SINGAPORE INSTITUTE OF ARBITRATORS
NEWSLETTER
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CONTENTS

VIEWPOINT

PRESIDENT'S MESSAGE

Memorandum of Understanding (MOU) between Singapore Institute of Arbitrators (SIArb) and Singapore Manufacturers' Federation (SMa)

I am pleased to inform you that on 22 February 2007, our Institute entered into a Memorandum of Understanding with the SMa for mutual co-operation. During the signing ceremony, which was attended by a number of our Council Members, I expressed the view that with the globalisation of the economy a sizeable proportion of manufacturers' businesses will be conducted outside Singapore. As such, it is timely that arbitration is adopted as a preferred means of resolving commercial disputes with overseas parties. This may be achieved by the incorporation of arbitration clause in their contracts with overseas parties.

Memorandum of Understanding between Singapore Institute of Arbitrators (SIArb) and Singapore Manufacturers' Federation (SMa)

Under this Memorandum with the SMa, the Institute will undertake the task of educating SMa's members on arbitration and other forms of alternative dispute resolution methods. The Institute will also assist in the preparation of lists of arbitrators on a country basis for the SMa. This MOU is part of our strategic objective in educating players from various industries on the adoption of arbitration as an alternative dispute resolution method in their contracts with third parties.

Memorandum of Understanding (MOU) between Chartered Institute of Arbitrators (CIArb) and Singapore Institute of Arbitrators (SIArb) and Law Faculty of National University of Singapore (NUS)

On 28 February 2007, our Institute renewed the existing MOU with the CIArb and the NUS for a further three-year term. The signing of the MOU

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was conducted at the Law Faculty of the NUS with Mr Hew R Dundas, President of CIArb signing on behalf of the CIArb. Prof Tan Cheng Han SC, Dean of NUS Faculty of Law signed on behalf of the NUS while I signed on the Institute's behalf.

The renewed MOU signifies the accreditation of two NUS law courses i.e. the International Commercial Arbitration and the Graduate Certificate in International Arbitration (GCIA) as satisfying part of the qualifying criteria for admission as a Member and Fellow of the SIArb and CIArb.

The accreditation acknowledges the expertise and professional training that NUS candidates receive under the two law courses in dispute resolution as being equivalent to the training courses conducted by SIArb and CIArb as well-established institutes of excellence in arbitration.

Memorandum of Understanding (MOU) between Chartered Institute of Arbitrators (CIArb) and Singapore Institute of Arbitrators (SIArb) and Law Faculty of National University of Singapore (NUS)

XVI International Congress of Maritime Arbitrators (ICMA) from 26 February to 2 March 2007

Congratulations and thanks to the Host Committee of the XVI ICMA Congress (which included Capt Lee Fook Choon and Mr Ashokan Govin, our current and former Council Members respectively) for successfully organising the Congress. By all accounts the Congress was a great success with over 170 participants from 26 countries. The Congress will certainly give our maritime arbitrators a boost in international maritime arbitrations.

Inaugural Regional Arbitral Institutes Conference – 12 & 13 July 2007

Going forward, I am pleased to report that preparations are presently being made for our Institute to host the Inaugural Regional Arbitral Institutes Conference on 12 and 13 July 2007 in Singapore. We are proud to host this Inaugural Conference, which will reinforce the ties between the various arbitral institutes in the region as well as providing direct information of arbitration practices in different jurisdictions.

Representatives from the arbitral institutes of Malaysia, Australia, Hong Kong, Indonesia and Brunei are expected to present papers on the enforcement of arbitral awards in their own jurisdictions as well as updates on the latest developments in arbitration in their respective jurisdictions.

Further details of this Conference will be provided shortly. I strongly encourage all members to attend and participate in this forthcoming Conference.

New Executive Officer

In accordance with our aim to provide and ensure a good level of service to members, I am pleased to welcome Ms Diane Ingrid Wee as our Institute's Executive Officer with effect from 1 February 2007. With her joining the Secretariat, I am sure that the level of administrative support provided to members will be enhanced.

I look forward to your continued support in the activities and events of the Institute.

Yours sincerely

Raymond Chan
President

LATEST DEVELOPMENT IN CASES AFFECTING THE LAW OF ARBITRATION

Introduction

In this issue, three cases are examined with one case, Front Carriers Ltd v Atlantic & Orient Shipping Corp [2006] SGHC 127 deferred to the next issue so that it may be examined with another case, ie, the Court of Appeal decision on Swift Fortune. Another case, Progen Engineering Pte Ltds v Chua Aik Kia (trading as Uni Sanitary Electrical Construction) [2006] SGHC 159 is left out as it is a decision based on the repealed Arbitration Act.

The first case is set out in brief only. In Lian Teck Construction Pte Ltd v Who Hup (Pte) Ltd and others [2006] SGHC 118, [2006] 4 SLR 1, the main contractor in a development project made an interim payment application under O 29 r 10 of the Rules of Court in an attempt to obtain money without having to go through an arbitration hearing. The main contractor's application was compared to an application for summary judgment and was not granted. Instead, the learned judge noted that the main contractor could have tried statutory adjudication if it wanted a quick process of obtaining money.

The next two cases are on the same topic, that is, setting aside an award. Although the applications to set aside were made under the Arbitration Act (Cap 10, 2002 Rev Ed) ("AA") and the International Arbitration Act (Cap 143A, 2002 Rev Ed) ("IAA"), the grounds relied on were the same. However, the results were not the same although the two cases were presided over by the same judge.

AA Case

***Fairmount development Pte Ltd v Soh Beng Tee & Co Pte Ltd* [2006] SGHC 189, [2007] 1 SLR 32 [Judith Prakash J]**

This report concerns an application to set aside an award under the Arbitration Act (Cap 10, 2002 Rev Ed) ("AA").

The plaintiff entered into a contract with the defendant as its main contractor in a development project. There were delays in the completion of the contract where there were requests by the defendant for an extension of time to complete the works. Although some extension of time was given, the plaintiff decided to terminate the contract on the ground that the defendant failed to proceed with the works with due diligence and due expedition. The contract used was the Singapore Institute of Architects' Articles and Conditions of Building Contract (Measurement Contract) 5th Edition.

The court was asked to decide whether the award should be set aside. The first ground is set out in section 48(1)(a)(iv), sometimes known as the ultra vires ground. The second ground is set out in section 48(1)(a)(vii), sometimes known as the natural justice ground. These are set out below.

> **Court may set aside award**
>
> **48.**—(1) An award may be set aside by the Court —
>
> *(a)* if the party who applies to the Court to set aside the award proves to the satisfaction of the Court that —
>
> ...
>
> (iv) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration, except that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside;
>
> ...
>
> (vii) a breach of the rules of natural justice occurred in connection with the making of the award by which the rights of any party have been prejudiced; or..."

The court also had to consider whether the plaintiff ought to have used section 43(4).

Background information

The learned judge had set out some useful information for users of the Arbitration Act at paragraphs 8 and 9 of her judgment as reproduced below.

- "The Arbitration Act was enacted in October 2001 and many of its features reflect the provisions of the United Nations Commission on International Trade Law's Model Law on International Commercial Arbitration ("the Model Law") as one of the purposes of the Act was to bring the regime for domestic arbitrations more into line with that applicable to international arbitrations. The Act does not, however, follow the Model Law in its entirety and the courts have more supervisory powers in respect of domestic arbitrations than they do in respect of international arbitrations." [see paragraph 8 of the judgment]

- "Section 48 establishes the situations in which the court may set aside an arbitration award. The power to set aside is discretionary and the burden of proving that any ground for setting aside exists lies with the party applying to set aside the award. Some seven grounds for setting aside are provided." [see paragraph 9 of the judgment]

Section 48(1)(a)(iv) – the ultra vires ground

The learned judge explained how the ground for setting aside works at paragraph 19 of her judgment.

- "As provided for in s 48(1)(a)(iv) of the Act, an award may be set aside if it deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration or contains matters beyond the scope of the submission to arbitration. This was the first ground on which Fairmount contended that the Award should be set aside."

In the application, the plaintiff had alleged that the arbitrator had decided that time was at large as regards the obligation of the defendants to complete the works although it was never made an issue at the arbitration. The plaintiff's position is described in paragraph 21 of the report.

- "...an analysis of the whole course of the arbitration made it plain that the issue of whether time for performance of the works was at large, because of the acts of prevention by Fairmount's site staff and the architect, never became an issue at the arbitration. SBT may have taken an alternative position in its pleadings that time was at large as a result of the delays and disruption caused by the clerk-of-works and site staff, but SBT never raised this point

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again either during the proceedings or in submissions. Instead, it abandoned this argument at the arbitration."

This ground for setting aside used by the plaintiff was rejected by the learned judge. Her reasons are set out in paragraph 22 as reproduced below.

- On this point, I was not with Fairmount. Whilst the parties may not have conducted their respective cases on the basis that various actions had led to time being at large and whilst (as I go on to discuss below) there may have been a breach of the rules of natural justice when the arbitrator came to a decision on this point, I do not consider that one can say the decision that time was at large resulted from a matter that was beyond the scope of the submission to arbitration. The dispute that was contemplated and dealt with by the parties was the dispute revolving around the period of time within which SBT had to complete its work. In theory, such a dispute could involve various considerations. One of these would be considering the contractual period specified originally and whether that contractual period could be extended by reason of any valid claims by the contractor. The other would be, in appropriate circumstances, considering whether the contractual completion date had been wholly set aside and time set at large. Theoretically therefore, a finding that time was at large would not necessarily be unanticipated or extraordinary or completely outside the contemplation of the parties when questions of delay had to be considered. Thus, I did not accept that Fairmount had any basis under s 48(1)*(a)*(iv) of the Act for criticising the tribunal's decision.

Section 48(1)(a)(vii) – the natural justice ground

Similarly, the learned judge set out the principles by which the ground used for setting aside awards may be used at paragraph 23.

- To establish that a breach of the rules of natural justice had occurred in order to justify a setting aside under s 48(1)(a)(vii) of the Act, Fairmount had to establish which rule of natural justice was breached; secondly, how it was breached; thirdly, in what way the breach was connected to the making of the award and fourthly, how the breach had prejudiced its rights: see *John Holland Pty Ltd v Toyo Engineering Corp (Japan)* [2001] 2 SLR 262.

In deciding that the award was set aside on the grounds of breach of natural justice, the court must be satisfied that there was a breach of the rules of natural justice as well as the fact that the making of the award has prejudiced the rights of any party. This the learned judge explained at paragraphs 28, 29 and 31.

- I agreed with Fairmount that it had not been given an opportunity to be heard on the issue whether time was at large and, if so, what would constitute a reasonable time within which SBT would have to complete. Simply making time at large could not mean that SBT could complete at its leisure. It would still have to meet a reasonable schedule. The arbitrator did not inform Fairmount that he was considering setting time at large. If he had, Fairmount would have been able to address the issue and submit not only why that should not be done but also, if the arbitrator still considered it should be done, address what the consequences would be and suggest a reasonable time for completion. [see paragraph 28]

- ...if the tribunal had informed the parties of what it had in mind, Fairmount would have sought to persuade the arbitrator that time for performance of the project was not at large by referring to cll 23 and 37 of the SIA Contract and citing relevant authorities. Of additional significance was what SBT had actually done. SBT had invoked the relevant provisions of cl 23 concerning acts of prevention and architect's instructions in relation to its own claims for extension of time and therefore had not proceeded on the basis that such acts would set time at large. Its position was that it would be entitled under cl 23 to the claimed number of additional days because it could prove these acts of prevention by Fairmount's staff and the architect. Thus, it was entirely the arbitrator's own idea that the conundrum could be solved by setting time at large. [see paragraph 29]

- The holding that time was at large and that SBT was entitled to reasonable time to complete, without the tribunal making a concurrent finding as to the length of that period of reasonable time, had serious consequences for Fairmount. It led to the conclusion that SBT had not failed in its duty to act with diligence and due expedition and therefore that the termination of its employment was wrongful. Fairmount submitted that its rights were seriously prejudiced as a result. I agreed. It is also the law that the breach of natural justice itself creates a prejudice that is suffered by the party, in this case, Fairmount, who has been deprived of its rights: see *The Vimeira* [1984] 2 Lloyd's Rep 66. [see paragraph 31]

In reaching her conclusion on the point whether the alleged conduct of the arbitrator amounted to a breach of natural justice, the learned judge had relied on 3 cases. These are set out below.

- *Société Franco-Tunisienne D'Armement-Tunis v Government of Ceylon* [1959] 1 WLR 787 [see paragraph 25]
- *Faghirzadeh v Rudolf Wolff (SA) (Pty) Ltd* [1977] 1 Lloyd's Rep 630 [see paragraph 26]
- *Gbangbola v Smith & Sherriff Ltd* [1998] 3 All ER 730 and *Fox v P G Wellfair Ltd* [1981] 2 Lloyd's Rep 514 [see paragraph 26]

Finally, I have abstracted part of the judgment which practising arbitrators may find as a useful reminder. Paragraph 30 is set out below.

- The tribunal was constituted to resolve the issues raised by the parties. Whilst in the initial stages of the proceedings the parties may raise many issues by way of their pleadings, once the evidence has been given, the submissions of the parties will indicate the issues that remain alive and that are to be decided by the tribunal. As Fairmount submitted, if the tribunal considered that the parties had missed any point which the arbitrator thought was crucial or which he wished to pursue, then it was not only a matter of obvious prudence but the tribunal was obliged in all fairness to put the point to them so that they had the opportunity to deal with it. This is a particularly important obligation in the context of arbitration because a party's rights of recourse after the making of an award are extremely limited. In this case, the issue of whether time for performance was at large was not put to the parties. No submissions were made on it and thus the fact that it may have been raised initially in SBT's pleadings did not entitle the arbitrator to deal with it without asking for further submissions.

IAA Case

***Government of the Republic of the Philippines v Philippine International Air Terminals Co, Inc* [2006] SGHC 206, [2007] 1 SLR 278 [Judith Prakash J]**

This report concerns an application to set aside an award under the IAA.

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The plaintiff entered into several contracts with the defendant relating to the construction of a third terminal building at the Ninoy Aquino International Airport in Manila. The matter before the court concerns the interpretation of an arbitration clause as set out below.

> "Section 10.2 Arbitration
> All disputes, controversies or claims arising from or relating to the construction of the Terminal and/or Terminal Complex or in general relating to the prosecution of the Works shall be finally settled by arbitration in the Republic of the Philippines following the Philippine Arbitration Law or other relevant procedures. All disputes, controversies or claims arising in connection with this Agreement except as indicated above shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by three (3) arbitrators appointed in accordance with the said Rules. The place of arbitration shall be Singapore and the language of the arbitration shall be English."

However, the plaintiff had earlier filed petitions in the Philippine Supreme Court which held that the contracts were null and void. Although this was known to ICC, it informed the parties that it had decided that the arbitration should proceed and that the arbitral tribunal, when constituted, would have to decide on its own jurisdiction. The arbitral tribunal issued a partial award wherein it was decided that [see paragraph 14]:

(a) that Singapore law was the law governing the arbitration proceedings; and
(b) that Singapore law was the law governing the arbitration agreement.

The arbitral tribunal also found that Singapore was designated as the place of arbitration in order to obtain a neutral venue for the resolution of disputes [see paragraph 15] and that the principle of severability applied in the case [see paragraph 16]. It is against this partial award that the plaintiff has applied to the court to set aside. The court had been invited to decide whether the partial award should be set aside under section 24(b) of the International Arbitration Act (IAA) as well as under Articles 34(2)(a)(i), (ii) and (iii) of the UNCITRAL Model Law on International Commercial Arbitration which is part of First Schedule of the IAA.

The grounds of the application are:

(a) that the rules of natural justice have been breached in connection with the making of the Award and GOP's rights have been prejudiced thereby contrary to s 24(*b*) of the Act;
(b) GOP was unable to present its case contrary to Art 34(2)(a)(ii) of the Model Law;
(c) the Award deals with a dispute not contemplated by and/or not falling within the terms of the submission to arbitration and/or contains decisions on matters beyond the scope of the submission to arbitration contrary to Art 34(2)(a)(iii) of the Model Law; and
(d) the arbitration agreement is not valid under the law of the Republic of the Philippines or under the law of Singapore contrary to Art 34(2)(a)(i) of the Model Law.

It was agreed that grounds (a) and (b) are the same and ground (d) was not proceeded with. The subject matter of the plaintiff's complaint for which the award should be set aside are the principle of severability applied in the case and the finding that Singapore was chosen as a neutral place for the arbitration. Only the severability point is examined here.

The severability point

It was the plaintiff's position was that it was necessary for the arbitral tribunal to decide on the choice of law before parties could address the jurisdictional arguments including whether the arbitration agreement was severable from the main contract. Further, the plaintiff contended that it could not reasonably have considered that this issue would be decided prior to the jurisdictional phase of the arbitration because it had filed a motion for bifurcation of the proceedings. As a consequence, the plaintiffs limited its submissions on the issue of the choice of law.

On this point the learned judge did not grant the plaintiff its application. Her reasons are set out below.

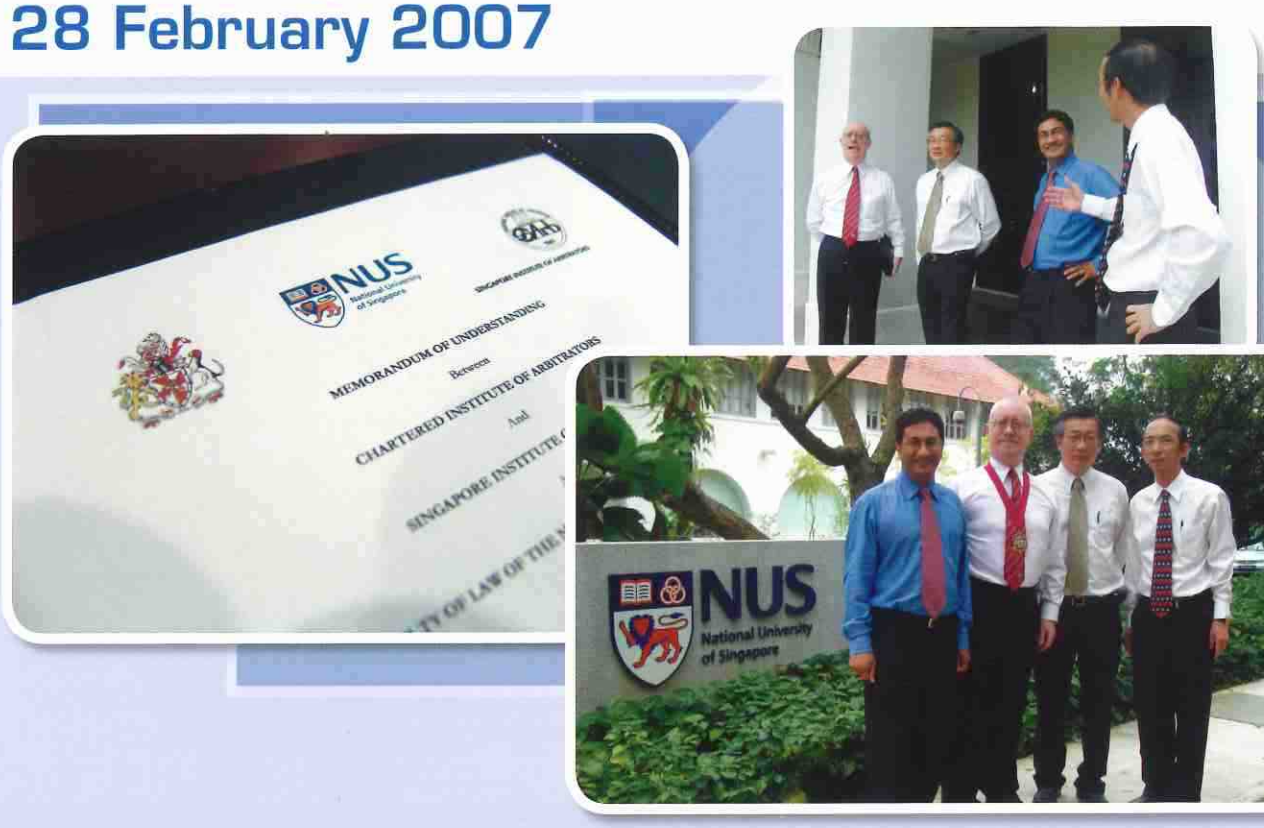
- "...One of GOP's grounds for challenging the jurisdiction of the Tribunal was that the ARCA being void, nothing remained and no arbitral tribunal could be constituted to consider disputes of parties arising from a non-existent contract. In its motion to bifurcate proceedings into two phases filed on 26 May 2004, GOP had made it clear that its stand was that the *Agan* decision "necessarily nullified the parties' reference to ICC Arbitration contained in that agreement". Thus, the Tribunal was faced with a classic challenge to its jurisdiction, *ie*, that there was no basis for such jurisdiction since the jurisdiction clause had allegedly died with the main contract. Yet at the same time the Tribunal was being asked to consider what law governed the arbitration agreement and what law governed the procedure of the Tribunal. In this situation, it appears to me that it was a prerequisite for the Tribunal to consider whether the arbitration agreement could be separated from the main contract and survive despite the alleged nullity of the main contract, or whether it had been extinguished with its parent. If the principle of severability was not available to the Tribunal then it would have been pointless for the Tribunal to go on to consider the two questions that it had been asked to determine. I therefore agree with the submission made by PIATCO that consideration of this principle was a necessary ingredient in the Tribunal's reasoning. It was also necessary for the Tribunal in its deliberations to consider whether the arbitration clause was severable in the sense that it could be governed by a law that was different from that which governed the main contract. There is no doubt that that aspect of severability was in GOP's contemplation because it did address arguments aimed at establishing that the parties could not in any event have intended the arbitration agreement to be governed by Singapore law." [see paragraph 28]
- "...in recognising that potentially any international arbitration can involve three different choices of law in relation to the main contract, the arbitration agreement and the arbitration procedure and that not all these choices would have to be of the same law, GOP was implicitly (perhaps subconsciously) admitting that the principle of severability would necessarily be involved when the issue of the governing law of any of these matters arose." [see paragraph 30]
- "Whilst GOP might not have wanted the severability issue to be decided at the choice of law stage, this was not a matter that it could control if the Tribunal considered that determination of this issue was a necessary part of determining the governing law...." [see paragraph 31]
- In my judgment, GOP had ample opportunity to address the issue of severability both before 20 August 2004 and thereafter up to 1 October 2004. It was not denied any opportunity to put its case. It was not shut out in any material way. If it misconceived the situation and the arguments required, it had an opportunity after 20 August 2004 to correct such a misimpression and make up for any omission in its submissions. It did not do so. I do not think it can complain about the situation now." [see paragraph 34]

MOU with SMa
22 February 2007

Talk On "Injunctions in Aid

MOU with CIArb, Law Faculty (NUS) and SIArb

28 February 2007



# of Foreign Arbitration"

12 January 2007

REPORT ON SEMINAR ON "INJUNCTIONS IN AID OF FOREIGN ARBITRATION" ON 12 JANUARY 2007

The seminar entitled, "Injunctions in Aid of Foreign Arbitration" was jointly organised by the Singapore Institute of Arbitrators and the National University of Singapore was held on 12 January 2007 at the Singapore Marina Mandarin with Mr Chan Leng Sun, Partner of Ang & Partners and Prof Phillip Capper, Head of Lovells International Arbitration practice, as speakers and Assoc Prof (Dr) Philip Chan, Deputy Head of School of Design and Environment, National University of Singapore, as the Chairperson.

Assoc Prof (Dr) Philip Chan, in his opening address, commented that there was uncertainty over the jurisdiction of the High Court of Singapore to grant Mareva injunctions against a party to a foreign arbitration in the light of recent court decisions in *Swift-Fortune Ltd v Magnifica Marine [2006]* and *Front Carriers Ltd v Atlantic & Shipping Corp [2006].* He went on to introduce the speakers, Mr Chan Leng Sun and Prof Phillip Capper who discussed the Singapore position as well as the broad perspective of the issue, including the English position.

Mr Chan's talk centred on the extent of the Singapore court's jurisdiction to grant interim injunctions in aid of foreign arbitration, in the light of a recent Court of Appeal judgment in *Swift-Fortune Ltd v Magnifica Marine SA* [2006] SGCA 42 and a High Court judgment in *Front Carriers Ltd v Atlantic & Orient Shipping Corp* [2006] 3 SLR 854.

He started with a brief introduction on the different types of injunction, and the statutory bases of the Court's power to grant these injunctions. He pointed out that an injunction is always at the discretion of the Court, even if the Court has the jurisdiction and power to grant it. The first question is whether there is jurisdiction or power. Only if the answer is affirmative does the Court move to the exercise of the discretion.

Injunctions in Singapore can be broadly categorized as interim or interlocutory injunctions, and final or permanent injunctions. An interim or interlocutory injunction is a temporary measure to preserve the status quo until the merits are finally decided. A final injunction is one that is issued on completion of the case, when a final decision is rendered on the relief claimed when the rights of the parties are determined.

Whether interim or final, an injunction can be prohibitive or mandatory. A prohibitive injunction restrains the defendant from doing something. A mandatory injunction compels the defendant to take some positive steps.

Mr Chan illustrated the difference between a final and an interim injunction by reference to the House of Lords' decision in *Channel Tunnel Group Ltd v Balfour Betty Construction Ltd* [1993] AC 334. In that case, the plaintiffs had applied for a final mandatory injunction (although couched in negative terms) for specific performance. The

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House of Lords decided that this was something to be decided by arbitration in Brussels under the contract between the parties and stayed the action. But their Lordships also held that the Court had power to grant an interim injunction pending a final determination by the tribunal. In the event, however, the Court exercised its discretion not to grant the interim injunction in the circumstances of that case.

Mr Chan explained that a Mareva injunction is also a form of interim injunction. It protects a prospective right of enforcement.

The power of the Court to grant final injunctions, on the other hand, is found in para. 14 First Schedule of the Supreme Court of Judicature Act ("SCJA"):

> *Power to grant all reliefs and remedies at law and in equity, including damages in addition to, or in substitution for, an injunction or specific performance.*

The stautory source of power to grant Mareva and other interim injunctions is in Section 4(10) Civil Law Act ("CLA"). The Court's power to grant interim injunctions in respect of arbitration is specifically referred to in s 31 Arbitration Act ("AA") and s 12(7) International Arbitration Act ("IAA"). The Arbitration Act deals with domestic arbitration. For domestic arbitration held in Singapore, there is no question that the Court has the power to grant interim injunctions, including Mareva injunction, pending the outcome of the arbitration.

The International Arbitration Act deals with international arbitration. Whether or not s 12(7) IAA applies to a foreign international arbitration was an issue that the Court was confronted with in *Swift-Fortune Ltd* and *Front Carriers Ltd*.

In the first instance decision in *Swift-Fortune Ltd*, Judith Prakash J held that a Singapore court has no jurisdiction to assist a party in a foreign international arbitration. She held that s 12 IAA applied only to Singapore seated arbitration. This goes for s 12(6) as well as s 12(7).

Shortly after the first instance decision in *Swift-Fortune Ltd*, Belinda Ang J in *Front Carriers Ltd* came to a different conclusion. Belinda Ang J held that the Singapore court has jurisdiction to grant a Mareva injunction in aid of a foreign international arbitration. She held that s 12(7) IAA applied to both foreign and Singapore-seated international arbitrations. In addition, on the persuasive authority of the English House of Lords' decision in *Channel Tunnel*, s 4(10) CLA gives the court power to grant an interim injunction since there is a recognisable justifiable right between the parties, even though that right is to be determined not by the court but by a foreign arbitral tribunal. On the facts, however, she was not satisfied that there was evidence of a risk of dissipation. The plaintiffs appealed to the Court of Appeal.

Since Mr Chan's talk, the parties in *Front Carriers Ltd* have settled the injunction issue and the appeal has been withdrawn.

The Court of Appeal in *Swift-Fortune Ltd* agreed with Judith Prakash J that s 12(7) IAA applied only to Singapore-seated international arbitration. Therefore, the court derived no jurisdiction or power from it to grant injunctions in aid of a foreign arbitration. The court left open the question whether s 4(10) CLA would give a court power to grant an injunction in aid of foreign arbitral proceedings if two preconditions were satisfied: (a) the plaintiff has a recognisable cause of action under Singapore law; and (b) the court has personal jurisdiction over the defendant. The court indicated that this was one way to distinguish *Swift-Fortune Ltd*, where the plaintiff had no justifiable right against the defendant, and *Front Carriers Ltd*, where the plaintiff had a justifiable right against the defendant.

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At the seminar, Mr Chan discussed some of the reasoning and policy arguments that went into the decisions of the Judges at the High Court and the Court of Appeal level. There remains residual uncertainty because the Court of Appeal in *Swift-Fortune Ltd*, being mindful that the appeal in *Front Carriers Ltd* was then pending, did not wish to pre-judge the scope and application of s 4(10) CLA when the parties in *Front Carriers Ltd* had not been heard on the issue. As this appeal has now been withdrawn, the Court of Appeal will have to wait for another opportunity to pronounce on this issue once and for all.

Mr Chan informed the audience that an UNCITRAL Working Group has proposed amendments to the Model Law to deal with interim measures and preliminary orders. A revised article 17 expands on the powers of the tribunal to grant interim measures. A new article 17*bis* provides that the competent court shall recognise and enforce an interim measure issued by the tribunal, irrespective of the country in which it was issued (with some exceptions). A new article 17*ter* states that the court shall have the same power of issuing interim measures in relation to arbitration proceedings whether seated in the same country or not, as it has for the purpose of proceedings in the courts.

Professor Phillip Capper who spoke next commended the Singapore courts on their vigorous examination of the legal principles, case precedents and legislative history of the relevant statutes. He acted in the *Channel Tunnel* case and found it interesting that it is subjected to such detailed examination even now. England itself has moved on and the judicial pronouncements that generated so much scrutiny and controversy are no longer relevant in England. He believed that it would be mutually beneficial for all jurisdictions to take a general approach in support of arbitration, wherever it takes place.

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ANNOUNCEMENTS

• NEW MEMBERS •

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

Fellows

1 Dato Cecil W M Abraham
2 Fong Shiu Man (transfer)
3 Aw Wei Keng Kelvin
4 Tania Wee Mae-Yih (transfer)
5 Vinodh Sabesan Coomaraswamy (transfer)
6 Koh Ching Ian

Members

1 Tan Kee Cheong
2 Thomas Ajay
3 Chin Pay Fah
4 Chan Lai Hing
5 Lee Cheng Cheong Edward
6 Calista Peter
7 John Lim
8 Poh Kiong Kok Paul
9 Drew James
10 Tan Wee Teck
11 Fei Jia Jessica
12 Sunil Agrawal
13 Chua Chin Shun Kevin
14 Lim Tau Chin Sydney
15 Rajan Menon
16 Vincent Ng
17 Gee Kim Fah John
18 Mohamed Faizal s/o M Abdul Kadir (transfer)

Associates

1 Koh Chee Meng Kelvin

• UPCOMING EVENTS •

1. Fellowship Assessment Course by Michael Hwang, SC (Course Director) from **30 March to 1 April 2007**
2. "Arbitration – Enforcement of Awards" by Dinesh Dhillon and Kevin Woo on **26 April 2007**
3. International Entry Course (IEC) by Richard Tan and Philip Yang (Course Directors) on **9, 10 and 16 June 2007**
4. Inaugural Regional Arbitral Institutes Conference on **12 and 13 July 2007**

same people ... **new** markets

same values **new** services

same company... **new** name

Following the acquisition of WordWave, Inc by Merrill Corporation, the combined legal services of both companies are being brought together under a new market name – Merrill Legal Solutions. Our full suite of services for research, discovery, investigation and trial will continue to be supported from our key offices in London, Dublin, Hong Kong, Singapore, Sydney, Melbourne and Christchurch. For a copy of our new solutions brochure please contact us.

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Professor Capper added that, from the perspective of his European colleagues, for example the Swiss practitioners, English lawyers focus too much on semantics and technical details. They might find that some issues which take a long and arduous process to resolve in the English courts could have been dealt with rather quickly once a broader policy approach is taken.

In *Econet Wireless Ltd v Vee Networks Ltd* [2006] EWHC 1568, the applicant obtained a "without notice" (ex parte) interim injunction restraining sale of shares by the respondents to third parties. This injunction was subsequently set aside by Morison J who found that it should never have been made. The dispute between the parties was subject to arbitration in Nigeria under Nigerian curial law. None of the respondents had any connection with England or had any assets there. The dispute related to shares in a Nigerian company. Morison J found that, in these circumstances, there was no justification for an application under s 44 of the Arbitration Act for an injunction.

In *Weissfisch v Julius* [2006] EWCA Civ 218, a dispute between two brothers was subject to an agreement for arbitration in Switzerland. One of them applied to the English Court for a temporary injunction restraining the arbitrator from ruling on his own jurisdiction. This application was rejected by David Steel J, whose decision was upheld by the Court of Appeal.

Professor Capper cited the above cases as examples where it would have been obvious to an European practitioner that such applications for interim injunctions to a Court with no connection with the dispute or the seat of arbitration were clearly unmeritorious. But in a proper case where granting an injunction would have aided an arbitration, Professor Capper is of the view that the Court should not restrict its own power to grant an appropriate order simply because the arbitration takes place elsewhere.

There were lively contributions from the floor, with commentators such as Mr Michael Hwang, SC and Mr Richard Tan, speaking on the policy issues concerning the exercise of injunctive powers in aid of foreign arbitration. Mr Chan added that, if the Model Law is amended to specifically grant such powers to the national courts, regardless of where the seat of arbitration is, it may be easier for Singapore legislation to follow suit.

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