SINGAPORE INSTITUTE OF ARBITRATORS
NEWSLETTER
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VIEWPOINT

PRESIDENT'S MESSAGE

LEAP Programme

The end of 2005 marks the close of the Locally Based Enterprise Advancement Programme (LEAP Programme), which began in October 2003. On behalf of the Institute, I would like to record our appreciation to the EDB for their support in this Programme. It is now time for the Institute to build upon what has been achieved in the past two years and move on with new initiatives.

Recognition of Institute's Standing and Standards

We have in the past two years managed to significantly raise the Institute's profile both locally and overseas. We have established ourselves as an arbitration institution with an important role in the promotion of arbitration in Singapore. This is clear from our Memoranda of Understanding with the National University of Singapore and the University of London in their Masters Joint Degree Courses and the National University of Singapore Graduate Certificate in International Arbitration programme and our participation in these programmes. The recent increase in the number of Fellows joining our Institute is testimony of the success of our links to these Institutions.

Official recognition of our Institute's standing and the maintenance of admission standards is evident that one of the criteria for admission to be a member of the Singapore International Arbitration Center's Regional Panel of Arbitrators is that the applicant must be a Fellow of our Institute or an equivalent professional institute. We are grateful for this recognition.

Fellowship/Membership Courses

To cope with the increase in the demand to join our Institute as Fellows, we shall be conducting a Fast Track Fellowship Course (Jointly with the Chartered Institute of Arbitrators) in February 2006. In April 2006, we will also initiate the Institute's own Fellowship Course for admission of candidates as Fellows. Our Council Member Mr Michael Hwang S.C. has kindly agreed to be the Course Director for this Course.

We note also that there is an increase in interest for participation in our International Entry Course, which we conduct annually. At our last International Entry Course in September 2005, we had about 90 participants. Arising from the demand, we are now considering conducting the IEC Course bi-annually.

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Co-operation with local professional groups and trades bodies

Our Institute has always been reaching out to local professional institutes and trade organisations to promote awareness of arbitration and provide different levels of arbitration training for their members. For instance, we have conducted Advance Arbitrators Surgery Workshops for the Singapore Institute of Architects and the Institution of Engineers Singapore.

In this regard, the Institute has initiated discussions with the Singapore Manufacturers Federation (SMa) on areas where we may provide arbitration support and training and areas of mutual co-operation. We hope to enter into a Memorandum of Co-Operation with the SMa by early next year. Such co-operation will be mutually beneficial and will provide an avenue for members to actively interact with the SMa's members through joint activities and programmes.

Institute's International Links

The Institute's profile and standing internationally has no doubt been enhanced through our formal Memoranda signed with Badan Arbitrase Nasional Indonesia (BANI), the Institute of Arbitrators & Mediators Australia (IAMA), Malaysian Institute of Arbitrators and the Construction Industry Development Council of India (CIDC) over the last two years. These links have resulted in closer co-operation with these Institutes. For instance, in March/April 2006 we plan to organise a workshop on Adjudication jointly with IAMA to be held in Singapore. Recently, we introduced two prominent speakers from one of our seminars to the Malaysian Institute of Arbitrators who then invited them to give a talk to their members in Kuala Lumpur. We intend to build our relationships further with these Institutes.

Moving ahead, the Institute is considering establishing chapters in India and Indonesia. This is a long-term plan, which would involve amendments to our Constitution and requires detailed planning. If this aim is achieved, I have no doubt that the Institute's membership base will expand significantly and that our reputation internationally will be greatly enhanced.

Dubai is at present a magnet for many large construction and infrastructure projects involving multinational contractors and consultants. With most large and complex construction and infrastructure projects, disputes usually follow. There is a need for trained arbitrators to arbitrate these disputes. We have recently commenced dialogue with the Dubai International Arbitration Centre (DIAC) for courses on arbitration at various levels that our Institute may conduct for the Centre and to see what further role the Institute can play. We will keep members informed of the progress of these discussions.

Invitation for Panel Membership:

Within Singapore itself, I wish to remind members that we have established a Code of Conduct for Arbitrators and that we have also introduced the Institute's own Arbitration Rules. As a natural follow up, in November 2005 the Institute invited members to submit applications to be admitted to its Panel of Arbitrators. I am glad to report that response has been very encouraging with 132 applications received as of 1 December 2005. A Review Committee has been formed to assist in the selection of the Panel. The announcement of the Panel will be made in due course.

I am also pleased to inform members that as at December 2005, our Institute has 584 members from different categories of membership. This is a substantial increase of about 10% from 531 members as at January 2005. With the on-going and new programmes and initiatives, I am confident that our membership will continue to increase further next year.

Secretariat:

Ms Teresa Ee completed her term with the Institute as Executive Director at the end of October 2005. I would like to place on record, the Institute's appreciation for her untiring efforts, dedication and contributions during the last two years and wish her all the best in her future endeavors. I have no doubt that we will be meeting her in our Institute's activities in the future.

I am also pleased to announce the appointment of our new Executive Director, Ms Doris Leong. She brings with her a vast experience in administering and managing Secretariats of Non-Profit Organisations. On behalf of the Institute, I would like to extend to her a very warm welcome.

I would like to close with a confident note that with the help of a dedicated Council, the Secretariat and YOUR support SIArb, shall continue to grow from strength to strength.

On behalf of all of my Council Members, I wish each of you a very Happy New Year.

Yours sincerely,

Raymond Chan
President

MARITIME ARBITRATION IN SINGAPORE UNDER THE SINGAPORE CHAMBER OF MARITIME ARBITRATION

By Govindarajalu Asokan, Partner, Rodyk & Davidson

I INTRODUCTION

1. As 40% of the world's shipping tonnage is owned or controlled in Asia, maritime services in Asia must be maintained at a most efficient state. This includes Asia's dispute resolution process.

2. Such disputes have been increasingly referred to arbitration. Often, parties to a contract of affreightment, expressly provide therein that the disputes arising in respect of the same, be referred to arbitration. Such clauses are commonly termed "arbitration clauses."

3. Arbitration is often defined as a process by which 2 or more persons submit a dispute or difference to one or more impartial persons (the arbitral tribunal) for a binding decision (the arbitration award) instead of a competent court of jurisdiction.

4. There are several common arbitration bodies under which parties can bring an arbitration. In England, there is the London Maritime Arbitrator's Association ("LMAA"), in New York, the Society of Maritime Arbitrators ("SMA") and in China, the China Maritime Arbitration Commission, Beijing ("CMAC").

5. In Singapore, the Singapore International Arbitration Centre ("SIAC") and the recently established Singapore Chamber of Maritime Arbitration ("SCMA") are two of the main arbitration bodies. Numerous arbitrations have been conducted in Singapore, reflecting the growing awareness of shipbrokers and shipping companies of Singapore's role in dispute resolution.

6. As of now, there have been 819 arbitration cases under the SIAC. In the last 5 years there were in total, USD 1 billion worth of disputes referred to arbitration under the SIAC. The proportion of maritime disputes brought under the SIAC however varied over the last few years. In 1996, 54% of the disputes were primarily maritime disputes compared with only 8.4 % in 2002. In the first 3 months of 2005, 20% of the disputes that have been referred to the SIAC, have been maritime disputes.

7. The SCMA, which was established as recently as November 2004, is expected to play an increasing role in the arbitration of maritime disputes while the SIAC's focus is likely to shift toward non-maritime disputes in the future.

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THE NEW EXECUTIVE DIRECTOR – MS DORIS LEONG

In the last issue, I bade a fond farewell to our previous Executive Director, Teresa Ee. In this issue, it is my privilege to welcome our new Executive Director, Doris Leong. Doris joined the Institute on 17 October 2005. Doris is no new comer to the management of the Secretariat of professional institutes and volunteer organisations. She comes with 27 years of work experience, of which 17 years were spent as executive director/manager of with various associations and non-profit organisations. With her vast experience, I am sure the Institute will benefit from her contributions to efficient running of the Institute's affairs. On her personal side, despite her hectic schedule as a mother of two, and her career, Doris finds time to embark on a distant learning MBA programme with a UK university. Doris is also a self-declared serious jogger and golfer. When asked to comment on her impression of the Institute and how she would contribute to its objectives, she said, "Having been with the Institute for two and a half months, I foresee that the main challenge faced by the arbitration community is the awareness of arbitration as an alternative dispute resolution method. Awareness will lead to growth and greater interest in the industry and the Institute will be in a position to meet this challenge by strengthening its internal processes, building on its current cohesiveness within the Council, enhancing our current relationships with our partners, developing new partnerships with industry groupings and last, but not least, growing our training and development programmes."

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II. ARBITRATION UNDER THE SCMA

A. The Purpose of the SCMA

8. The SCMA was an initiative by the Singapore Maritime Foundation. It was established to provide the international maritime community with an independent, efficient and reliable dispute resolution institution. The SCMA thus offers parties involved in maritime disputes, a network of internationally renowned, experienced arbitrators, user-friendly arbitration rules which ensure an impartial and speedy arbitral process and a quantum-based fee structure which provides certainty of cost.

9. In this respect, the SCMA provides a measure of institutional oversight and a suite of services to facilitate the progress of arbitration, allowing parties and the arbitrator to concentrate on the substantive aspects of the dispute, which they are tasked, to resolve.

B. The SCMA Rules (2004)

(i) Function of the SCMA Rules (2004)

10. The SCMA Rules (2004) came into effect on 8 November 2004, when the SCMA was established. They ensure that the arbitration process proceeds in an expedient and equitable manner.

11. The International Arbitration Act (Cap 143A) is the relevant statute in the case of an arbitration under the SCMA Rules (2004) unless the Parties opt out. If so, the arbitration under the SCMA Rules (2004) is subject to the Arbitration Act (Cap 10) instead.

12. It should also be noted that Rule 2 expressly states that the SCMA Rules (2004) shall govern the arbitration save that, where any of the SCMA Rules (2004) is in conflict with a mandatory provision of the Act from which the parties cannot derogate, that provision shall prevail.

13. The SCMA Rules (2004) cover all the main aspects of arbitration. In this regard, the SCMA Rules (2004) provide close guidance to the Tribunal and Parties, but empower the Tribunal to exercise discretion to address eventualities not specifically provided for in the SCMA Rules (2004). It is pertinent to note that Rule 34 provides, *inter alia*, that the Tribunal may make orders or give directions to any party for interrogatories and also make such orders or give such directions as it deems fit in so far as they are not inconsistent with the International Arbitration Act (Cap 143A) (or Arbitration Act (Cap 10) as the case may be) or any statutory re-enactments thereof or such law which is applicable or the SCMA Rules (2004).

(ii) Scope of the Rules

- *SCMA Rules (2004) not limited to Maritime Disputes*

14. The SCMA envisages that disputes which are primarily of a maritime nature will be referred to arbitration under the SCMA Rules (2004). The SCMA Rules (2004), however, do not expressly limit the arbitration to maritime arbitration or to the arbitration of maritime disputes.

15. The reason for this is mainly legal rather than commercial; the SCMA Rules (2004) are drafted as such, so as not to exclude disputes that are not very clearly of a maritime nature and to avoid unnecessary dispute as to whether the arbitration in question, is sufficiently maritime in nature to be governed by the SCMA Rules (2004).

- *SCMA Rules (2004) apply to arbitrations under the SCMA unless parties agree otherwise.*

16. Where parties have agreed to have an arbitration dispute carried out under the SCMA Rules (2004), the arbitration will be conducted in accordance with the SCMA Rules (2004) but the parties may, before the arbitration starts, by mutual agreement, make such modifications to the SCMA Rules (2004) as they deem fit. As such, parties may vary the SCMA Rules (2004) and/or effectively contract out of the SCMA Rules (2004).

(iii) Features of the SCMA Rules (2004)

17. The SCMA Rules (2004) are structured to govern primarily, the following aspects of the arbitration:
    - The process by which the arbitration is commenced;
    - Appointing the arbitrator(s), including carrying out conflict searches and requiring arbitrators to abide by a strict code of professional conduct;
    - The jurisdiction of the arbitrator(s);
    - Appropriate procedure to facilitate the arbitration, and the procedure with respect to small claims as defined under the SCMA Rules (2004);
    - The arbitral award; and
    - The financial aspects of the arbitration.

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18. The SCMA Rules (2004) thus set out succinctly, the steps that must be taken by a party wishing to commence an arbitration under the SCMA Rules (2004) and by a party who wishes to defend the claim under the SCMA Rules (2004) respectively.

19. The SCMA Rules (2004) also provide the timelines and procedure for the filing of case statements. This is provided for in Rule 6. Guidance is provided in Rule 7 as to the contents of the Case Statements. Rules 8 and 9 were drafted to address eventualities in which one of the parties defaulted in filing Case Statements and where further Case Statements would be needed, respectively.

20. There are also rules that specifically relate to the Arbitration Tribunal. In this regard, the procedure for the appointment of the Arbitral Tribunal is governed by Rules 11-13. The SCMA Rules (2004) were drafted to ensure that arbitrators abide by a strict code of professional conduct. For example, Rule 14 expressly requires that arbitrators remain independent and impartial. Should either of the parties justifiably doubt, *inter alia*, the independence or impartiality of the arbitrator, the SCMA Rules provide the appropriate recourse. A challenge procedure is available to such a party. This procedure essentially allows the party concerned to challenge the arbitrator(s). In such an event, the Chairman will, pursuant to Rule 15, make a decision as to whether to sustain the challenge and appoint a substitute arbitrator. Rules 17, 18 and 19 provide for the replacement of the Tribunal, the removal of the Tribunal and any re-hearing if necessary.

21. The jurisdiction of the Arbitral Tribunal is expressly provided in Rule 20. In particular, Rule 20 allows the Tribunal to rule on its own jurisdiction. Further, Rule 21(2) allows the arbitrator to decide on such terms as the parties may agree, in which case, he may depart from strict legal positions.

22. The powers of the Tribunal are also specifically provided for under the SCMA Rules (2004). Rule 34 expressly confers several additional powers on the Tribunal. These powers are to:

    a) allow any party, upon such terms (as to costs and otherwise) as it shall determine, to amend claims or counterclaims;

    b) extend or abbreviate any time limits provided by these Rules;

    c) conduct such enquiries as may appear to the Tribunal to be necessary or expedient;

    d) order the parties to make any property or thing available for inspection;

    e) order any parties to produce to the Tribunal, and to the other parties for inspection, and to supply copies of any documents or classes of documents in their possession, custody or power, which the Tribunal determines to be relevant;

    f) make orders or give directions to any party for interrogatories;

    g) make such orders or give such directions as it deems fit in so far as they are not inconsistent with the Act or any statutory re-enactment thereof or such law which is applicable or these Rules.

23. There are also rules relating to the Award made by the Tribunal. Rule 36 governs decision making of the Tribunal and Rule 37 sets out the making of the Award. As the arbitration may involve several different issues or require the making of an Interim Award(s), Rule 37 expressly empowers the Tribunal to make interim awards or separate awards on different issues at different times. In similar vein, Rule 39 allows the Tribunal to make an Additional Award if it deems it so necessary. Corrections of the Award, if required, are expressly provided for in Rule 40. In so far as costs are concerned, Rule 42 allows the Tribunal to make an award on costs. In the light of the international nature of many arbitrations, Rule 38 allows the Tribunal to make, *inter alia*, an Award in a currency that it considers just.

24. The procedure of the arbitration is also governed by the SCMA Rules (2004). In this connection, Rules 22 to 33 are the main rules in respect of the arbitration procedure. In addition to this, Rule 41 sets out the procedure should parties be able to settle the dispute before the Award is made.

25. It should be noted that there is also a procedure in place to deal with "Small Claims", that is, claims or counterclaims less than USD 75,000.00 or where the claim is unlikely to exceed USD 75,000.00, or where the parties agree that the "Small Claims Procedure" is to apply. The "Small Claims Procedure" was established to ensure that such claims are dealt with in the most efficient manner possible.

26. Invariably, in an arbitration there are a number of financial aspects that require regulation. As such, there are thus provisions in the SCMA Rules (2004) that relate to the financial aspects of the

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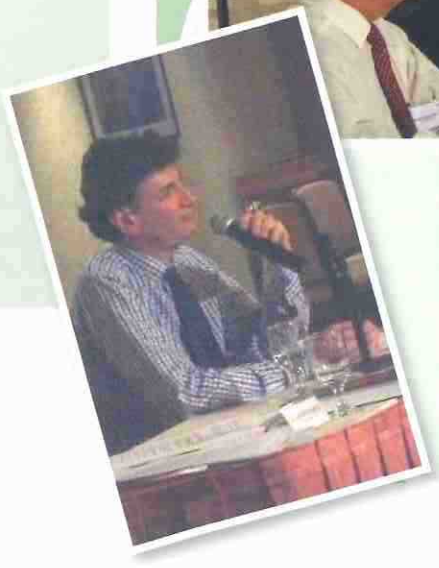
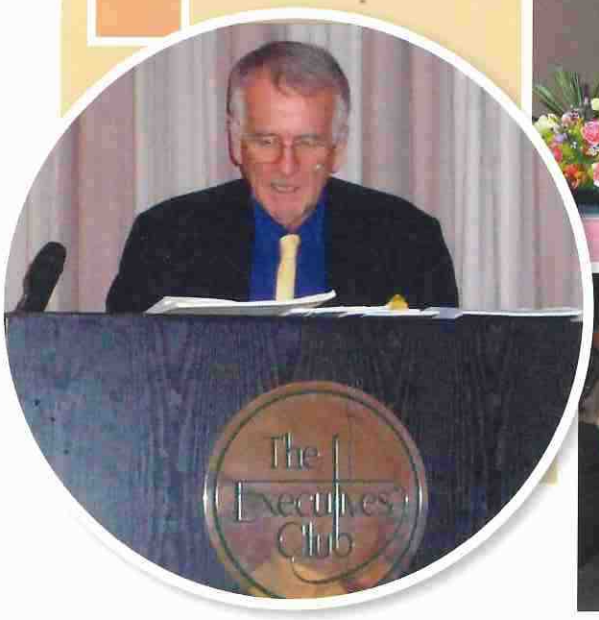
Dinner hosted by SIArb during WIPO Workshop 10 – 11 November 2005

Talk by David Joseph QC 22 November 2005



Talk by Rt. Hon. Lord David Hacking
16 November 2005



Talk on arbitration in China
17 November 2005

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arbitration. Rule 36 is the main rule in respect this. In particular, it should be noted that the Registrar may, under Rule 36, from time to time, direct parties to make one or more deposit(s) towards any further expenses incurred or to be incurred on behalf of or for the benefit of the parties. This SCMA Rules (2004) gives, *inter alia*, Tribunals the right to obtain security for their costs before embarking on a hearing or on the work required in the preparation of an Award.

C. Advantages of the SCMA.

(i) Institutional advantages

27. The SCMA provides parties with institutional oversight. The SCMA also offers an international panel of experienced arbitrators and the arbitrators are appointed in accordance with the procedure set out in the SCMA Rules (2004). It also maintains a strict code of professional conduct.

28. In addition, the SCMA provides the necessary logistical support for arbitrations. It will thus make the logistical arrangements for the arbitration, which include arranging facilities and services for the hearing and attending to all other clerical and administrative issues.

29. The SCMA Rules (2004) are also comprehensive and in this regard, they serve as a useful point of reference for arbitrators and parties alike.

(ii) Differentiated Procedure

30. The SCMA Rules (2004) are tailored to accommodate complex claims for high values as well as "small claims". This structure is essentially a cost saving measure, to afford parties with small claims, a low-cost and highly efficient dispute resolution process.

31. The "Small Claims Procedure" is indeed expedient. The dispute will be decided in accordance with a fairly strict timetable. The arbitration process is streamlined, and does not involve an oral hearing, unless the Parties prefer otherwise. Further, even if there is an oral hearing, it is likely that the hearing will be limited to 2 days. Costs are also considerably reduced as no reasons need to be given after the Award is made. Under the "Small Claims Procedure", a sole arbitrator will be appointed. A sole arbitrator will clearly have economic benefits, particularly in the case where the claim is relatively modest.

32. In similar vein, the SCMA Rules (2004) also provide for "documents only arbitration", which will considerably scale down the arbitration process where parties are of the view that oral hearings are not required.

(iii) Financial Advantages

33. The SCMA manages all the financial aspects of the arbitration. The SCMA also operates on a quantum-based fee structure in which the fees are pegged to the quantum in dispute. While arbitration under the SCMA is generally a speedy process, the fees are not time based. This is thus an added incentive to conduct the arbitration efficiently.

(iv) Legislative support

34. Arbitration is Singapore is governed by the International Arbitration Act (Cap 143A) as well as the Arbitration Act (Cap 10). The Arbitration Act (2002 Edn), Cap. 10A and the International Arbitration Act, Cap. 143A generally provide a supportive environment for arbitrations under the SCMA. There is generally minimal intervention from the Singapore Courts and the Arbitral Tribunal's orders and directions enjoy the same status as the orders of the High Court in a number of respects.

V. CONCLUSION

35. The SCMA provides the necessary framework for the smooth, expedient and fair proceeding of the arbitration. Should parties wish to have any matter arbitrated under the SCMA rules, they may consider the use of an arbitration clause, which expressly provides that any disputes be referred to arbitration under the SCMA and that the proceedings be subject to the SCMA Rules (2004). This will prevent any dispute as to which arbitration rules are to apply to the arbitration or the details of the arbitration procedure. The arbitration clause, could, if parties so intend, specify that the Small Claims Procedure under the SCMA Rules (2004) is to apply. Parties can also specify whether they require only a sole arbitrator to be appointed. Alternatively, if a contract includes an arbitration clause that does not specify which arbitral institution or which arbitration rules are to apply, it is still open to the parties to adopt, by subsequent agreement, the SCMA Rules (2004).

Legal Development Affecting Arbitration

by Dr Philip Chan Chuen Fye

In this issue, two cases are featured. Both cases are decisions in respect of an application to stay the court proceeding so that the dispute may be referred to arbitration. Further, both cases also involved three parties. However, the applicable law in the first case is the International Arbitration Act whilst that of the second case is the Arbitration Act.

In the first case, *Dalian Hualiang Enterprise Group Co Ltd and another v Dreyfus Asia Pte Ltd,* there were two plaintiffs and one defendant. It is an appeal heard in the High Court against the decision of the Assistant Registrar. The case involved two contracts. It was an attempt to "create" a dispute in one contract by importing from another contract a claim, which was presented as a set-off in the first contract. The Appeal was allowed and the stay was not given. Although it was not the *ratio decidendi* of the case, the learned judge's analysis of the Commonwealth cases before arriving at his conclusion about the meaning of section 6(2) of the International Arbitration Act ought to make interesting reading.

In the second case, *Yee Hong Pte Ltd v Tan Chye Hee Andrew (Ho Bee Development Pte Ltd, third party),* there were three parties in the proceeding, the plaintiff who is the Contractor, the defendant who is the project Architect and the third party who is the Developer. The case involved also two contracts, namely, the building contract between the Developer and the Contractor, and the service contract between the Developer and the Architect. An application by the Third Party was made for a stay of all proceedings and that the disputes be referred to the same arbitration. The learned judge had to rule on the interpretation of section 6 of the Arbitration Act to determine the extent of the court's jurisdiction to grant the Third Party its application which she did. If the decision of the High Court is affirmed by the Court of Appeal as the plaintiff has appealed, this may very well start a trend where the consultants, whether architect, engineer or quantity surveyors, who may have an arbitration clause in their respective service contracts with the developer, would be drawn into tripartite arbitrations with the developer and the contractor. Correspondingly, it may start another similar trend of tripartite arbitrations involving the developer, the contractor and the sub-contractor.

Stay application under the International Arbitration Act

Dalian Hualiang Enterprise Group Co Ltd and another v Dreyfus Asia Pte Ltd [2005] SGHC 161 [2005] 4 SLR 646 [Woo Bih Li J] (Appeal allowed against the decision of Assistant Registrar)

There are three parties in this action, which is an appeal against the Assistant Registrar's decision to grant the Defendant's application for an order that the action be stayed and the dispute be referred to arbitration. In this case, there was an agreement between the First Plaintiff and the Defendant known as the Armonikos contract in the judgment. The First Plaintiff subsequently assigned the contract to the Second Plaintiff. The Second Plaintiff claimed payment under the contract and one Sally Yang of the Dreyfus Beijing confirmed the amount payable. There was a subsisting arbitration between the First Plaintiff and the Defendant. There appears to be a set off which the Defendants are relying which is not a claim against either plaintiffs but against a related company in another contract known as the Hanjin Tacoma contract in the judgment. However, there was only one issue to be considered in the appeal, that is, whether there was an admission binding on Louis Dreyfus. The learned judge allowed the appeal.

This case required the learned judge to interpret the provisions of section 6(2) of the International Arbitration Act (Cap 10, 2002 Rev Ed) to ascertain the extent of the court's jurisdiction to consider if there was a dispute between the parties or whether the court was obliged to refer any dispute to arbitration so long as there was a dispute.

The learned judge framed the issues at paragraph 12 as:

- "...whether there was an admission binding on Louis Dreyfus...";
- "...This involved a consideration of the court's role under s 6(2) of the IAA.
  On the court's role under s 6(2) IAA, the question was whether the court had jurisdiction to consider if there was in fact a dispute, sometimes referred to as a genuine dispute, between the parties or whether the court was obliged to refer any dispute to arbitration so long as there was a dispute. ..."
- "...This consideration was also relevant for the set-off issue. ..."

The learned judge answered as follows:

- 14 The question of the authority of Sally Yang turned out to be a red herring. ...The sums payable on these claims were disclosed in a statement of account issued by Louis Dreyfus itself. ...In my view, the statement of account demonstrated that Louis Dreyfus was accepting that the sums claimed under the Armonikos contract would be due and payable but for its claim under the Hanjin Tacoma contract.
- 15 As regards the question whether the set-off issue was within the scope of the arbitration agreement, both sides had assumed that I had the jurisdiction to rule on the question.
- 25 I was of the view that I had jurisdiction to determine if the matter before the court was the subject of the arbitration agreement between the parties. However, if that issue was arguable in that the outcome was not clear to me, then I should stay the court proceedings.
- 26 At this juncture, it is appropriate to set out the terms of the arbitration agreement under the Armonikos contract. It states:

  ARBITRATION : Should any dispute arise between the contracting parties to which no agreement can be reached, these disputes shall be settled by arbitration, which shall take place in London as per FOSFA.
- 29 I was of the view that the phrase "any dispute" should also be given a wide interpretation. Nevertheless, it would not cover a dispute unrelated to the transaction covered by the Armonikos contract. For example, if there was a dispute between DHE [the first plaintiff] or DJOM [the second plaintiff] on the one hand and Louis Dreyfus on the other hand under a separate contract which did not have an arbitration agreement, would that dispute be caught by the

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arbitration agreement in the Armonikos contract? Surely not. Likewise, even if that separate contract had its own arbitration agreement, the dispute thereunder would be referred to arbitration under that arbitration agreement and not under the arbitration agreement in the Armonikos contract.

- 30 ...In my view, it was clear that the set-off issue was not the subject of the arbitration agreement. In the circumstances, I allowed the appeal.
- 31 Accordingly, the jurisdiction of the court under s 6(2) IAA became academic. However, as submissions were made on this issue and in view of the importance of the issue, I will venture my view on it.

As regards the issue of the interpretation of section 6(2), the learned judge by way of *obiter dicta* said the following after traversing the case law of several jurisdictions:

- 74 As regards s 6(2) IAA, I am of the view that once there is a dispute, a stay must be ordered unless the arbitration agreement is null and void, inoperative or incapable of being performed. The court is not to consider if there is in fact a dispute or whether there is a genuine dispute. The more difficult question is when it can be said that a dispute exists. For example, is there a dispute when the defendant simply refuses to pay or to admit the claim or remains silent? Although there have been statements that suggest that such conduct is sufficient to constitute a dispute I do not share that view. A defendant may refuse to pay or to admit a debt or remain silent because he has no money to pay or simply because he is intransigent. To my mind that is not a dispute. It is different if the defendant at least makes a positive assertion that he is disputing the claim. If he is prepared to and does assert that, then there is a dispute even though it can be easily demonstrated that he is wrong. However, an admission by a defendant will, generally speaking, be contrary to a dispute but not every admission will necessarily avoid a stay order.

- 75 The above approach is not inconsistent with the concept of minimal court involvement, which is the regime under the IAA and the Model Law. On 31 October 1994, when the International Arbitration Bill (No 14 of 1994) was read for the second time, Assoc Prof Ho Peng Kee, who was then the Parliamentary Secretary to the Minister for Law, said:

  [T]he Model Law accords full liberty to parties in non-domestic arbitrations to choose laws and arbitrators to resolve their disputes with minimal intervention from domestic courts. Domestic arbitrations will continue to be governed by the existing Arbitration Act (Cap. 10) where a greater degree of judicial supervision is imposed.

- 76 It also seems to me that s 6(2) IAA could have been drafted in terms adopting the previous s 7(2) of the domestic arbitration legislation (before s 6(2) of the Singapore domestic Arbitration Act was enacted) if the intention was to allow the court to consider whether there is in fact a dispute. In my view, the difference in the wording of s 6(2) IAA and the previous s 7(2) of the domestic arbitration legislation is meant to reflect the difference as enunciated by Swinton Thomas LJ in *Halki*, although the legislative history behind the enactment of s 9(4) of the English Arbitration Act 1996 is not exactly the same as that behind the enactment of s 6(2) IAA.

Stay application under the Arbitration Act

Yee Hong Pte Ltd v Tan Chye Hee Andrew (Ho Bee Development Pte Ltd, third party) [2005] SGHC 163 [2005] 4 SLR 398 [Lai Siu Chiu J] (Appeal against the Asst Registrar's decision allowed)

There are three parties in this action, which is an appeal against the Assistant Registrar's decision not to grant the Third Party's application for an order that all further proceedings be stayed and referred to arbitration. In this case, there is an arbitration agreement between the Plaintiff, the Contractor, and the Third Party, the Developer on the one hand and the Defendant, the Project Architect, and the Third Party, Developer, on the other. There is no arbitration agreement as between the Plaintiff Contractor and the Defendant Architect. The learned judge allowed the appeal.

This case required the learned judge to interpret the provisions of section 6 of the Arbitration Act (Cap 10, 2002 Rev Ed) to ascertain the extent of the court's jurisdiction to make an order to compel the Plaintiff Contractor, and the Defendant Architect to proceed to a tri-partite arbitration with the Third party Developer.

Some facts that came before the court include:

- In an earlier case between the Contractor and the Developer, Suit No 1094 of 2001, the Developer successfully obtained a stay of proceeding because their contract contained an arbitration clause [see paragraph 13 of the Judgment];
- The Architect had "no problem" in being added to the arbitration proceedings between the Contractor and the Developer [see paragraph 15 of the Judgment];

The learned judge held that the court has power to order the parties to refer their respective disputes to the same arbitration: According to her:

- 24. Section 6(1) of the Arbitration Act reads:

  Where any party to an arbitration agreement institutes any proceedings in any court against any other party to the agreement in respect of any matter which is the subject of the agreement, any party to the agreement may, at any time after appearance and before delivering any pleading or taking any other step in the proceedings, apply to that court to stay the proceedings so far as the proceedings relate to that matter.

- 25 ...It is my view that the power of the court to do so is contained in s 6(5) of the Arbitration Act. It states: For the purposes of this section, a reference to a party includes a reference to *any person claiming through or under such party.* [emphasis added]

- 26 I read the italicised of the above subsection to include the Defendant who by the Third Party Proceedings was making a claim for an indemnity or contribution through or under the Third Party (who had an arbitration agreement with the Plaintiff). Moreover, the wording of cl 37 in the main contract (see [22] above) was very wide. It encompassed claims in contract as well as in tort and any direction or instruction or certificate of the Defendant.

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Visit by William Slater II, President & CEO, American Arbitration Association

The Institute played host to the Mr William Slater II, President & CEO, American Arbitration Association on 28 October 2005. The Council hosted Mr Slater II to a lunch at Zhang Gualao Room, Tower Club. Ms Sabiha Shiraz, SIAC acted as tour guide and accompanied Mr Slater II during his visit to Singapore. During lunch, the Council had a fruitful and lively discussion with Mr Slater II on various aspects of practice of arbitration and the function of the American Arbitration Association. Mr Slater II also shared with the Institute how the American Arbitration Association dealt with their membership issues and its role in the management of arbitration in the US.

Announcements

• NEW MEMBERS •

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

Fellows

1 Andrew Chan
2 Murugan Subramaniam
3 Baswan Bhartendra Singh
4 Sreerangaraju L. V.
5 Justice (Retired) Rajendran Sinnathamby
6 Anumolu Ramakrishna A.
7 Chawla Harish
8 Jha Sarweshwar
9 Rabi Ahmad s/o M Abdul Ravoof (Transfer)
10 Lim Tze Sin
11 Mahesh Kumar Agrawal
12 Alvin Yeo, SC
13 Paul Wong (Transfer)
14 Lek Siang Pheng (Transfer)
15 Randolf Khoo Boo Teck (Transfer)
16 Dr Mohamed Idwan Ganie
17 Chan Leng Sun (Transfer)
18 Peter Gabriel (Transfer)
19 Dr Thean Lip Ping
20 Chandra Mohan Rethnam (Transfer)
21 Subramanian Pillai (Transfer)
22 Dr S Chandra Mohan

Members

1 Jossy Ho Bragassam

Associates

1 Mohan Mahdev
2 Capt Lansakara Francis

• UPCOMING EVENTS •

- Members' Nite on **6 January 2006**
- IBA Arbitration Day on **17 February 2006**
- Fast Track Assessment Workshop in **February 2006**
- Special Fellowship Workshop in **March/April 2006**
- Adjudication training with IAMA in **March 2006**
- Institute's 25th Anniversary in **June/July 2006**
- ICMA XVI Conference on **26 February 2007** to **2 March 2007**

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