica Investors Ltd ("**Silica Investors**"), commenced a court action against eight defendants alleging that it had been oppressed as a minority shareholder of the eighth defendant, Auzminerals Resource Group Limited ("**Auzminerals**").

Silica Investors had acquired the shares in Auzminerals from the second defendant, Lionsgate Holdings Pte Ltd ("**Lionsgate**"), pursuant to a Share Sale Agreement that contained an arbitration clause. Only Silica Investors and Lionsgate were parties to the said Share Sale Agreement. The other six defendants include other shareholders and directors of Auzminerals and directors of other related companies.

Silica Investors' oppression claim was hinged on four main allegations but only two are relevant for this commentary, namely:

(1) Auzminerals had issued shares which diluted Silica Investors' shareholding (the "Share Issuance Issue"); and
(2) in breach of the Share Sale Agreement, Silica Investors had been denied its right to participate in the management of Auzminerals (the "Management Participation Issue").

One of the reliefs sought by Silica Investors before the High Court was an order that Auzminerals be put into liquidation.

Lionsgate filed a stay application pursuant to s 6 of the International Arbitration Act (the "**IAA**") alleging that a part of the dispute fell within the scope of the arbitration clause. It argued that the remainder of the disputed issues ought to be stayed as well in favour of arbitration for better case management purposes. The other defendants also filed stay applications on the basis of the court's inherent case management power. The stay applications were dismissed by the assistant registrar and thereafter that dismissal was affirmed by the High Court.

Bases of the High Court's decision

In the High Court, Quentin Loh J adopted a two-step approach comprising:

(1) first, ascertaining the "essential dispute" between the parties; and

(2) second, determining whether such an essential dispute is a matter capable of arbitration.

1 The author assisted the *amicus curiae* in this case with research and the preparation of written submissions in the proceedings before the Singapore Court of Appeal.

Continued from page 11

Applying the above approach, the Judge opined that the issue of "*whether the affairs of the eighth defendant were being conducted and managed by the other defendants in a manner that was oppressive towards the plaintiff as a minority shareholder*" was the "*essential dispute*". Moreover, the Share Issuance and Management Participation Issues were considered part of this "*essential dispute,*" and were thus within the scope of the arbitration clause.

In respect of the second step, however, the Judge took the view that the subject matter was not arbitrable on the ground that a claim for relief under s 216 of the Companies Act "*straddled the line between arbitrability and non-arbitrability*". In the present case, various factual circumstances militated against a finding that the dispute was arbitrable. In particular, the totality of the dispute involved third parties who were not parties to the arbitration clause. Moreover, the plaintiff had sought a remedy (i.e. the winding up of a company) that a tribunal had no power to grant.

Court of Appeal decision

The issues before the Court of Appeal were as follows:

(1) whether a dispute over minority oppression or unfairly prejudicial conduct was arbitrable;

(2) whether the court proceedings between Silica Investors and Lionsgate, or any part thereof, fell within the scope of the arbitration clause in the Share Sale Agreement; and

(3) in the event that the court proceedings between Silica Investors and Lionsgate (or any part thereof) are covered by the arbitration clause and are stayed in favour of arbitration, whether the remainder of the court proceedings (whether against Lionsgate or against the remaining defendants) should also be stayed pending the resolution of the arbitration.

The Court of Appeal sought assistance from Professor Lawrence Boo ("**Professor Boo**") of The Arbitration Chambers (Singapore) and National University of Singapore, who was appointed as *amicus curiae* for this matter.

Standard of review

Before analyzing the main issues, the Court of Appeal addressed a threshold issue raised by Professor Boo that any court confronted with stay applications ought to consider, i.e. the standard of review of arbitration agreements in a stay application under s 6 of the IAA. The Court of Appeal was of the view that it was important to survey the differing positions in various jurisdictions on whether a *prima facie* or a full merits approach standard of review should be adopted. It also conducted an analysis of the preparatory documents and working group sessions of the UNCITRAL Model Law. The Court of Appeal came to the conclusion that as various jurisdictions had adopted different views despite reviewing the same set of preparatory documents and working group sessions, an analysis of such documents was thus "*inconclusive*" and "*[lacked] certainty*" to the question of the standard of review for stay applications.

According to the Court of Appeal, a "*historical analysis*" of the Model Law, particularly Art 8 read with Art II(3) of the New York Convention explained this seeming lack of certainty. At the time the Model Law was drafted, the primary aim was to maintain consistency with Art II(3) of the New York Convention. The principle of *kompetenz-kompetenz*, which was thought at the time to be "*somewhat controversial*", was then taking root in what is now Art 16 of the Model Law. The New York Convention, on the other hand, having been executed some three decades earlier than the Model Law, did not at the time consider at all the principle of *kompetenz-kompetenz* in its preparatory documents. The drafters of the New York Convention had not considered the issues arising from the tension between the courts and the arbitral tribunals to rule on the latter's jurisdiction.

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The Court of Appeal, however, eventually relied on three previous decisions of the Singapore courts, namely *Sim Chay Koon and others v NTUC Income Insurance Co-operative Limited* [2015] SGCA 46, *The Titan Unity* [2013] SGHCR 28 and *Malini Ventura v Knight Capital Pte Ltd and others* [2015] SGHC 225. These cases endorsed the *prima facie* approach, which was the same view urged by the *amicus curiae.* In the circumstances, the Court found no cogent basis to depart from the *prima facie* approach when hearing a stay application under s 6 of the IAA.

Arbitrability of claims of minority oppression and unfairly prejudicial conduct under s 216 of the Companies Act

As a starting point, the Court of Appeal considered s 11 of the IAA which is entitled, "*Public policy and arbitrability*". It took the view that the subject matter of a dispute could only be regarded as non-arbitrable if to refer it to arbitration would be against the public policy of a state.

In relation to the High Court's decision to refuse a stay on the basis of "remedial inadequacy" (i.e. that an arbitral tribunal does not have available to it the full arsenal of remedies which the court was vested with under s 216(2) of the Companies Act), the Court of Appeal held that a party claiming a relief which an arbitral tribunal has no power to grant is welcome to make the necessary application to the court. The Court of Appeal was of the view that it did not necessarily follow that if an arbitral tribunal had no power to grant all the reliefs claimed by a party, the subject-matter of the dispute was not arbitrable.

That being said, the Court of Appeal drew a distinction between a dispute over the liquidation of an insolvent company, and a dispute under s 216 of the Companies Act. The former, without doubt, affected public interest and has been held to be non-arbitrable. As to the latter, however, there was no indication in the legislative history of the Companies Act that results in minority oppression or unfair prejudice claims under s 216 being claims that would affect public policy, and thus being unable to be resolved by way of arbitration. In particular, a s 216 claim was not enacted to protect a public interest, and a claim arising therefrom need not be advertised (as opposed to claims for the liquidation of an insolvent company), as no "public element" was being triggered, even when winding up is being sought as a relief.

In view of the foregoing, the Court of Appeal held the subject-matter in the present dispute was arbitrable.

Do the court proceedings, or any part thereof, fall within the scope of the arbitration clause?

In respect of this issue, Silica Investors and Lionsgate proffered divergent views. Silica Investors argued in favour of a holistic approach by identifying the "essential dispute" or "main issue" between the parties. In particular, it submitted that the sole matter in dispute was "*whether the affairs of Auzminerals have been conducted in an oppressive or unfairly prejudicial manner towards it as a minority shareholder*". In contrast, Lionsgate's argument sought a separatist approach where each issue which was material to the relief sought was discrete and was capable of being determined by itself.

In determining this issue, the Court of Appeal first referred to s 6(2) of the IAA. In its view, this provision gave no indication that a "matter" should be construed strictly by the dichotomic approach proffered by the parties. The Court noted that each issue raised by Silica Investors was substantial and related to its claim for relief under s 216 of the Companies Act. Each issue was thus a separate "matter" to be considered in the stay application.

The Court of Appeal looked to the arbitration clause between Silica Investors and Lionsgate, being the embodiment of the intention of the parties as to what ought to be included within the scope of the said arbitration clause. It thereafter looked at the *nature* of the claims or issues

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themselves (as opposed to the manner in which they were pleaded).

The Court of Appeal held that the Management Participation Issue was the only issue falling within the scope of the arbitration clause. The Share Issuance Issue related to shares issued by Auzminerals, who was not a party to the Share Sale Agreement and thus not a party to the arbitration clause. Moreover, the Share Issuance Issue did not relate to any breach of the Share Sale Agreement in contrast to the Management Participation Issue, which specifically referred to an alleged breach of a provision in the Share Sale Agreement.

Should the rest of the court proceedings be stayed pending resolution of the arbitration between Silica and Lionsgate?

With respect to the question of whether the remaining allegations that were not subject to the arbitration clause should be stayed pending resolution of the arbitration, the parties did not dispute that this question would have to be determined based on the court's inherent case management powers.

The Court of Appeal surveyed the decisions of various jurisdictions. It noted that the English courts do not readily grant stays unless there are "*rare and compelling circumstances*" for them to do so. The courts in New Zealand adopt a similar approach. Canadian courts, on the other hand, offer the other end of the spectrum – to stay *all* of the court proceedings when a "substantial part" of the dispute before the courts falls within the scope of the arbitration clause. The Court of Appeal observed that Australia's position was just as robust, if not more so.

In its opinion, the Court of Appeal held that in its exercise of inherent case management powers, a court must put utmost consideration on the basic notions of ensuring a fair and just resolution of all disputes while being mindful of its task to prevent abuse of the court process.

In the present case, the parties in the court proceedings who were not parties to the arbitration clause had requested a stay of the court proceedings pending resolution of the arbitration between Silica Investors and Lionsgate. The Court considered that in granting such a stay application, a stay has to be made subject to the agreement of the applicant third parties to be bound by any "applicable findings" that could be made by the arbitral tribunal. Such "applicable findings" should refer to the arbitral tribunal's findings in relation to the Management Participation Issue being the only issue falling within the scope of the arbitration clause.

Commentary

The decision of the 3-member Court (which included both the present and immediate former Chief Justices of the Supreme Court of Singapore) falls nothing short of what could be expected from the highly esteemed members of the Court determining such landmark issues. Thoroughly researched, and spanning cross-border judicial decisions from England, Australia, New Zealand, Canada, Hong Kong, the British Virgin Islands and Singapore, in addition to its analysis of the preparatory documents and working group sessions of the Model Law and New York Convention, this decision has, once and for all, provided predictability and certainty on issues most notable of which are those relating to the standard of review of arbitration agreements and arbitrability of minority oppression claims.

Standard of review

This case will be instructive henceforth on whether the courts ought to adopt a *prima facie* or full merits review of arbitration agreements. The tension between the court's jurisdiction vis-à-vis an arbitral tribunal's jurisdiction to rule on the latter's jurisdiction arising from the arbitration clause ought to have been finally put to rest by the Court's decision.

Singapore courts have thus far been consistent in upholding the *prima facie* standard of review

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save for what could be perceived as a middle ground between a *prima facie* and a full merits approach or what could be referred to as the "*more than prima facie approach*" that the Court had adopted in the case of *R1 International v Lonstroff AG [2014] SGHC 69; R1 International Pte Ltd v Lonstroff AG [2014] SGCA 56 ("**R1 International**").*

What triggered the Court to undertake a "more than *prima facie* approach" in *R1 International* was the fact that one of the parties had raised as an issue, contractual formation and incorporation of terms outside of the subject contract by reference. The Court had no other recourse but to look into pre-contract and post-contract behaviour of the parties and correspondence between the parties in ascertaining whether a contract (and consequently, an arbitration clause) existed at all.

For a brief moment after the Court's decision in R1 International, it was thought that Singapore courts may be inclined towards taking the full merits approach in reviewing arbitration agreements. The Court's decision in *Tomolugen Holdings* affirmed that R1 International could only be deemed as an exception rather than the general approach Singapore courts ought to take.

Arbitrability of s 216 claims seeking winding up of company as a relief

In addition to considering the issue of arbitrability, the Court of Appeal also stated that the type of relief being sought could indeed not be made the gauge or primary consideration in determining whether the subject-matter of the dispute was arbitrable or not. To do so would be tantamount to putting the cart before the horse, and allowing the nature of the claim to be at the behest of the desired outcome (the relief claimed).

At the stage of a stay application, any desired outcome or relief would not yet have been granted by the arbitral tribunal and there would be no guarantee that such relief would be granted. If the type of relief sought could dictate the nature of the claim, this would be disconcerting as this opens the way for any claimant who is a party to an arbitration clause – and who may have changed its mind and now prefers to have its disputes brought before a court of its own choice – to easily circumvent its contractual obligation to refer its disputes to arbitration by claiming such reliefs which an arbitral tribunal has no power to grant.

Admittedly, there is no statutory provision which expressly defines what makes a subject matter arbitrable or not arbitrable. It does not mean, however, that there is nothing at all to guide the courts, arbitral tribunals and counsel on this issue. In particular, s 11(1) of the IAA states that, *"[a]ny dispute which the parties have agreed to submit to arbitration under an arbitration agreement may be determined by arbitration unless it is contrary to public policy to do so*". It would thus have to be on the basis of public policy considerations that this issue could be gauged against, and nothing more.

Tomolugen Holdings is indeed a decision of the Singapore Court leaning towards more predictability and certainty on the issue of the standard of review that a court ought to adopt in reviewing arbitration agreements. The arbitrability of minority oppression claims also makes for the added attractiveness of Singapore as an international arbitration hub.

In the Hot Seat!

In each issue of our newsletter, we interview an SIArb member to get their views on the alternative dispute resolution scene in Singapore, and to obtain some insight into what makes them tick. In this issue, we interview **CAMERON TINTO**, Corporate Counsel at Rio Tinto.

- **How would you describe yourself in three words?**

  Young at heart.

- **How did you first get involved in arbitration work?**

  Many years ago as a young solicitor in about 1989 I had a construction case that was resolved by arbitration.

- **In the course of your work, do you notice a trend in clients preferring arbitration over litigation as a form of dispute resolution?**

  I have noticed two trends, running contrary to each other. In the developing world where courts and laws are perhaps not so advanced, there is a definite continuation of the trend towards arbitration. However in the developed world such as the US, Australia, Canada, Singapore, there is a small but discernible trend back to litigation where the parties can agree on a court. Some in-house counsel have had negative experiences with arbitration, or have heard of such experiences, and prefer litigation where the courts are equipped to handle the case.

- **What is the most memorable arbitration or arbitration-related matter that you were involved in, and why?**

  I think it remains my very first arbitration, a domestic building case in about 1989. It was memorable for me because it was my first and I was impressed at the time with the flexibility of arbitration and the ability to get to the nub of the problem. The procedures were very simple and we had a hearing quickly and informally, including an impromptu site visit.

- **What advice do you have for a young fellow practitioner interested in arbitration work?**

  The same advice Horatio Lord Nelson gave his captains – "Go at 'em!" Don't be afraid to roll up your sleeves and get in there and do it. Arbitration should be more about the substance than the form, so develop your forensic ability, cut to the heart of the issues and press in.

- **What are the challenges you think arbitration practitioners will face in the upcoming years?**

  The number of arbitration practitioners is increasing, which in one way is a good thing, but it may mean that there is less arbitration

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work for each practitioner. There may be more competition for arbitrations than in the past. A second challenge is the challenge to arbitration itself, that it is becoming too slow, expensive and legalised. The challenge for practitioners will be to keep arbitration as simple, cheap and effective as possible while at the same time preserving parties' rights and their sense of justice from the process.

- **With the establishment of the Singapore International Mediation Centre and the introduction of the SIAC-SIMC Arb-Med-Arb Protocol, do you see mediation as now having a bigger role to play in assisting parties to resolve their disputes?**

  Definitely. I am a late-comer to mediation having studied in the 1980s when it was only beginning, but have become an ardent supporter after seeing seemingly intractable or "unsuitable" disputes settled by mediation. Mediation has become a fixture of the Australian dispute resolution landscape and is mandated in many court proceedings and some particular types of disputes (eg, farm debt). One simply expects to be sent to mediation at some stage of the proceedings, with sometimes surprising results. The establishment of the SIMC and the protocol institutionalises mediation in Singapore and gives parties drafting contracts a recognised and accepted mediation procedure. It is much easier to get a counterparty to agree to a DR clause including mediation where it is a standard clause of established and respected institutions.

- **Who is the person(s) who has had the greatest impact and/or influence on your career?**

  I hesitate to give this answer because it will sound pretentious and contrived, but after long thought I have to say it was Lord Nelson. Naturally there have been individual lawyers and judges from whom I have taken something, but Nelson's life has been the single most inspiring one, particularly for a dispute resolution lawyer. He took the battle to the opposition, fought on the front foot, created optimal conditions for battle on his terms, applied principles rather than mere rules, used innovative techniques in battle such as "Nelson's Patent Bridge for capturing first rates" and cutting the battle line, he knew when it was appropriate to give "Nelson's notice" to impractical orders, understood the overall importance of each battle and of going for the opponent's supply lines. From his example I have endeavoured always to be issue-driven rather than process-driven, to apply principles rather than mere rules, and to litigate on the front foot.

- **If you weren't in your current profession, what profession would you be in?**

  I think in academia. I thoroughly enjoy study, teaching and writing, am just finishing a Master of Arts in Contemporary China through NTU and will start a PhD on security for costs in international arbitration next year. I have also just established the Mongolian Academy of Law with the purpose of enhancing the capacity of Mongolian lawyers and opening the world to them – see www.macoflaw.com.

- **What's your guilty pleasure?**

  Roti prata followed by prawn noodles for weekend breakfast!

- **What is one talent that not many people know you have?**

  Playing the French horn very inexpertly.

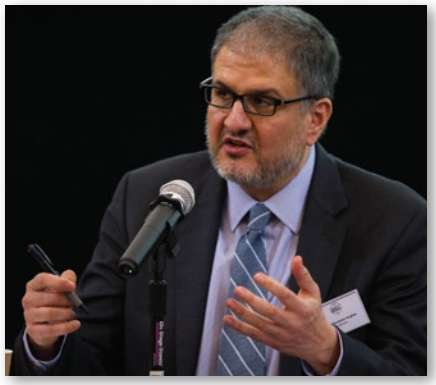
- **Fill in the blank: "Arbitration is to dispute resolution as salt is to ___".**

  Tequila. Salt is an integral element of the tequila experience. According to the experts, salt lessens the burn of the tequila, just as you could say arbitration lessens the burn of dispute resolution. Without salt, the experience is not complete, just as dispute resolution is incomplete without arbitration.

SIArb Commercial Arbitration Symposium





Date	Event
22 October 2015	SIArb Commercial Arbitration Symposium

In the seventh annual Commercial Arbitration Symposium organised by the Singapore Institute of Arbitrators at the Old Parliament House, enthusiastic arbitration professionals held a lively and engaging discussion around current issues in commercial arbitration.

Following previous years' format, with no set speakers or speeches, participants were invited to introduce topics, with the discussion then opening up to the floor under Chatham House Rules.

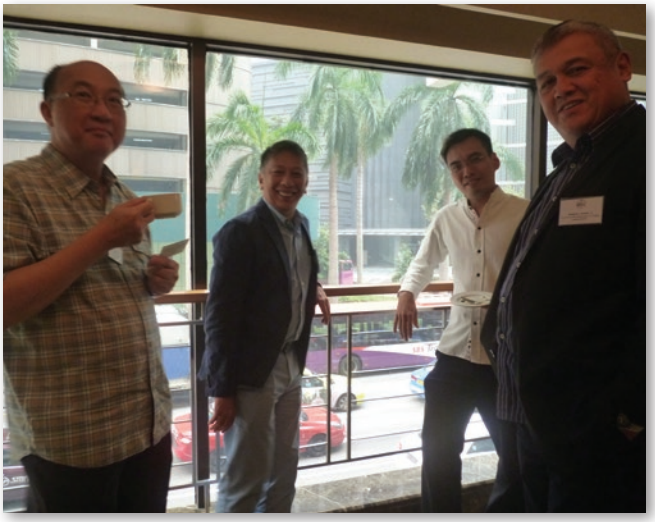
The Symposium commenced with a discussion of conduct, practice & procedure, co-chaired by Mr Stephen Moriarty, QC of Fountain Court Chambers and Mr Kevin Nash of the Singapore International Arbitration Centre. Participants considered topics ranging from emergency arbitrator procedures and discovery to the length and cost of arbitration and a code of ethics for counsel in arbitration, with different views and experiences shared among the group.

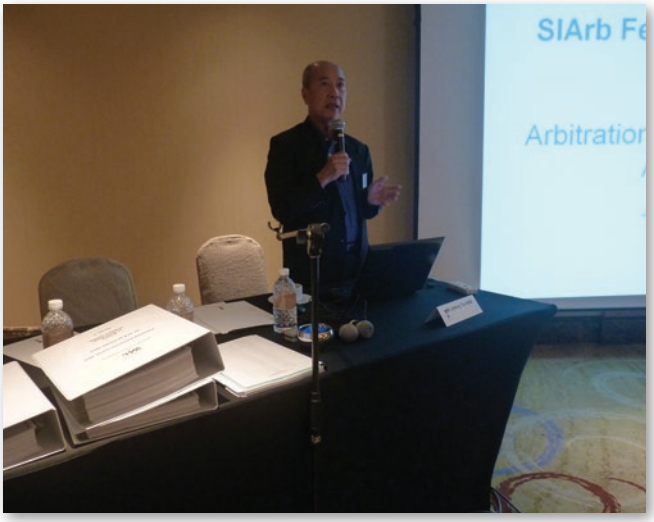
After a refreshment break, the discussion moved on to the Tribunal, looking at its jurisdiction, powers and duties, in a session co-chaired by Mr Steven Lim of Nabarro LLP and Professor Benjamin Hughes of Seoul National University. A particularly contentious topic surrounded collection of information on arbitrators, as well as interviewing arbitrators for appointments. While a number of the participants felt that interviewing arbitrators prior to appointment was necessary and appropriate, others were opposed to the idea and highlighted issues with inappropriate questions that appear to be aimed at ascertaining the views of an arbitrator which may have a bearing on the outcome of a case. The group also discussed the previous SIArb talk by Mr Michael Hwang, SC on the use of interrogatories in arbitration.

Finally, with plenty of energy still remaining, the group moved on to discuss the role of the Courts, with the discussion co-chaired by Sir Bernard Eder, International Judge at the SICC and Mr Cavinder Bull, SC of Drew & Napier. A very topical discussion followed, where significant recent Singapore cases in this area were considered, as well as other issues such as insolvency, enforcement and challenges to arbitral awards. Sir Bernard in particular shared some useful (and entertaining) insights.

With a fun evening of drinks and networking following the more cerebral part of the day, a rewarding and enjoyable day was had by all.

Fellowship Assessment Course





Date	Event
16, 23, 24, 26 October 2015	Fellowship Assessment Course

Participants of this annual programme were coached intensively over the four-day course culminating in an award-writing examination. The course was well attended and the SIArb congratulates those who passed.

SIArb Dinner

Date	Event
18 November 2015	SIArb dinner

The Singapore Cricket Club recently hosted SIArb's 34th annual dinner on 18 November 2015. The clear views of the famous Padang field and the city skyline provided the perfect backdrop for a delightful evening for the celebration of the fellowship and camaraderie of the arbitration community in Singapore. We had the privilege of having Mr Gary Born as our guest of honour, and he enthralled us with accounts from his early years as an arbitration practitioner. A highlight of the evening was the quiz time during dinner which challenged everyone's knowledge of the development of SIArb and the arbitration community in Singapore. We would like to thank the sponsors and everyone who attended the dinner and made it a memorable evening for one and all.

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.

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