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THE PRESIDENT'S COLUMN

Hard-working members of SIArb enjoyed some respite from the demands of work during the Members Nite on 26 April 2016. Even the insipid answers by the President of SIArb in an interview by the intrepid Ms Maricef of SIAC did not deter members and guests, including participants from the latest International Entry Course, from enjoying the lovely setting at the roof-top of the Singapore Recreation Club.

The International Entry Course reflects the growing popularity and relevance of the Institute. This year we had 50 candidates from as far away as Kenya. I am happy to say that all have passed and we look forward to welcoming them into our ranks.

At the same time, Dr Dean Lewis of Pinsent Masons took us beyond the basics with his talk comparing how courts in Singapore, Hong Kong and Australia have interpreted the UNCITRAL Model Law. The seminar, International Arbitration and Jurisprudential Clashes of the New World Titans - Singapore, Hong Kong and Australia, was chaired by Mr Johnny Tan. In this issue, we also feature a report on the talk given by Professor Lawrence Boo on notable court decisions in 2015 on arbitration.

As members would expect, SIArb has more interesting and informative talks lined up for the next half of the year. Those keen to upgrade to Fellowship should take note of the Fellowship Assessment Course which will be run on 14, 21, 22 October 2016 with the examination to be conducted on 24 October 2016.

That aside, I do hope that you have marked your diary for these other key events:

- Our AGM on 1 September 2016. Members who qualify and are keen to serve are welcome to put up their hands as candidates for Council election. Do turn up to vote for your candidate of choice.
- The SIArb Commercial Arbitration Symposium on 21 September 2016

SIArb celebrates its 35th Anniversary this year. It is an occasion to reflect on our long history, which runs parallel to the success story of Singapore arbitration. It is an opportunity to see what we can do to reinforce this institution for future generations. Let's not forget that it is also an occasion to celebrate. Therefore, please do set aside one evening to join us at the SIArb Annual Dinner on 27 October 2016.

Chan Leng Sun SC
President

CASE LAW DEVELOPMENTS

BY **WEIYI TAN AND LAVANIA RENGARAJOO**
Baker & McKenzie.Wong & Leow

In this issue, we focus on two recent Singapore High Court decisions:

- *Maybank Kim Eng Securities Pte. Ltd. v Lim Keng Yong and another* [2016] SGHC 68; and
- *Maniach Pte. Ltd. v L Capital Jones Ltd and another* [2016] SGHC 65.

***MAYBANK KIM ENG SECURITIES PTE. LTD. V LIM KENG YONG AND ANOTHER* [2016] SGHC 68**

Background Facts

Maybank Kim Eng Securities (the "**Appellant**") is a securities brokerage incorporated in Singapore with which Wendy Lim Keng Yong (the "**1st Respondent**") maintains a contract for difference ("**CFD**") account (the "**CFD Account**").

The CFDs entered into between the Appellant and the 1st Respondent were governed by the Appellant's General Terms and Conditions as well as its CFD Terms and Conditions.

Pursuant to a Remisier Agreement dated 29 January 2015, William Lye Hoi Fong (the"**2nd Respondent**") was appointed by the Appellant as a remisier in respect of the CFD Account. The agreement included a Trading Representative's Indemnity (the "Indemnity") between the Appellant and the 2nd Respondent.

The claims in the proceedings arise from a series of CFD transactions, involving shares in Apple Inc and Baidu Inc, which the 1st Respondent entered into with the Appellant in July 2015. On 24 August 2015, the Appellant closed out the CFD transactions at the prevailing market prices. This resulted in substantial trading losses being reflected on the CFD Account.

The key dispute arises from whether such closing out of the CFD transactions on 24 August 2015 was authorised by either or both of the respondents. If so, how much trading loss was incurred.

The Appellant claims that it acted on the Respondents' express instructions and that the Respondents are liable for the losses incurred. The Respondents however take the position that the neither of them is liable for the losses arising from the closing out of the CFD transactions on 24 August 2015 as this was done without their consent and/or authorisation.

Although the claims are for the same loss, the claims are subject to different dispute resolution mechanisms:

(a) Any dispute arising under the CFD Terms and Conditions is subject to "*arbitration in Singapore in accordance with the UNCITRAL Arbitration Rules as at present in force…*";

(b) Any dispute arising under the Indemnity is subject to the "*non exclusive jurisdiction of the Courts of Singapore*".

Both the dispute resolution clauses are standard clauses of the Appellant's contracts and therefore the Court found that the Appellant must have known and intended that different forums govern the disputes arising under these different contracts.

In the circumstances, it was common ground that the Appellant's claim against the 1st Respondent is *prima facie* in breach of the arbitration agreement which states that disputes should be submitted to domestic arbitration governed by the Arbitration Act (the "**AA**"). The parties also agree that the Appellant's claim against the 2nd Respondent falls within the non-exclusive jurisdiction agreement in favour of the Singapore Courts.

Accordingly, the present action had *prima facie* been commenced in breach of the arbitration clause.
The Appellant acknowledged that it bore the burden of demonstrating sufficient reason why a stay of proceedings should not be ordered under Section 6 of the AA.

The Decision Below

The main argument advanced by the Appellant to discharge the burden of demonstrating why a stay should not be ordered was that, since the claim against the 2nd Respondent is not subject to arbitration, the stay in respect of the claim against the 1st Respondent should be refused to avoid multiplicity of proceedings which risks inconsistent findings.

The submission, the Court held, cannot be accepted as acceptance of which would mean that on every occasion when trading losses are incurred and a remisier is involved, the Court should invariably displace the arbitration clause in favour of court proceedings to avoid multiplicity of proceedings. The Court was not minded to make such a move.

Rather, the Assistant Registrar chose to invoke the case management powers developed by the Singapore Court of Appeal in the case of *Tomolugen Holdings Ltd and another v Silica Investors Ltd and other appeals* [2016] 1 SLR 373 ("***Tomolugen Holdings***"), ordering a stay of the proceedings against the 1st Respondent in favour of arbitration, and further, a stay of the proceedings against the 2nd Respondent pending the outcome of the arbitration proceedings between the Appellant and the 1st Respondent.

The Present Appeal

<u>Appellant's position</u>

On appeal, the Appellant (on what seemed to be a matter of tactics) dropped the decision to appeal the stay of proceedings against the 1st Respondent.

The Appellant also took the line of argument that the 2nd Respondent's liability as sole principal debtor under the Indemnity is separate from and independent of the Appellant's claim against the 1st Respondent. The outcomes of the claims are independent of each other, and there is no reason why the claim against the 2nd Respondent should be stayed pending the outcome of arbitration involving the 1st Respondent.

In any event, the Appellant argued that the case management powers in *Tomolugen Holdings* should apply only to arbitrations under the International Arbitration Act (the "**IAA**"), and not arbitrations convened under the AA.

<u>Respondents' position</u>

First, the 1st Respondent stated that it would initiate arbitration proceedings against the Appellant under the CFD Terms and Conditions within 14 days of the hearing even if the Appellant did not do so. This kept the issue of the multiplicity of proceedings *prima facie* alive.

Second, as the 2nd Respondent's liability is clearly contingent on, and subsidiary to, the liability of the 1st Respondent under the CFD Terms and Conditions, there is significant overlap in the factual and legal issues to be determined in both claims. Accordingly, allowing parallel proceedings would lead to duplication of resources and the risk of inconsistent decisions.

In any event, the Respondents argued that a case management stay would be temporary, and cannot unduly prejudice the Appellant. The Appellant will still be allowed to proceed against the 2nd Respondent upon resolution of, or in the event of unnecessary delay in, the arbitration.

Issues to be decided on Appeal

The key issue of interest before the Court was whether the Court's inherent power to stay court proceedings in the interests of case management pending the resolution of a related arbitration extends to cases where the relevant arbitration agreement is governed by the AA, as opposed to the IAA. If so, how should the principles governing this power, developed in the case of *Tomolugen Holdings*, be applied in this context?

Having considered that, the next issue would be whether, in the case of separate but related and/or dependent claims in arbitration and litigation, the Court should exercise its inherent power of case management to stay Court proceedings pending the outcome of the arbitration proceedings?

Findings of the Court

On the facts of the case, the Court dismissed the Appellant's appeal against the stay of proceedings against the 2nd Respondent.

As a starting point, the Court considered the decision in *Tomolugen Holdings.* In that case, the Court of Appeal exercised its inherent powers of case management and ordered, *inter alia*, that if the plaintiff wished to pursue the allegation subject to arbitration, then the rest of the court proceedings would be stayed in the interests of case management, conditional upon the allegation being arbitrated expeditiously.

As set out in *Tomolugen Holdings*, to serve the ends of justice, the Court has to strike a balance amongst the following:

(a) a Plaintiff's right to choose whom he wants to sue and where;

(b) the Court's desire to prevent a plaintiff from circumventing the operations of an arbitration clause; and

(c) the Court's inherent power to manage its processes to prevent an abuse of process and ensure the efficient and fair resolution of disputes.

To this end, a Plaintiff's right to sue whoever he wants and where he wants is not absolute. It is restrained to only a modest extent when the plaintiff's claim is stayed temporarily pending the resolution of a related arbitration, as opposed to when the plaintiff's claim is shut out in its entirety. In appropriate cases, that right may be curtailed or may even be regarded as subsidiary to holding the plaintiff to his obligation to arbitrate where he has agreed to do so.

Having established the principles, the issue then was whether they applied to a case where the relevant arbitration agreement is governed by the AA, rather than the IAA.

The Court found that the answer to this question is "clearly yes". The only substantial difference in the context of domestic arbitration is that the Court has the discretion to stay proceedings, unlike in the context of international arbitration where a stay is mandatory.

At first blush, this distinction may seem significant. This is especially so since the factor relied upon in *Tomolugen Holdings* was the Court's obligation to conform to the statutory mandate laid down in Section 6 of the IAA to stay proceedings in favour of international arbitration. However, although such power is discretionary under the AA, the burden is on the party who wishes to proceed in court to show sufficient reason why the matter should not be referred to arbitration.

Such approach, as the Court pointed out at [23], is in line with the desirability of holding the parties to their agreement, as well as Singapore's strong policy in favour of arbitration. Accordingly, the Courts should be slow to exercise the option of allowing all claims to proceed in court, including those governed by the arbitration agreement.

The Court also pointed out that the principles laid down in *Tomolugen Holdings* apply equally whether the relevant arbitration is governed by the IAA or the AA.

Having decided that the considerations in *Tomolugen Holdings* apply, the Court went on to consider whether the claim against the 1st Respondent and the 2nd Respondent are related.

Having considered the facts, the Court found that it is undeniable that the claims are related and the amounts claimed by the Appellant against both the 1st and 2nd Respondents are identical.

Applying *Tomolugen Holdings*, the Court found that the balance in this case is inexorably in favour of a stay of the court proceedings against the 2nd Respondent pending the resolution of the related arbitration between the Appellant and the 1st Respondent.

***MANIACH PTE. LTD. V L CAPITAL JONES LTD AND ANOTHER* [2016] SGHC 65**

The Parties

The Plaintiff is a company incorporated in Singapore. It is a personal investment vehicle for one Mr. Manos. Mr. Manos is the Plaintiff's executive director and sole shareholder.

The 1st Defendant is a company incorporated in Mauritius. The 2nd Defendant, a company incorporated in Singapore, is a worldwide holding company for the *Jones the Grocer* businesss, which had began operations in Australia, but now operates globally.

The Plaintiff and the 1st Defendant are the only 2 shareholders in the 2nd Defendant.

Background Facts

Mr. Manos had founded the *Jones the Grocer* business in Australia, with his business partner, in 2004. In 2010, Mr. Manos bought his partner out, and became the sole owner of the business. In 2012, L Capital Asia (the sole shareholder of the 1st Defendant) agreed to inject capital into the business in order to fund its expansion. The 2nd Defendant was incorporated to receive such investment, and to be the post-investment holding company of the *Jones the Grocer* business.

In July 2012, the parties to this proceeding and Mr. Manos entered into a shareholders' agreement. This agreement was restated and re-executed in 2013 (the "**Agreement**").

In 2013 and 2014, L Capital Asia made further investments. As a result, the 1st Defendant's stake in the 2nd Defendant increased, with the Plaintiff's stake being correspondingly reduced.

In 2014 and 2015, the Plaintiff and the 1st Defendant (the 2 shareholders) fell out irretrievably.

As a result, the Plaintiff commenced these proceedings against the Defendants under section 216 of the Companies Act (Cap 50), seeking relief against both Defendants from what it considers minority oppression. The nub of the Plaintiff's case is that the 1st Defendant has been engaged in carefully plotting to wrongfully seize control of the 2nd Defendant.

Pursuant to the Agreement, the parties agreed to resolve any disputes or differences arising under or in connection with the shareholders' agreement, by arbitration. Relying on this, both Defendants applied to stay these minority oppression proceedings in favour of arbitration. They both sought a stay under section 6 of the IAA.

Defendants' Positions

The Defendants submitted that:

(a) The Plaintiff's claim in the proceedings should be properly characterized as a claim for breach of the agreement and not as a claim for relief from minority oppression. Therefore, the subject-matter of these proceedings would fall squarely within the scope of the parties' arbitration agreement.

(b) In the alternative, even if the Plaintiff's claim is properly characterised as a claim for relief from minority oppression, the scope of the parties' arbitration agreement is wide enough to encompass such a claim.

Plaintiff's Position

In response, the Plaintiff's position is that:

Both the Defendants are precluded from applying for a stay because each failed to do so "before…taking any other step in the proceedings" as required by section 6(1) of the IAA.

In the alternative, the Plaintiff's claim in these proceedings is indeed a *bona fide* claim for relief from minority oppression and not one for breach of the agreement. As such, it falls outside the scope of the parties' arbitration agreement.

(a) In the further alternative, even if its claim falls within the scope of the parties' arbitration agreement, a minority oppression claim is not arbitrable.

The Court's Decision

1. For the reasons set out below, the Court refused to stay the proceedings.

2. In the present case, there were 3 issues before the Court:
   (a) Whether either Defendant has taken a step in these proceedings;
   (b) Whether the subject-matter of these proceedings falls within the subject of the parties' arbitration agreement; and
   (c) Whether the Plaintiff's minority oppression claim is arbitrable.

<u>Whether either Defendant has taken a step in these proceedings</u>

On the first issue, the Plaintiff alleged that the 2nd Defendant had taken a step in the proceedings when it took out an application to strike out the Plaintiff's action ("**Summons 998**").

In Summons 998, the 2nd Defendant sought 2 heads of relief. As its primary relief, it prayed that the Plaintiff's proceedings be struck out pursuant to Order 18, Rule 19 of the Singapore Rules of Court. If it was unable to secure its primary relief, it prayed in the alternative that the proceedings by stayed under section 6 of the IAA, pursuant to the arbitration agreement.

Amongst other things, the Plaintiff argued that the primary purpose for the 2nd Defendant's application in Summons 998 was to strike out the proceedings on the merits, i.e. pursuant to Order 18, rule 19 of the Singapore Rules of Court. This is sufficient to estop the 2nd Defendant from now seeking a stay of these proceedings.

The 2nd Defendant's position was that it had taken up Summons 998 to strike out the proceedings on the grounds of a fundamental defect: the Plaintiff had not sought leave to commence action given that the 2nd Defendant was undergoing judicial management proceedings. Summons 998 was thus a rejection of the Court's jurisdiction, rather than an affirmation.

For the following reasons, the Court found that the 2nd Defendant had not taken a step in the proceedings:

(a) The 2nd Defendant's application to strike out the proceedings on the grounds of a procedural defect cannot amount to a step in the proceedings.

(b) Insofar as the 2nd Defendant had prayed to strike out the proceedings on the grounds set out in Order 18, rule 19 of the Singapore Rules of Court, that aspect was never pressed in argument, and therefore did not amount to taking a step in the proceedings. The point was never argued because the Court had taken steps to cure the procedural defect, rendering any arguments to be made moot. In other words, the prayer fell away even before the application, as a whole, was argued. Accordingly, the 2nd Defendant's application to strike out the Plaintiff's action came very close to taking a step in the proceedings. However, it did not cross the line which separates a procedural act which is not a step in the proceedings from one which is.

(c) The fact that the 2nd Defendant had presented its striking out application as the primary relief, and presented its application to stay the proceedings pursuant to an agreement to arbitrate as an alternative relief, is insufficient to make the 2nd Defendant's conduct in connection with the application a step in these proceedings.

(d) Finally, from the time the 2nd Defendant had entered an appearance in the present proceedings, it had asserted and maintained the position that the proceedings should be stayed pursuant to an agreement to arbitrate.

In the circumstances, the 2nd Defendant's right to apply for a stay remains reserved.

The 1st Defendant had not taken up any application. However, the Plaintiff argues that the 1st Defendant had used the 2nd Defendant as "its cat's paw in this action".

The Plaintiff had not cited any authority in favour of its argument that a defendant can be precluded from seeking a stay of proceedings under section 6 by actions taken in the proceedings by another defendant which it controls. As the Court had already decided that the 2nd Defendant's right to apply for a stay remains reserved notwithstanding Summons 998, the Court did not find it necessary to decide this point any further.

The next plank in the Plaintiff's submissions on this point is that the Defendants are precluded from seeking a stay because they both took steps by presenting substantive arguments in opposition to the Plaintiff's application for an interlocutory injunction at the opposed *ex parte* hearing of Summons 1734 ("**Summons 1734**").

The Court rejected this submission for the following reasons:

(a) The 1st Defendant indicated an intention to seek a stay of the proceedings at the very outset of arguments on Summons 1734.

(b) Both Defendants were merely parrying the Plaintiff's efforts to seek an *ex parte* interlocutory injunction.

<u>Whether the dispute is within the scope of the arbitration agreement</u>

The burden of showing whether the dispute is within the scope of the arbitration agreement rests on the Defendants. To meet it, they need only establish a *prima facie* case that it does.

At the outset, the Court stated that the true question is only whether the subject-matter of the proceedings falls within the scope of the parties' arbitration agreement. If it does, a stay of these proceedings is mandatory regardless of the Plaintiff's intent in presenting a claim in this legal form.

The Court thought that the only relevant argument in this regard was that advanced by the 2nd Defendant, i.e. even if the parties' dispute is genuinely a minority oppression action, their arbitration agreement is wide enough to encompass it.

In the present case the Court found that the arbitration agreement is very widely drafted, encompassing "*any dispute or difference [which] shall arise between the Parties as to the construction of this Agreement or as to any matter whatsoever (sic) nature arising thereunder or in connection therewith*".

There is no intention that the parties intended to exclude statutory claims. This was subject, of course, to the boundaries of arbitrability at law.
On the facts, the Court found that the subject-matter of the proceedings falls *prima facie* within the scope of the parties' arbitration agreement.

<u>Whether the dispute is within the scope of the arbitration agreement</u>

Arbitrability is the cornerstone of arbitration. A finding of non-arbitrability must have the result that a stay of the proceedings is no longer mandatory under section 6(1) of the IAA.

The Court found it difficult to accept the Defendants' point that arbitrability is or ought to be dependant on the facts and circumstances of each case. The Court took the view that arbitrability is an overarching concept which has its source outside the IAA, outside the Model Law and outside the parties' arbitration agreement. In the Court's words, "*[it] is imposed from above in order to give effect to the national public policy of the seat or, as in this case, the forum*".

In reaching its decision, the Court considered that the answer to the question whether the statutory minority oppression claim is arbitrable must either be that all claims of that type are arbitrable or that no claims of that type are arbitrable. This is so for the following reasons:

(a) Arbitrability rests on fundamental conceptions of public policy. It should not be within the power of a party to unilaterally arrange the facts and circumstances of the case for tactical reasons so as to invite the intervention of public policy and maximize the likelihood of disrupting the parties' bargains.

(b) A case-by-case approach to arbitrability undermines commercial certainty. Firstly, it makes it impossible to predict the outcome of the inquiry into arbitrability; and secondly, it allows a party's unilateral act to change a dispute from being arbitrable to being non-arbitrable.

Accordingly, whether this dispute is arbitrable depends not on the facts of the case, but on the fundamental question as to whether statutory minority oppression claims are, as a type, arbitrable.

The Court took the view that such claims are not arbitrable. This is so for the following reasons:

(a) Firstly, being statutory in nature and asserted in relation to affairs of a creature of statute, these claims ought to be supervised and determined by the Court in all cases; and

(b) Secondly, an arbitral tribunal is unable to grant a plaintiff in minority oppression proceedings the full panoply of relief available at law and it is undesirable to compel the parties to fragment a minority oppression dispute between litigation and arbitration.

Accordingly, the Court reached the view that statutory minority oppression claims are a type of dispute which is not arbitrable, and refused a stay of the proceedings.

This decision is on appeal to the Court of Appeal.

ARTICLE

CHOICE OF COURTS AGREEMENTS ACT

BY **WEIYI TAN AND LAVANIA RENGARAJOO**
Baker & McKenzie.Wong & Leow

Parties to commercial agreements often choose the jurisdiction and the Court to which they will submit any dispute. However, this is not so simple where one party chooses to have the dispute heard in a jurisdiction which the other party considers an inappropriate forum.

The Singapore Parliament enacted the Choice of Courts Agreements Act (the "**CCAA**") on 14 April 2016. The CCAA implements the 2005 Hague Convention on Choice of Court Agreements ("**Convention**") to which Singapore is a signatory. As Singapore's Senior Minister of State for Law Ms. Indranee Rajah says, the CCAA is likely to boost Singapore's position as a "*dispute resolution hub in Asia by enhancing the international enforceability of Singapore court judgments*".

PRE-CCAA

Prior to the CCAA, there were two regimes under Singapore law, which allowed for a very limited scope for the enforcement of Singapore court judgments in other jurisdictions and *vice versa*.

The two regimes are the Reciprocal Enforcement of Commonwealth Judgments Act ("**RECJA**") and the Reciprocal Enforcement of Foreign Judgments Act ("**REFJA**").

The RECJA and REFJA allow for mutual recognition and enforcement of judgments from states with whom Singapore has reciprocal treaty arrangements. The RECJA and REFJA regimes are currently limited to 11 states.

THE FRAMEWORK OF THE CCAA

The CCAA will implement the regime under the Convention.

<u>Recognition of Exclusive Choice of Court Agreements</u>

The CCAA confirms that where parties have chosen the Singapore court pursuant to an exclusive choice of court agreement, the Singapore court will have jurisdiction to decide the dispute unless the agreement is null and void under Singapore law. In other words, the Singapore court must give effect to the agreement of the parties, and generally cannot decline jurisdiction on the basis that the dispute should be decided by the Court of another state.

Similarly, in the converse situation, where parties have chosen the court of another state pursuant to an exclusive choice of court agreement, the Singapore court must stay or dismiss the matter in favour of the chosen court. This is except where the chosen court has declined to hear the case, or where the agreement is null and void under the law of the state of the chosen court.

Enforcement of Judgments

A judgment of the court chosen by parties to resolve their dispute must be recognised and enforced in Singapore so long as the judgment has effect and is enforceable in the state where the judgment was made.

Similarly, where the judgment was made in Singapore pursuant to an exclusive choice of court agreement, the courts of other contracting states will be obliged to recognise and enforce the Singapore court judgment on that dispute.

Exceptions to recognizing and enforcing foreign judgments

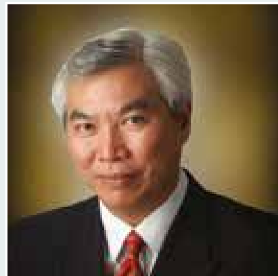
It is mandatory to refuse recognition or enforcement in certain instances. These include where the defendant in the proceedings in which judgment was obtained was not properly notified of the claims made against him in proper time accordingly denying him the right to defend the proceedings; where the judgment was obtained by fraud in respect of the procedure; and where recognition and enforcement would be manifestly incompatible with Singapore's public policy.

There are also certain grounds on which the Court has discretion as to whether or not it should refuse to recognize or enforce a foreign judgment. These include where the exclusive choice of court agreement pursuant to which the dispute was heard is null and void under the law of the State of the chosen court; either of the parties lacked capacity to enter into the exclusive choice of court agreement; or the foreign judgment is inconsistent with a Singapore judgment in a dispute between the same parties.

CONCLUSION

In recent years, Singapore has become one of the most preferred seats of arbitration in the world. The newly-established Singapore International Commercial Court (the "**SICC**") and now, the enactment of the CCAA, are likely to do the same in meeting the demand for Court dispute resolution in the region and internationally.

IN THE HOT SEAT!



CAPT LEE WAI PONG

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 **CAPT LEE WAI PONG**.

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

  Patient, Persistent & Persuasive (P3 J)

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

  When I was appointed Executive Director of the Singapore Chamber of Maritime Arbitration back in 2010.

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

  Yes, this was especially true within the maritime and dry bulk commodities community but this trend is being tempered by rising concerns over costs and lengthy procedural measures coming into play.

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

  Playing host to the Honourable, The Chief Justice Mr Sundaresh Menon at SCMA's Annual Conference in 2015. He was my Guest of Honour and delivered the keynote speech in which he devoted a segment to observing the progress made in the development of ADR. He went on to suggest that it might be timely to re-consider the abbreviation of ADR to stand for Appropriate Dispute Resolution in light of these developments. I felt very honoured that he chose our event to be one of the first occasions to mention this.

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

  Be patient and work on developing your network of contacts in the community. Failure to secure an appointment in a tribunal in the immediate period after qualification has often been cited as a big area of disappointment and disillusionment. Getting qualified is just the first step. Gaining sufficient trust amongst the stakeholders to secure appointments comes hand in hand with time and effort.

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

  I can only make observations on this issue within the maritime context as it is the community that I am most intimately connected with. I believe a return to the roots of maritime arbitration practice where many disputes were resolved in less legalistic procedures and by commercial men who are very familiar and sensitive to the trade practices and also mindful of keeping costs and time to the minimum would be most welcome. The tasks arising from such an endeavour would prove to be very challenging.

- **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?**

  I would hasten to add that I introduced the SCMA Arb-Med-Arb protocol into the current edition of SCMA Rules (2015). Unlike the protocol you mentioned, it is neutral to all mediation bodies including SMC and SIMC. With that, I think it is safe to say that I do see mediation as having a bigger role to play in dispute resolution, particularly in the maritime community. Shipping / oil and gas industries within the maritime community are particularly affected by the global economic downturn and this is reflected by the lower rates of income they are obtaining for their goods and services. Claim quantums arising from contractual disputes have also become proportionally smaller and in this context, the costs of recovery through arbitration or litigation can become disproportionate. Accordingly, disputants are becoming more receptive to procedures like mediation which offer substantial savings in costs and time. One of the reasons I have been appointed as a consultant to SMC is also to promote the awareness and adoption of mediation by the maritime community and I have a whole slew of initiatives to introduce in the months ahead. To conclude, I would say that there is definitely a larger and more enhanced role for mediation to play, either in isolation or more importantly as a complement to arbitration as a total dispute resolution process, especially for the larger and more complex disputes.

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

  That would be Mr Goh Joon Seng.

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

  A (probably struggling but passionate) writer.

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

  Durians

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

  Eat a ridiculous amount of food at one sitting without burping.

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

  Wan tan mee – in the big mix, you won't notice it's presence until it is absent!

RECENT EVENTS

Review of 2015 Singapore Judicial Decisions on Arbitration

3 March 2016

Speaker: Professor Lawrence Boo
Chair: Dinesh Dillon, Partner at Allen and Gledhill

Reported by Earl J Rivera- Dolera, The Arbitration Chambers

Professor Lawrence Boo is in his 4th year of doing a lecture for SIArb discussing judicial decisions of Singapore courts. In yet another well-attended and lively discussion, Professor Boo provided his analysis on arbitration-related cases that came out in the year 2015. He spent more time on cases arising out of two stages of the arbitral proceedings most commonly besieged with issues that would require judicial assistance, a) enforcement of arbitration agreements vis-à-vis stay of court applications, and b) setting aside an award. There have been 7 occasions where Singapore courts had been asked to stay court proceedings in favour of arbitration and 9 cases for it to set aside arbitral awards.

One case was highlighted showing a party's novel attempt of seeking the setting-aside of an award due to the tribunal's failure to declare closure of proceedings under the SIAC Rules. This then served as a springboard for exchange of ideas with the participants on how to curb obvious unmeritorious setting-aside applications. One suggested course of action was for Singapore courts to provide for payment of indemnity costs, which is being done by Hong Kong courts.

Chaired by Mr Dinesh Dillon of Allen and Gledhill, Professor Boo's presentation and the discussion that followed showed the gap that Singapore courts had not yet had the opportunity to close, i.e. what defines "egregious" or how "egregious" should an error be in an arbitral award in order to merit setting aside of such award by the courts. Guidance on this may protect the courts from setting-aside applications hinged on what could obviously be deemed as baseless and unmeritorious grounds.

International Arbitration and Jurisprudential Clashes of the New World Titans – Singapore, Hong Kong & Australia

12 May 2016

Speaker: Dean Lewis - Partner, Pinsent Masons
Chair: Johnny Tan - Independent Arbitrator

Ignatius Hwang, Partner, Squire Patton Boggs Singapore LLP

Over 50 participants attended the talk by Dean Lewis who shared his research and insights contained in his recently published book.

Dean identified the reasons for the adoption of the UNCITRAL Model Law on International Commercial Arbitration ("Model Law"), and explained the concept of the "internationalist approach", which simply put, is the application of law by a court "that is intended to respond to the needs of a transnational community".

Dean then embarked on a fascinating comparative analysis of the extent to which the "internationalist approach" has been adopted by the courts in three different jurisdictions, namely Singapore, Hong Kong and Australia. He provided a historical examination of case law on the Model Law of each jurisdiction across four periods – 1977 to 1994, 1995 to 2003, 2004 to 2010 and 2011 to 2015, to identify the extent and consistency of such adoption against three parameters - the "internationalist approach" - Model Law Internationalist Norm ("I-Norm"), Travaux Preparatoires Internationalist Norm ("TP I-Norm") and Global Jurisconsultorium Internationalist Norm ("JC I-Norm").

His analysis suggests there is a gradual recognition and adoption of the "internationalist approach" in all three jurisdictions, with Hong Kong and Australia the early adopters, and Singapore catching up and becoming the leading adopter in recent years. Interestingly, UK cases were cited most in Hong Kong proceedings and significantly less in Singapore and Australian proceedings. Dean also shared his analysis of the public policy impact on the "internationalist approach" as reflected in several cases.

A wine reception capped off the successful event, with participants taking the opportunity to chat with Dean Lewis and mingle with fellow participants.

ANNOUNCEMENTS

New Members

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

Associates:

1. Chow Kok Onn
2. Lim Pi Wen
3. Edwin Liew
4. Sumit Agarwal

Members:

1. Adriana Alexis Uson-Ong
2. Rian Matthews
3. Andrew Pullen

Fellows:

1. Law Hai Wee
2. Mohan Subbaraman
3. Edwin Kung
4. Rajat Bhatia
5. Phua Ee-Lyn Gayle
6. Alex Yeo
7. Tang Wai Loong Kenneth
8. Dedy Suryadinata
9. Yeh Siang Hui
10. Rendy Tan Howe Choong
11. Shourav Lahiri

UPCOMING EVENTS

- Why is there a need to prove prejudice in annulment proceedings? (21 July 2016)
- SIArb AGM (1 September 2016)
- SIArb Commercial Arbitration Symposium 2016 (21 September 2016)
- Fellowship Assessment Course 2016 (14, 21, 22 October 2016 with an examination on 24 October 2016). Candidates who pass an examination at the end of this Course may apply to be Fellows of the Institute and, subject to meeting membership requirements, may use the abbreviation "FSIArb" as part of their credentials.
- SIArb 35th Anniversary Dinner (27 October 2016)

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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