SINGAPORE INSTITUTE OF ARBITRATORS

NEWSLETTER

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THE PRESIDENT'S COLUMN

In recognition of SIArb's 30th Anniversary, I devoted my last President's Message to look back at what SIArb had achieved in the last 30 years, since its founding in 1981.

In this Message, I focus on our programs and initiatives for this year, both local and regional.

There should be something for everyone here - from those beginning to develop an interest in arbitration to those looking to be trained as an Arbitrator, and everyone in between. So please take note of the dates and send in your registration forms to participate.

SILE CPD Accreditation

I would however like to start with the news of the Institute being recognized as an Accredited CPD Institution by the Singapore Institute of Legal Education (SILE).

SILE oversees the mandatory CPD scheme for the legal profession, which is being implemented in phases.

Apart from SILE programmes, external training providers which meet SILE criteria, are recognized as Accredited CPD Institutions for the SILE CPD Scheme.

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ANNOUNCEMENTS UPDATES & UPCOMING EVENTS

1. SIArb Commercial Arbitration Symposium 2012 on **08 June 2012.**

2. Fellowship Assessment Course (FAC) 2012 on **24, 25 and 27 August 2012.**

NEW MEMBERS

The Institute extends a warm welcome to the following new members:

Fellows

1. Tin Keng Seng, Eric
2. Mohd Alam Pengiran Anak Puteh
3. Mario Joseph Durinic
4. Jeyandran Nadaraxjah
5. Edmund Jerome Kronenburg
6. Lawrence Teh
7. Bay Way Yee

Members

1. Abha Pareek
2. Akshay Kishore
3. Amardeep Singh
4. Chan Le Fong Alexis
5. Choong Jyy Lin Joan
6. Chua Eng Beng
7. Robert Nicholas Fenton
8. Heng Tien Tien
9. John Domingo JR
10. Khoo Eng Hock Patrick
11. Koh Hwee Koon Cheryl
12. Lee Wai Pong
13. Ngiam Shih Ern
14. Seah Chee Wei
15. Tan Siak Lim
16. Wong Widjaja
17. Yudi Debeer
18. Chung Yee Shen

Associate Members

1. Bahadir Tonguc
2. Tan Teck Han Freddie

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Through this partnership, we hope to broaden the reach of our wide variety of arbitration and ADR training programmes, to assist with the continuing training needs of practicing lawyers in Singapore.

I would like to thank Naresh Mahtani, Chairman SIArb CPD Committee and Pauline Wong, SIArb Secretariat who took charge of, and saw through, our discussions with SILE to successful accreditation.

IEC 2012

This entry level course for those keen on developing their interest in arbitration was conducted from **18–19 May**.

We have had good response to the course, and everything is in place for another successful run of our IEC Course very shortly.

Participants will be introduced to the basic tenets and skills of arbitration practice, with lectures and tutorials conducted by experienced trainers. This will be followed by a written exam.

Successful candidates will be invited to apply for membership of the Institute. Admission as Member allows candidates to use the abbreviation 'MSIArb' as part of their arbitration credentials in their professional biographies.

FAC 2012

For the more advanced members who are now looking to be trained as an Arbitrator, our FAC course will be run from **24-25 August**, with written exams on **27 August**.

The FAC Course introduces candidates to the finer points of the arbitral process, from the perspective of the Tribunal. Classes range from the preliminary meeting and directions, through the arbitration procedure, and finally award writing.

Successful candidates will be invited to apply for fellowship of the Institute. Admission as Fellow allows candidates to use the abbreviation 'FSIArb' as part of their arbitration credentials in their professional biographies.

Many arbitration centres, such as the SIAC, require applicants seeking admission to their Panel to have attained at least Fellowship status, as part of their qualifying criteria.

SIArb Commercial Arbitration Symposium

Now in its 4th year, the sell-out SIArb Commercial Arbitration Symposium is back.

The 2012 Symposium takes place on **Friday, June 8**, just before the start of the ICCA Singapore Conference 2012.

The SIArb Arbitration Bar Committee, which first launched this event in 2009, plays host to a strong bench of international and local co-chairs. As always, the symposium provides a distinctive and interactive forum for participants to discuss current issues and developments in the field of Commercial Arbitration.

The drinks reception that caps off the event presents a good opportunity for members of the arbitration community to network and mingle.

Cambodia Training 2012

Moving to the regional arena, SIArb is pleased to continue its Cambodia training program which traces its origins back to 2010.

It was in 2010 that SIArb successfully led a team consisting of the Institute, the Law Society and SIAC to appointment by the International Finance Corporation, an arm of the World Bank Group, with a brief to design and run an arbitration training program in Phnom Penh, Cambodia.

This World Bank funded program saw the Institute lead the training of Cambodia's first group of 50 arbitrators for its National Arbitration Centre in 2010.

Further follow-up training led by the Institute took place recently over the weekend of 5 May 2012, with over 50 participants in attendance. There is a fuller report in this issue with more details.

Credit is due to Immediate Past President Johnny Tan who led the initiative in 2010 and continues to take the lead in the 2012 training program for Cambodia.

6th RAIF Conference Bali

SIArb is a founding member of the Regional Arbitral Institutes Forum, a regional grouping of 7 arbitral institutes from Singapore, Malaysia, Hong Kong, Philippines, Indonesia, Brunei and Australia.

Having organized the Inaugural Conference in 2007, it was very gratifying for SIArb to attend the 6th RAIF Conference organized by RAIF's Indonesian member, BANI in Bali.

I together with Vice President Chan Leng Sun, SC represented SIArb. The slate of speakers and session chairs from Singapore included Justice Quentin Loh of our High Court, Alvin Yeo SC (Wong Partnership), Guy Spooner (Norton Rose), and Philip Jeyaretnam SC (Rodyk). International speakers included Sundra Rajoo

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(Director, KLRCA) and Professor Bernard Hanotiau.

Next year's RAIF event will be hosted by the Philippines, and promises to be every bit as interesting and satisfying as the Bali Conference.

I do hope you will find something of interest in these events and look forward to your participation and continued support of the Institute's programs.

Mohan R Pillay, President

Case Law Development

By Dr. Philip Chan

Introduction

In this issue, two cases are reviewed. The first case ***Lim Chin San Contractors*** is a case on setting aside an arbitral award under the (domestic) Arbitration Act ("**AA**"). There are pointers in this case for arbitrators as well as lawyers in relation to making an additional award under section 43 of the AA.

The second case ***Giant Light Metal Technology*** concerns an application for a stay of court proceedings under the International Arbitration Act ("**IAA**") in an action based on a foreign judgment. Parties in such cases must remember that unless they challenge the claim made against them in the foreign courts, it might be too late to do so in Singapore.

***Lim Chin San Contractors Pte Ltd v L W Infrastructure Pte Ltd* [2012] SGHC 75 [Lai Siu Chiu J]**

Lim Chin San Contractors ("the plaintiff") were aggrieved by the arbitrator's decision to make an additional award pursuant to section 43 of the AA (which allows arbitrators to correct or interpret awards and make an additional award after having issued the final award). The arbitrator had responded to ***L W Infrastructure's*** ("the defendant") request for pre-award interest by issuing an additional award without first ascertaining from the plaintiff if they actually did not intend to object to the making of the additional award. [50]

There were two prayers in the application put before the court. First, the plaintiff prayed for the Additional Award to be declared a nullity in that it was not an award made under or for the purposes of s 43 of the AA. The second prayer was for an order that the Additional Award be set aside under s 48(1)(a)(vii) of the AA. [11]

No order was made in respect of the first prayer while the second prayer was granted. [54]

(a) Nullifying an award under section 43

The court held at paragraph 20 that, "s 43(4) was not in and of itself a ground upon which the court could declare the Additional Award a nullity and set it aside." The court noted that section 47 conferred the jurisdiction to set aside awards only where so provided in the Act and "The only provision in the Act which allows the court to set aside an arbitral award is s 48…" [22]

The court then added at paragraph 22 that, "It should be emphasised that the list in s 48 is exhaustive; the court does not otherwise have inherent or residual discretion to set aside an arbitral award. The only other provision in the Act which confers jurisdiction upon the court to set aside an arbitral award is s 49(8)(d) in the context of an appeal against the award on a question of law. However, this provision was not in issue in the instant case."

An interesting point was made by the learned judge which lawyers might wish to take note when launching an application in similar factual circumstances. The learned judge noted at paragraph 23 that, "in order for the plaintiff to have succeeded on this point, it would have had to show that its case fell within one of the subsections of s 48. The most applicable subsection would be s 48(1)(a)(iv), which states that a court may set aside an arbitral award if it dealt with matters or contained decisions beyond the scope of the submission to arbitration."

(b) Setting aside of award under section 48(1)(a)(vii)

For ease of convenience, section 48(1)(a)(vii) is reproduced below.

"Court may set aside award
48. – (1) An award may be set aside by the Court –

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> (a) if the party who applies to the Court to set aside the award proves to the satisfaction of the Court that –
> ...
> (vii) a breach of the rules of natural justice occurred in connection with the making of the award by which the rights of any party have been prejudiced ...."

In the process, the court identified two issues:

- "whether the Arbitrator was empowered to revive his jurisdiction and make the Additional Award for pre-award interest" [18];
- "whether natural justice should apply to the entire arbitration proceedings, or whether natural justice only applied where the statute specifically provided that it should." [35]

The court also examined (a) the arbitrator's conduct in respect of whether adequate opportunity was given to discharge the duty to comply with the rules of natural justice; and (b) section 43(4) at length.

(i) Revival of arbitrator's jurisdiction

The court held at paragraph 43 that in order to revive an arbitrator's jurisdiction and make an additional award, the arbitrator must have due regard to two questions before proceeding to make an additional award under section 43(4).

In particular, the learned judge held that, "Before an arbitrator can make an additional award under s 43(4), he must first correctly decide that s 43(4) applies at all. … This decision would involve his being satisfied that the subject of the request was both presented during the arbitral proceedings and omitted from the final award."

(ii) Scope of application of natural justice – entire proceedings?

The learned judge held at paragraph 35 that, "In fact, natural justice should apply to the entire arbitration proceedings even if s 22 did not specifically allow for it and even if the Act made no provision for it. Natural justice is an implied requirement of all arbitral proceedings, and each and every aspect of the same."

The court added :

- "…the rules of natural justice aim to protect parties from a miscarriage of justice,…" [36];
- "…they should therefore apply whenever there is occasion for justice to be carried out." [36];
- "These principles are immutable." [36];
- "…the rules of natural justice should permeate and impregnate every single one of its [Arbitral Tribunal's] findings and determinations." [37]

(c) Arbitrator's threshold conduct needed to comply with the rules of natural justice

In the case itself, the court held that what the arbitrator had done was wrong. [50] The court noted that the arbitrator,

"…justified his own actions by stating that he had given the plaintiff three days to reply to the defendant's request, and by that statement seemed to suggest that he had given the plaintiff adequate opportunity to respond. However, this was hardly an adequate opportunity given that s 43(5) did allow the Arbitrator sixty days to render the Additional Award, and that the consequences of the Additional Award were to impose a liability on the plaintiff to pay the defendant a further sum of $274,114.61. In other words, the short time given for the plaintiff to respond and the grave consequences of the Additional Award made it unreasonable to say that the plaintiff here had been given adequate opportunity to respond and unreasonable to infer that the plaintiff did not intend to object to the making of the Additional Award. Further, the Arbitrator had not contacted the plaintiff to ascertain if it actually did not intend to object to the making of the Additional Award." [50]

However, the court added that, "in every case, it should be determined if there are other factors which would persuade the court that adequate or inadequate opportunity had been given. These could include the manner in which the request was made and the timing of the request, both of which remain unspecified by s 43(4) of the Act and therefore would admit to some flexibility in interpretation." [51]

(d) Substance of section 43(4)

The following points were noted by the court:

"…s 43(4) certainly does not allow an arbitrator a backdoor to consider issues that were not part of the main arbitration and thereby subvert the principle that an arbitrator who has made his final award is functus officio." [38]

"Section 43 provides for the ability of the arbitrator to correct errors that he had made in the award; it allows an arbitrator to deal with claims that he had omitted to address." [38]

"The provision allows for the correction of genuine inadvertent omissions made by the arbitrator, but why should the principle of finality have to make room for the arbitrator's oversight?" [38]

"The ability to make an additional award, therefore, supports the principle of minimal curial intervention because it allows the arbitrator to correct his award for genuine oversights and fortify it against litigious challenges based on natural justice principles. The award would be less vulnerable to attack in the courts, and the autonomy of the arbitral process would thus be upheld." [41]

"Before an arbitrator can make an additional award under s 43(4), he must first correctly decide that s 43(4) applies at all. … This decision would involve his being satisfied that the subject of the request was both presented during the arbitral proceedings and omitted from the final award." [43] … "Given that these questions of fact and law only arise when one party makes a request under s 43(4), it is only fair that the other party should be given an opportunity to submit on what the answers to those questions should be. That should be the purpose of the requirement imposed by s 43(4) itself, viz that the requesting party gives notice to the other party of the request made to the tribunal. The notice is not simply meant to warn the other party of what is to come, but rather to give the other party an opportunity to respond to the request and address the arbitrator on the applicability of s 43(4)." [44]

Giant Light Metal Technology (Kunshan) Co Ltd v Aksa Far East Pte Ltd **[2012] SGHCR 2 [Terence Tan Zhong Wei AR]**

The matter before the court was an application for a stay of court proceedings under section 6 of the IAA. The issue identified by the court was, "…whether the Suit, which appears to involve a claim by the plaintiff for a debt arising from the PRC judgment, should be stayed pursuant to s 6 of the IAA." [14] The application was dismissed. [29]

Aksa Far East ("the defendant") filed an application to stay an action filed by ***Giant Light Metal Technology*** ("the plaintiff") based on a judgment obtained before the PRC courts.

The contract between the parties contained an arbitration agreement.

The defendant argued that "…the fact that plaintiff had obtained a PRC judgment was irrelevant to this application. It was further submitted that the plaintiff had pleaded both the contract and the PRC judgment in their statement of claim, and so if the Suit is allowed to proceed, this court would have to determine the substantive dispute between the parties and whether the Chinese court has international jurisdiction over the defendant." [10]

(a) Nature of claim

The learned Assistant Registrar held that, "…what the defendant is seeking to stay in this application is the plaintiff's claim for a debt arising from the PRC judgment, and not a claim which concerns any dispute or controversy arising out of or relating to the contract between the parties during performance, as provided in the arbitration agreement. Hence, it is clear that the Suit instituted by the plaintiff, ie, to claim for a debt arising from the PRC judgment from the defendant in Singapore, does not fall within the terms of the arbitration agreement." [23]

(b) Nature of Judgment

The learned Assistant Registrar held that, "…there can be no question that the PRC judgment stands as a final and conclusive judgment." [24] The legitimacy of the plaintiff making a claim based on a judgment that is final and binding from a foreign court was supported by case authority in Singapore which the learned Assistant Registrar cited at paragraph 27 as Bellezza Club Japan Co Ltd v Matsumura Akihiko and others [2010] 3 SLR 342 at [10].

In arriving at this conclusion, the court had noted that "The defendant made the conscious decision of neither objecting to the proceedings at the PRC court nor appealing against the PRC judgment when it was subsequently granted. It was also not argued that the PRC judgment was either not made by a court of competent jurisdiction or that it was in any way irregular." [24]

If the defendant wished to successfully rely on the arbitration clause, it would appear that they must have necessarily challenged the proceeding taken out against them in the foreign court before the judgment became final and binding.

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THE INTERNATIONAL ARBITRATION (AMENDMENT) ACT 2012 - A BRIEF COMMENTARY BY ANDREW CHAN[1] AND GOH ZHUO NENG[2]

1. The International Arbitration (Amendment) Act 2012 (the "Amendment Act"), which amends the International Arbitration Act (Cap. 143A)("IAA") and the Arbitration Act (Cap.10) ("AA") comes into operation on 1 June 2012. The Amendment Act strives to, inter alia, keep Singapore's arbitration regime up to date with recent developments and trends in international arbitration, by essentially implementing the following changes:

   a. Permitting an appeal to the High Court on negative jurisdictional rulings made by arbitral tribunals, with leave required for any further appeal to the Court of Appeal.

   b. Giving legislative support to emergency arbitrators and orders made by them, by expanding the definition of "Arbitral Tribunal" to include an emergency arbitrator.

   c. Broadening the interim measures made by foreign arbitral tribunals that are enforceable by a Singapore Court, by expanding the definition of "arbitral award" under Part III of the IAA to include interim measures made under section 12(1)(c) to (i) of the IAA.

   d. Easing the writing requirement for arbitration agreements, by expanding the definition of an "Arbitration Agreement" to include agreements whose content are recorded in any form, whether or not they were concluded orally or by conduct.

   e. Giving an arbitral tribunal the statutory power and scope to award interest on monetary claims and cost orders.

Consistency with Arbitral Norms and Commercial Reality

2. By moving away from the strict requirement that an arbitration agreement must wholly be in writing and only be in certain forms of writing, the Amendment Act helps to bring Singapore in line with commercial reality. In commercial transactions, agreements may be made on an ad hoc and oral basis, and recorded in writing later, rather as a written agreement with the signature of both parties.

3. In recognising agreements that are concluded orally and by conduct, as long as this agreement is recorded, the Amendment Act also aligns the Singapore position with the amendments that were made to the UNCITRAL Model Law 1985 in 2006 ("2006 Model Law"). [3] As stated in the Explanatory Note to the 2006 Model Law describing Article 7 of the 2006 Model Law which addresses the form of an "arbitration agreement":

   "It follows the New York Convention in requiring the written form of the arbitration agreement but recognises a record of the "contents" of the agreement "in any form" as equivalent to traditional "writing". The agreement to arbitrate may be entered into in any form (e.g. including orally) as long as the content of the agreement is recorded. This new rule is significant in that it no longer requires signatures of the parties or an exchange of messages between the parties."

4. Similarly, by making clear that an arbitral tribunal has the power to award simple or compound interest in respect of monetary claims and costs awarded in arbitral proceedings, Singapore has also kept pace with its competitors for the leading Asian seat for international arbitrations, e.g. Hong Kong.

5. Next, the Amendment Act also resolves some of the uncertainty as to whether an arbitrator can award interest on an award, or whether the parties have to obtain a separate order from the High Court for interest after an arbitration award is recognised. This is because the extent of an arbitrator's power to award interest is currently not detailed in the IAA and the AA.

Resolving a Legal Lacuna

6. The Amendment Act also provides what may be viewed as a timely resolution of the legal lacuna on the judicial review of negative jurisdiction rulings by an arbitrator.

7. Under the IAA[4] and the AA[5], an arbitral tribunal may rule on its own jurisdiction whether as a preliminary or final ruling. Applications can be made to court for judicial review within 30 days of such a preliminary

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ruling on jurisdiction. However, if the jurisdictional ruling is not a preliminary ruling, then one would have to await the making of the final award before having any recourse[6].

8. Unfortunately the legislation only explicitly provides that an appeal can be made where the arbitral tribunal makes a positive ruling that it has jurisdiction to hear the matter[7]. Where the arbitral tribunal rules that it has no jurisdiction to hear the matter, the Singapore Court of Appeal has decided that the aggrieved party who asserts that the arbitral tribunal has jurisdiction to hear the matter does not have recourse to judicial review.[8]

9. While this also reflects the position in the 2006 Model Law[9], there is no general consensus in the international position. This was noted in the "Report of the Law Reform Committee on Right to Judicial Review of Negative Jurisdictional Rulings" ("**Report**").[10]

10. The Report's findings indicated that while major arbitration jurisdictions like the USA,[11] France[12] and England[13] permitted appeals from negative jurisdiction rulings, other arbitration jurisdictions such as Australia[14] and Hong Kong[15] did not permit an appeal from negative jurisdiction rulings by an arbitral tribunal. However, the Report noted that in Singapore, the feedback obtained at that point indicated that there was "overwhelming support in the industry" that such an avenue for appeal be provided.[16]

11. In fact, the Report noted there were other strong reasons for doing so :

    a. It was unfair and inconsistent to deny judicial review of negative jurisdictional rulings, when the jurisdictional review of erroneous positive jurisdictional rulings is permitted.[17]

    b. Significant prejudice would be caused to the parties if they were unable to obtain judicial review against a wrongly made negative jurisdictional ruling by an arbitral tribunal[18]. They would have lost their recourse to arbitration, and be forced to litigate their claim in the local courts. This was contrary to the purpose of arbitration – that parties chose arbitration as a neutral seat to resolve their dispute, as opposed to a national court with a connection to either of the parties.[19]

    c. In the light of the above, parties to arbitration may prefer to select an arbitration seat where there is judicial review of a negative jurisdictional ruling by the arbitral tribunal.[20] This would have an impact on Singapore's ability to position itself as an arbitration hub.

12. While Singapore has departed from the position in the 2006 Model Law, and there are certainly arguments against allowing appeals against negative rulings, the Amendment Act indicates that pragmatism has prevailed over rigid adherence to the Model Law and some of the concerns raised.

13. The response of the Ministry of Law ("Minlaw") to feedback which was received in response to the public consultation on a draft version of the International Arbitration Amendment Bill states:

    "Notwithstanding the majority support for the amendment, a few respondents felt that the review of negative jurisdictional rulings should not be permitted as it will potentially deprive a party of its right of access to the court.

    Minlaw has considered these views, but has on balance, decided to retain the amendment in the IA(A) Bill. As highlighted in the Singapore Academy of Law's Law Reform Committee's Report on the Right to Judicial Review of Negative Jurisdictional Rulings (January 2011), to permit review of positive jurisdictional rulings but not negative jurisdictional rulings is both "unfair and inconsistent". One may also question if the right of access to the court is indeed denied in cases where the court overrules the tribunal has jurisdiction –in such cases, the court itself has decided that the parties should be held bound by their arbitration agreement and have their dispute settled by arbitration and not the court. Seen in another light, in reviews of both positive and negative jurisdictional rulings where the court finds that the tribunal has jurisdiction, the arbitration in both cases will continue on the basis that the court has found that the tribunal has jurisdiction. It would be unfair to say that in one case (where the appeal is against a tribunal's negative jurisdictional ruling) the parties have been denied access to the court but not the other (where the appeal is against a tribunal's positive jurisdictional ruling). Given these strong counter-arguments, which are supported by the majority of the respondents, Minlaw decided to retain the proposed amendment."

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Expanding and Providing Legislative Support For the Powers of Arbitrators, both Emergency and Abroad

14. Finally, and significantly, the Amendment Act provides significant recognition and support of the power and awards made by foreign arbitrators, and emergency arbitrators.

15. First, the expansion of the definition of "arbitral tribunal" to include emergency arbitrators. The emergency arbitrator procedure is increasingly becoming a part of international arbitration[21], and has been incorporated by for instance, the arbitration rules of the Singapore International Arbitration Centre[22]. The Amendment Act provides legislative support to the awards made by these emergency arbitrators, by recognising them as "arbitral tribunals", which have the power to make awards that can be recognised by the High Court.

16. This approach was not adopted without some reservations. During the 2nd reading of the International Arbitration Amendment Bill in Parliament, concerns were raised as to the "thorny questions which may potentially arise" from the introduction of an emergency arbitrator into the arbitration legislation[23]. While these "thorny questions" were not enumerated during the parliamentary debates, they may include doubts as to the status of the emergency arbitrator itself. If so, recognition under the legislation would no doubt help ameliorate such a concern.

17. One particular issue may need to be addressed in relation to the scope of powers available to the emergency arbitrator. By including the emergency arbitrator in the definition of "arbitral tribunal", the Amendment Act may well give the emergency arbitrator all the powers of an arbitrator – including the power to determine the merits of the dispute between the parties[24]. Given that the emergency arbitrator is normally called into action when parties require interim relief and not as the Arbitral Tribunal,[25] there is some concern that the Amendment Act now expands the scope of his statutory powers beyond the practical nature of his interim role and the interim relief he grants. It is suggested, however, that the powers of the emergency arbitrator should be read down or consistent with the arbitrators' appointment as emergency arbitrator. That being the case, while in principle, the amendment could carry with it all powers of an arbitrator, a purposive interpretation that the arbitrator should only have such power that are consistent with his appointment minimises such a concern.

18. In any event, the step to provide legislative support for the emergency arbitrator appears to be the right one. As stated above, the emergency arbitrator procedure is increasingly becoming a procedural norm in international arbitration. Failing to provide legislative support for such a procedure would actually create more doubt as to the legal status of awards made by an emergency arbitrator – leading to more uncertainty. To elaborate on the pun, Singapore has grasped the nettle, and certainly for the better.

19. Second, the recognition of interim orders made by foreign arbitral tribunals. Part III of the IAA deals with the local recognition and enforcement of awards made by foreign arbitral tribunals. In this respect, the "arbitral awards" of the foreign arbitral tribunals which are recognisable and enforceable, are currently generally defined under section 27(1) of the IAA as having the same meaning as set out in the Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("New York Convention"),[26] and "include not only awards made by arbitrators appointed for each case but also those made by permanent arbitral bodies to which the parties have submitted."[27] However, this definition does not specifically refer to the exact types of interim orders that comprise "arbitral awards" of foreign arbitral tribunals which are recognised and enforceable.

20. Here, the Amendment Act expands on enforcement by enumerating types of interim orders which can also comprise a recognisable award by a foreign arbitral tribunal. In particular, the types of interim orders which can be granted by an arbitral tribunal under Section 12(1)(c) to (i) under the IAA are now expressly included in the definition of arbitral awards, e.g. mareva injunctions.[28] See the proposed new definition of "arbitral award" under the Amendment Act:

"arbitral award" has the same meaning as in the Convention, <u>but also includes an order or a direction made or given by an arbitral tribunal in the course of an arbitration in respect of any of the matters set out in section 12(1)(c) to (i);".</u>

(additions in Amendment Act underlined)

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However, it should be noted that a corresponding amendment has not been made to section 46 of the AA, which addresses the enforcement of foreign arbitral awards under the AA. In this respect, section 46(3) of the AA enables enforcement of foreign awards wider than those made in New York Convention countries. This may means that orders for interim measures made by arbitral tribunals from non-New York Convention territories (e.g. Taiwan) may not have the benefit of the amendment made to Part III that applies to awards made by arbitral tribunals from New York Convention territories.

21. Together with the powers given to an arbitral tribunal to grant interest, these measures have provided welcome clarity to the position of emergency arbitrators and the types of awards made by a foreign arbitral tribunal which can be recognised under Singapore law.

Conclusion

22. As stated in the Annex to the speech of the 2nd Reading of the International Arbitration Amendment Bill, Singapore has achieved its goal to become the leading hub of arbitration in Asia.

Whether it can maintain that lead, or become the leading hub of international arbitration will depend on whether it can keep apace with developments in international arbitration. At the same time, there is a need to ensure that Singapore does not slavishly adopt procedures and concepts, at the expense of good reason. On this account, and on reflection, it is likely that the Amendment Act has for now struck that difficult balance.

Andrew Chan

Goh Zhuo Neng

[1] Mr. Andrew Chan is a Partner in Litigation & Dispute Resolution at Allen & Gledhill LLP. His practice encompasses commercial work, and he is a specialist in dispute resolution (especially arbitration), trusts, and insolvency (corporate and personal). Andrew is a Fellow and Honorary Secretary of the Singapore Institute of Arbitrators ("SIArb") (as well as being on its panel of tutors). He is on the panels of arbitrators of the Singapore International Arbitration Centre, the Law Society Arbitration Scheme, the SIArb and the Kuala Lumpur Regional Centre for Arbitration. He is also Director of the American Arbitration Association- ICDR Ltd. Andrew has written over 60 articles covering many areas of the law and has contributed to various publications. On arbitration, he has written extensively and is a co-author of the Singapore Chapter of the publication Arbitration in Asia.

[2] Mr Goh Zhuo Neng is a Senior Associate in Litigation & Dispute Resolution at Allen & Gledhill LLP.

[3] See Chapter II, Article 7, Option 1 of the UNCITRAL Model Law 1985 (with 2006 Amendments). Under the New York Convention, there is support in case law for a wider conception of writing as compared to the 1985 Model formulation of the requirement of writing. See Aloe Vera of America, Inc v Asianic Food (S) Pte Ltd &Anor [2006] 3 SLR(R) 174.

[4] Article 16 of the UNCITRAL Model Law 1985 as incorporated under the 1st Schedule of the IAA via section 3 of the IAA.

[5] Section 21 of the AA.

[6] Article 16(3) of the UNCITRAL Model Law 1985 only provides for a faster track of appeal from a preliminary jurisdictional ruling.

[7] Article 16(3) of the UNCITRAL Model Law 1985

[8] PT AsuransiJasa Indonesia (Persero) v Dexia Bank SA [2007] 1 SLR 597

[9] Article 16 of the 2006 Model Law provides that a judicial review of a jurisdictional ruling can only be made when *"the arbitral tribunal rules as a preliminary question that it has jurisdiction"*.

[10] Annex A of the Report of the Law Reform Committee on Right to Judicial Review of Negative Jurisdictional Rulings.

[11] Section 10(a)(4), Federal Arbitration Act

[12] Articles 1466 and 1502 of the French New Code of Civil Procedure

[13] Sections 30 and 67 of the English Arbitration Act 1996

[14] International Arbitration Act 1974 does not have any provision permitting judicial review in this scenario.

[15] Section 34(4) and 34(5) of the Hong Kong Arbitration Ordinance

[16] See paragraph 14 of the Report.

[17] Paragraph 12(e) of the Report

[18] Paragraph 12(b) of the Report

[19] Paragraph 12(a) of the Report

[20] Paragraph 12(c) of the Report

[21] See Appendix II of the Stockholm Chamber of Commerce Rules 2010, Appendix V of the International Chamber of Commerce Rules 2012.

[22] Schedule 1 of the 4th edition of the Singapore International Arbitration Centre Rules, that came into effect on 1 July 2010.

[23] NMP Ms Lina Chiam, at 2nd Reading of the IA(A) Bill, Parliamentary Session 12, Session No.1, Volume 89, Sitting No.1, sitting date 9 April 2012, Column 61

[24] Section 2 of the IAA provides that *"award - means a decision of the arbitral tribunal on the substance of the dispute…"*

[25] Schedule 1, paragraphs 1, 5, 6 of the SIAC 2010 Rules.

[26] Concluded at New York on 10th June 1958

[27] Article 1(2) of the New York Convention, as set out in the 2nd Schedule of the IAA, and referred to in section 27(1) of the IAA.

[28] Section 12(1)(h) – *"ensuring that an award which may be made in the arbitral proceedings is not rendered ineffectual by the dissipation of assets by a party."*

Seminar on "Issues in Construction Arbitration"

Date	Event	Speakers	Chairperson:
29 March 2012	Issues in Construction Arbitration	Ms. Audrey Perez Mr. Ho Chien Mien	Mr. Steven Lim

In this seminar, speakers from the Construction sector as well as from the Legal and Arbitration fraternity shared updates and views regarding challenges facing construction arbitration. The seminar covered some recent findings in cases concerning construction arbitrations and challenges to construction arbitration awards. The attractiveness as well as pitfalls of construction arbitration, as well as the use of other alternative methods such as dispute boards, expert determination, med-arb and early neutral evaluation in conjunction with arbitration, were also discussed. The seminar was attended by a wide range of delegates involved in the construction sector including lawyers and non-lawyers, arbitrators, engineers, consultants, experts and other engaged in the construction industry.

Seminar entitled "Three sides of the same coin? Approaches to enforcement of foreign arbitration awards in Singapore, Australia and UK"

Date	Event	Speaker	Chairperson:
26 April 2012	Three sides of the same coin? Approaches to enforcement of foreign arbitration awards in Singapore, Australia and UK	Mr. Dinesh Dhillon	Mr. Edwin Lee

The speaker discussed the approach of the courts in three jurisdictions with respect to the enforcement of foreign awards under the New York Convention; in particular, whether their analysis of who constitutes a party to an arbitration agreement under the Convention is uniform. The seminal cases discussed were: Aloe Vera of America, Inc v Asianic Food (S) Pte Ltd and another [2006] 3 SLR(R) 174 (Singapore), Dallah Real Estate and Tourism Holding Company v The Ministry of Religious Affairs, Government of Pakistan [2010] UKPC 46 (UK), and IMC Aviation Solutions Pty Ltd v AltainKhuder LLC [2011] VSCA 248 (Australia).

Seminar on "Arbitration Centre – Organisation and Management" in Phnom Penh, Cambodia

Date	Event	Speakers
5 May 2012	Arbitration Centre – Organisation and Management	Mr. Johnny Tan Ms. Rachel Foxton

In 2010 a team lead by SIArb comprising the Institute, the Law Society and SIAC successfully bid to design and run a training program for the initial core group of arbitrators in Phnom Penh under the auspices of the Ministry of Commerce, Cambodia (MoC) and the International Finance Corporation (IFC), an arm of the World Bank Group.

This World Bank funded initiative has now been extended to provide continuing arbitration training for this initial core group of arbitrators and assist the MoC in the setting up of the National Arbitration Centre (NAC) of Cambodia.

Further follow-up training led by the Institute took place recently over the weekend of 5 May 2012 with a seminar on the Organisation and Management of an Arbitration Centre. Speaking at the seminar was Immediate Past President, Mr. Johnny Tan and Ms. Rachel Foxton, Director of Business Development, SIAC. Notwithstanding that the seminar was held on Vesak Day, an important religious day for the predominantly Buddhist country, it was well attended by over 50 participants comprising the initial batch of arbitrators, and representatives from the IFC and MoC.

The seminar was graced by H.E. Moa Thora, Secretary of State, Commerce. In his opening remark, H.E thanked SIArb for the support and training provided to NAC. He expressed his hope that SIArb would continue to provide further training in the future. He also paid tribute to Singapore's reputation as a well known and very reputable hub for arbitration in this region. He shared that most of the commercial contracts in Cambodia prefer arbitration in Singapore. He hoped that the training the NAC receives from Singapore would be a positive step in building the NAC as a reliable centre for arbitration in Cambodia and businesses will use its services.

SIArb has been appointed by the IFC to run a series of monthly programs till November 2012 and an Award Writing Course in 2013.

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