SINGAPORE INSTITUTE OF ARBITRATORS

NEWSLETTER

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THE PRESIDENT'S COLUMN

Time does not fly; it is just a direction in space according to Feynman. He also says that our history is just one path out of all possible paths making up the multi universe. A little like decision-making by an arbitrator, who eventually ends up with one particular award out of many possible awards. The greatest minds in science have grappled with alternate histories for decades. Arbitrators dispose of them on a daily basis.

I digress. What I wanted to say is that the AGM of the Institute is so quickly upon us again. I look forward to seeing you at the 34th Annual General Meeting of the SIArb on 17 September 2015. Please do attend also the pre-AGM talk by Ms Loretta Malintoppi which will surely offer a fascinating comparison of civil law and common law perspectives on the topic: "*Procedural Approaches of International Arbitral Tribunals: Is there a Common Law/Civil Law Divide?*"

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ANNOUNCEMENTS UPDATES & UPCOMING EVENTS

1. Evening and Pre-AGM Seminar: Procedural Approaches of International Arbitral Tribunals: Is There a Common Law/Civil Law Divide? by Ms Loretta Malintoppi (17 September 2015)
2. SIArb Annual General Meeting 2015 (17 September 2015)
3. SIArb Commercial Arbitration Symposium 2015 (22 October 2015)
4. 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.
5. SIArb Annual Dinner (18 November 2015)

NEW MEMBERS

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

Members

1. Lim Hseng Iu
2. Iain Cameron Potter
3. Chan Siew Pang
4. Wee Yu Yen
5. Loo Hui Jing
6. Hiroki Aoki
7. Kapil Chaudhary
8. Sia Kian Leong
9. Tong Wai Yan Josephine
10. Muhammad Farook Fahmita Parveen
11. Sivasankar Chelliah
12. Tay Kuan Seng Charles
13. Voltaire Jr Acosta
14. Trevor George De Silva

Fellows

15. Nicholas Alexander Brown
16. Kalidass Murugaiyan
17. Giam Choon Khong Hubert
18. Edward William Luke
19. Scottie Yim
20. Jun Wang

PANEL ARBITRATORS

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

Secondary Panel of Arbitrators

1. Sudhir Singhal

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Let's walk backward from the AGM to 5 September 2015 when SIArb conducted a Mock Arbitration Workshop based on the SIAC mock arbitration video. This was an updated and "*Asianised*" version from the mock arbitration workshop that SIArb had conducted in 2013 using the videos of the Institute of Transnational Arbitration. SIArb expresses its gratitude to the trainers, Mr Johnny Tan, Mr Edmund Kronenburg and Mr Kevin Nash for spending their Saturday with the equally dedicated participants.

On 20 August 2015, Mr Tan Chuan Thye, SC conducted a seminar sharing his thoughts on the reasons for an award and whether awards should be published. And back in July 2015, Mr Michael Hwang, SC who has an infinite repository of arbitration topics challenged an engrossed audience to think deeper about document production and interrogatories in arbitration.

From the past we move back to the present and the future, never mind if they actually exist simultaneously. I am happy to say that the hard work of the Council members and our Secretariat Intellitrain over the last two years has regularized the internal processes, improved record-keeping and stabilized the finances of the SIArb. Even if some historical numbers are absorbed in this financial year, we are in pretty healthy shape going forward. Our total membership now stands at 806 and we notice a trend of increased participation in most of the SIArb training and accreditation courses.

Following the AGM, we will have the annual SIArb Symposium on 22 October 2015, followed immediately by the Fellowship Assessment Course on 16, 23, 24 and 26 October 2015.

After such hard work, the Council (outgoing and incoming), will sit back and enjoy our Annual Dinner on 18 November 2015. The organizing committee, led by Vice-President Mr Chia Ho Choon who is ably assisted by Ms Sapna Jhangiani and Mr Yeo Boon Tat, are planning an entertaining evening for all of us.

See you very soon at all these upcoming occasions.

Chan Leng Sun, SC
4 September 2015

An Interview with the Honourable Justice Vinodh Coomaraswamy

The SIArb Newsletter is indeed privileged to have the opportunity to engage the Honourable Justice Vinodh Coomaraswamy on his thoughts on the arbitration landscape in Singapore, his advice for young practitioners and the impact of the Singapore International Commercial Court on arbitration in Singapore.

1. **How has the arbitration landscape in Singapore changed since you entered practice in 1992?**

   The arbitration landscape in Singapore has transformed beyond recognition.

   In 1992, all arbitration was still regulated by the Arbitration Act. The International Arbitration Act was yet to introduce the UNCITRAL Model Law as part of Singapore law. The SIAC was in its infancy, having been established only in 1990 and commencing operations only in 1991. Although the SIArb had by then been in existence since 1981, it is fair to say that it was a very different organisation from what it is now. There was no Singapore branch of the CIArb. There was no Maxwell Chambers.

   Over the past 23 years – spurred by the adoption of the Model Law, the efforts of the Ministry of Law and the Singapore Academy of Law, the

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   efforts of the SIAC, our growing and thriving community of arbitration practitioners (both counsel and arbitrators) and a supportive legislative and judicial approach – Singapore has established itself as a successful and rising international arbitration centre.

   All of that has led to an exponential increase in international commercial arbitration in Singapore. By that I mean (in a non-technical sense) contractual disputes outside what used to be the traditional areas for arbitration – *eg* shipping and construction – and which involve parties with no connection to Singapore other than having chosen it as their seat.

   Of course, this exponential growth is not unique to Singapore. It has been a worldwide phenomenon. It is to Singapore's credit that it foresaw the trend and positioned itself to capture a significant share of the market which continues to grow today.

2. **What today is arbitration's unique selling point when compared to litigation?**

   It is the case now that any high-value or high-complexity international contract is very likely to provide for disputes to be resolved by arbitration. And that likelihood becomes a virtual certainty where either counterparty wishes to avoid the other's national courts.

   The increase in the number of high-value and high-complexity disputes coming into arbitration has led to what some call the "judicialisation" of arbitration and which I call the "forensication" of arbitration. It is true today that the path from dispute to resolution in the bulk of arbitrations is virtually indistinguishable from that in litigation. Many have warned against this trend. Certainly there are significant drawbacks. But I see it more as being inevitable rather than being inimical.

   In a high-value or a high-complexity arbitration, there are significant incentives for the parties and for the tribunal to model their arbitral procedure on litigation. It is not simply a question of laziness or of falling back on the familiar. Adopting or adapting litigation procedures in arbitration is, paradoxically, both: (i) a tried and tested method for arriving at a decision which has the highest likelihood of being objectively correct; and (ii) a tried and tested method for preventing or, at the very least, delaying, the very same outcome. And from the tribunal's perspective, what better way to insulate an award from unmeritorious challenge before a court – even on the narrow Model Law grounds – than to adopt the very same procedure that the court would have adopted if it had had to determine the very same dispute?

   The forensication of arbitration has led to the erosion of what were, when I started practice, considered to be the benefits of arbitration. It is no longer the case today that arbitration is faster than litigation or that it is cheaper than litigation. And while enforceability under the New York Convention is still in theory an invaluable benefit, it is in practice at best a semi-benefit. A party to an arbitration agreement who, with reason, chooses arbitration in order to avoid its counterparty's national courts will still have to have recourse to those national courts when it comes to enforcement under the New York Convention. So too, the advantage of choosing a specialist tribunal has proven at best a qualified benefit. As in litigation, and with justification, tribunals in international commercial arbitrations are almost invariably dispute-resolution specialists rather than industry specialists. Confidentiality is the only benefit of arbitration over litigation which is unqualified and which endures to this day.

3. **Do you see that arbitration will become increasingly the choice for dispute resolution in tenancy agreements, employment contracts and professional services, which have not been traditional strongholds unlike (say) construction and shipping?**

   The starting point is that arbitration is a consensual dispute resolution procedure. Given that starting point, there is no reason in principle why arbitration cannot be a dispute resolution alternative for virtually any kind of dispute. So long as all the parties whose interests are to be affected by an award which determines a dispute have agreed to arbitrate that dispute, and no issues of public policy (narrowly conceived) intrude, they should not only be considered at liberty to arbitrate that

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dispute but should also be held to any prior agreement to arbitrate that dispute.

But it must be remembered that arbitration is a consensual dispute resolution procedure only in the contractual sense, not in the subjective sense. A court holds a party to its contractual promise to arbitrate for the same reason that it holds a party to any other contractual promise. It does so if that is the result of the parties' intention, objectively ascertained from their outward manifestations. A party can therefore find itself contractually bound to arbitrate even if it had no subjective intention to arbitrate or did not freely assent to arbitration.

The gap between a subjectively-ascertained intent to arbitrate and an objectively-ascertained intent to arbitrate is, in commercial matters, simply one of the risks of doing business. For that reason, despite this gap, commercial arbitration can justifiably claim to be founded on consent. That may not be true in the additional areas which have been identified. Arbitration of these classes of disputes may not flourish because of the fear or the risk that an agreement to arbitrate which is based on objective contractual consent rather than actual subjective consent will be viewed as an illegitimate attempt by the party with stronger bargaining power to divert the weaker counterparty to arbitration either in order to deny access to the courts or out of a malign desire for confidentiality.

4. What do you see as the most critical factor if Singapore is to continue to grow as an arbitration centre?

What I say is hardly novel, but for Singapore to continue to grow as an arbitration centre, we have to: (i) identify what the users of international arbitration want or need; (ii) make sure we have the hardware and software in place to provide it before our competitors; (iii) make sure that the users know that we provide it, and (iv) offer value for money in providing it.

Our success to date as an international arbitration centre shows that we are serving current wants and needs well. But we need also to be thinking about addressing future needs. None of this is original, but examples of what users might need or want include: (a) online arbitration for low-value claims; and (b) greater transparency to enable users to make an informed choice of arbitrator.

5. What would your advice be to young practitioners who are considering making a career of arbitration work?

Being a successful arbitration practitioner requires developing both the right skill set and the right social set.

Because I view the forensication of arbitration as inevitable, I view the skill set for both arbitration and litigation as being fundamentally the same. This is especially so for a young practitioner. To be a successful advocate in arbitration, as in litigation, you must be able to apply an analytical mind to marshal the facts and the law so as to present them to a decision-maker in a persuasive manner which also complies with the applicable procedural rules in order to secure a favourable and enforceable outcome for your client. So I would gain as much practice as I could in doing these things, whether in arbitration or in litigation.

Developing the right social set is significantly more difficult. But that difficult task is made easier today than it was when I was a young practitioner. Arbitration practitioners and institutions are actively reaching out to encourage the next generation of arbitration practitioners. Thus, for example, the SIAC has its Young SIAC initiative which has just had its inaugural conference, in June 2015. The CIArb also has a young members' group, although I am not sure whether it is active in the Singapore branch. The SIArb also offers invaluable opportunity to learn from one's seniors. Get involved in these groups: go to the events, join the committees, write for the newsletter, speak at events.

As for young practitioners who have their eye set on appointments as arbitrator, I am afraid that that road is a long and hard one. And rightly so. Arbitrators are vested with all the powers of a judge – and in some ways greater powers – and their decisions are amenable to less judicial scrutiny. It is therefore not

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surprising that arbitral institutions have strict requirements for empanelling arbitrators. But I think it is fair to say that young arbitration practitioners who make a name for themselves as counsel in arbitration will be well-placed to fulfil the requirements for admission as a Fellow of SIArb or an equivalent body and, in due course, to find their names on the panel of an arbitral institution.

6. Do you think that arbitration work in Singapore will be increasingly dominated by foreign law practices, the big local firms, and boutique local arbitrators?

I will consider arbitration work first for the advocate and then for the arbitrator.

There is an understandable tendency for the larger firms to have an advantage in winning the advocacy mandate in the high-value or high-complexity arbitrations. Any party with a high-value or high-complexity dispute will want the best lawyers to handle it. While the larger firms do not have a monopoly on talent by any means, the perception is that the better advocates tend to cluster in the bigger firms, both local and foreign. It is also in big firms that the advocate is supported by the necessary internal resources – both legal and clerical – to handle the heavy lifting that is now an inevitable part of complex arbitration and litigation.

Coupled with that tendency, there is also a tendency for foreign firms to have an advantage when it comes to these arbitrations. That is simply because so many of the arbitrations in Singapore now originate outside Singapore. Where a dispute has no connection to Singapore other than as being the agreed seat for the ensuing arbitration, the parties to the dispute will almost always have secured legal advice from practitioners in their own jurisdiction before the dispute matures into an arbitration. That same legal team from outside Singapore is very likely to go on to handle the arbitration when it comes time to draft a notice of arbitration or a response.

Singapore firms have an advantage in international commercial arbitration where there is a Singapore connection which goes beyond the seat: where either: (i) the client is from Singapore; or (ii) the contract is governed by Singapore law. It is also the case that Singapore firms have an advantage in disputes which originate from jurisdictions with a legal sector less well-developed than Singapore's, even if the parties have pre-arbitration representation from their own jurisdiction.

These are all, of course, tendencies and not inevitabilities. There is no intrinsic reason why Singapore practitioners and firms cannot compete with the best in the world rather than the best in Singapore. Indeed, many have done so and will continue to do so with great success.

Securing appointment as arbitrator is quite different. An arbitrator's role is a solitary one. So the standing of the individual is of much greater weight than the organisation to which he belongs.

7. Do you see the establishment of the SICC as competition to arbitration as a dispute resolution forum?

The SICC has been conceived and implemented to be a complement to international commercial arbitration rather than an adversary. It fills out Singapore's offering to the dispute-resolution marketplace and thereby, to use a cliché, grows the dispute-resolution pie rather than trying to take a bigger slice of the same pie.

As the Chief Justice pointed out when he delivered the inaugural speech in the Lecture Series of the Dubai International Financial Centre Courts earlier this year, there are users who want a dispute resolution process which is purpose-built for international disputes but which takes place in the national courts of a respected jurisdiction, before a tribunal drawn from its judges, which carries the possibility of a true appeal, which has a mechanism to join parties without their consent and which yields immediately a judgment of the national courts. Even without the SICC, these users would not have chosen international commercial arbitration, let alone Singapore as a seat. But with the SICC, there is now every reason for a significant proportion of these users nevertheless to come to Singapore's International Commercial Court.

Dabbling in DABs

By Nicholas A. Brown

The Use and Avoidance of FIDIC Dispute Boards

Dispute Adjudication Boards ("DABs") have been a feature of FIDIC Books for twenty years, having made their first appearance in the Conditions of Contract for Design-Build and Turnkey 1st edition 1995. DABs take two forms: one that is formed to decide a single dispute after which its appointment will normally[1] expire – the "*ad hoc* DAB";[2] and one that is formed at the beginning of the project to remain in place until the Contractor's discharge of the Employer at the end of the project takes effect – variously, the "standing DAB", "full-term DAB" or "permanent DAB".[3] The FIDIC Conditions of Contract for Plant and Design-Build First Edition 1999 ("P&DB") and Conditions of Contract for EPC/Turnkey Projects First Edition 1999 ("EPCT") provide for an *ad hoc* DAB, whilst the Conditions of Contract for Construction First Edition 1999 ("CONS"), Conditions of Contract for Construction Multilateral Development Bank Harmonised Edition June 2010 ("MDB") and Conditions of Contract for Design, Build and Operate Projects First Edition 2008 ("DBO") provide for a standing DAB. The reported cases cover both kinds of DAB.

Although in practice, the *ad hoc* DAB appears to be much more common than its standing sibling, the DAB *per se* occupies a distinct intermediate tier in the FIDIC Book's three-tiered dispute resolution regime, FIDIC's ambition being that a dispute will ordinarily go no further than a reference to the DAB. Yet, empirically, it seems that disputing parties are often unwilling to entrust a DAB with the final resolution of their dispute, preferring instead to proceed directly to arbitral proceedings.

When faced with a declared "dispute", at least one of the parties (usually the would-be Respondent) might be reluctant to take the steps needed to form the DAB. This can lead to various forms of uncooperative behaviour, ranging from a refusal to nominate a member, to a refusal to sign the Dispute Adjudication Agreement, and/or to a failure to pay the DAB members' invoices. In turn, when faced with (or anticipating) such uncooperativeness, the other party (usually the would-be Claimant) will be tempted to dispense with the DAB altogether and proceed directly to arbitration. It may also be thought that there are tactical advantages in commencing arbitration sooner rather than later. There may even be a mandatory prescription period running that cannot accommodate the usual duration of a DAB proceeding. The Respondent may wish to raise a counterclaim in the principal arbitral proceeding in order to avoid a multiplicity of arbitral proceedings. For whatever given reason (or reasons), it is not uncommon for parties to seek to bypass the DAB stage when seeking to resolve their dispute.

In view of these realities, this short article outlines a range of circumstances in which a party may be relieved of the obligation to refer a dispute to the more common type of DAB – the *ad hoc* DAB.[4] More particularly, this article focuses on the question of whether and in what circumstances a dispute must be referred to an *ad hoc* DAB before it can be finally resolved in arbitration.

A Word about the Reference Materials

Most of the cases are set out in the reasoned

1 The appointment can be extended if prior to the giving of the decision another dispute has been referred to the DAB.

2 The first paragraph of Sub-Clause 20.4 of the P&DB, reads: "If a dispute (of any kind whatsoever) arises between the Parties in connection with, or arising out of, the Contract or the execution of the Works, including any dispute as to any certificate, determination, instruction, opinion or valuation of the Engineer, then after a DAB has been appointed pursuant to Sub-Clause 20.2 [Appointment of the DAB] and 20.3 [Failure to Agree DAB] either Party may refer the dispute in writing to the DAB for its decision, with copies to the other Party and the Engineer. Such reference shall state that it is given under this Sub-Clause."

3 The first paragraph of Sub-Clause 20.4 of the CONS, reads: "If a dispute (of any kind whatsoever) arises between the Parties in connection with, or arising out of, the Contract or the execution of the Works, including any dispute as to any certificate, determination, instruction, opinion or valuation of the Engineer, either party may refer the dispute in writing to the DAB for its decision, with copies to the other party and the Engineer. Such reference shall state that it is given under this Sub-Clause."

4 The position with respect to the (less common) standing DAB will be examined on another occasion.

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decisions of arbitral tribunals formed under the auspices of the Rules of Arbitration of the International Chamber of Commerce (the "ICC Rules of Arbitration"),[5] although state courts have also been called upon to rule in a few germane cases. Whatever the forum, the rulings are based on a diversity of legal norms and in some cases in the context of substantially modified model FIDIC Book provisions. Moreover, in terms of the (common law) doctrine of precedent, the reasoning contained in these materials is at most persuasive only.[6] As a result, it would be somewhat ambitious to draw fixed conclusions from these materials. Nonetheless, they offer a rich source of information on possible outcomes albeit not universally binding conclusions.

FIDIC's Ad Hoc DAB Procedure

In a nutshell, disputes between the parties "shall" be adjudicated by a DAB to be appointed jointly by the parties.[7] Whereas the standing DAB would already be in place, as mentioned, usually the *ad hoc* DAB must then be formed. Either party may then refer a dispute to the DAB for decision. The DAB, acting as a panel of experts and not as arbitrators, must conduct its investigation of the dispute and give notice of its decision to the parties within 84 days (or such other period as the parties may agree). The decision is binding on the parties who must give effect to it unless and until it is revised. Sub-Clause 20.7 provides for the revision of the DAB's decision in international arbitration under the ICC Rules of Arbitration. Exceptionally, Sub-Clause 20.8 provides for the bypassing of the DAB under limited circumstances and thus the direct reference of a dispute to arbitration under the ICC Rules of Arbitration.

Numerous difficulties of interpretation arise in connection with Sub-Clauses 20.7 and 20.8, including when and how the DAB is actually formed and whether it is mandatory to form one and refer a dispute to it in a given case.

5 Many of which are conveniently extracted in anonymized form in the recently published ICC Dispute Resolution Bulletin 2015 Issue 1, International Chamber of Commerce, Trappes (78), France.

6 Emmanuel Gaillard & Yas Banifatemi, Precedent in International Arbitration, International Arbitration Institute, Juris Publishing, Inc., 1 June 2008, p. 40-43.

7 Sub-Clause 20.2.

The General Rule

Generally speaking, arbitral respondents (as regards the main claim) and arbitral claimants (as regards any counterclaim) tend to challenge the admissibility of the underlying dispute (*la recevabilité*) or even the jurisdiction of the arbitral tribunal (*la compétence*) on one or more of a variety of recognisable grounds. Under the FIDIC Books, one of those potential grounds is that the referral of the dispute to the DAB is a mandatory precondition to the advancement of the dispute to the next tier of the dispute resolution procedure, which the protagonist has failed to discharge. All of the available reports of arbitral and curial decisions concerning this question confirm that the initiation of the DAB process is indeed, generally speaking, a mandatory precondition, as indicated (in the context of an *ad hoc* DAB) in the first paragraph of Sub-Clause 20.2, which states:

"Disputes shall be adjudicated by a DAB in accordance with Sub-Clause 20.4 [Obtaining Dispute Adjudication Board's Decision]. The Parties shall jointly appoint a DAB by the date 28 days after a Party gives notice to the other Party of its intention to refer a dispute to a DAB in accordance with Sub-clause 20.4."

So, generally speaking, bypassing the DAB is not an option. However, there are exceptions to the general rule. These exceptions tend to stem from Sub-Clause 20.8, which is universal to the FIDIC Books. It reads:

"If a dispute arises between the Parties in connection with, or arising out of, the Contract or the execution of the Works and there is no DAB[8] in place, whether by reason of the expiry of the DAB's appointment or otherwise:

(a) Sub-Clause 20.4 [Obtaining Dispute Board's Decision] and Sub-Clause 20.5 [Amicable Settlement] shall not apply, and

(b) the dispute may be referred directly to arbitration under Sub-Clause 20.6 [Arbitration]."

8 The MDB prefers the acronym "DB".

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The Exceptions to Mandatory DAB Referral

The publicly available cases considering the scope of the mandatory referral rule may be divided into roughly four classes. First, there is the recent English case, *Peterborough City Council v Enterprise Managed Services Ltd,*[9] in which the parties were held not to be free to bypass the *ad hoc* DAB because Sub-Clause 20.8 is categorically inapplicable (see Section 1 below). Second, there are cases where Sub-Clause 20.8 is recognised as being applicable and where there is in fact no DAB "in place" due to the acts or omissions of the party who is challenging the admissibility of a claim or the jurisdiction of the arbitral tribunal (see Section 2 below). Third, there are cases where Sub-Clause 20.8 is recognised as being applicable and where a DAB is recognised as having been formed but where it is held that nonetheless a dispute need not be referred to it (see Section 3 below). Fourth, there is the case where the DAB was formed and yet the actual or perceived bias of the sole DAB member was held to justify the avoidance of a referral to it (see Section 4 below).

1. Class 1 – No Exceptions

The judgment of the Technology and Construction Court in *Peterborough City Council v Enterprise Managed Services Ltd*[10] represents the most restrictive approach to the mandatory referral to an *ad hoc* DAB. It involves a contract made between the Council and EMS by which EMS agreed to design, supply, install, test and commission a 1.5 MW solar energy plant on the roof of a building owned by the Council. The contract, made on the EPCT, provided for the *ad hoc* appointment of a DAB following the issue by one of the parties of a notice of intention to refer a dispute to adjudication. A dispute arose out of the contract and following an unsuccessful attempt at mediation and a letter from EMS stating its intention to refer the dispute to adjudication, the Council brought an action in Court against EMS in respect of it. EMS applied to the Court for an order to stay the action. The court granted the stay principally on the following five grounds:

(1) The first paragraph of Sub-Clause 20.2 contains a mandatory requirement to refer disputes arising under the contract in the first place to adjudication in accordance with Sub-Clause 20.4.

(2) The source of the DAB's authority, the Dispute Adjudication Agreement, was pre-agreed because it was to be in the form set out in the Appendix to the Conditions and the agreement of the adjudicator's entitlement to reasonable fees and expenses was implied.[11] It was not unenforceable for want of signature of the parties because the parties could be compelled to sign the agreement by an order for specific performance at the suit of one or more of the other parties.[12]

(3) Sub-Clause 20.8 is inapplicable to the contract because it applies only in cases where the contract provides for a standing DAB, rather than the procedure of appointing an *ad hoc* DAB after a dispute has arisen.[13]

(4) Even if Sub-Clause 20.8 applied, a DAB is "in place" and the right to refer a dispute to it arises under the first paragraph of Sub-Clause 20.4 as soon as a DAB has been appointed, whether under Sub-Clause 20.2 (joint appointment) or Sub-Clause 20.3 (appointment by appointing entity or official).[14]

(5) The Council has not made out a sufficiently compelling case to displace the presumption in favour of adopting the method of dispute resolution chosen by the parties in their contract, and thus had not made out a sufficient case for resisting a stay.[15]

The holding that Sub-Clause 20.8 does not apply to a contract providing for an *ad hoc* DAB amounts to the most interesting but restrictive position across the range of interpretations, not least because it categorically prevented a party from avoiding the adjudication of a dispute by a DAB in accordance

9 [2014] EWHC 3193 (TCC) coram Justice Edwards-Stuart.
10 Id.
11 Ibid. [22] and [28]
12 Ibid. [31]
13 Ibid. [33]. Edwards-Stuart J. reached a consistent conclusion (without discussion) in the earlier case of *Doosan Babcock Ltd v Comercializadora De Equipos Y Materiales Mabe Limitada* [2014] 1 Lloyd's Rep 464, [2013] EWHC 3010 (TCC), [12].
14 Ibid. [34]. This point appears to have been made in the alternative to the point preceding point that Sub-Clause 20.8 was inapplicable to the contract.
15 Ibid. [37-44]

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with Sub-Clauses 20.2 and 20.4. A literal reading[16] of the expression "no DAB in place" in Sub-Clause 20.8 makes possible the (*reductio ad absurdum*) argument that if Sub-Clause 20.8 applied also to an *ad hoc* DAB then in such a case there could never be one in place because – unlike a standing DAB – when the relevant dispute arises, invariably the *ad hoc* DAB has not yet been formed. Under Sub-Clauses 20.2 and 20.3 the appointment of the DAB will always come after the existence of a dispute. Interestingly, an earlier decision of the full divisional court of the Federal Supreme Court of Switzerland (published originally in French), anonymously entitled "*A. SA v B. SA*" eschews such a literal interpretation of the expression. In its unanimous decision, the court expressed such doubts in view of the evident purpose of Clause 20. One unofficial English translation of this passage reads:

3.4.3.3. The broad interpretation of Sub-Clause 20.8 of the General Conditions by the majority of the Arbitral Tribunal is not more convincing. According to it and insofar as it actually has such a meaning, it would be sufficient for a DAB not to be operational at the time arbitration proceedings are initiated, no matter for what reason, for a decision of this body to become optional. Such a conclusion would ultimately turn the alternate dispute resolution mechanism devised by FIDIC into an empty shell. Moreover, the reasons advanced in support are of little weight. [17]

It appears that the English and Swiss courts have taken different paths to a similar restrictive reading of the exception afforded by Sub-Clause 20.8 to the mandatory rule. The former approach confines the operation of the Sub-Clause specifically to standing boards, whereas the latter more fact-sensitive approach requires particular qualifying reasons for the non-empanelment of the DAB (be it standing or *ad hoc*) in order for Sub-Clause 20.8 to be given expression.

2. Class 2 – No Need to Persevere in the Face of Prevention

The FIDIC Contracts Guide fairly conveys the impression that the FIDIC actually intended that Sub-Clause 20.8 would apply to *ad hoc* DABs but that the expression "no DAB in place" should carry a limited default-oriented scope. In the context of *ad hoc* DABs, the principal drafter writes:

"Under P&DB or EPCT, the first paragraph of Sub-Clause 20.2 requires a DAB to be appointed within 28 days after a Party gives notice of intention to refer a dispute to a DAB, and Sub-Clause 20.3 should resolve any failure to agree the membership of the DAB. The Parties should thus comply with Sub-Clauses 20.2 and 20.3 before invoking Sub-Clause 20.8. If one Party prevents a DAB becoming "in place", it would be in breach of contract. Sub-Clause 20.8 then provides a solution for the other Party, which is entitled to submit all disputes (and this breach) directly to arbitration.[18]"

On this approach, the party seeking to justify the avoidance of the DAB process must show preventative acts or omissions on the part of the Party seeking to rely on the non-referral of the dispute to a DAB to exclude the dispute from the arbitration. Such a showing is illustrated in *A. SA v B. SA,*[19] in which the parties spent around 15 months unsuccessfully trying to form a DAB by various means. In the end, the Respondent, having refused to sign the DAA, commenced arbitral proceedings. In those proceedings the tribunal rendered a partial award finding for the admissibility of the principal claims. The Court rejected an annulment application that was subsequently brought by the Respondent, upholding the arbitral tribunal's partial award notwithstanding the failure to commence the DAB proceedings. In doing so, the court articulated the following non-exhaustive, fact-sensitive test for

16 Ibid. [32]. Although a broad interpretation of the same expression is preferred in the final award of the sole arbitrator in *ICC Case 18505* dated November 2013 (at [107]), the published extract of the award contains no reference to the proposition that as such there can never be a reference of a dispute to *ad hoc* adjudication because when the relevant dispute arises there will never be a DAB in place within the meaning of Sub-Clause 20.8. To the contrary, in that award, which concerns a contract based on the P&DB, the arbitrator held that the Claimant had fully complied with the contract's multi-tier procedure in circumstances where the inexistence of the *ad hoc* DAB was caused by the Respondent's lack of cooperation.
17 Ibid. [3.4.3.3]. The original French text reads:
3.4.3.3. L'interprétation large, faite par la majorité du Tribunal arbitral, de la sous-clause 20.8 des conditions générales ne convainc pas davantage. A la suivre et autant qu'elle revête effectivement une telle signification, il suffirait qu'un DAB ne soit pas opérationnel au moment de l'ouverture de la procédure d'arbitrage, quelle qu'en soit la raison, pour que l'on puisse se passer d'une décision de cet organe. Semblable conclusion, poussée dans ses extrémités, reviendrait à faire du mode alternatif de règlement des litiges élaboré par la FIDIC une coquille vide. Les motifs qui l'étayent n'ont du reste guère de poids.
18 See page 321.
19 See also final award in *ICC Case 18505*, ICC Dispute Resolution Bulletin 2015, Issue 1, 137.

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the operation of Sub-Clause 20.8. Translated into English, the relevant passage reads:

"However, that the rule permits some exceptions is clear from the text of Sub-Clause 20.8. Special circumstances, whether objective or not, must be reserved in which resorting to the pre-arbitration DAB procedure could not be imposed upon the party wishing to submit the dispute with its contractual counterpart to arbitration. Considered from the opposite perspective, the exception is a case in point of the principle of good faith, which governs the procedural behaviour of the parties as well. Depending upon the circumstances, the principle will therefore prevent one of them from objecting on the basis of the absence of a DAB decision. Yet, saying in advance and once and for all when it may be applied is impossible because the answer to the question depends upon the facts germane to the case at hand. [20]"

3. Class 3 – No Need to Refer Connected Disputes

The third class of case concerns rulings that a reference to DAB proceedings was not mandatory in the particular case for reasons not touching the operation of Sub-Clause 20.8. This is illustrated by the interim award of the arbitral tribunal in *ICC Case 16083*,[21] a decision based on the French law of international arbitration concerned with a contract which though based on the three-tier dispute resolution provisions of the EPCT contained contradictory special provisions for two-tier amicable settlement[22] and arbitration in Special Conditions.

In this case, the tribunal held that there was no evidence that the parties' consent to arbitration in the present case was contingent on compliance with the various pre-arbitral procedures set forth in the contract,[23] hence there was no condition precedent to the admissibility of the Claimant's claims remaining to be satisfied.[24] Applying the French-law principle of interpretation in accordance with good faith,[25] the tribunal identified six factors that taken together necessitated the conclusion that the parties were not required to refer claims or disputes to a DAB before resorting to ICC arbitration. Five of the six factors pertain solely to the content of certain articles of the Special Conditions which the tribunal applied in priority to Clause 20 of the EPCT and thus which hold no broader significance. The sixth factor however does offer wider utility because it illustrates how, under the good faith-based approach to interpretation, the subsequent conduct of the parties had confirmed the non-essentiality of the DAB procedure. That conduct is not narrated in detail in the published extract of the interim award; however, what can be gleaned is that whereas the Claimant had brought forward its claims in the Request for Arbitration without first referring the related dispute to a DAB, the Respondent had taken no steps to have those claims referred to a DAB during a period of more than three years since the dispute first arose between the parties. Similarly, the Respondent had directly referred its counterclaim to arbitration.[26]

Of equal significance, this same conduct contributed to an alternative conclusion, based on French case law,[27] that there was no legitimate ground for declaring the Claimant's claims inadmissible, i.e. such grounds had been waived. Other factors were (1) the undesirability of referring the Claimant's claims to a DAB and, at the same time, proceeding with the adjudication of the Respondent's counterclaims in the arbitration;[28] and (2) the purpose of a DAB reference - namely, speedy resolution of dispute during the course of construction and engineering projects - was already unattainable.[29] The approach of the tribunal on the alternative waiver ground may also be confined to its facts since it appears that the application of the two-step procedure in priority to the EPCT's three-step procedure created room for the application of the waiver principle free of the mandatory requirement in Sub-Clause 20.2.

20 The original French passage reads:
"Cependant, la règle posée souffre des exceptions, comme cela ressort du texte de la sousclause 20.8. Il faut, en effet, réserver la prise en compte de circonstances particulières, objectives ou non, dans lesquelles le recours à la procédure préalable du DAB ne saurait être imposé à la partie désireuse de soumettre à l'arbitrage le différend qui l'oppose à son cocontractant. Considérée sous l'angle opposé, cette exception constitue un cas d'application du principe de la bonne foi, lequel régit aussi le comportement procédural des parties. Suivant les circonstances, ce principe interdira donc à l'une d'elles d'opposer à l'autre une fin de nonrecevoir tirée de l'absence de décision rendue par un DAB. Cela étant, dire d'avance et une fois pour toutes quand il trouvera à s'appliquer n'est pas possible puisque la réponse à cette question dépend de la prise en compte des faits propres à la cause en litige."
21 ICC Dispute Resolution Bulletin 2015 Issue 1, 57 (July 2010)
22 Ibid. [59]
23 Ibid. [65(b)]
24 Ibid. [66]
25 Ibid. [68-76] See also *A. SA v B. SA* (supra) at [3.4.4].
26 Ibid. [90] and [101-102]
27 Société British Leyland International Services v Société d'exploitation des Établissements Richard, 1e civ., 6 June 1978.
28 *ICC Case 16083* Interim Award dated July 2010, [103].
29 Ibid. [104]

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4. Class 4 – No Need to Refer to a Biased DAB

The final award of the arbitral tribunal in *ICC Case 19581*[30] offers a showing of an arbitral tribunal finding for jurisdiction and admitting claims that were referred directly to arbitration where a sole member of a standing DAB had failed to comply with his disclosure obligations and was found also to be lacking the required independence and impartiality.[31] In summary, at the material time, the sole member's wife was the Head of the Claims Disputes and Arbitration Unit of the Respondent, this being a decision-making position.[32] The sole member disclosed the Respondent's employment of his wife but described her role as a non-decision-making position.[33] This disclosure was only belatedly corrected, one and a half years after the member's acceptance of the appointment and only upon the Claimant's intervention.[34] The member declared that he had gotten divorced from the employee who was no longer head of the Respondent's management unit. Even so, she was subsequently mentioned as a party representative in the Respondent's Answer to the Request for Arbitration and Counterclaim and in the Terms of Reference,[35] and she was involved in two other major arbitration proceedings pending between the Respondent and a company pertaining to the Claimant's group.[36] In these circumstances, the arbitrator concluded that in terms of Sub-Clause 20.8 the DAB was no longer validly "in place" when the current dispute arose. The arbitrator observed:

"The Sole Arbitrator recalls that Sub-Clause 20.8 GCC is drafted in broad terms. It acknowledges that a DAB may not be in place "whether by reason of the expiry of the DAB's appointment or otherwise" (emphasis added). The Sole Arbitrator finds that the term "otherwise" covers situations where a sole DAB member has violated his disclosure obligations and lacks the required independence and impartiality.[37]

As Sub-Clause 20.8 GCC is phrased in broad terms ("or otherwise"), the Sole Arbitrator determines that Claimant was not required to declare a termination of the Dispute Adjudication Agreement … for the purpose of triggering the exception under Sub-Clause 20.8 GCC, which would have been "without prejudice" to the Contractor's other rights (Clause 7 para. 2 of the General Conditions of Dispute Adjudication Agreement). Rather, in a case where the DAB comprises only one single member, the warranty undertaken in Clause 3 of the General Conditions of Dispute Adjudication is of such a fundamental nature that its violation likewise may trigger the exception under Sub-Clause 20.8 GCC.[38]"

Whilst it may be tempting to confine the reasoning in *ICC Case 19581* to circumstances of a sole member of the DAB, there is no obvious reason why by parity of reasoning the consequences of bias within a three-member DAB might not amount to the constructive absence of a DAB. Leaving aside the question of whether Sub-Clause 20.8 applies universally across the FIDIC Books (Section 1 above refers), the permanence of the DAB is probably not a basis for distinguishing the tribunal's reasoning, in the sense that it is hard to see how a lack of independence and impartiality would not have the same triggering effect upon an *ad hoc* DAB (which would be a post dispute DAB) as on a standing DAB (a pre-dispute DAB).

Future Possibilities

Thanks to the civic mindedness of those persons who have allowed the ICC to publish the substance of arbitral awards rendered in their proceedings, and the efforts of the ICC and various legal information institutes, the body of awards and other decisions concerning the multi-tiered dispute resolution provision in the FIDIC Books continues to grow. That said, the strict precedential value of these materials should not be assumed as they are not binding decisions. Instead, they are selected at source and involve a diversity of governing laws and thus, varying

30 *ICC Case 19581* Final Award dated August 2014, ICC Dispute Resolution Bulletin 2015, Issue 1, 147.
31 Ibid. [299]
32 Ibid. [301]
33 Ibid. [300 and 302]
34 Ibid. [303]
35 Ibid. [309-310]
36 Ibid. [311]
37 Ibid. [314]
38 Ibid. [318]

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degrees of adherence to the stated intentions of FIDIC's Contracts Committee. Yet, they do illustrate and provide interesting insights into the various approaches of different arbitrators appointed by the ICC Court and experienced commercial judges to real-world fact patterns. Indeed these offer some reasonable basis for analogizing, and a useful source of guidance.

No doubt further illustrations of the four-fold catalogue of exceptions to the mandatory rule will find expression in publicised materials, and perhaps so too will new exceptions. Equally, there are bound to be inconsistent approaches particularly in view of the eclectic nature of international commercial arbitration; however the opportunity stands before FIDIC to confirm its intentions as regards the exceptional cases where parties may refrain from dabbling with the DAB and move on.

Nicholas A. Brown
LLB & LLM (QUT), DipICArb, FCIArb, FSIA
Partner, Pinsent Masons MPillay LLP, Singapore

SINGAPORE ARBITRATION CASE LAW UPDATE

By Yeo Boon Tat and Josephine Tong

This issue deals with two recent cases on arbitration decided by the Singapore Courts:

(a) *PT Perusahaan Gas Negara (Persero) TBK v CRW Joint Operation* [2015] 4 SLR 364; and
(b) *AQZ v ARA* [2015] 2 SLR 972.

PT Perusahaan Gas Negara (Persero) TBK v CRW Joint Operation is the latest decision by the Court of Appeal regarding enforceability of decisions issued by the dispute resolution board ("**DAB**") in FIDIC contracts. In a rare occasion where the Court of Appeal was split 2:1 in its decision, the majority of the Court of Appeal declined to set aside an interim arbitral award which sough to enforce a DAB decision, notwithstanding the merits of the dispute underlying the DAB decision had not been arbitrated upon. This departs from an earlier decision by the Court of Appeal involving the same parties in *CRW Joint Operation v PT Perusahaan Gas Negara (Persero) TBK* [2011] 4 SLR 305 which upheld the decision at first instance to set aside an arbitral award which sought to enforce a DAB decision.

AQZ v ARA is another case where there was an unsuccessful application to set aside an arbitration award. It is the first reported case involving a challenge to the validity of an arbitral award rendered under the Expedited Procedure of the SIAC Rules.

***PT Perusahaan Gas Negara (Persero) TBK v CRW Joint Operation* [2015] 4 SLR 364**

BACKGROUND FACTS

The parties

1. The Appellant is an Indonesian company that owns and operates gas transmission systems in Indonesia while the Respondent is a group comprising three Indonesian limited liability companies. The Appellant engaged the Respondent to design, procure, install, test and pre-commission a pipeline to convey natural gas from South Sumatra to West Java (the "**Project**") in 2006.
2. The governing contract between the parties (the "***Contract***") included, *inter alia*, the standard provisions of the *Conditions of Contract for Construction: For Building and Engineering Works Designed by the Employer* (i.e. the "Red Book") issued by FIDIC (the "***Conditions of Contract***").

The underlying dispute and relevant dispute resolution clauses

3. A number of disputes arose between the parties during the course of the Project that were referred to the DAB constituted pursuant to the dispute resolution mechanism

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under Clause 20 of the Conditions of Contract.

4. Clause 20 of the Conditions of Contract provided *inter alia* as follows:
   a. Any DAB decision would be binding, and parties would have to promptly give effect to it unless and until it is revised pursuant to an amicable settlement or an arbitral award.
   b. If any party is dissatisfied with the DAB decision, it would have to issue a Notice of Dissatisfaction ("***NOD***") within 28 days of receipt of that decision. If no NOD is issued, the DAB decision would become final and binding.
   c. If an NOD is issued, both parties would attempt to settle the dispute amicably. Unless both parties agree otherwise, the dispute may be referred to arbitration after 56 days from the issuance of the NOD, even if there has been no attempt at amicable settlement.
5. In this instance, the Appellant refused to accept one of the decisions issued by the DAB ("**DAB No.3**"), under which the Appellant was directed to pay the Respondent US$17,298,834.57 (the "**Adjudicated Sum**"). The Appellant subsequently lodged an NOD against that decision and refused to pay the Respondent the Adjudicated Sum despite the latter's repeated requests.

Summary of proceedings in relation to DAB No. 3

The 2009 Arbitration and setting-aside application

6. The Respondent obtained an arbitration award in 2009 for a declaration that the Appellant had an immediate obligation to pay the Adjudicated Sum and an order for prompt payment of that sum. The arbitral tribunal had termed this a "*final award*" at the material time (the "**Final Award**").
7. The Appellant however successfully applied in the High Court to set aside the Final Award on the basis that the arbitral tribunal had exceeded its jurisdiction in failing to consider the merits of the parties' underlying dispute vis-à-vis DAB No.3 (the "**Underlying Dispute**").
8. The Respondent's appeal against this decision was dismissed by the Court of Appeal in 2011 which upheld the decision by the High Court in the first instance. However, the Court of Appeal commented, *obiter,* that the Adjudicated Sum could be enforced directly by an interim or partial award pending final resolution of the Underlying Dispute.

The 2011 Arbitration, enforcement and setting-aside proceedings

9. Following the decision of the Court of Appeal in 2011, the Respondent then commenced a second arbitration in 2011 seeking a final resolution of the Underlying Dispute as well as an interim award for the Adjudicated Sum pending such resolution (the "**2011 Arbitration**").The interim award sought by the Respondent was granted by the arbitral tribunal (the "***Interim Award***").
10. However, the Appellant refused to comply with the Interim Award and pay the Adjudicated Sum. This led the Respondent to commence enforcement proceedings in respect of the Interim Award.
11. The Appellant applied to set aside the Interim Award. It contended that the Interim Award was a provisional award as the arbitral tribunal only intended the Interim Award to have interim finality until determination of the Underlying Dispute. The Appellant therefore submitted that such provisional award was prohibited by Section 19B of the International Arbitration Act ("**IAA**"), and the arbitral tribunal in the 2011 Arbitration had acted in excess of its jurisdiction, in breach of natural justice and/or in breach of the parties' agreed procedure in issuing the Interim Award.
12. The High Court Judge dismissed the Appellant's application, and held that none of the Appellant's grounds of challenge was sustainable for the following reasons:
    a. Although the Interim Award was a provisional award insofar as it would cease to be effective when the tribunal of the 2011 Arbitration resolved the Underlying Dispute, there was nothing in Section 19B of the IAA which either prohibited or permitted provisional awards;
    b. The Interim Award did not breach Section 19B of the IAA because it was final and binding vis-à-vis the Appellant's obligation under the Contract to pay the Adjudicated Sum. This would remain undisturbed regardless of how the Underlying Dispute would be eventually resolved; and
    c. Any future determination of the Underlying Dispute would not vary the Interim Award because such final award could be worded to stand alongside the

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Interim Award, such that there would consequently be no breach of Section 19B(2) of the IAA in any event.

The present appeal

13. The Appellant appealed against the High Court Judge's decision on two grounds:
    a. The Interim Award is inconsistent with Section 19B because it is an award that only has interim finality.
    b. The effect of Clause 20.4 of the Conditions of Contract meant that the DAB decision in question ceased to be binding as soon as the arbitral tribunal of the 2011 Arbitration made any award on the Underlying Dispute. The Appellant contended that the arbitral tribunal did make certain findings on the merits in this case.

THE COURT OF APPEAL'S GUIDANCE ON FINAL, INTERIM, PARTIAL AND PROVISIONAL AWARDS

14. The majority of the Court of Appeal comprising Chief Justice Sundaresh Menon and Justice Quentin Loh, made the following observations on the terminology used in relation to arbitral awards.
    a. the terms "*partial*" and "*interim*" awards have been used interchangeably to refer to the same category of arbitral awards that dispose of certain preliminary issues or certain claims for relief prior to the disposition of all the issues in the arbitration.
    b. In contrast, "*provisional*" awards are issued to protect a party from damage during the course of the arbitral process and do not definitively or finally dispose of either a preliminary issue or a claim in arbitration. They do not give rise to a finding or determination of the substantive rights of the parties and are therefore provisional in nature. Whilst Section 12 of the IAA permits an arbitral tribunal to make such orders or directions (which are provisional in nature) in the course of arbitration, Section 2 of the IAA provides that such orders or directions are not to be regarded as "*awards*" for the purposes of the IAA.
15. The majority of the Court of Appeal identified the characteristics of a "*final*" award as follows:
    a. an award which resolves a claim or matter in an arbitration with preclusive effect (i.e. the same claim or matter cannot be re-litigated);
    b. an award that has achieved a sufficient degree of finality in the arbitral seat; and
    c. the last award made in an arbitration which disposes of all remaining claims.

THE DECISION OF THE MAJORITY OF THE COURT OF APPEAL

Interpretation of clauses 20.4 and 20.6 of the Conditions of Contract

16. Clause 20.4 of the Conditions of Contract imposed a direct contractual obligation on the parties to comply promptly with a DAB decision once it is issued, regardless whether such decision is final and binding or merely temporarily binding.
17. If a party is dissatisfied with a DAB decision and wishes to challenge it, the dissatisfied party would have to issue an NOD in accordance with the procedure set out in Clause 20 of the Conditions of Contract, and would be entitled to refer the merits of the DAB decision to arbitration only after 56 days from the date of issuance of the NOD.
18. The obligation to comply promptly with a temporarily binding DAB decision would be capable of being directly enforced by arbitration without requiring the parties to first go through the preliminary steps set out in clause 20.4 and 20.5 of the Conditions of Contract.
19. The majority of the Court of Appeal provided guidance on the types of determinations that may be awarded by the arbitral tribunal depending on the issue(s) that it has been asked to rule on:
    a. Where an arbitral tribunal is asked to rule on whether the paying party has complied promptly with a DAB decision only, the tribunal would be entitled to make a final determination on that issue.
    b. Where an arbitral tribunal is asked to rule on both the dispute over the paying party's non-compliance with a binding but non-final DAB decision as well as the dispute over the merits of that DAB decision, the tribunal may:
        i. make an interim or partial award which finally disposes of the first issue (i.e. whether the paying party has to comply promptly with the DAB decision);
        ii. then proceed to consider the second issue (i.e. the merits of the DAB decision), which is a separate and conceptually distinct matter;
        iii. subsequently, make a final determination of the underlying dispute between the parties.

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The Appellant's first argument on appeal and Section 19B of the IAA

20. The majority of the Court of Appeal found that the Interim Award was not intended by the arbitral tribunal to be one that could subsequently be varied, and therefore held that Section 19B of the IAA would not operate to render the Interim Award unenforceable in any event.
21. Instead, Section 19B would render the Interim Award final and binding in respect of the issue that the arbitral tribunal dealt with i.e. whether the paying party has complied with the DAB decision. This did not preclude the Respondent's right to have the Underlying Dispute determined in the 2011 Arbitration.
22. The Appellant's first ground in its appeal was therefore dismissed.

The Appellant's second argument on appeal

23. The Appellant contended that the effect of Clause 20.4 meant that DAB No 3 would cease to be binding as soon as the arbitral tribunal of the 2011 Arbitration issues any award on any aspect of the Underlying Dispute.
24. The majority of the Court of Appeal rejected this argument as it held that the Appellant failed to discharge its burden of showing how and why the Interim Award would be unenforceable or liable to be set aside in the event where the release of an award on the Underlying Dispute would cause the binding effect of DAB No 3 (upon which the Interim Award is premised) to cease.
25. In any event, at the material time of the Court of Appeal's decision, there had not been a final determination of the Underlying Dispute and therefore, nothing has transpired to invalidate or affect the Interim Award.

DISSENTING VIEWS OF SENIOR JUDGE CHAN SEK KEONG

26. Senior Judge Chan Sek Keong disagreed with the views of the majority of the Court of Appeal, and held that the Interim Award should be set aside.

Interim Award should be set aside as the arbitral tribunal of 2011 Arbitration had no mandate

27. Chan SJ was of the view that the arbitral tribunal in the 2011 Arbitration had no mandate to issue the Interim Award. A summary of his reasoning is set out below:
    a. Clause 20.6 constituted the arbitration agreement between the parties, and made clear that the Underlying Dispute would have to be finally settled by international arbitration i.e. whether the decision in DAB No 3 was correct. Clause 20.6 was not intended to and could not apply in the context of an enforceability dispute (i.e. whether DAB No 3 is enforceable by an arbitral award pending the determination of the primary dispute on the merits) as the preceding words in Clause 20.6 - "*unless settled amicably*" rendered the provision applicable only in respect of factual disputes, such as the parties' primary dispute.
    b. The enforceability dispute involved a dispute on the law which could not be resolved by amicable settlement. This would not be within the scope of Clause 20.6, as an arbitral tribunal would only have mandate to determine the primary dispute i.e. the correctness of the adjudication in DAB No 3. The arbitral tribunal of the 2011 Arbitration therefore had no jurisdiction or power to grant an interim award ordering the enforcement of DAB No 3 pending its resolution of the primary dispute on the correctness of that DAB decision.

Interim Award is a provisional award in essence

28. Even if the arbitral tribunal of the 2011 Arbitration had mandate to issue the Interim Award, Chan SJ considered that the Interim Award was in essence a provisional award and was therefore incapable of being recognised as an award for enforcement purposes

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under the IAA. This was because he found, *inter alia*, the arbitral tribunal in the 2011 Arbitration had issued the Interim Award on the understanding that it could be subject to alteration at the arbitration of the primary dispute. Accordingly, the Interim Award was not an "*award*" recognised under the IAA and was therefore unenforceable under Section 19 of the IAA in the same manner as a judgment.

***AQZ v ARA* [2015] 2 SLR 972**

BACKGROUND FACTS

29. The Plaintiff was a supplier of Indonesian non-coking coal. The Defendant, the Singapore subsidiary of an Indian trading and shipping conglomerate, was a potential buyer of such coal.
30. Sometime in or around November 2009, parties negotiated the possibility of entering into two separate sale and purchase agreements in which the Plaintiff would sell Indonesian non-coking coal to the buyer.
31. By 7 December 2009, parties entered into a contract for the shipment of 50,000 metric tonnes of coal in January 2010 ("**the First Shipment Contract**") at an agreed price.
32. A dispute subsequently arose as to whether the parties' negotiations resulted in a further contract for a second shipment of the same quantity of coal in January 2010 ("**the Second Shipment Contract**"). Whilst the Plaintiff claimed that the Second Shipment Contract did not materialise, the Defendant contended that the Second Shipment Contract had been concluded and the Plaintiff had breached it.

Commencement of arbitration proceedings

33. The Defendant commenced arbitration proceedings against the Plaintiff in the SIAC pursuant to the arbitration agreement under the alleged Second Shipment Contract. The Defendant also applied for the arbitration to be commenced under the "Expedited Procedure" pursuant to r 5 of the SIAC Rules 2010.
34. The Plaintiff challenged the existence of the arbitration agreement and objected to the Expedited Procedure.
35. Following the parties' submissions on the suitability of the Expedited Procedure, the SIAC allowed the Defendant's application for the Expedited Procedure.
36. The parties then agreed to jointly nominate a sole arbitrator but the Plaintiff made clear that it was proceeding with the arbitration *"under protest with all of its rights reserved, including the right, inter alia, to challenge the effectiveness of the Arbitration Agreement, the applicability of the SIAC Rules 2010, the conduct of the Arbitration under the Expedited Procedure before a sole arbitrator and/or the Tribunal's own jurisdiction".*
37. Following a preliminary hearing on jurisdiction and liability, the appointed arbitrator decided that he had jurisdiction and that the Plaintiff was liable to the Defendant for breach of the Second Shipment Contract.

Commencement of setting aside proceedings in the High Court

38. This culminated in the High Court proceedings where the Plaintiff sought to reverse and/or wholly set aside the arbitrator's ruling on the following grounds:
    a. the arbitrator lacked jurisdiction to hear the dispute pursuant to s 10(3)(a) of the IAA and/or Art 16(3) of the Model Law;
    b. alternatively, the Expedited Procedure and the appointment of a sole arbitrator were not in accordance with parties' agreement, thereby entitling the Plaintiff to challenge the arbitrator's ruling pursuant to s 3(1) IAA and Art 34(2)(a)(iv) of the Model Law.

THE COURT'S GUIDANCE ON THE NATURE OF A SETTING ASIDE APPLICATION

39. The Plaintiff initially submitted that the Court should undertake a *de novo* hearing in an application to set aside an arbitral award on the ground that the arbitral tribunal lacked jurisdiction to hear the dispute. Specifically, the Plaintiff wanted the Court to hear oral evidence from the parties' witnesses and allow cross-examination in the application.
40. Although the Plaintiff subsequently withdrew this submission and was content to proceed on affidavit evidence alone, Justice Judith Prakash set out her views on this issue to provide future guidance on the nature of a setting-aside application for lack of jurisdiction.

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41. Prakash J acknowledged that the Court would undertake a *de novo* hearing of the arbitral tribunal's decision on its jurisdiction in a setting-aside application on the ground of lack of jurisdiction to hear the dispute. However, this would not mean that oral evidence and cross-examination would be allowed in every such application as this would effectively result in a complete rehearing of all matters presented before the arbitral tribunal.
42. An application under O 69 r 2 would not envisage a *de novo* re-hearing of all evidence in every application to set aside an award. Instead, it contemplates that the matter would generally be resolved by way of affidavit evidence. The plaintiff is expected to file a supporting affidavit setting out the award and all evidence he seeks to rely upon. The defendant is then entitled to file an affidavit to oppose the application setting out his grounds and evidence. The Court would have a wide array of materials before it, including the official transcripts of the arbitral hearing, and would therefore be able to reach a conclusion on the tribunal's jurisdiction.
43. However, there would be exceptions in which the Court would allow oral evidence and/or cross-examination in an application to set aside an arbitral award on the ground of lack of jurisdiction, when it considers that:
    a. there is or may be a dispute on the facts of the matter;
    b. to do so would secure the *"just, expeditious and economical"* disposal of the application.
44. If such considerations apply and a party wishes to deal with the application by way of oral evidence, it should file the affidavits of evidence of the witnesses it intends to call at an early stage, as well as file an application to have these witnesses and the witnesses of the opposing party to be heard and cross-examined in Court.
45. When faced with such application whether to allow oral evidence and cross-examination, the Court should be mindful that parties would have already examined witnesses fully before the arbitral tribunal. Although the arbitral tribunal's views would be of no legal or evidential value to the Court, this would not mean that the Court is unable to assess and rely on the evidence presented before the arbitral tribunal. The Court would remain fully competent to review the transcripts of oral evidence and documentary evidence produced before the arbitral tribunal and thereafter make findings of fact based on such evidence. Mere existence of factual disputes could not alone constitute a sufficient reason to allow oral examination and cross-examination.
46. In addition, Prakash J noted that parties would be free to adduce new evidence that was not before the arbitral tribunal by way of their affidavits filed in support of the application to set aside the arbitral award. The Court may then order deponents to appear and be subject to cross-examination on the new evidence if the need arises.

THE SUBSTANTIVE ISSUES

47. Three substantive issues were before the Court:
    a. Whether the Plaintiff could rely on s 10(3) of IAA and Art 16(3) of the Model Law in light of the fact that the arbitrator's decision on its jurisdiction was contained in the same award which also dealt with the merits of the dispute;
    b. Whether the Arbitrator's decision on jurisdiction could be set aside under Art 34(2)(a)(i) of the Model Law on the basis that there was no valid arbitration agreement; and
    c. Whether the arbitral award could be set aside under Art 34(2)(a)(iv) on the grounds that the composition of the arbitral tribunal (i.e. the appointment of a sole arbitrator instead of three arbitrators) or the arbitral procedure (i.e. the Expedited Procedure) was not in accordance with the parties' agreement.

Issue 1: Whether the Plaintiff could rely on s 10(3) of IAA and Art 16(3) of the Model Law where the arbitrator's decision on its jurisdiction was contained in the same award which also dealt with the merits of the dispute

48. The Plaintiff contended that it was entitled to set aside the arbitral award by relying on s 10(3) of the IAA and/or Art 16(3) notwithstanding that the Arbitrator's decision on his jurisdiction was contained in the same award that also dealt with the merits of the dispute.
49. Prakash J reviewed the drafting history of the

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Model Law and concluded that the drafters did not intend an award that deals with the merits of the dispute, however marginally, to be subject to challenge under Art 16(3) of the Model Law. In such circumstances, the party seeking to set aside the award should seek relief under s 3(1) of the IAA and/or Art 34(2) of the Model Law.

50. With regard to s 10(3) of the IAA, Prakash J rejected the Plaintiff's contention that the difference in wording between s 10 of the IAA and Art 16(3) of the Model Law meant that it was entitled to challenge the arbitral award under the former even if it was precluded from doing so under the latter. Accordingly, it was held that the Plaintiff was unable to seek relief under s 10(3) of the IAA and/or Art 16(3) of the Model to set aside an award that also dealt with the merits of the dispute.

Issue 2: Whether the Arbitrator's decision on jurisdiction could be impeached under Art 34(2)(a)(i) of the Model Law in that there was no valid arbitration agreement

51. The Plaintiff sought to contend that there was no arbitration agreement because:
    a. No valid and binding contract for the Second Shipment Contract (based on the specifications and terms of the First Shipment) was formed on 8 December 2009.
    b. Parties intended that the 8 December 2009 agreement must be "subject to contract" before it became binding.
52. Further, the Plaintiff contended that even if there was a valid and binding Second Shipment Contract, there was no valid arbitration agreement which complied with s 2(1) of the IAA in force in December 2009.
53. Having considered all the evidence before the Court, including the contemporaneous email correspondence and the witnesses' evidence on paper and during cross-examination, Prakash J concluded that both parties' conduct from 8 December 2009 onwards demonstrated their belief that a binding contract was in place, notwithstanding that they had not yet signed a formal document. In addition, having construed the contract in the context of what occurred at the material time, Prakash J concluded that parties did not negotiate on a "subject to contract" basis. A valid and binding contract for the Second Shipment Contract was therefore formed on 8 December 2009 and the terms were identical to those in the First Shipment Contract.
54. The Plaintiff also contended that even if the arbitration agreement was valid and binding, the arbitration agreement was not valid because it did not comply with s 2(1) of the IAA in 2009 which required an arbitration agreement to be in writing. The Defendant, on the other hand, contended that the definition of "arbitration agreement" contained in s 2A of the IAA, which came into force on 1 June 2012, applied to govern the issue of the validity of the arbitration agreement, since the arbitration commenced on 21 March 2013 after the amendment. The definition of "arbitration agreement" contained in s 2(1) of the IAA in 2009 was deleted and replaced with that contained in s 2A, which expanded the definition of "*in writing*" to refer to the content of the arbitration agreement being recorded in any form, including an oral agreement.
55. Prakash J agreed with the Defendant that the issue of the validity of the arbitration agreement was to be governed by the IAA currently in force i.e. s 2A of the IAA applied. Having considered the Singapore Parliamentary Debates leading to the amendments in the IAA, Prakash J concluded that the requirements set out in the amended Art 7(3) of the Model Law and s 2A(4) of the IAA would be satisfied so long as one party to the agreement unilaterally records it in writing. It was immaterial whether the written version of the agreement was signed or confirmed by all parties involved. Accordingly, the arbitration agreement in the First Shipment Contract applied since parties agreed on 8 December 2009 that all the terms of that contract would apply.

Issue 3: Whether the arbitral award could be set aside under Art 34(2)(a)(iv) on the grounds that the composition of the arbitral tribunal (i.e. the appointment of a sole arbitrator instead of three arbitrators) or the arbitral procedure (i.e. the Expedited Procedure) was not in accordance with the parties' agreement.

56. Art 34(2)(a)(iv) contains two distinct possible grounds of challenging an arbitral award as follows:
    a. That the arbitral procedure was not in accordance with the parties' agreement; and/or
    b. That the composition of the arbitral tribunal was not in accordance with the parties' agreement.
57. Assuming there was a valid arbitration agreement, the Plaintiff relied on both grounds in Art 34(2)(a)(iv) to set aside the arbitral award by contending that:
    a. the arbitral procedure was not in accordance with parties' agreement because it was wrongly conducted under the Expedited Procedure under r 5 of the SIAC Rules 2010, which was not applicable. Instead, the SIAC Rules 2007, which were the rules applicable at the time parties entered into the agreement for the Second Shipment in 2009, applied and such rules did not contain any provision for Expedited Procedure;
    b. even if the SIAC Rules 2010 were applicable, the composition of the arbitral tribunal was not in accordance with parties' agreement because they had expressly agreed to arbitration before three arbitrators.

Whether the Expedited Procedure was in accordance with parties' agreement

58. With respect to the first ground of challenge under Art 34(2)(iv) in relation to the composition of the arbitral tribunal, Prakash J acknowledged the existence of a presumption that reference to rules of a particular tribunal in an arbitration clause refers to such rules as are applicable at the date of commencement of arbitration and not at the date of contract, as long as the rules contain mainly procedural provisions. On the contrary, if the rules contain mainly substantive provisions, then the applicable rules would be those in force as at the date of contract.
59. However, Prakash J held that the absence of the phrase "for the time being in force" in the arbitration agreement did not displace the presumption for the applicability of the rules as at the date of commencement of the arbitration i.e. SIAC Rules 2010.
60. Since r 5 of the SIAC Rules 2010 provides for arbitration to be conducted under the Expedited Procedure if the SIAC President agrees that such procedure should be used, the Court dismissed the Plaintiff's argument that the arbitral procedure was not in accordance with the parties' agreement.

Whether the Tribunal comprising a sole arbitrator was in accordance with parties' agreement

61. The default position for Expedited Procedure arbitration under r 5 of the SIAC Rules 2010 is for a sole arbitrator to hear the dispute. The Plaintiff contended that even if the SIAC Rules 2010 applied, the arbitration should have not have been conducted before a sole arbitrator since the parties expressly agreed to arbitration before three arbitrators.
62. Given that the SIAC Rules 2010 have been incorporated into the parties' contract, Prakash J held that the parties' agreement for the arbitration before three arbitrators was overridden by the applicability of the Expedited Procedure even when the contract was entered into before the Expedited Procedure provision came into force.
63. Further, even if the Plaintiff was correct in its submission that the arbitration should not have been conducted before a sole arbitrator, it had not discharged its burden of explaining the materiality or the seriousness of the breach, or that it has suffered prejudice as a result of the arbitral procedure that was adopted. Although prejudice is not a legal requirement for an award to be set aside under Art 34(2)(a)(iv) of the Model Law, it is a relevant factor that the supervisory court should take into consideration when deciding whether the breach in question is serious enough to warrant its exercise of discretionary power to set aside the award for the breach.
64. Since the Court found that the arbitral proceedings were conducted in accordance with the parties' agreement, there was no basis to set aside the arbitral award under Art 34(2)(a)(iv) of the Model Law.

Yeo Boon Tat
Partner, Pinsent Masons MPillay LLP

Josephine Tong
Associate, MPillay

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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 **CAPT HAKIRAT S. H. SINGH**, Managing Director, Maritime Affairs Pte. Ltd.

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

  Focused, independent, reliable.

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

  Upon completing my maritime law studies in the United Kingdom, I returned to Singapore and worked as a surveyor and claims consultant with correspondents of an International Group Protection & Indemnity ("P&I") Club. The large spectrum of maritime claims I had to deal with made it clear that arbitration had an important role to play within the maritime industry, hence understanding the mechanics of this dispute resolution process was crucial. I then applied for and was admitted to the inaugural course on international arbitration conducted at the National University of Singapore ("NUS") in 2004. This then eventually led to appointments as party representative, arbitrator and dispute resolution consultant for various clients.

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

  While most clients prefer to pursue an amicable settlement when possible, there does appear to be a strong preference for arbitration over litigation when standard form contracts are frequently used in the underlying maritime activity. For example, in business involving voyage and time chartering, salvage work and towage contracts. However, arbitration clauses are also frequently found in maritime agreements that do not utilise standard forms contacts, such as in operations involving leasing of space on board floating storage units for oil products or even in agency and brokerage agreements. Whether an arbitration clause is incorporated into a maritime contract does depend on the familiarity of those who draft the document with alternative dispute resolution and arbitration, in particular.

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

  It was an International Chamber of Commerce ("ICC") arbitration where I was appointed the sole arbitrator in a maritime dispute that involved multiple issues.

  It was memorable because after about a year of much legal wrangling between the parties, which required issuance of a number of directions and orders, the parties managed to eventually settle the dispute.

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

  Patience is key. More importantly, while waiting for an arbitration appointment, in whatever role that opportunity may present, it is crucial to keep abreast of developments in all spheres of alternative dispute resolution, including mediation and expert determination, which may at times overlap within an arbitration process.

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

  The issue of an arbitration process being managed in a manner that is similar to court proceedings may be inevitable where both parties agree on a particular procedure. Arbitrators, being bound to follow the procedure that parties have both agreed to adopt, may under such circumstances find it challenging to suggest less formal alternatives but may wish to do so where costs savings would materialise. The challenge would be to prevent arbitration from becoming no different from a court proceeding that is conducted in private.

- **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?**

  Yes, mediation is certainly a key element of alternative dispute resolution and this has been the case for some time. The SIAC-SIMC Arb-Med-Arb Protocol certainly helps in formalising and injecting clarity into the process, i.e. where Arb-Med procedures are required. This is in contrast with the position in a matter I recall from 2007, where a client approached Maritime Affairs with a shipbuilding dispute and presented a contract that contained a dispute resolution clause that had been drafted at the outset by opposing interests which seemed unworkable. The clause contained wording that required mediation to be conducted at the SIAC. Maritime Affairs discussed the clause with SIAC's then Registrar and it was learnt that the SIAC and the Singapore Mediation Centre ("SMC") had a memorandum of understanding in place that allowed an arbitration to be registered at SIAC with the mediation then conducted in accordance with the SMC's mediation rules. The arbitration would be kept in abeyance until the parties completed mediation. The Registrar issued a letter explaining the procedure in light of the said clause and clients were thus able to rely on the dispute resolution clause, which would have otherwise appeared to be unworkable. Thus the newly launched SIAC-SIMC Protocol is indeed helpful in promulgating the ability to combine the mediation and arbitration processes. This improved awareness may in turn result in mediation playing a bigger role in dispute resolution.

  As a matter of interest, attempts to have mediation play a bigger role in the maritime industry are also underway. For example, mediation is being promoted as a means to settle maritime disputes with such efforts in Singapore being led by the Marine Offshore Oil and Gas ("MOOGAS") Association, which encourage their members to utilise mediation in the event of a dispute.

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

  My lecturers and ex-bosses. I am also fortunate to have had a number of very supportive bosses.

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

  I would have remained in the shipping industry, be it at sea or ashore in management.

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

  The best seafood fried rice at the Bukit Merah hawker centre behind OCBC bank.

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

  Dance.

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

  the sea.

A New Approach to Document Production in Arbitration – The Use of Interrogatories




Date	Event
9 July 2015	Evening Seminar: A New Approach to Document Production in Arbitration – The Use of Interrogatories

The Institute was again privileged to have Mr Michael Hwang, SC (Michael Hwang Chambers LLC) share with us on the use of interrogatories to focus the process of document production in arbitration.

Mr Hwang noted that requests for document production were often overly sweeping in their scope for documents requested, often brought about by a counsel's lack of knowledge as to what documents existed and were in the hands of the other party.

Such broad-ranging requests would often fail the test set out in the IBA Rules of Evidence on the Taking of Evidence in International Commercial Arbitration 2010 ("**IBA Rules**"), which is a guideline for document production frequently adopted by parties or referred to by arbitrators as a persuasive standard.

Interrogatories would play a useful role in clarifying the issues and facts in dispute and to act as a preliminary step for parties to elicit the necessary details to draft a proper document production request. It would essentially enhance the production of documents ahead of the hearing, where a witness might be cross-examined about the existence of certain documents, to which he might admit their existence and produce the same. Instead of having documents being produced at the point of the hearing, interrogatories give counsel an opportunity to query the other party on the existence of documents prior to the hearing, enabling parties to better prepare their case.

Another issue raised was whether document requests which were relevant to an issue which it was the opposing party's burden to prove should be granted. On a broad reading, such documents were relevant and material, but to an issue that the opposing party would have had to prove. Mr Hwang raised the question of why the requesting party should help the opposing party improve his case by requesting documents which supported the opposing party's case, if the opposing party had failed to introduce sufficient documentary evidence in support of its case.

Of all the questions explored, the most interesting was the one dealing with the extent to which a party may be forced to do a better job of proving its own case. One view was that this could test the strength of a party's evidence at an early stage. Another view was that it would result in an opposing party also producing related adverse documents which it has chosen not to rely upon.

The session was chaired by the Institute's President, Mr Chan Leng Sun, SC who concluded the evening with a lively question and answer session. The seminar certainly raised thought-provoking issues in relation to document production and was an interesting session to all who participated.

Why Did He Decide That Way – Should Awards be Published?



Date	Event
20 August 2015	Evening Seminar: Why Did He Decide That Way – Should Awards be Published?

One of the issues besetting the practice of international commercial arbitration today is the tension between a rising clamour for more transparency of arbitral proceedings (which would have to include the publication of awards) and the well-entrenched practice of confidentiality.

The possibility of a mandatory process for the publication of awards (with attendant safeguards on confidentiality) and how such a process will affect Singapore's arbitration hub status was most relevantly discussed by Mr Tan Chuan Thye, SC of Rajah & Tann LLP. Chaired by Mr Chia Ho Choon of KhattarWong LLP, Mr Tan's presentation and the discussion with the participants that followed showed the implications and legal consequences of a progressively transparent arbitral regime as opposed to one that is restrictively confidential.

Mock Arbitration Workshop




Date	Event
5 September 2015	Mock Arbitration Workshop

Participants in the Mock Arbitration Workshop had a lively Saturday morning discussing how an actual arbitration proceeding is conducted. The workshop was largely based on the video produced by the Singapore International Arbitration Centre (SIAC). The trainers focused on selected scenes relating to common procedural and substantive issues arising in the course of an arbitral proceeding.

One of the trainers, Mr Edmund Kronenburg of Braddell Brothers LLP, shared his expertise by leading the discussions on issues besetting most commonly the commencement of arbitration - issues arising from the existence of a dispute, arbitration agreement, and emergency arbitration were discussed.

Participants thereafter threshed out issues in relation to procedures of the SIAC, and the discussion on issues arising on appointment and challenges to arbitrators was led by the Deputy Registrar of the SIAC, Mr Kevin Nash. The workshop leader, Mr Johnny Tan, who is an active arbitrator himself led and closed the workshop with his discussion on issues arising from the early stages of an arbitral proceeding, jurisdiction challenges, submissions, hearing on merits, cross-examination of factual and expert witnesses and deliberations on the award by the Tribunal.

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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Singapore Institute Of Arbitrators
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