SINGAPORE INSTITUTE OF ARBITRATORS

NEWSLETTER

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THE PRESIDENT'S COLUMN

Welcome to the July edition of the Singapore Institute of Arbitrators Newsletter. This, being the final issue before the Institute's 29th Annual General Meeting, will report on an interesting array of events which the Institute has been involved in over the last few months.

Membership Growth

As at the end of the financial year on 31 March 2010, the Institute saw a steady growth in membership numbers from 734 at the same time last year to 787 this year. This is testament to the efforts put in by the Institute in promoting arbitration and the recognition it receives from the fraternity for its commitment to improve the standards of the arbitration practice here and in the region.

Continuing Professional Development (CPD)

Since the implementation of Compulsory CPD for our panel of arbitrators in 2009, it has been most heartening to witness how actively many of our members have been in the pursuit of continuing education in the field of arbitration. To ensure that members have a continuous source of training and education, the Institute has organised a total of 14 talks and seminars providing a total of about 60 training hours within the span of 2009. This includes both the International Entry Course and the Fellowship Course. I am certain that members have gained much from them judging by the good response each of these events has received.

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ANNOUNCEMENT
UPDATES & UPCOMING EVENTS

1. Members' Nite on **19 August 2010**.
2. Seminar on "The Implications of Rotterdam Rules for a Maritime Country" by Captain Lee Fook Choon on **07 September 2010**.
3. SIArb Commercial Arbitration Symposium on **16 September 2010**.
4. SIArb Annual Dinner on **29 October 2010**.

NEW MEMBERS

New members admitted from April 2010 to June 2010 (inclusive of transfers)

Fellows

1. Chee Fang Theng
2. Darren Benger
3. Gan Kam Yuin
4. Graham Easton
5. Wong Yew Fai

Members

1. Alastair Stirling
2. Choy Wei Nung Andrew
3. Fierman Prakarsa Alam
4. Heng Chin Hong
5. Jamshid Medora
6. Marisha Maya Miranty
7. Ning Siong Loong

Assoc. Member

1. C M Mohanasundaram
2. Lee Teck Leng Robson
3. Lew Tze Yeong
4. Ngo See Khee
5. Wang Huijing

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Website Revamp

As some of you might have noticed, the SIArb website has recently undergone a major revamp to unveil a new interface that allows for increased interactivity between the site and its visitors. With the latest developments of the Institute's activities visible at a glance, the end result of the revamp project is a dynamic and lively website that promises to deliver more to its users and visitors. Members are now able to log in to a restricted section for the retrieval of notes from past seminars and talks conducted by the Institute. In the very near future, members will be able to update their particulars, pay membership subscription fees, as well as register for events at a click of their mouse. Much credit should go to the Website Committee which has been working tirelessly with the web developer in fine-tuning the website features.

Council for Private Education (CPE) Mediation – Arbitration Scheme

In line with our efforts to create greater awareness of SIArb's panel and its arbitration services, I am pleased to announce our initiative in the CPE Mediation – Arbitration Scheme in a joint collaboration with CPE and the Singapore Mediation Centre (SMC). This Scheme is designed to provide students and private education institutions a quick and affordable avenue to resolving their disagreements through a mediation-arbitration model, and encapsulates both tailored mediation and arbitration drawn up, in consultation with CPE, by the SMC and SIArb respectively. Driven by the Scheme Arbitrations Committee, the CPE Mediation – Arbitration Scheme had a launch in April 2010. Under the Private Education (Dispute Resolution Schemes) Regulations 2010, which came into force on 10 May 2010, the Institute has been prescribed as a dispute resolution centre and under the Scheme arbitration rules, the Institute is the default appointing authority for arbitration. With the appointment of most members both on our Primary and Secondary Panels of Arbitrators due for renewal this year, continuing panel members can look forward to additional opportunities to be appointed as arbitrators when private education-related disputes are referred to the Institute.

Training Programme for the National Arbitration Centre, Cambodia

In June and July 2010, the Institute led a team which visited Cambodia to provide training in arbitration for the National Arbitration Centre of Cambodia's first group of 50 arbitrators. Organised under the auspices of the International Finance Corporation (IFC), a member of the World Bank Group, this was a joint collaboration between the Law Society Singapore, Singapore International Arbitration Centre and the Institute. With the National Arbitration Center being the first commercial arbitration body in Cambodia offering its business community an alternative commercial dispute resolution mechanism, it was a great honour for the Institute to be involved in the training of their pioneer batch of arbitrators. I look forward to getting the Institute more involved in such training exercises of our counterparts in the region so as to promote best practices in arbitration as well as bolster the Institute's role as one of the leading arbitration bodies in Southeast Asia.

As we approach the SIArb 29th Annual General Meeting, I would like to take this opportunity to express my appreciation to the members who have served on the Council for their great work in the past year. At the same time, I encourage other keen members to step up and contribute more actively to the Institute through their participation in the Institute's Committees. Only with your dedication and support can the SIArb continue to flourish and serve the arbitration fraternity to the best of its abilities.

Johnny Tan Cheng Hye, PBM
President

E-DISCOVERY: A FIVE-STEP PROCESS

BY CHRIS-PALEY MENZIES – RGL FORENSICS

These days everyone seems to have heard about e-discovery. They probably think they ought to be doing it and can probably think of several cases in the past where it could have been useful. Then they think, 'Isn't it very expensive? How will I keep control of the information? Isn't paper just a little bit easier to handle? That's what I've been using for the past 20 years'.

The truth is that these questions are all very valid but with a bit of careful thought and management, e-discovery may not be so difficult to use in both arbitration and litigation.

Before we look at the processes and issues behind the concerns above, let's start with a definition of what e-discovery is. It is an abbreviation of the term 'electronic data discovery' (EDD) and can be defined as a 'process in which electronic data is sought, located, secured and searched with the intent of using it as evidence in a civil or criminal legal case'. That sounds simple enough, but why is it such an issue? The main perceived problems with it are the time and cost of collecting, processing and especially reviewing the increasingly vast numbers of client documents captured within litigation cases.

The process can be broken down into several parts:
- who and what to collect the data from;
- who to use to collect the data;
- the collection process;
- filtering of the data; and
- presentation of the data.

Who and what to collect the data from
The first stage of the process is the identification of the relevant custodians. Obviously, this step has always been a natural part of any collection exercise concerned purely with paper. Now, however, the net may need to be cast wider to include, for example, custodians' secretaries, as there maybe pertinent data on their computers and e-mail accounts. The location of each custodian is also a very important factor, especially in a US-led litigation that extends internationally.

Who to use to collect the data
When considering who should perform the collection, it is made easier if your organisation has its own in-house forensic technology team but few law firms or companies have this luxury. So, when considering a third-party forensic technology provider, difficulty may come in comparing the pricing of one company with another. Often, dictating a basic scenario can be effective in getting estimates that can be easily compared. Of course, the alternative to having outsiders collect the data is for the client to perform the search and collection themselves. This may seem an attractive way to save money but could lay the case open to accusations of unsupportable procedures or even of missing information. The client's IT infrastructure will also go some way to dictating whether this approach is used.

The collection process
The first task of the collection team is to identify where the relevant computer hardware and information is situated. Sometimes, this is very simple, but, as I have found, it can take two days of discussions with the client's technical staff to ascertain the full scale of the exercise. There may be PCs, thumb drives, massive file servers or document management systems to consider. Backup tapes may also play a large part which can add to the complexity and size of the final data set.

Filtering of the data
The amount of data collected in the project can be vast - a daunting prospect for the lawyer or paralegal team who has to do the first relevance review. So it makes sense that the workload should be brought down first and there are different ways of doing this. A simple one is de-duplication, which uses techniques to allow exact duplicate files to be excluded.

Keyword lists have always been a traditional way of selecting potentially relevant documents. However, care is needed to ensure that the list is fully representative and reasonable in order to maintain a balance between the relevance of the documents collected and the total number of documents. A judgement in a recent UK case was very critical of the defendant for not using a 'reasonable' list of key words and ordered a re-search with an extended list – a very costly exercise.

Contextual or conceptual grouping of documents is also a way of using broad strokes to limit the size of the initial review. This method uses noun or meta-data information to group similar documents allowing 'clusters' of them to be kept or discarded en masse.

Presentation of the data
Finally, after filtering and any other pre-processing, the remaining documents are uploaded to a review system. Document-review tools, of which there are many on the market, allow a powerful form of document analysis, including, at the very least, an extremely fast way of searching by key word and ways of coding documents for relevance or issues. Some will allow automated workflow where, for example, documents marked as relevant by a paralegal in the first review automatically appear in the solicitor's 'work box' for detailed analysis. Larger law firms may have their own review systems in-house but often application service providers will offer the tools, hosted on their own servers and accessible via the internet.

So, overall, is electronic data discovery collection and processing a good thing, especially as the volume of data kept becomes larger? The answer is yes and with the right approach, it need not be a painful process.

RECENT CASE DEVELOPMENTS

BY PHILIP CHAN

In this article, 5 cases are examined. The article is divided into 3 parts, namely, one case in the pre-arbitration section, two cases each in the IAA and AA sections. These cases are likely to interest the lawyers and users of arbitration more than the practicing arbitrators except for the case ***Front Row Investment Holdings*** where part of the arbitral award was set aside because of a breach of natural justice which would be of interest to practicing arbitrators as regard how the courts expect them to conduct the arbitration.

Part A – Pre-arbitration

This case should be instructive for being one that dealt with whether the courts are empowered to grant an order for pre-arbitral discovery.

***Equinox Offshore Accommodation Ltd v Richshore Marine Supplies Pte Ltd* [2010] SGHC 122**

Coram: Teo Guan Siew AR

The main issue here concerns whether the discovery applied for is intended for the commencement of a court proceeding or an arbitration and the applicable principles. It was held by the Assistant Registrar ("**AR**") (at [12]) that it was indeed an application for pre-arbitral discovery. According to the learned AR (at [13]), "the question of whether the court has the power to order pre-arbitral discovery has not been resolved by our courts."

In this case, the court examined the court's power to grant such an application under the rules of court under O24 r 6(1) of the Rules of Court (R5, Cap 322, 2006 Rev Ed) (the "**ROC**"), under its inherent power under O 92 r 4 of the ROC and under common law.

Order 24 rule 6(1)

The court had to determine whether O24 r6(1) of the ROC, as reproduced below, gave the court power to grant a pre-arbitral discovery order.

6.(1) An application for an order for the discovery of documents before the commencement of proceedings shall be made by originating summons and the person against whom the order is sought shall be made defendant to the originating summons.

[emphasis added]

The court also examined O24 r6(3) as set out below:

6(3) An originating summons under paragraph (1) ... shall be supported by an affidavit which must —

(a) in the case of an originating summons under paragraph (1), state the grounds for the application, the material facts pertaining to the intended proceedings and whether the person against whom the order is sought is likely to be party to subsequent proceedings in Court;

[emphasis added]

The learned AR then noted (at [15]) that:

"the requirement in rule 6(3) that the supporting affidavit state whether the respondent to the application is likely to be party to "subsequent proceedings in Court" suggests that O 24 r 6(1) is only concerned with discovery prior to the commencement of a court action".

Further, after referring to Jeffrey Pinsler, "Is Discovery Available Prior to the Commencement of Arbitration Proceedings" [2005] SJLS 64, the learned AR held (at [16]) that:

"based on a reading of O 24 r 6 itself, and adopting as well Professor Pinsler's reasoning, I decided that O 24 r 6(1) does not grant the court the power to order discovery prior to the institution of arbitration proceedings."

Inherent jurisdiction

The law in relation to the inherent jurisdiction of the courts under O92 r 4 of the ROC was considered by the Singapore Court of Appeal in *Wee Soon Kim v Law Society of Singapore* [2001] 2 SLR(R) 821. The learned AR then summarised the principle enunciated by the Court of Appeal as follows:

- it is insufficient to merely show that you have an interest or desire that the court exercises its inherent jurisdiction under O 92 r 4. A real "need" of sufficient gravity must be shown;
- it also will not suffice to show that no prejudice will be caused to the other party. The requirement is one of "strong and compelling reasons" for the court to exercise its inherent powers; and
- in particular, if a statutory regime with detailed rules already exists to govern the procedure in that particular area, it is unlikely that such necessity would arise (see also Jeffrey Pinsler, "Inherent Jurisdiction Re-visited: An Expanding Doctrine" (2002) 14 SAcLJ 1).

The court subsequently held (at [22]) that there is no "need" for the court to exercise its inherent jurisdiction after considering the following:

- the applicable arbitration law of IAA and O 69A do not make provision for obtaining discovery from the court (at [20]);
- the recent amendments to the IAA had removed the power of the court to grant discovery even in relation to existing arbitration proceedings (at [20]); and

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- it would seem more consistent with Parliament's intention for the court not to be granting pre-arbitral discovery (at [22])

- For completeness, the learned AR also addressed the argument that pre-arbitral discovery is a different type of relief from the interim measures contemplated by the legislative provisions and hence should be regulated by other rules.

- The learned AR was similarly satisfied that the court has no power to make a pre-arbitral discovery because:

- an application to invoke the court process in order to obtain discovery would be improper in the absence of agreed terms to this effect: see [25];
  if the concern is that there is no mechanism for compelling the disclosure of documents prior to the institution of arbitration proceedings, it surely is for the parties to make the necessary contractual provision for such a pre-arbitral process of discovery: see [25].

Part B – IAA

There are two cases in this section. In the first case, the court had to deal with an appeal against the assistant registrar's decision to grant a stay by an intervener. This case had to consider the distinction between an action in rem and an action in personam and the parties involved in order to determine the ambit of section 6.

The second case dealt with an application to enforce an arbitral award that faced a challenge on 4 grounds. In the challenge based on the existence of an arbitration agreement, the court had to decide whether it should conduct a rehearing or simply review the arbitrator's decision. This case also warns parties in such applications about the importance of obtaining adequate expert evidence on the law applicable to the formation of the contract and the arbitration agreement.

The Engedi [2010] SGHC 95

Coram: Judith Prakash J

This case before the court is interesting because it is an appeal against the assistant registrar's decision to grant a stay pursuant to the IAA by an intervener. In this case, the plaintiff entered into a charter party with the defendant who had sold the ship to the intervener (see: [1] and [4])

The learned judge had granted the appeal. In the process of the hearing, the court first noted (at [12] and [14]) that:

"the court's power to stay the proceedings only extends so far as the proceedings relate to matters which are the subject of the arbitration agreement between parties. It has no power under s 6 of the IAA to stay proceedings that fall outside that ambit."

The main issue identified was whether actions in rem fall within the ambit of s 6 of the IAA. The nature of action in rem, thus became important enough for the learned judge to set it out (at [17]):

"The action in rem operates only against the res, but once the defendant enters an appearance, he submits to the jurisdiction of the court and from then onwards the action continues as an action in rem against the res and in personam against the shipowner defendant (see The "Damavand" [1993] 2 SLR(R) 136 at [18]; The Fierbinti [1993] SGHC 319; The August 8 [1983] 2 AC 450). While an action in personam and an action in rem may involve the same cause of action, it must be stressed that the defendants of the respective actions are regarded as different parties."

The main issue here concerns whether the discovery applied for is intended for the commencement of a court proceeding or an arbitration and the applicable principles.

The court then held (at [19]) that:

"[Whilst] the commencement of an action in rem in Singapore to arrest a ship would not necessarily constitute a waiver or repudiation of the right to arbitrate. Nonetheless, I was of the view that I was not obliged to grant a stay of the action in rem pursuant to s 6 of the IAA because there was no arbitration agreement between the plaintiff and the notional defendant of the in rem action which was the res."

The learned judge then noted that in cases like the one before the court (at [20]), "the distinction [between an in rem action and an in personam action as explained is] ... of the utmost importance because the owner of the res was no longer the defendant, but the intervener. In other words, the in rem claim was not identical to the in personam claim. If the plaintiff and defendant were to proceed to arbitration, and the in rem action in Singapore were to be stayed, the intervener would not be able to protect its interest."

The court further held (at [20] and [26]) that:

"the in rem claim could not be a matter that was a subject of the arbitration agreement between the plaintiff and the defendant falling within the ambit of s 6 of the IAA... The intervener, as a party to the action in rem only, was not a party to any arbitration agreement with the plaintiff and could not therefore be forced to litigate in another forum."

***Denmark Skibstekniske Konsulenter A/S I Likvidation (formerly known as Knud E Hansen A/S) v Ultrapolis 3000 Investments Ltd (formerly known as Ultrapolis 3000 Theme Park Investments Ltd)* [2010] SGHC 108**

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Coram: Belinda Ang Saw Ean J

This case concerns the enforcement of a foreign arbitral award being challenged on 4 grounds under the IAA. The court rejected the challenges. The 4 grounds are:

1. that the original arbitration agreement was not produced as required under s 30(1)*(b)*;
2. alternatively, the arbitration agreement is non-existent and so enforcement should be refused under s 31(2)*(b)*;
3. if there was an arbitration agreement, the composition of the arbitral authority was not in accordance with it and, therefore, enforcement of the Corrected Award should be refused under s 31(2)*(e)*; and
4. the Corrected Award was made and passed at a time when the Tribunal was functus officio with the consequence that the enforcement of the Corrected Award should be refused under s 31(2)*(e)*.

Non production of original arbitration agreement – s30(1)(b)

There were two salient facts that required scrutiny and consideration. First, as not uncommon in some contracts, the parties entered into rounds of negotiation and two sets of documents were produced and the second set of documents then became the contract documents (the "**New Agreement**"). Second, as commonly found in some contracts, the arbitration agreement is found in one document which was referred to by the main document (the "**Standard Conditions**"). This therefore raises the question of whether the arbitration clause was validly incorporated into the contract.

The documents produced before the court was a copy of the New Agreement and a certified true copy of the Standard Conditions. The issue before the court was whether these documents satisfied the requirement of section 30(1)(b) which is reproduced below.

30. (1) In any proceedings in which a person seeks to enforce a foreign award by virtue of this Part, he shall produce to the court —
...(b) the original arbitration agreement under which the award purports to have been made, or a duly certified copy thereof; ...

The court then referred to and adopted the decisions of two cases, namely, *Aloe Vera of America, Inc v Asianic Food (S) Pte Ltd [2006] 3 SLR(R) 174 ("**Aloe Vera**")* and Dardana Ltd v Yukos Oil Co [2002] 2 Lloyd's Rep 326 ("***Dardana***"). In particular, the court quoted Prakash J in Aloe Vera where the learned judge held (at [42]) that the examination that the court must make of the documents under O 69A r 6 is a formalistic one and not a substantive one.

- s 30(2) of the IAA provides that a document produced to a court in accordance with this section shall, upon mere production, be received by the court as *prima facie* evidence of the matters to which it relates; and
- an agreement in writing within the meaning of s 27(1) of the IAA together with Article II.2 of the New York Convention is not limited to a document between the parties that had been signed by the parties as such.... the fact that the Standard Conditions were not signed does not mean that there was no arbitration agreement.

Non existent arbitration agreement s 31(2)(b)

This provision might be suitable where the arbitral tribunal comprises non-lawyers and there are questions of law to be determined. However, should the dispute involve only questions of law, then arbitration might not be suitable unless parties placed a premium on privacy and confidentiality.

Before the court could scrutinise whether a valid arbitration agreement existed pursuant to section 31(2)(b) of the IAA, the court held as follows:

- First, the court held (at [39] and [34]) that, *"the court is entitled to conduct a rehearing based of the grounds prescribed in s 31(2) of the IAA" and "not a mere review of the arbitrator's decision."*
- Second, the court held (at [42]) that a party who initiates a challenge under section 31(2)(b) in an enforcement court is, *"not estopped from challenging the enforcement of the [award] but it can only succeed on its submission that there was no valid arbitration agreement if it can discharge its burden of establishing that s 31(2)(b) of the IAA applies."*
- As for the issue of whether there was a valid arbitration agreement, the court held (at [43]) that *"under s 31(2)(b) of the IAA, the issue of whether there was a valid arbitration agreement has to be determined based on foreign law."* In this case, the applicable law is Danish law. This point is instructive as the issue would be essentially determined by the quality of the expert evidence on foreign law.

However, on the facts, the court held that the party opposing enforcement has failed to discharge its burden in satisfying the court that s 31(2)(b) of the IAA

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on the refusal to enforcement a foreign award applies. This failure was caused, inter alia, by the following:

1. failure on the part of the expert of the challenger to cite any Danish law: see [44];
2. the arguments used before the court by the challenger appeared to be a rehash of the arguments before the arbitral tribunal: see [44];
3. the qualifications of the enforcer's expert was not challenged: see [45];
4. the expert of the enforcer was independent of the proceedings before the arbitral tribunal whereas the expert of the challenger was involved at the hearing as the their lawyer: see [44 & 45]; and
5. the expert of the enforcer explained Danish law and international business practice on the subject under contention [45];

Composition of the arbitral authority not in accordance with the arbitration agreement s 31(2)(e)

In the third issue concerning section 31(2)(e), reproduced below, it appeared that the failure on the part of the party in properly drafting its affidavit in support of its application resulted in its failure before the court: see [49]

Status of Tribunal when issuing corrected award s 31(2)(e)

In the fourth issue, again, the failure to provide expert evidence on whether the Tribunal was functus officio proved fatal to the challenger and the challenge was dismissed.

Part C – AA

There are also two cases examined in this section. The first case sees the use of section 45(2)(a) of the AA which allows parties to refer questions of law to the court for determination. The second case involves an application to set aside the arbitral award on the ground that there was a breach of the rules of natural justice. The interesting point would be the extensive reference made to adjudication cases to establish the principles for observing natural justice.

***Econ Piling Pte Ltd and another v Sambo E&C Pte Ltd and another matter* [2010] SGHC 120**

Coram: Steven Chong JC

This is an interesting case as it appears to be the first case to take advantage of section 45(2)(a) of the AA which allow parties in an arbitration to refer questions to be determined by the court.

This provision might be suitable where the arbitral tribunal comprises non-lawyers and there are questions of law to be determined. However, should the dispute involve only questions of law, then arbitration might not be suitable unless parties placed a premium on privacy and confidentiality.

***Front Row Investment Holdings (Singapore) Pte Ltd v Daimler South East Asia Pte Ltd* [2010] SGHC 80**

Coram: Andrew Ang J

The application before the court was to set aside an arbitral award under section 48(1)(a)(vii) of the AA where a breach of the rules of natural justice had occurred. The court granted the application in part and also ordered that the part set aside should be tried by a newly appointed arbitrator: see [54].

In arriving at its conclusion, the court held that:

- there will be a breach of natural justice when the arbitrator disregards the submissions made by a party during the hearing or has, despite paying its regard to them, does not really try to understand them and so fails to deal with the matter in dispute: see [37];
- the court will look at the face of the documents and the tribunal's decision to determine whether the tribunal has in fact fulfilled its duty to apply its mind to the issues placed by the parties before it and considered the arguments raised: see [39]; and
- this was not a case where he had took into consideration the submissions but had accidentally omitted to state his reasons for rejecting the same or had found the same to be so unconvincing as to render it unnecessary to explicitly state his findings on it: see [45].

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ICC ARBITRATION IN THE ASIA PACIFIC

Introduction to ICC Arbitration

Since its creation in 1919, the International Chamber of Commerce (ICC) has become the largest, most representative business organization in the world and is the voice of world business, championing the global economy as a force for economic growth, job creation and prosperity. ICC activities cover a broad spectrum, from arbitration and dispute resolution to making the case for open trade and the market economy system, business self-regulation, fighting corruption or combating commercial crime.

ICC offers a wide array of dispute resolution services specifically intended for international commerce and cross-border transactions. Foremost among these is ICC arbitration, which is the focus of this note[1]. ICC arbitration is administered by the ICC International Court of Arbitration (ICC Court) based in Paris, France. Since its creation in 1923, the ICC Court has handled over 17,000 cases worldwide.

ICC arbitration, which can only be administered by the ICC Court, is a truly international, dispute resolution system, available to parties wherever they are based. Composed of experts from over 90 countries, the ICC Court brings a truly international perspective to each case it administers. The ICC Court is ably assisted on a day-to-day basis by its Secretariat comprising some 80 staff members comprising some 40 lawyers with no less than 20 different nationalities, who are available to provide assistance and information in over 20 different languages. Since the end of 2008, the Asia Office of the ICC Court Secretariat in Hong Kong serves users particularly in the Asia Pacific and Gulf regions.

When parties choose to settle their differences through ICC arbitration, they undertake to comply with the procedure set forth in the ICC Rules of Arbitration (the "Rules"). The flexibility of these Rules gives the parties both the freedom to fashion proceedings in accordance with their needs and the security of knowing that the resulting decision will be binding upon them and widely enforceable. ICC also offers a pre-arbitral referee procedure, which provides a means of rapidly obtaining measures to deal with urgent issues prior to the constitution of an arbitral tribunal and without recourse to national courts. This procedure complements the Rules as it provides parties (who have agreed to this procedure) with rapid recourse to a Referee empowered to make an order designed to meet the urgent problem at hand.

2009 Facts and Figures

In 2009 alone, the ICC Court received a record 817 requests for arbitration from all over the world. Some 22% of new cases filed last year involved one or more parties originating from Asia. The following information shows the relevant general statistics of ICC Arbitration in 2009 while the chart depicts the growth of ICC Arbitration from 1999 to 2009[2].

When parties choose to settle their differences through ICC arbitration, they undertake to comply with the procedure set forth in the ICC Rules of Arbitration (the "Rules"). The flexibility of these Rules gives the parties both the freedom to fashion proceedings in accordance with their needs and the security of knowing that the resulting decision will be binding upon them and widely enforceable.

[1] In addition to arbitration, ICC provides a number of other services to help parties resolve their disputes. ICC Amicable Dispute Resolution (ADR) is inspired by an amicable approach and covers a variety of techniques including mediation, neutral evaluation, mini-trial, or a combination of such techniques. The ICC Dispute Board Rules provide a framework for establishing and operating Dispute Boards to deal with disputes as and when they arise during the life of mid and long term contracts. Three types of Dispute Board, offering different approaches to dispute resolution, are available under the ICC Dispute Board Rules. When parties are faced with a question requiring technical, legal, financial or other expertise, the ICC International Centre for Expertise is available to propose and appoint experts and administer expertise proceedings. It also offers a specialized service known as DOCDEX for the resolution of disputes relating to documentary credits, collections and demand guarantees. More information can be found on the following websites: www.iccarbitration.org; www.iccadr.org; www.iccdisputeboards.org; www.iccexpertise.org; www.iccdocdex.org

[2] "Facts and Figures on ICC Arbitration - 2009 Statistical Report" at http://www.iccwbo.org/court/arbitration/index.html?id=34704

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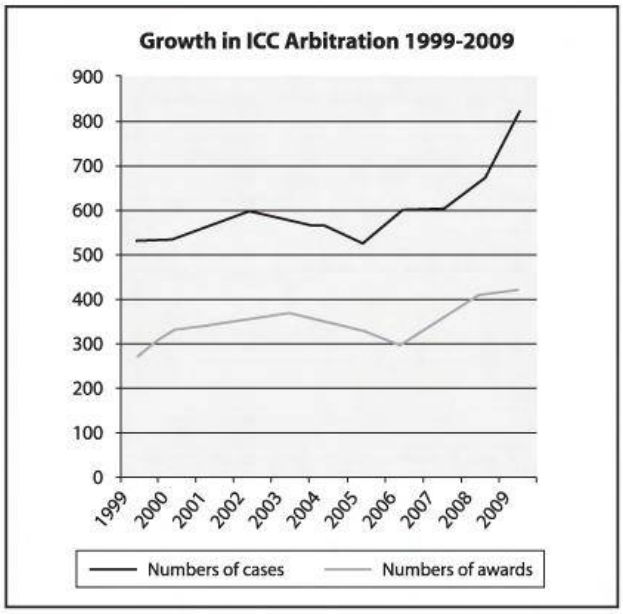
- **817** Requests for Arbitration were filed with the ICC Court;
- Those Requests concerned **2,095** parties from **128** countries and independent territories;
- In **9.5%** of cases at least one of the parties was a State or parastatal entity;
- The place of arbitration was located in **53** countries throughout the world;
- Arbitrators of **73** nationalities were appointed or confirmed under the ICC Rules;
- The amount in dispute was under one million US dollars in **22.9%** of new cases;
- **415** awards were rendered.



ICC's Growth and Commitment in the Asia Pacific

The Asia Pacific region has seen unparalleled growth in terms of the use of international commercial arbitration over the last 20-30 years. The region is now a major user of this process, with at least hundreds of truly international arbitrations seated here each year. The growth in arbitration activity followed the region's impressive economic growth, which started with Japan after World War II, spread generally across the region in the last couple of decades, and was substantially accelerated by Mainland China in recent years. The region now includes several of the world's strongest economies, and two of its principal commercial and financial centres. The Asia Pacific quickly embraced international commercial arbitration as *the* preferred method for resolving international business disputes.

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Apart from Singapore and Hong Kong, now two of the world's most prominent and effective seats for international arbitrations, the region also boasts numerous 'arbitration friendly' legal systems (i.e., legal systems that are highly supportive of international arbitration), the courts and legislators being conscious of the need to keep abreast of international developments. Almost all jurisdictions are parties to the New York Convention and there has been a raft of legislative changes based on the internationally recognised UNCITRAL Model Law on International Commercial Arbitration, giving the Asia Pacific the highest concentration of 'Model Law countries' in the world. This shows real commitment, at a regional as well as individual national level, to developing a sound climate for efficient international dispute resolution, in turn facilitating healthy international trade. While there is still room for improvement in the arbitration laws and/or attitude of state courts in a small number of Asia Pacific legal systems, very positive steps have been taken towards rectifying most of these issues over the last few years.

This healthy activity is reflected in ICC arbitration statistics. Of the new Requests for Arbitration filed in 2009, for example, parties from Asia included: 52 from India, 49 from China (33 from the mainland, 16 from Hong Kong), 31 from Korea, 27 from Singapore, 26 from Japan and 22 from Malaysia. The following chart shows the number and percentage of Asia Pacific parties in new ICC arbitrations filed between 1980 and 2009 and also the number and percentage of Asia Pacific seats of arbitration in new ICC cases between 1980 and 2009[3].

[3] Please note that full Statistical Report will be published in http://www.iccdrl.com/ and in ICC International Court of Arbitration Bulletin Vol. 21/No. 1 (2010).

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Year	Number & % of Asia-Pacific parties in new ICC arbitrations filed that year	Number & % of Asia-Pacific seats of arbitration in new ICC cases filed that year
1980	22 (4.7%)	Zero
1990	111 (11.2%)	8 (3.2%)
2000	152 (11.6%)	45 (10.7%)
2008	215 (12.2%)	61 (12.1%)
2009	284 (13.5%)	78 (12.4%)

In recognition of the growth of international trade, cross-border transactions and the use of international arbitration in the region, the Asia Office of the ICC Court Secretariat was opened in Hong Kong at the end of 2008. The Asia Office is the first branch of the ICC Court Secretariat outside Paris.

The Asia Office, which falls under the same management supervision from Paris and serves the same ICC Court, administers arbitrations locally on a day-to-day basis, acting as the neutral interface between parties, arbitrators and the ICC Court using ICC's sophisticated case management resources. The Asia Office alone presently manages about 150 pending cases. The opening of the Asia Office was intended to facilitate the administration of ICC arbitration in the Asia Pacific region generally, as well as to meet the needs of users of ICC arbitration here. Parties are now able to file Requests for Arbitration directly with the Asia Office[4].

In line with the ICC's commitment to the Asia Pacific region as a whole, in recognition of its growing importance in dispute resolution services, the ICC created the ICC Regional Office, Asia in Singapore in December 2009, as a dedicated liaison office for the promotion and business development aspects of ICC Dispute Resolution Services.

The ICC Regional Office, Asia actively promotes ICC Dispute Resolution Services in the region and also organises training programmes and regional arbitration forums. In July 2010, an ICC workshop on international commercial arbitration will be held in Hong Kong (using a format which has been very successfully conducted in other parts of the world and will make its way for the very first time to Asia) followed by a series of roadshows in Shanghai, Beijing and Shenzhen, in furtherance of its outreach to local users of ICC arbitration and as part of its ongoing effort to develop the use of international arbitration in the region[5]. Seminars will be held in Australia in mid September 2010 as well as in other Asian countries this year.

For more information, please contact Ms. Ow Kim Kit - Director, ICC Arbitration and ADR, Asia at okk@iccasia.com.sg.

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[4] To contact the Asia Office, please email Ms Khong Cheng-Yee at ica8@iccwbo.org.

[5] To contact the Regional Office, please email Ms Ow Kim Kit at okk@iccasia.com.sg.

SIARB SEMINARS AND EVENTS
APRIL TO JULY 2010

SEMINAR ON "RECENT DEVELOPMENTS IN THE LAW OF DAMAGES"

Date	Event	Speaker	Chairperson
29 March 2010	Seminar - Recent Developments in the Law of Damages	Mr. David Lewis	Mr. Chong Yee Leong

On the evening of 29 March 2010, David Lewis, Barrister at 20 Essex Street, London & Singapore, presented an engaging and highly topical discussion on the most significant recent English case law developments in relation to the Law of Damages. The emphasis of the discussion was on the recent decision of the House of Lords in *The Achilleas* [2008] UKHL 48 and the potential impact that this could have on the application of the standard test of *Hadley v Baxendale [1854] 9 Exch. 341*. David also considered the recent cases of *The Vicky 1 [2008] 2 Lloyd's Rep. 45 and 4 Eng Ltd v Harper [2009] Ch. 91* in relation to loss of chance and summarised the recent case law on penalty clauses and the principles of cost recovery and interest.

SEMINAR ON "COUNSEL'S PROFESSIONAL ETHICS IN THE PRESENTATION OF EVIDENCE"






Date	Event	Speaker	Chairperson
18 May 2010	Seminar - Counsel's Professional Ethics in the Presentation of Evidence	Mr. Tan Chuan Thye	Mr. Chelva Rajah

"On 18th May, Chuan Thye spoke on an interesting aspect of Counsel's conduct in international arbitration – The Professional Ethics in presentation of Evidence.

Chuan Thye in dealing with a topic that had modest (if any) text-book material, shared his experience in International Arbitration that often involved Counsels from differing jurisdictions and practices. These experiences were insightful in so far as it considered how and why Counsels often took differing positions in not just the presentation but also the disclosure of Evidence.

The possible theories, hypothesis and propositions were thoroughly addressed during the question & answer session managed and moderated by the tremendously proficient and talented Mr. Chelva Rajah S.C. The participants warmed up to the session with several interesting questions and sharing that were handled well by Chuan Thye and a couple by Mr. Rajah.

While many may have started the evening not totally clear as to the "educational" element of the talk, they left with a greater sense and appreciation of the greater scheme of Counsels managing and administering the presentation of Evidence in the International arena."

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