SINGAPORE INSTITUTE OF ARBITRATORS

# NEWSLETTER

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## THE PRESIDENT'S COLUMN

The Annual RAIF (Regional Arbitral Institutes Forum) Conference was hosted to great success by MIArb in Kuala Lumpur on 8 May 2015. The Honourable Attorney-General of Singapore, Mr VK Rajah, SC delivered the Distinguished Speaker Lecture. The speech, titled *"Whither Adversarial Dispute Resolution?"*, presented interesting data on dispute resolution around the world and provoked thoughts on what such data meant in relation to the challenges ahead for disputes lawyers. I am pleased to see the RAIF Annual Conference, which Singapore hosted last year, continue to generate high standards of discussions towards the common goal of making arbitration serve its end-users better.

On a more sombre note, after the RAIF Conference in Kuala Lumpur, it was with regret that I learnt of the passing of Prof. Dr. Priyatna Abdurassyid on 22 May 2015 at the age of 85 years. Prof. Priyatna was a founding member and Chairman of BANI. He will be missed not only in the arbitration community, but by colleagues and friends who recognize him as

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## ANNOUNCEMENTS UPDATES & UPCOMING EVENTS

1. Evening Seminar: A New Approach to Document Production in Arbitration - The Use of Interrogatories by Mr Michael Hwang, SC (9 July 2015)
2. Evening Seminar: Why Should He Decide That Way – Should Awards be Published? by Mr Tan Chuan Thye, SC (20 August 2015)
3. Mock Arbitration Workshop (5 September 2015)
4. SIArb Commercial Arbitration Symposium (22 October2015)
5. Fellowship Assessment Course 2015 (16, 23 and 24 October 2015 with an examination on 26 October 2015). 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.
6. SIArb Annual Dinner (18 November 2015)

## NEW MEMBERS

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

### Associate Members

1. Vikram Chandrashekara
2. Summer Montague
3. Teo Kar Hian
4. Elisabeth Leimbacher
5. Olivier Monange

### Members

1. Tay Yu Meng Jason
2. Kong Shui Sun

### Fellows

1. Thayananthan Baskaran
2. Wong Kin Boon
3. Yu Pui Lam Belinda
4. Lee Chee Leng, Alden
5. Navinder Singh Nijar
6. Rajeev Kumar
7. Anil Sachdev

## PANEL ARBITRATORS

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

### Primary Panel of Arbitrators

1. B. Rengarajoo

### Secondary Panel of Arbitrators

1. Dr Dominic Henley Katter


### COUNCIL 2014/2015

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an expert on Air and Space Law in Indonesia. I offer my sincere condolences to the family of Dr Priyatna.

Back home in Singapore, SIArb ran a couple of specialist seminars designed to serve specific sectors. Dr Stanley Lai, SC presented on the "*Arbitration of IP Disputes*" in March 2015, followed by Ms Lucy Reed who spoke on "*Arbitrating Complex Financial Disputes*" in April 2015. Ms Lucy Reed, as many of you know, moved to Singapore from Hong Kong recently. I congratulate her on her appointment to the SIAC Court of Arbitration.

We have lined up further events for the second half of this year. Picking up from the mock arbitration video that had been launched by SIAC last year, SIArb will be conducting a mock arbitration training with trainers discussing selected scenarios and issues raised in this video. Do join us for the interesting half-day session on 5 September 2015. After this, we will have the perennial favourite, the SIArb Symposium, on 22 October 2015.

Congratulations to those who took and passed the SIArb International Entry Course. The Council is heartened to see the increase in the sign up rate for this annual course, which paves the way to membership of SIArb once other criteria are met. We look forward to welcoming you into the ranks of MSIArb. For those who are considering aspiring to Fellowship, please note that the Fellowship Assessment Course will be held on 16, 23, 24 and 26 October 2015.

As many of you know, the SIArb Council and the secretariat had devoted much time and energy to regularizing and updating the records of the Institute. Kudos to my hard-working Council members and Intellitrain for their determination in improving our internal procedures. Now that much of this has been done, the SIArb Council plans to spend more time on thought-leadership initiatives that will serve members as well as the wider arbitration community. I will share with you some of these ideas as they take shape.

I urge all members to set aside and mark 18 November 2015 in your diary. That is the date of the SIArb Annual Dinner. SIArb is pleased that the new President of SIAC, Mr Gary Born, has agreed to grace this event as our Guest of Honour. This is a good opportunity for members to hear and speak to Mr Born. Although he is no stranger to many of us, the demands on his time had not hitherto brought him into the SIArb circle. We are looking forward to this occasion.

**Chan Leng Sun, SC**
8 June 2015

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# DEVELOPMENTS IN ARBITRATION CASE LAW IN SINGAPORE

## By Joey Quek / Gan Kam Yuin

In this issue, three cases pertaining to when a Tribunal's award will be set aside are reviewed. The cases are:

1. *Coal & Oil Co LLC v GHCL Ltd* [2015] SGHC 65;
2. *Triulzi Cesare SRL v Xinyi Group (Glass) Co Ltd* [2015] 1 SLR 114; and
3. *AKN and another v ALC and others and other appeals* [2015] SGCA 18.

*Coal & Oil Co LLC v GHCL Ltd* concerns an application to set aside an arbitral award on the grounds that the Tribunal had breached the duties imposed on it by the SIAC Rules and that there had been a breach of natural justice.

*Triulzi Cesare SRL v Xinyi Group (Glass) Co Ltd* concerns an application to set aside an arbitral award on the ground that the Tribunal's conduct of the arbitral proceedings had caused the plaintiffs prejudice.

*AKN and another v ALC and others and other appeals* concerns 3 appeals heard together before the Court of Appeal. The issues raised in this case concern whether the Tribunal had acted in breach of natural justice and in excess of its jurisdiction.

(*Kindly note that Triulzi Cesare SRL v Xinyi Group (Glass) Co Ltd was heard by the Court of Appeal on 28 May 2015. The appeal was dismissed. At the time this article was written, no written judgment had been released by the Court of Appeal*)



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**Coal & Oil Co LLC v GHCL Ltd** [2015] SGHC 65

1. The case represents a novel attempt, on the part of the plaintiff, Coal & Oil Co LLC ("**C&O**"), to set aside an arbitral award which had been made in favour of the defendant, GHCL Ltd ("**GHCL**"). C&O's arguments before the Singapore High Court were essentially two-fold:

    a. that the Tribunal had breached its duty under Rule 27.1 of the 2007 Singapore International Arbitration Centre Rules (the "**2007 SIAC Rules**") because it had failed to declare the arbitral proceedings closed before releasing its award (the "**Rule 27.1 Issue**"); and
    b. that there was a breach of natural justice as the Tribunal had released the award 19 months after the parties' final closing submissions (the "**Natural Justice Issue**").

<u>Background facts</u>

2. C&O was a company registered in Dubai, in the business of coal trading. GHCL was a company registered in India, and at the material time, was a customer of C&O.

3. On 26 April 2007, C&O signed an agreement to supply an amount of coal to GHCL, under which the coal was to be delivered in three to four shipments (the "**Agreement**"). The Agreement provided that any disputes would be submitted to arbitration in Singapore.

4. Between April 2007 and January 2008, the price of coal increased dramatically. C&O then informed GHCL that unless the parties agreed that the price of coal supplied under the Agreement would be increased, C&O would not be delivering the third shipment due under the Agreement. Faced with this, GHCL agreed to, and paid, the increase in the price of coal supplied under the Agreement. GHCL subsequently claimed that C&O had coerced it into agreeing to the price increase, and demanded that C&O repay the said sum. C&O refused to repay the demanded sum, and the parties submitted the dispute to arbitration under the 2007 SIAC Rules.

5. On 17 March 2014, the Tribunal issued its Final Award wherein it found in favour of GHCL, held that the price increase was vitiated by duress and awarded GHCL the repayment of the sum paid, with interest. The parties received the Award 19 months after they had made their respective final reply submissions.

6. On 12 June 2014, C&O filed an Originating Summons in the Singapore High Court, applying under Section 24 of the International Arbitration Act ("**IAA**") to set aside the Award on the following grounds ("**Grounds for Setting Aside**"):

    a. first, under Article 34(2)(a)(iv) of the UNCITRAL Model Law on International Commercial Arbitration 1985 (the "**Model Law**") as set out in the First Schedule to the IAA in that the issuance of the Award was in breach of the parties' agreed procedure;
    b. second, under Article 34(2)(b)(ii) of the Model Law in that the Award was in conflict with the public policy of Singapore; and
    c. third, under section 24(b) of the IAA in that there was a breach of natural justice.

<u>The Rule 27.1 Issue</u>

7. C&O's arguments in relation to the Rule 27.1 Issue turned on the construction of Rule 27.1 of the 2007 SIAC Rules, which reads as follows:

    *"27.1 Before issuing any award, the Tribunal shall submit it in draft form to the Registrar. Unless the Registrar extends time or the parties agree otherwise, the Tribunal shall submit the draft award to the Registrar within 45 days from the date on which the Tribunal declares the proceedings closed. The Registrar may suggest modifications as to the form of the award and, without affecting the Tribunal's liberty of decision, may also draw its attention to the points of substance. No award shall be issued by the Tribunal until it has been approved by the Registrar as to its form."*

8. C&O argued that Rule 27.1 obliges the Tribunal to first declare the proceedings closed before issuing a draft award. As the Tribunal did not do so, the Tribunal had breached its duty by issuing the draft award and the Award must therefore be set aside. C&O argued that, while there is nothing in Rule 27.1 which expressly requires the Tribunal to declare proceedings closed, such an obligation must be inferred as the issuance of an arbitral award always takes place in 2 stages:

    a. the tribunal first declares the proceedings closed; and
    b. the tribunal must submit the draft award to the Registrar of the SIAC within 45 days of its declaration. C&O argued that as the second step is mandatory, it must be inferred that the

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Tribunal has a duty to declare the closure of the arbitration proceedings.

9. The Singapore High Court decided that under Rule 27.1 of the 2007 SIAC Rules, there was no duty on the part of the Tribunal to declare proceedings closed. The Singapore High Court observed that Rule 27.1 must be interpreted purposively as it had been incorporated into the parties' contract, and then proceeded to consider the drafting history of the said rules. The drafting history had to be considered, akin to examining the legislative history of an Act of Parliament, since the Court was interpreting the institutional rules of an arbitral institution.

10. The Singapore High Court found that there had been a clear gradual shift towards the imposition of stricter timelines for the release of arbitral awards through a decrease in tribunal autonomy and a concomitant increase in the supervisory role of the Registrar and the parties. The key question was whether the 2007 SIAC Rules specifically imposes a duty on the Tribunal to declare proceedings closed, or whether it should be construed as conferring a mere power. The Singapore High Court preferred the latter construction for the following reasons:

    a. construing the 2007 SIAC Rules as imposing a duty would not be consonant with the drafting history of the rules. Such a construction would be impractical. It would be unsafe to impose a duty on tribunals to issue a declaration of closure of the proceedings as this could encourage hasty tribunals to close proceedings prematurely, opening awards to collateral attacks on the basis that the rules of natural justice have been violated;
    b. the declaration of the closure of proceedings is essentially a case management tool, and assists by helping to prevent the tribunal's award-drafting process from being derailed by last minute submissions from parties. It also serves as a signal to parties that the arbitral process is coming to an end. To impose a duty on a tribunal to declare proceedings closed is inconsistent with this case-management function;
    c. the interpretation of Rule 27.1 advocated by C&O was not commercially sensible. C&O had failed to put forth a satisfactory explanation as to why the declaration of closure is normatively important enough to the arbitration process that such a duty should be imposed; and
    d. interpreting Rule 27.1 as imposing a duty would render other rules in the 2007 SIAC Rules superfluous.

<u>Grounds for Setting Aside</u>

11. Even though the Singapore High Court found that there was no duty imposed on the Tribunal in the 2007 SIAC Rules to declare proceedings closed, it proceeded to examine the Grounds for Setting Aside in relation to both C&O's arguments in the Rule 27.1 Issue and the Natural Justice Issue. In both issues, the Singapore High Court found that there were no grounds for setting aside the award.

12. The following are the key observations made by the Singapore High Court:

    a. while Article 34(2)(a)(iv) of the Model Law provides that an arbitral award may be set aside if proof is furnished that the arbitral procedure leading up to the issuance of the award was not in accordance with the agreement of the parties, the Court has the discretion not to set aside the award. The Court will only set aside an award if the procedural breach complained of is material enough. A technical breach would not suffice. A failure to issue a declaration of the closure of proceedings is not material, and C&O had failed to show why this was of such critical importance that non-compliance justified the setting aside of the award;
    b. the 19 month delay in the issuance of the award did not breach the public policy of Singapore. The Court differentiated between violations of public interest (which it noted to be a wider concept), and violations of public policy (which only encompass those acts which are so egregious that elementary notions of morality have been transgressed). While delay in the release of an arbitral award might not necessarily be in the public interest, this did not constitute a violation of public policy. Further, the Singapore High Court referred to *Hong Huat Development Co (Pte) Ltd v Hiap Hong & Co Pte Ltd* [2000] 1 SLR(R) 510, in which the Court of Appeal found that an arbitral award that was released more than 10 years after the hearings was an insufficient basis for setting aside an award which had already been rendered;
    c. C&O had failed to show that any prejudice that it suffered related to the outcome of the arbitration. C&O complained that as a result of the delay, its arbitration against a third party was impacted, and that it will suffer difficulty in locating witnesses for the said arbitration. C&O also argued that the delay made it liable to pay a large sum in interest as a result of the delay in the release of the award. The Singapore High Court found that the first 2 reasons had nothing to do with the matter before the Tribunal. There was no reason why C&O could not commence arbitration against the third party until after the conclusion of the arbitration involving GHCL. Further, the payment of additional interest was a consequence of the arbitration, and was not a matter which would have affected its outcome. C&O had been free to invest the interest sums before the award was rendered;
    d. The delay of 19 months in the release of the award was not a breach of natural justice. C&O had not been denied a fair hearing because of that delay, and neither was the delay evidence of bias since the delay impacted both parties equally.



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**Triulzi Cesare SRL v Xinyi Group (Glass) Co Ltd** [2015] 1 SLR 114

1. This case concerns an attempt by Triulzi Cesare SRL ("**TC**") to set aside an arbitral award on the grounds that the Tribunal's conduct of the proceedings had caused it prejudice. TC argued that:

    a. the Tribunal had admitted an expert witness statement submitted on behalf of Xinyi Group (Glass) Co Ltd ("**XG**") in breach of the parties' agreed arbitral procedure ("**Issue 1**");
    b. TC had not been afforded a reasonable opportunity to be heard in respect of expert evidence. This was in breach of Article 34(2)(a)(ii) of the UNCITRAL Model Law on International Commercial Arbitration (the "**Model Law**") ("**Issue 2**"); and
    c. the Tribunal's decision not to apply the United Nations Convention on the International Sale of Goods ("**CISG**") as the applicable law of the three contracts entered into between TC and XG did not accord with the public policy of Singapore ("**Issue 3**").

2. This review focuses on the Singapore High Court's decision in relation to Issues 2 and 3 above. Issue 1 turned mainly on the Court's finding of fact whether or not the parties had agreed to dispense with expert evidence, and will not be examined in this review.

<u>Background facts</u>

3. TC was an Italian company in the business of, *inter alia*, manufacturing and producing horizontal and vertical washing machines for glass sheets. XG was a Hong Kong company in the business of manufacturing and selling, *inter alia*, float glass products and solar glass products.

4. TC and XG entered into three contracts in November 2009 under which XG was to purchase TC's washing machines. The three contracts provided for any dispute between the parties to be resolved by arbitration in Singapore.

5. Under the three contracts, upon the installation of each washing machine at XG's premises, an acceptance test would be conducted by both parties in accordance with the technical specifications. This involved an eight-hour uninterrupted test with different sizes of glass sheets. If the installed machines failed the acceptance test, XG could then cancel the respective contract and TC would have to refund XG the purchase price.

6. Disputes arose between the parties, and XG commenced arbitration in the International Court of Arbitration of the International Chamber of Commerce ("**ICC**"). On 12 August 2013, the Tribunal issued a Final Award.

7. In the course of the arbitration:

    a. XG filed an expert witness statement, along with other factual witness statements. TC objected to the admission of this expert witness statement and contended that parties had agreed to not file any expert witness statements. The Tribunal noted that its minutes did not indicate such an agreement, admitted XG's expert witness statement, and allowed TC to file an expert witness statement within 10 days thereafter;
    b. TC subsequently informed the Tribunal that the time given to it to file an expert witness statement was too short, and attempted to vacate the evidential hearings which the Tribunal had fixed in relation to the expert witnesses; and
    c. TC attempted to adduce the expert witness statement of its expert on the last day of the evidential hearing. The Tribunal refused to allow it to do so as it was of the view that it was too late in the day.

<u>Issue 2</u>

8. TC's arguments in relation to Issue 2 can be summarized as follows:

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a. TC had been prevented from advancing arguments before the Tribunal that the subject machines complied with the contractual technical specifications, and that any non-compliance was due to XG's fault;
b. TC had been prevented from refuting the Tribunal's reliance on XG's expert evidence;
c. TC had been treated unequally as compared with XG, as evidenced by the Tribunal's procedural orders and directions. In particular, TC complained that the time given by the Tribunal for its expert to prepare his witness statement was too short.

9. The Singapore High Court noted that Section 24(b) of the IAA and Article 34(2)(a)(ii) of the Model Law both provide that TC should have been given a reasonable opportunity to be heard (the "**fair hearing rule**"). It found that the fair hearing rule can vary greatly from case to case depending on the circumstances of each case, since what may be a breach in one context may not be in another. For TC to succeed in its Issue 2 arguments, it had to first show that it had been denied fair hearing, and then proceed to show that as a result of this denial, it had suffered prejudice.

10. The Singapore High Court disagreed with TC's arguments. The following are the key observations that the Court made in relation to TC's arguments that it had been denied a fair hearing:

a. the Tribunal is the master of its own procedure, though its power to manage the case is subject to the rules of natural justice which includes the right to be heard. The right to be heard however only encompasses a reasonable opportunity to present one's case which must be considered in light of other competing facts (including the Tribunal's obligation to conduct the arbitration expeditiously);
b. the Singapore High Court found that the 10 days that the Tribunal had given to TC to file its expert witness statement was not unreasonable. The Tribunal had previously given notice to the parties that it expected the parties to strictly adhere to its deadlines, and that Article 22 of the ICC Rules 2012 imposed an obligation on the Tribunal to conduct matters expeditiously. The Tribunal, in granting TC the 10 days had, within its case management discretion, acted fairly and was entitled to require the evidential hearings to go ahead;
c. TC's excuse in not filing its expert's witness statement was not credible. Its predicament was created by its own doing, and it did not matter whether this was due to a mishap, mistake or misunderstanding that it had with XG;
d. further, in issuing procedural directions, a tribunal must consider the interests of both parties. The Tribunal had to balance XG's interest to ensure that it was not inconvenienced by TC's lapses;
e. in any case, the Tribunal did order XG to grant reasonable supervised access to 2 of the washing machines to TC's expert for his inspection. TC however failed to make full use of this opportunity; and
f. the right of each party to be heard does not mean that the Tribunal must sacrifice all efficiency in order to accommodate unreasonable procedural demands by a party. Procedural fairness requires only that a party be given a reasonable opportunity to present his case, and not that the tribunal needs to ensure that a party takes the best advantage of the opportunities to which he is entitled.

11. The Singapore High Court also noted that even if TC had been denied a fair hearing, TC had not shown that it had suffered prejudice as a result.

Issue 3

12. In relation to Issue 3, the Singapore High Court also disagreed with TC's arguments.

13. It found that there was domestic legislation in the form of the Sale of Goods (United Nations Convention) Act, which gave effect to the CISG, and when the Tribunal decided that the governing law was Singapore law, the Tribunal would be referring to the common law statutes in force in Singapore including the said Act. In any case, the Tribunal did in fact make reference to the CISG, and had applied its Articles to the proceedings before it. Even if the Tribunal had not considered other articles of the CISG when it should have done so, this was an error of law and an error of law did not engage the public policy ground in Article 34(2)(b)(ii) of the Model Law.

14. The Singapore High Court also rejected TC's argument that the failure of the Tribunal to apply the CISG violated Singapore's policy of upholding international obligations (since it has ratified the CISG), and should therefore be set aside pursuant to Article 34(2)(b)(ii) of the Model Law. The Singapore High Court reiterated that a public policy argument of this nature had to shock the conscience, and be clearly injurious to the public good or wholly offensive to the ordinary reasonable and fully informed member of the public. This was not the case before it. Singapore's most basic notion of morality and justice had not been violated.

15. In any case, given that there was no choice of law agreement in any of the three contracts, it was clearly within the Tribunal's powers, granted to it by mutual consent of the parties, to determine Singapore law to be the governing law of the contract. There was no strict obligation on the Tribunal to apply the CISG and it was entitled to prefer another rule of law which it determined to be appropriate. TC had agreed to apply the ICC rules, and thereby agreed to have its disputes resolved in accordance with this rule of law determined by the Tribunal. It cannot complain about the rule of law chosen by the Tribunal even if it disagrees with the Tribunal's choice.



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**AKN and another v ALC and others and other appeals**
[2015] SGCA 18

1. This case concerned 3 different appeals arising from an arbitral award issued by a three-member arbitral tribunal (the "**Tribunal**") in an arbitration administered by the Singapore International Arbitration Centre ("**SIAC**").

Background facts

2. An insolvent corporation (the "**Corporation**") was heavily indebted to a number of secured creditors ("**Secured Creditors**") and a municipal authority in respect of unpaid taxes. The liquidator of the Corporation had devised a plan to sell some of the Corporation's assets (the "**Plant Assets**") to the appellants in the present matter (the "**Purchasers**"). To give effect to the sale of the Plant Assets, two key agreements were entered into:

a. an Asset Purchase Agreement (the "**APA**"), under which the Plant Assets were to be delivered to the Purchasers "*free from and clear of all Liens of any kind*". The APA contained an arbitration clause under which any contemplated disputes would be referred to arbitration in Singapore in accordance with the rules of the SIAC; and
b. an Omnibus Agreement ("**OMNA**") under which the Purchasers agreed to issue two notes (the "**Notes**") for the Secured Creditors' benefit. The Notes were issued in return for the Secured Creditors agreeing to deliver the Plant Assets to the Purchasers "*free from and clear of all Liens of any kind*" under the APA. A few of the original Secured Creditors sold their rights under the Notes to third parties (the "**Funds**").

3. One of the conditions precedent to the closing of the transactions contemplated under the APA was the approval by the municipal authorities of a deferred payment scheme for the unpaid taxes that were owed by the Corporation. The liquidator eventually procured a tax amnesty agreement (the "**TAA**"), which granted the Corporation relief from paying interest and penalties on all the unpaid taxes it had hitherto incurred, and allowed it to settle the unpaid taxes in eight instalments. The TAA was liable to be revoked if any taxes in relation to the Corporation's assets, including the Plant Assets, were not paid on time.

4. After the signing of the TAA, the unpaid taxes owed by the Corporation remained unpaid, and the TAA was eventually revoked. The Purchasers stopped making payments pursuant to the Notes and commenced arbitration in Singapore. The liquidators and the Secured Creditors were the respondents in the arbitration, with the Funds subsequently joined to the arbitration as interested parties.

The Arbitration

5. The crux of the dispute at the arbitration was whether the liquidator and the Secured Creditors had fulfilled their obligation to deliver the Plant Assets to the Purchasers "*free from and clear of all Liens of any kind*".

6. The Tribunal found that the liquidator and the Secured Creditors had breached their obligation under the APA. Certain statutory liens had arisen over the Plant Assets as a result of the unpaid taxes. This meant that the liquidator and the Secured Creditors had failed to ensure that the Plant Assets were delivered free from encumbrances. The Tribunal also found that the Secured Creditors had breached an obligation to settle third party legal proceedings claiming ownership over certain portions of land which some of the Plant Assets were situated on. Finally, the Tribunal determined that it had the jurisdiction to suspend the Purchasers' payment obligations under the Notes as those arose

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under the APA, and declared that the Purchasers were entitled to suspend performance of their payment obligations.

The High Court decision

7. In the Singapore High Court, the liquidator, the Secured Creditors and the Funds (collectively, the "**Respondents**") applied to set aside the entire Award on the grounds that the Tribunal had breached natural justice rules, and that the Tribunal had acted in excess of its jurisdiction. The High Court agreed with the Respondents and found that the Tribunal had breached the requirements of natural justice and had acted in excess of its jurisdiction. As such, the whole of the Award was set aside. The Purchasers appealed.

The Appeal

8. In determining whether the High Court had erred in setting aside the Award in its entirety, the Court of Appeal took the opportunity to once again state the present law as regards when a court will set aside an arbitral award on the basis that there has been a breach of natural justice. The Court of Appeal also noted that when a court is faced with arguments pertaining to a tribunal having acted in excess of jurisdiction, it should approach the matter *de novo*.

Setting aside arbitral awards on breach of natural justice grounds

9. The Court of Appeal took the opportunity to restate the proper relationship between arbitral tribunals and the courts.

10. The Court of Appeal reiterated the following principles:

    a. a critical foundational principle in arbitration is the notion of party autonomy. Parties to arbitration have to enjoy both the benefits of party autonomy, and accept the consequences of the choices they have made. The courts do not and must not interfere in the merits of an arbitral award and, in the process, bail out parties who have made choices that they might come to regret, or offer them a second chance to canvass the merits of their respective cases;
    b. there will be minimal curial intervention in arbitral proceedings. The grounds for curial intervention are narrowly prescribed and generally concern process failures that are unfair and prejudice the parties or instances where the arbitral tribunal had made a decision that is beyond the scope of the arbitration agreement. Parties to an arbitration do not have a right to a "*correct*" decision from the arbitral tribunal that can be vindicated by the courts;
    c. the courts must resist the temptation to engage in what is substantially an appeal on the legal merits of an arbitral award. The courts need to assess the real nature of the complaint;
    d. failing to consider an important issue that has been pleaded in an arbitration is a breach of natural justice because the arbitrator would not have brought his mind to bear on an important aspect of the dispute before him. Such a failure is usually a matter of inference, but the inference must be clear and virtually inescapable. If the facts are consistent with the arbitrator simply having misunderstood the aggrieved party's case, or having been mistaken as to the law, or having chosen not to deal with a point pleaded by the aggrieved party because he thought it was unnecessary, then the inference that the arbitrator did not apply his mind at all to the dispute before him (and so acted in breach of natural justice) should not be drawn;
    e. no party to an arbitration has a right to expect the arbitral tribunal to accept its arguments, regardless of how strong and credible it perceived them to be; and
    f. in addition, there must be a causal nexus between the breach of natural justice and the arbitral award, and the breach must have prejudiced the aggrieved party's rights.

11. Broadly speaking, the Court of Appeal found that the High Court judge erred in dealing with the issues concerning the obligation to deliver clean title to the Plant Assets and the revocation of the TAA. The Judge should have restricted the inquiry to whether the Tribunal had committed a breach of natural justice in its resolution of the matters. Instead, the Judge had engaged with the merits of the underlying dispute.

12. The Court of Appeal agreed with the lower court's decision that the Tribunal had acted in breach of natural justice by raising a new issue at the eleventh hour without hearing arguments and submissions from the parties. However, only the part of the Award that was affected by that breach should have been set aside; not the whole award.



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Setting aside an arbitral award on the ground that the Tribunal had acted in excess of its jurisdiction

13. In determining whether the Judge had erred in this issue, the Court of Appeal noted that although the courts should not, in general, engage with the merits of the dispute when dealing with applications to set aside arbitral awards, however, when faced with arguments relating to the jurisdiction of the tribunal, the court should undertake a *de novo* hearing. The Court of Appeal examined the relevant provisions in the APA and the OMNA and found that the Tribunal had exceeded its jurisdiction as regards its determination in relation to the Purchasers' obligations under the Notes. The said obligations had been carved out of the arbitration agreement in the APA, and fell under the OMNA.

It is clear from the 3 cases summarized in this article that while the Singapore Courts place emphasis on the timeliness by which a Tribunal issues an arbitral award, this is counterweighed by the Singapore Court's desire that sufficient time be given to the Tribunal for it to issue its grounds of decisions. The Singapore High Court has once again affirmed that the threshold for the Court to exercise its discretion to set aside an award for reason of procedural breaches and / or natural justice is not an easy one to meet, and that mere technicalities are insufficient. Party autonomy is an important principle in arbitration, and the Singapore Courts will uphold this, with the appropriate safeguards in place.

**JOEY QUEK**
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# 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 **MARK MCGEOCH**, Director, Navigant Consulting (APAC), Pte. Ltd.

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

  Yin and Yang!

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

  As a practising Quantity Surveyor ("QS") , I became frustrated at the way M&E contractors were being unfairly treated when it came to the agreement of variations, claims and delays. I became increasingly involved in the dispute resolution process on construction projects and this further led to me successfully completing the Diploma in Arbitration. This was the foundation from which I was able to develop my experience as a practising arbitrator. At that time, arbitrators with technical/industry background were few and far between and, to some extent, they still are.

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

  At Navigant, our core business is acting as delay and/or quantum expert witnesses and dealing with other aspects of dispute resolution work. Whilst we are involved in matters that progress to either arbitration or litigation, the majority of construction/arbitration disputes do proceed to arbitration.

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

  That occurred when I was undertaking arbitrator pupillage in England.

  I sat in on a hearing where a QS Expert was giving evidence on a matter that concerned sand filling a beach: in particular, how to measure changes in volumes of sand over several years. The Respondent's Barrister commenced by methodically going through various scenarios with the Expert, questioning him about certain aspects of his report concerning quantifying the stages of beach fill. During one particularly embarrassing (for the Expert) moment, the Barrister summed up that stage of the proceedings by saying "*… well Mr. X, you have used a formula but you cannot remember whose formula it is. You have taken that formula from a book which you have in the office, the title of which you cannot remember and you cannot recall the author of that book either…..*". Turning to the Arbitrator, the Barrister stated that this was not the first time that the expert's credibility had been questioned in the proceedings and suggested that this was yet another example. Ouch!

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

  I have young quantity surveyors and planners in my team. I encourage even those that don't aspire to become arbitrators to undergo arbitration training courses. This will provide them with an appreciation of what an arbitrator is looking for from the parties in a dispute.

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

  Keeping the parties' costs down/making arbitration more affordable. All of us in the arbitration arena should be working towards a more streamlined cost-effective 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?**

  Having acted as a mediator on 70 occasions in the UK, I am not surprised that the SIMC has taken this initiative. I feel that with the Arb-Med-Arb option, parties may be more willing to give it a try: they effectively have nothing to lose in terms of what may be a day or two at a mediation (where they are in control of the ultimate decision) compared with what could be weeks in an arbitration hearing (where they are not in control of the ultimate decision).

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

  My school careers master. I was seeking a career where I was not going to be desk-bound and that would provide opportunities to travel. He suggested Surveying. I completed a degree in Quantity Surveying and as a result have worked on some fascinating construction projects, met some interesting people from all walks of life and spent time in some wonderful (and not so wonderful) countries.

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

  I would seek a role that provides job satisfaction and a reasonable work/life balance.

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

  Lime Gelato from the booth outside the Shaw Cinema on Scotts Road

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

  Cooking

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

  Chips (French fries)



# Natural Justice in Arbitration Proceedings: Revisiting the Curious Relationship Between Arbitral Awards and a Court of Law

By Jolene Ng & Kartik Singh[1]

**Introduction**

1. An integral aspect of Singapore's common law heritage,[2] the concept of natural justice has been given parliamentary recognition, notably in various legislative enactments relating to adjudication processes outside a court of law.[3]

2. It is trite law that the decision of an arbitral tribunal with the requisite jurisdiction is final and binding, however good or bad the said decision is in the eyes of a party.[4] Notwithstanding that, in light of the statutory right of recourse provided by section 24(b) of the International Arbitration Act[5] and section 48(1)(a)(vii) of the Arbitration Act,[6] read with the UNCITRAL Model Law on International Commercial Arbitration ("**Model Law**"), the judiciary is tasked to ensure that rules of natural justice, which serve to uphold the procedural rights of both parties to an arbitral proceeding, are not compromised.

3. The rules of natural justice may be surmised as follows: *nemo judex in causa sua* and *audi alteram partem*, that is, the right to an unbiased adjudicator and the right to be given adequate notice and opportunity to be heard. While it is noteworthy that sub-branches or amplifications of the two principles may exist,[7] they will not be examined for the purposes of this paper.

4. It is apposite at this juncture to revisit the test which an applicant has to satisfy in order to successfully set aside arbitral awards for breach of natural justice in Singapore. The Court of Appeal in *Soh Beng Tee & Co Pte Ltd v Fairmount Development Pte Ltd* ("*Soh Beng Tee*") authoritatively laid down the following requirements an applicant has to establish:[8]

   (a) which rule of natural justice was breached;
   (b) how it was breached;
   (c) in what way the breach was connected to the making of the award; and
   (d) how the breach prejudiced its right.

5. However, as this paper will subsequently explicate, the practical application of this test is not as straightforward, as evident in the seemingly discordant approaches Singapore courts have adopted in recent years.

6. The Court of Appeal decision in *AKN and another v ALC and others and other appeals* ("*ALC*")[9] represents the latest in a line of cases involving an application for the court to review an arbitral award for, amongst others, the arbitration tribunal's non-adherence to rules of natural justice. There, the court attempted to restate the proper relationship between arbitral tribunals and the courts, and to lay down the proper framework with which subsequent courts should adopt when reviewing arbitral awards.

7. This paper will examine the decision reached by the Court of Appeal in *AKN* and consider whether the current approach to an alleged breach of natural justice in an arbitration proceeding is satisfactory and practicable. Finally, proposals for legislative reforms will also be put forth.

**The conflict**

8. Notwithstanding Parliament's unequivocal intention to safeguard the integrity of arbitral proceedings by providing a statutory right of recourse against procedural improprieties, judges have been vexed with the perennial challenge of ensuring that the manner in which arbitral awards are reviewed is not at odds with the principle of minimal curial intervention. This principle, as affirmed by the Court of Appeal in *Soh Beng Tee*, is paramount in ensuring that the finality and autonomy of an arbitral award are not compromised.

9. An understanding of the tension requires an appreciation of the rationales underlying the need for rules of natural justice to be upheld. Foremost, rules of natural justice take particular importance in arbitration

1 Jolene Ng and Kartik Singh are second and third year law undergraduates at the Singapore Management University

2 Judith Prakash J, "Challenging Arbitration Awards for Breach of the Rules of Natural Justice", speech delivered at the CIArb 2013 International Arbitration Conference in Penang, Malaysia (24 August 2013) at para 1.

3 For instance, s 16(30)(c) of the Security of Payment Act (Cap 30B, 2006 Rev Ed) provides that: "[a]n adjudicator shall —(a) act independently, impartially and in a timely manner … and(c) comply with the principles of natural justice.

4 *TMM Division Maritima SA de CV v Pacific Richfield Marine Pte Ltd* [2013] SGHC 186

5 International Arbitration Act (Cap 143A, 2002 Rev Ed)

6 Arbitration Act (Cap 10, 2002 Rev Ed)

7 *Soh Beng Tee & Co Pte Ltd v Fairmount Development Pte Ltd* [2007] 3 SLR 86 at [47]

8 *Soh Beng Tee & Co Pte Ltd v Fairmount Development Pte Ltd* [2007] 3 SLR 86 at [29]

9 *AKN and another v ALC and others and other appeals* [2015] SGCA 18

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because of the flexibility and the freedom from the technical rules which characterise court proceedings.[10] Further, when parties agree to submit their dispute to an arbitral tribunal, the corollary implication that parties should accept the consequences of such an agreement should not *ipso facto* include the infringement of their legitimate expectations to be accorded procedural fairness. Further, the Court of Appeal in *BLC and others v BLB and another*[11] ("*BLC*") reiterated that "*the supervisory function of the court requires it to step in to provide relief in cases of genuine challenges*."[12] Indeed, an effective legal mechanism is one that makes available a remedy when a party has suffered actual prejudice as a result of a breach of rules of natural justice.

10. To this end, a caveat is in order. Although arbitrator malfeasance and procedural improprieties should be assiduously guarded against to ensure fairness, a nuanced understanding of fairness is necessarily warranted. Fairness, as has been recognised by the Court of Appeal in *Soh Beng Tee*, is a multidimensional concept.[13] Unfairness to the successful party may arise "*if it were deprived of the fruits of its labour as a result of a dissatisfied party raising a multitude of arid technical challenges after an arbitral award had been made.*"

11. Both *finality* and *procedural propriety* form the cornerstones of Singapore's arbitration. Faced with two such diametrically opposed concepts, a tension inevitably arises when courts attempt to balance these competing interests. This tension is heightened when parties disguise errors of law or fact as legitimate complaints of breaches of natural justice in an attempt to have the court interfere in the merits of the arbitral award.

12. The judiciary has taken cognisance of this propensity for abuse,[14] and has consistently adopted the position that the policy of minimal curial intervention in arbitration is best promoted when a court would not set aside an award that was, viewed objectively or otherwise, wrongly decided due to an error of law or fact. Notwithstanding the pro-arbitration stance our courts have constantly espoused, there remains a real daunting challenge in discerning between genuine and disguised applications.

13. In addition, the final limb of the test for setting aside an award based on breach of natural justice requires the court to determine whether the said breach has, "*at the very least, actually altered the final outcome of the arbitral proceedings in some meaningful way*".[15] This presents a curious problem as regards the extensiveness of review. On the one hand, the court has a duty to engage the application because "*[t]hat is what the IAA and Model Law provide and that is what the court must do.*"[16] On the other hand, for the court to consistently engage in a comprehensive review of arbitral proceedings and/or the awards would run contrary to the finality of arbitration proceedings. Contrariwise, the lengthy review process would increase the costs associated with arbitration and hinder the efficiency of arbitration as a *real* and *effective* dispute resolution mechanism.

14. In *L W Infrastructure Pte Ltd v Lim Chin San Contractors Pte Ltd* ("*LW Infrastructure*") at [54], the Court of Appeal helped illuminate the concept of prejudice in deciding whether an arbitral award ought to be set aside. It was held that:[17]

   "*… the issue is whether the material could reasonably have made a difference to the arbitrator, rather than whether it would necessarily have done so.*"

15. The Court of Appeal essentially lowered the test of prejudice in favour of the party alleging the breach of natural justice.[18] Before *L W Infrastructure*, the plaintiff had to prove that the argument it was deprived of raising in the arbitration would have necessarily made a difference to the outcome. After *L W Infrastructure*, all that a party needs to now demonstrate is that the argument that it was deprived of making could have reasonably made a difference to the outcome.

*ALC*

16. The Singapore Court of Appeal in *ALC* extracted a few salient principles as regards the setting aside of arbitral awards.

17. The procedural history of *ALC* may be briefly stated. After reviewing the case, the High Court found, amongst others, that the Tribunal failed to consider a number of arguments advanced by the Liquidator. The Court also made a finding that there was a breach of natural justice because the Tribunal did not consider other submissions put forth by the Secured Creditors and to give the Liquidator and Secured Creditors an opportunity to deal with the Purchasers' loss of profits. For the above reasons, the High Court set aside the entire Award. On appeal, the Court of Appeal reinstated parts of the Award and, in so doing, reaffirmed the judiciary's pro-arbitration stance.

10 Khushboo Hashu Shahdadpuri, *The Natural Justice Fallibility in Singapore Arbitration Proceedings* (2014) 26 SAcLJ 562
11 *BLC and others v BLB and another* [2014] SLR 79
12 *BLC and others v BLB and another* [2014] SLR 79
13 *Soh Beng Tee & Co Pte Ltd v Fairmount Development Pte Ltd* [2007] 3 SLR 86 at [65]
14 Prakash speech
15 *Soh Beng Tee & Co Pte Ltd v Fairmount Development Pte Ltd* [2007] 3 SLR 86 at [91]
16 *TMM* at [42]
17 *L W Infrastructure Pte Ltd v Lim Chin San Contractors Pte Ltd* [2013] 1 SLR 125 at [54].
18 Khushboo Hashu Shahdadpuri, *The Natural Justice Fallibility in Singapore Arbitration Proceedings* (2014) 26 SAcLJ 562



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18. Citing *Front Row Investment Holdings (Singapore) Pte Ltd v Daimler South East Asia Pte Ltd* [2010] SGHC 80 ("*Front Row*") in affirmation, the Court of Appeal held that in order to make out a breach of natural justice on the basis that the arbitrator failed to consider an important pleaded issue:[19]

   "*… it will usually be a* matter of inference *rather than of* explicit indication *that the arbitrator wholly missed one or more important pleaded issues. However, the inference – that the arbitrator indeed failed to consider an important pleaded issue – if it is to be drawn at all, must be shown to be* clear and virtually inescapable*.*"
   [emphasis added]

19. The Court further listed a number of circumstances under which an inference of breach of natural justice may not be drawn. These include:[20]

   (a) If the facts are also consistent with the arbitrator simply having misunderstood the aggrieved party's case;
   (b) The arbitrator having been mistaken as to the law; and
   (c) The arbitrator having chosen not to deal with a point pleaded by the aggrieved party because he thought it unnecessary (notwithstanding that this view may have been formed based on a misunderstanding of the aggrieved party's case).

20. Interestingly, the court defined the situations deserving review to be a matter of "*clear and virtually inescapable*" inference. Such an "*inference approach*" taken by the Court of Appeal is not without its difficulties.

**Is the current approach satisfactory?**

21. The clashing concepts of finality and fairness have led the court to their recent formulation. While they largely sieve out the unmeritorious cases from the meritorious ones, there are two salient issues with the court's stance in *AKN* that could be further elucidated. The first concerns the onerous threshold to be satisfied by the parties requesting review. The second pertains to the indistinguishable practical scenarios between a meritorious case for review and the, seemingly, unmeritorious ones.

*Threshold too onerous to be satisfied by the parties*

22. The extremely high standard to meet will lead to meritorious cases being unable to qualify for review, depriving an aggrieved party of his or her right to a fair arbitration. The "sub-branches" of the right to be heard include that each party must be given a fair hearing and a fair opportunity to present its case.[21] *A fortiori*, the parties must be given a fair chance to have their arguments considered fully, and that should be the standard of procedures in arbitration tribunals. However, it is submitted that this is not always the case, and setting a threshold this high will throw the baby out with the bath water and will deprive the courts of the opportunity to ensure that the standard of arbitration is met.

23. The judiciary continually struggles with several issues with respect to arbitration, some of which have been resolved by the inference approach while others await further judicial clarifications. To understand the said struggles, it is apposite to understand what comprises the right to be heard. In practice, such a right has two aspects: (a) temporal aspect, wherein a party was not given sufficient notice;[22] (b) qualitative aspect, wherein a party to an arbitration alleges that the tribunal failed to consider the arguments put forth.

24. It is submitted that the inference approach taken by the Court of Appeal in *ALC* more readily resolves issues arising out of the former aspect, where the lack of adequate notice will be factual and a matter of "clear and inescapable inference". Contrariwise, the latter, by its nature, requires a greater probing into the factual matrix. The inference approach is only applicable insofar as the issues are factually straightforward. Notwithstanding that, the said approach necessarily falls short of resolving the latter.

*Indistinguishable practical scenarios*

25. Quite apart from the inherent problems with the threshold, there remains an additional issue of handling indistinguishable practical scenarios with the same standard. Being a recent judgment, the application of this rule remains unclear. However, in the judgment, the court said that:

   "*… [i]f the facts are also consistent with the arbitrator simply having misunderstood the aggrieved party's case… then the inference that the arbitrator did not apply his mind at all to the dispute before him and so acted in breach of natural justice should* not *be drawn.*"

26. This sentiment was echoed by Mr Fong Wei Li in a recent commentary about the decision in *AKN*.[23] This is a hard to reconcile with issue as the right to be heard involves the parties making submissions to be adequately and fairly considered and then a judgment is made. If a misunderstanding persists throughout the judgment, then this misunderstanding may or may not have prejudiced the party's right. Hence, it will not be a clear and inescapable case for review but that does not

19 *AKN and another v ALC and others and other appeals* [2015] SGCA 18 at [46]
20 *AKN and another v ALC and others and other appeals* [2015] SGCA 18 at [46]
21 *Soh Beng Tee & Co Pte Ltd v Fairmount Development Pte Ltd* [2007] 3 SLR(R) 86
22 As in the case of *L W Infrastructure Pte Ltd v Lim Chin San Contractors and anor appeal* [2013] 1 SLR 125
23 Fong Wei Li, "Singapore Court of Appeal espouses standards to be met when setting aside an arbitral award and reinforces Singapore's pro-arbitration policy", *Singapore Law Blog* (30 April 2015) <http://www.singaporelawblog.sg/blog/article/114> (accesed 27 May 2015)

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warrant for the parties to not get a review.

27. The undermining of rights is not a matter of absolute clarity but one that requires deep inquiry to ensure that every event wherein this may have transpired is kept in check. Arbitration, while according the parties their sense of autonomy and a respect for finality, cannot absent itself from the procedural fairness the courts are trying to monitor. Alongside, the courts ought not to bolster their strict stance on review simply because of the extent of disguised cases attempting to abuse the review mechanism by bringing forth empty, hollow claims which did not prejudice their rights.[24] These cases, while serving as practical hurdles, can be weeded out on an early stage of inquiry, but because of their existence the court ought not to make it even harder for meritorious cases to be considered for review.

**Suggested Reforms**

28. The inquiry has provided us with greater insights into the real problems the courts grapple with with respect to claims of breach of natural justice in arbitration proceedings. Put simply, the biggest hurdle remains to separate the meritorious cases from the unmeritorious ones. Our judiciary's existing position is to do so by implementing a high threshold to pass for a review to be considered. Notwithstanding a strict judicial stance, another avenue one ought to consider is that of statutory intervention wherein the legislature implements regulations which attempt to mitigate these practical challenges and we submit this to be the best compromise to ensure the smooth function of both arbitration and its review mechanisms.

**Statutory Intervention**

29. It is submitted that a legislative intervention is an option to be considered. In this regard, the Amendment in the Draft Bill[25] is a welcome development in Singapore. In particular, this paper proposes two further reforms to the current legislative framework. First, the IAA could be amended to include a provision allowing parties to contractually waive their right to set aside awards, notwithstanding the existence of established grounds to set aside awards.[26]

30. In addition, unmeritorious claims for reviews, disguised as meritorious ones, may be deterred through an amendment to the IAA allowing for cost orders to be made against vexatious applicants. This approach is espoused by the Hong Kong judiciary,[27] having taken the "default position that, save in special circumstances, indemnity costs will be awarded for an unsuccessful challenge to an arbitration award". Cost orders will serve as sufficient economic deterrence for parties to reconsider an appeal for review and ensure that mostly the legitimate ones are brought in front of the court.

31. The aforementioned measures will ensure that most claims that reach the courts bear the parties interest in review and bear some degree of merit. When operated alongside a less onerous judicial stance, these measures will complement a more fair and holistic approach to reviewing arbitral awards in Singapore.

**Conclusion**

32. Areas of arbitration and breach of natural justice epitomise the clashing concepts of autonomy and fairness. The courts' struggle remains a balancing act, tipping on fairness or finality as a necessary trade off. This is best evident in the recent case of *AKN* where the court struck a practical bargain, upholding finality over other considerations. However, given the recency of *AKN*, the future implications of the decision remain to be seen. This paper has attempted to provide some foresight on the potential shortcomings of the decision, and to provide possible solutions to the said shortcomings.

33. One of the biggest concerns remains that the judiciary will move towards a firmer, stricter stance due to reasons of practicality, but the trade off will be that of fairness. With respect to matters relating to procedural propriety in an arbitration proceeding, issues of unmeritorious parties disguising into meritorious ones should be warily trodden upon, as it remains a tempting recourse to conflate the issue and make it the end all and be all in the court's decision-making process.

34. The paper proposes statutory reforms as a solution to the aforementioned practical difficulties. Notwithstanding these changes, it is submitted that the judiciary has to strike a better balance for cases requiring review; a decision of review not only upholds one party's right but acts as an important check and balance on the process of arbitration. While there may be no simple solution to a complex issue such as this, the optimal response would be one that combines well thought out legislations and judicious judges who are able to balance, with acuity, the various competing interests in an arbitral review.

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24 *AKN* at [46].

25 Ministry of Law, *Review of the International Arbitration Act* (2011)

26 *Id*. at [23] - [25]

27 Shaun Lee, "Setting aside arbitral awards in Singapore: a problem in the standard of review?", *Singapore International Arbitration Blog* (21 October 2013) <http://singaporeinternationalarbitration.com/2013/10/21/setting-aside-arbitral-awards-in-singapore-a-problem-in-the-standard-of-review/> (accessed 23 May 2015)



## Arbitrating Complex Financial Disputes

| Date | Event |
| --- | --- |
| 15 April 2015 | Evening Seminar: Arbitrating Complex Financial Disputes |

The Institute was thrilled to have Ms Lucy Reed, Partner, Freshfields Bruckhaus Deringer, share with attendees the tricks of navigating the complexities involved in arbitration of disputes arising from banking and financing transactions across various jurisdictions. Participants were provided with a sample of cases demonstrating the globalization of financial markets and concerns over cross-border enforceability of court judgments worldwide. Ms Reed also shared on the model arbitration clauses published by the International Swaps and Derivatives Association and how various arbitration institutions have competed for disputes arising from structured financial products. The evening closed with a lively question and answer session, led by Chairman, Mr Mohan Pillay.

# International Entry Course 2015

| Date | Event |
|---|---|
| 24, 25 and 27 April 2015 | International Entry Course 2015 |

Candidates seeking in-depth knowledge on arbitration or entry to the Institute as Members, attended this year's International Entry Course, which was conducted over two full days by seasoned arbitration practitioners in the arbitration circuit. This year's instalment drew a much larger cohort of 37 candidates. The Institute congratulates all candidates who have been passed the examinations and welcomes them to the Institute subject to meeting other membership requirements.

## 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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