SINGAPORE INSTITUTE OF ARBITRATORS

NEWSLETTER

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CONTENTS

VIEWPOINT

THE PRESIDENT'S COLUMN

- Richard Tan LLB(Hons) FSIArb FCIArb

The past year has been a busy one for the Institute. Beginning with the Institute's annual dinner at which new members were presented with their membership scrolls, retired High Court judge, Mr Warren Khoo, the Chairman of the Singapore International Arbitration Centre and a long-time member of the Institute, was conferred an Honorary Fellowship. Drawing on his long experience at the bench and at the bar, he gave, with his characteristic candour and penchant for detail, a thoughtful after-dinner speech on the opportunities and challenges of arbitration in Singapore.

A couple of months later, the Institute together with the Chartered Institute of Arbitrators East Asia Branch and supported by the Singapore International Arbitration Centre, held a highly successful 2-day international symposium "Arbitration Asia 21 - Current Trends and Practice". This symposium attracted more than 130 speakers and delegates from many Asian countries and provided a broad spectrum of views and perspectives as to how arbitration was conducted in the various Asian jurisdictions and the future trends across Asia. The highlight of this conference was the Keynote Address of the Chief Justice of Singapore, Mr Yong Pung How, on "The Strategic Imperatives for Arbitration in the New Millennium", which emphasized, amongst other things, the importance of leveraging on the flexibility of the arbitration process and the use of information technology to enhance the use of arbitration in Singapore in the present day, knowledge-based economy.

At last year's AGM, I also announced my plans to form specialist arbitration groups to better cater to the needs of specific industries. This springs from the recognition that different industries have evolved over time their own unique methods and models for dispute resolution. The landscape however continues to change and we must be quick to adapt to the times. The formation of these groups will therefore help in this endeavour and in the long term will benefit all users of the system. I am pleased to announce that three Arbitration Groups have been formed and all three have got off to a promising start.

The IT/IP Arbitration Group initiated discussions with the Singapore International Arbitration Centre and Singapore Network Information Centre (SGNIC), the local registration authority for Singapore domain names, to develop a dispute resolution model for resolving domain name disputes involving Singapore ccTLDs ie. those ending with .sg. A Memorandum of Understanding was signed by these organisations and a Consultation Paper inviting comments on the proposed new framework (together with the Singapore Domain Name Dispute Resolution Policy and the Rules) has recently been circulated. The documents can be found on SGNIC's website www.nic.net.sg. The Institute welcomes feedback from its members, who may send their comments to The Chairman, IT/IP Arbitration Group, care of the Singapore Institute of Arbitrators.

The Construction Arbitration Group organized a luncheon talk by Mr Harold Crowter, a past Chairman of the Chartered Institute of Arbitrators and himself an immensely experienced

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arbitrator in the construction industry, on "Minimizing Delays In Construction Arbitrations". This talk was sold out in less than 48 hours after its announcement by fax broadcast, leaving a long list of members on the waiting list (thus underscoring the point of the talk that speed is always desirable!) The fact that lunch was prepared by an award-winning chef and charged at the very low price of $28.50, did not hurt the cause. Mr Crowter spoke on the techniques arbitrators might employ to make construction arbitrations less protracted and less costly.

The Maritime Arbitration Group organized two talks, one by Capt Lee Fook Choon, one of our council members, on "Arbitration as an Option in Maritime Dispute Resolution" and another by Mr David Lewis Malcolm Alwyn, on "The Difficulties Encountered in the Incorporation of the Arbitration Clause into the Bill of Lading".

The Institute also held an International Entry Course, in conjunction with the Chartered Institute of Arbitrators, and this was, as usual, well attended, the successful completion of the course being a requirement for admission into the Institute as a Member. We are once again grateful to our friends from the Chartered Institute of Arbitrators, Mr Robin Peard, Mr Philip Yang and Ms Theresa Cheng SC, for coming to Singapore to lecture at the course with our own faculty members, Raymond Chan, Leslie Chew SC, Kenneth Tan SC, Ang Yong Tong and myself. Another entry course is being planned sometime towards the end of the year.

As regards participating in committee work and joining the Arbitration Groups, members will find, together with this newsletter, application forms for them to complete and return should they wish to participate in these activities. I cannot emphasize sufficiently the need to have more members participate in the planning and organisation of the events of the Institute. We need dedicated and able members to step forward and play a role in the activities of the Institute.

The Institute, through its Professional Practice Committee, will also be putting together a list of persons to act as arbitrators and/or mediators. Members who are interested in being placed on the list, are invited to submit their particulars by completing and returning the application form enclosed with this newsletter. The Institute receives requests for the appointment of arbitrators from time to time and will therefore need to have its database updated on a regular basis.

We have also recently seen a growing interest in arbitration amongst "younger" persons - those in the 20 to 30 age bracket. Our present Constitution has certain minimum age requirements for membership, as for example, a minimum age of 30 for those wishing to become Members. Even though persons below the minimum age may have passed the International Entry Course examination, they are presently precluded by the Constitution from joining as Members. We believe that certain parts of the Constitution will need to be amended and intend to convene an EGM to amend the Constitution on 15 August 2001. We hope members will attend the EGM (and AGM on the same date) to support the amendments. ▲

Richard Tan

List of Events:

Luncheon Talk held on 20 October 2000. This was organized by the Construction Arbitration Group through the efforts of the President who arranged for Mr Harold Crowther, a Chartered Arbitrator and Past-Chairman of the Chartered Institute of Arbitrators, to speak on "Minimising Delays in Construction Arbitrations". The talk was well received with an attendance of 40 participants.

Arbitration Asia 21 Symposium, a major 2-day international conference jointly organized by the Singapore International Arbitration Centre and the Chartered Institute of Arbitrators (East Asia Branch), was held on 17 and 18 November 2000 at the Marina Mandarin, Singapore. The Honourable the Chief Justice Yong Pung How, President of the Singapore Academy of Law, delivered the Keynote Address. This event was a great success, with 63 delegates from Singapore and 55 from overseas.

International Entry Course 2001 was conducted jointly with the Chartered Institute of Arbitrators from 2 to 4 February 2001 at the Shangri-La Hotel. There were 49 candidates. The local Course Tutors, including the President, being also the Course Director, donated their honoraria back to the Institute.

A Luncheon Talk organized by the Maritime Arbitration Group was held on 9 February 2001 with 11 Members and 21 Non-Members in attendance. Captain Lee Fook Choon, a Fellow of our Institute and of the Chartered Institute of Arbitrators, and an experienced arbitrator, spoke on "Arbitration as an option in Maritime Dispute Resolution".

The next Luncheon Talk was again organized by the Maritime Arbitration Group had Mr David Lewis Malcolm Alwyn, a solicitor and Director/Underwriter of Charles Taylor Mutual Management (Asia) Pte Ltd, as speaker. He spoke on the topic, "The difficulties encountered in the incorporation of the Arbitration Clause into the Bill of Lading" to an audience of 11 Members 15 Non-Members. ▲

ARBITRATION IN SINGAPORE: THE CHALLENGE AND THE OPPORTUNITY

Address by Mr.Warren Khoo on the occasion of the conferment of an Honorary Fellowship on him by the Singapore Institute of Arbitrators at the Institute's Annual General meeting on 4th August 2000)

It is indeed a pleasure and a privilege to be bestowed this singular honour of being made an honorary fellow of this most distinguished arbitration institution.

My association with the Singapore Institute of Arbitrators goes back a long way. In fact I took a marginal part in the birth of the Institute, in being consulted on the draft constitution of the Institute when it was being considered. But the moving force for the institute came from the late Mr. Chan Chee Wah and his colleagues, to all of whom I would like to pay tribute for their pioneering effort. The Institute was formed in 1982, and I was for a time a council member.

Since then, under the leadership of succeeding distinguished presidents and their colleagues on the Council, the Institute has grown from strength to strength. The quality of its membership has grown with it. It is now an organization that anyone would be proud to call his own. It has come a long way.

It is, therefore, indeed a privilege that at this juncture of the institute's progress I am being made an honorary fellow. I accept this with profound humility and gratitude.

I have been asked to say a few words about arbitration, the more controversial the better. I don't know whether there is very much one could say about the subject which has not been said in the countless arbitration forums that are held all the time. So what I have decided to do is to share with you some thoughts about the challenges and opportunities that present themselves to the arbitration community from the increasingly rapid development on the arbitration scene in Singapore.

Much, indeed, has changed in the field of arbitration in the course of the last three or four decades. When I first started my professional life in Singapore in the 1970's, arbitration was a fairly new thing. I certainly had not learned anything about it at university. I had to learn from scratch. Litigation was the rule of the day.

But, to-day, arbitration is common place. Its twin, mediation, has also seen phenomenal growth. The legal framework in which arbitration operates has also undergone fundamental changes. I have witnessed in my not very long professional life the reign of the case-stated procedure, the birth of the Nema principle, and then the regime of the UNCITRAL Model Law.

These changes in the law are the outcome of an international doctrinal debate between those who believe in a near absolute autonomy of the arbitral process and those who believe in a measure of court supervision of it, a doctrinal debate which gained momentum, if one can put a date to it, in the 1970's. The voice of autonomy gained ground. Countries enacted legislation to lessen court control in the belief that this would help them to retain their position as favoured venues for arbitration, or to achieve that position. The quality of a country's arbitration laws began to be measured by the degree to which the arbitral process was freed of court control. The international debate culminated in the adoption of the UNCITRAL Model Law in 1985, whose distinguishing feature was the wholesale ouster of court intervention in the substantive merits of arbitral awards.

In Singapore, the case-stated procedure gave way to the 1980 amendments of the Arbitration Act and the adoption of the Nema principle of court intervention. Much later, in 1994, the UNCITRAL Model Law was enacted in the form of the International Arbitration Act.

The Model Law was actually intended by the people who developed it to assist countries with relatively undeveloped arbitration laws to use it as a template to structure their arbitration laws. It was intended to set certain common denominators of standards for such countries to adopt. Hence the name Model Law. Hence also the presence of provisions which you might regard as rather rudimentary or as something which could be taken for granted. It is also not a perfectly drafted piece of legislation. But it was seen as a piece of legislation friendly to international arbitration. Countries that aspired to attract international arbitration to their shores saw it as an instrument which would help them to do that, for the total freedom from court control that it embodied. The fact that it had the UN stamp on it of course helped in its credibility. So even countries that already had fairly well-developed arbitration laws began to adopt it, either in place of their existing law or as a supplement to it for use in international cases. The process is still continuing. The Model Law gains new adherents all the time. Like the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, it is one of the most successful UN instruments in the field of international private law.

Singapore, as you know, enacted the Model Law in 1995, as the last plank in the restructuring of its legal architecture in its effort to develop itself as a centre for international arbitration. As you also know, we now have a dual regime as far as court supervision of arbitration decisions are concerned - the Nema principle as embodied in the 1980 amendments to the Arbitration Act for domestic arbitration, and complete autonomy under the International Arbitration Act, for international arbitration. While the IAA allows no court intervention at all, the Nema principle allows it only in the most patent cases of error. You have to cross a very high threshold indeed before a court will hear your complaint about your arbitrator's decision.

So, an arbitrator's decision is final on its merits under the Model Law, and is near final on the Nema principle. It is not subject to scrutiny, except by the parties and their advisors.

Add to this finality the fact that the proceedings are confidential, add to it the fact that the awards are not accessible to the public, and add to it the fact that the arbitrator is immune from suit except in the most extreme cases, you have the making, then, do you not, of a justice system that largely operates on its own, with the arbitrator accountable to nobody. It is no exaggeration to say that there is no other profession that enjoys so much immunity.

I am not here to say whether this is a good system or bad. The debate has been concluded. The jury has given its verdict. Party autonomy (or should one rather say the arbitrator's autonomy?) certainly has the virtue of adding efficiency to the arbitral process. What I want to suggest is that such a large degree of immunity must carry with it a corresponding dimension of responsibility. There is the responsibility, both on the part of the arbitration community as a whole and on the part of the individual arbitrator, to ensure that the privilege is well earned and well deserved. The end-user of arbitration services are entitled to expect that the arbitrator discharges his adjudicatory functions with the required degree of competence and with honesty in the widest possible sense - personal, professional and intellectual. There is a need for us all to always remind ourselves that we are serving the public, and that we are accountable to it. The arbitration community accounts to the public by the quality of performance of the individual arbitrator in every case that comes before him. Unless we discharge this responsibility to the public, we risk the public losing confidence in arbitration as a credible means of dispute resolution.

It is in this context that I want to pay tribute to the work of this Institute under the leadership of its succeeding presidents and their colleagues. True to its avowed objects, the institute has been doing an excellent job in enhancing the knowledge and skill of those who aspire to be arbitrators. As one example out of many, the training courses run by the Institute to syllabuses set by internationally renown institutions help those who go through them to gain competence, at least at the technical level, to enable them to conduct an arbitration and write an award at the end of it. Of course, to arbitrate is to make judgments with fairness and equity and according to principle. Some of these things cannot be taught, but those aspects that are teacheable are well covered by these courses. The courses thus enable those who have these less tangible attributes gain the skill and knowledge that will enable them to perform as creditable arbitrators.

In this connection, I hope you will forgive me for mentioning the Singapore International Arbitration Centre, which I have the privilege to serve as its Chairman. The SIAC is also dedicated to the pursuit of standards of excellence in arbitration. Through the appointment of arbitrators and providing them with the opportunity for regular hands-on experience, and monitoring their performance, I would like to think that we play a part in maintaining standards. There is indeed great synergy between the Institute and the Centre. Your distinguished president Richard Tan and his colleagues have been working in close consultation with me and my colleagues at the Centre to meet the challenge posed by a fast increasing demand for competent arbitrators from domestic and international users. There is a real opportunity for the two institutions to work together to continue the process of developing Singapore as a place which people from near and far naturally think of when they have a commercial dispute to settle.

As much as it is an opportunity, it is also a challenge. The twin quality of competence and integrity, which is to be taken for granted in a Singapore arbitrator, will enable us to meet that challenge. ▲

Delays In Construction Arbitration And Ways To Overcome Them An arbitrator's viewpoint

by Harold Crowter

Brief Introduction

Construction contracts are by their very nature complex. Construction is essentially a site-based activity; sites often have unpredictable ground conditions; construction activities are usually subcontracted and sub-sub-contracted; therefore the capacity for things to go wrong is enormous. Factory methods of control are rarely able to be used.

It is therefore little wonder that construction contracts often give rise to multi-issue disputes and a complex interaction between those various sub-disputes. It further follows that complex cases when they are referred to dispute resolution procedures are more subject to delay than single issue cases.

It is certainly true that construction arbitrations have historically often been the subject of delay and I will first explore how these delays can arise.

How delays can arise

Appointment

It is amazing how many construction contracts do not provide for an efficient means of appointment of the arbitral tribunal. The most common delaying tactic is for the Respondent to deny that there is a dispute; he will say that negotiations are continuing and it is far too early to say that the parties are in dispute. The way to deal with this is for the Claimant to demand what it considers is due in such a way as to provoke a response; the response will usually identify whether or not there is a dispute. In England there is now some very helpful case law *(Halki Shipping -v- Sopex Oils (1997)* where the judge gave a very wide interpretation as to what could be considered to be a dispute.

The second area of delay in appointment of the tribunal is where unsatisfactory arrangements have been made for the appointment of the third arbitrator or where there is a sole arbitrator and the appointing body either does not exist or is incorrectly named. For example, the contracts might provide for "arbitration under the standard rules applicable in Malaysia". Does that mean that the arbitration is subject to the Rules of the Regional Centre, or perhaps the rules of the Chartered Institute of Arbitrators, or perhaps the UNCITRAL arbitration rules or perhaps it is so meaningless so as not to incorporate any rules whatever. The courts will usually step in to prevent frustration where it is clear that the seat of the arbitration or the law of the arbitration truly is within the jurisdiction of the court. The lesson is that carefully and accurately drafted arbitration agreements can and do lead to less likelihood of delay.

Thirdly, it is always better to identify an appointing body in the arbitration agreement to appoint in any case, or in the event of the parties failing to agree on the identity of the tribunal, or where a third arbitrator needs to be appointed. Any court process will inevitably cause delay, although in my home jurisdiction of England, the court will usually appoint an arbitrator, if requested, within 14 days.

Setting the timetable and procedures for the reference

It is normal in any arbitration procedure for the arbitrators to make contact with the parties or their representatives and arrange a meeting with them or if that is not convenient to set up a conference call or video link. Historically this has been known as the preliminary meeting, although I now tend to call it the "first case conference".

Delays often occur here as one party, usually the Respondent, will maintain that all the dates proposed are inconvenient. This needs a robust approach by arbitrators who should, in my opinion, set a date and time perhaps 2 or 3 weeks ahead at a time which is convenient to at least one of the parties and should advise the other party that they should take steps to be represented. My experience is that despite all protestations of inconvenience, the reluctant party will always attend. That is not to say you should set a date which manifestly will be inconvenient to one of the parties where they have given credible reasons for their non-availability.

There are those that say preliminary meetings or first case conferences are a relic of the past and that we should now adopt written procedures or perhaps have a telephone conference or a video conference. In some international cases, I agree, but I strongly believe that in domestic cases and in most international cases, a well-structured, well-managed preliminary meeting is very worthwhile indeed, if not essential. On the occasions where I have been persuaded not to have a preliminary meeting, problems have developed which could have been snuffed out at a preliminary meeting.

The agenda for the preliminary meeting is the key. My own agenda runs to 40 items on three or four pages of A4. I take the initiative in finding out whether there are any jurisdiction problems, whether the parties have taken away any of my default powers under the relevant Arbitration Statute or Arbitration Rules or have given me any extra powers not envisaged by the Statute or the applicable Arbitration Rules. As well as the traditional time-tabling matters, I discuss with the parties whether and to what extent it may be appropriate for me to take the initiative in determining any issues of fact or law.

It can already be seen that in my view management of the process by the arbitrators is key to preventing, and in any event minimising, delay. There was a time, hopefully long gone, when the arbitrator took as few positive steps in the action as he possibly could; he might issue a few orders for directions (and even then he would hope they were by consent); if the parties delayed he said or did nothing. When and if the hearing finally came he would say nothing except "good morning", make notes and that was all. If arbitration is to be the efficient means of dispute resolution that the parties to construction and other contracts require, then, subject to statutory and arbitration rules limitations and subject to public policy considerations, the arbitrators must actively manage the reference and that management will start from the day of appointment.

At the preliminary meeting, there is usually one party who wants to make progress and who is prepared to work hard to minimise delay; that party is usually the Claimant. In some cases, the Respondent will ask for inordinate lengths of time to prepare pleadings, witness statements, expert reports and the like with the aim of delaying the hearing and in particular delaying the rendering of any award. Although, now I am known as an active case manager, I find that Respondents are less likely to be seen to be delaying the process, than once was the case.

Here it is appropriate to discuss Arbitration Rules. Such rules can be of enormous assistance in preventing delay. For example in the Rules for Arbitration of the Kuala Lumpur Regional Centre for Arbitration, which adopt the UNCITRAL Arbitration Rules with some modifications, Rule 6 requires the arbitral tribunal to render its award within a period which is limited to six months, such period to run from the date of receipt of the Statement of Defence and/or Counterclaim. Thus there is no opportunity for months to prepare and file witness statements and expert reports.

Other rules, for example the Chartered Institute of Arbitrators Rules 2000 give the arbitrators substantial additional powers which can be used to prevent or avoid delay, for example by making an order for the payment of monies on account pending the award, thus acting as a major disincentive to a party wishing to delay proceedings in order to put off the evil day when monies have to paid over.

Limiting time for statements of case

It is often a matter of fine judgment as to how long it will take to prepare a statement of claim or a statement of defence and counterclaim. It is certainly true that pleadings in many construction cases take far too long. Sometimes a Claimant starts an arbitration prematurely when his case is far from fully identified, never mind prepared. Little is gained in my experience except in the most massive cases from many months being

allowed to prepare pleadings. Of course under the common law system, it will be argued that unless a matter is pleaded, no evidence can be adduced on that matter and certainly no award can be made on it. It is for this reason that lawyers try very hard to ensure that the pleading is all-embracing.

Some arbitration rules limit the time for serving statements of case, in one construction industry example, the Joint Contract Tribunal Rules in UK, that time is 28 days. I am not in favour of a blanket time limit for all cases, but even in the largest case, 3 months ought to be sufficient. I have had substantial experience in assisting parties in preparing pleadings and I have found that however long the party is given, they will do little work at the beginning of the period and only when they realise that the time limit will soon expire, do they start serious work. If the serious work was started at the beginning of the period, the period itself could be shorter.

Requests for Further and Better Particulars

This is one of the most common abuses which delay construction arbitrations. It is of course true that a party in receipt of a pleading must be able to fully understand the case that it has to answer, but the almost ritualistic raising of requests for further and better particulars, often many times longer than the pleading itself is in my view an abuse of the process, the excesses of which arbitrators should stamp out.

Construction contracts are particularly vulnerable to claims for more particulars because of the almost inevitable complex interaction of delaying and disrupting events. It is often difficult, if not impossible, for the claiming party to say, in respect of each delaying or disrupting event, witnesses of fact are not capable of doing so.

What I have described above has become known as a "global claim". For a global claim to succeed it must be demonstrated that for practical purposes it was and remains impossible to break the claim down into identifiable delay and extra cost for each individual event, because of the complex interaction of the events claimed - see for example the English case of Crosby -vPortland (1967). To defeat a global claim, a Respondent would need to prove that the delay and extra costs could indeed be broken down, at least in part, to individual events or that a reasonable proportion of the delay of extra costs claimed was caused, not by the claimed events, but by some default for which the Claimant is contractually responsible.

Claimants, knowing that global claims are difficult to prove, will try to pretend in pleading that their claim is broken down into detailed cause and effect. In these cases the Respondent will try to flush out the global nature of the claim by making requests for detailed breakdowns of events into cause and effect. These breakdowns, even if produced, are usually artificial at best and do little to identify the case that the other side has to meet; they are used more as a trap into which it is hoped the Claimant will fall.

My approach is to ask the Claimant to state clearly if its claim in whole or in part is truly a global claim; if so there is no need for particulars. If however the Claimant indicates that its claim is not global but is intended to be of a detailed cause and effect nature, then it must be asked to particularise its claim sufficiently so that the Respondent can understand the case it has to meet.

Discovery of documents

In common law jurisdictions, discovery as it is practised in the US and used to be practised in the UK is an enormous constituent of delay in construction arbitrations. The historic duty on each party is to disclose by list all of the documents which are or have been in their custody power or possession relating to the matters in dispute, separately identifying those in respect of which privilege is claimed. There then follows an inspection process where the other side has a right to inspect the documents on the list. Almost always the parties will then complain that not all the relevant documents have been included on the lists and they make application for specific discovery of certain additional documents or classes of documents. Next the parties will disagree about the relevance of the additional documents and will maintain that the request for more documents is merely a "fishing expedition" trying to locate documents which might be damaging to the other side, if indeed they exist - the legendary "smoking gun". Other than racking up lawyers' fees, this process rarely improves the quality of justice. It certainly adds very substantially to costs and delay. Our civil law colleagues manage perfectly well without discovery where each party submits the documents it wishes to rely on and there is only a very limited opportunity to request copies of other classes of documents in respect of which the tribunal can be persuaded to make an order for disclosure.

The new English court Civil Procedure Rules which came into effect in 1999 probably get the balance about right in a common law context. My typical order for disclosure and inspection of documents now runs like this:-

"Not later than 14 days from service of the Statement of Defence and Counterclaim each party is' to serve on the other a list of those files of documents or classes of documents defined below which are or have been in its control. Each party shall disclose only - (a) the documents on which he relies; and (b) the documents which - (i) adversely affect his own case; (ii) adversely affect the other party's case; or (iii) support the other party's case. Inspection within 7 days of notice. Disclosure by files, not individual documents."

Other case management issues which have an impact on delay

Expert witnesses

There are two types of expert in construction cases:-

- The expert whose technical or scientific experience and knowledge is required to assist the tribunal to understand the issues

- The expert who is used merely to manage and analyse enormous amounts of data and present it in a digestible form to the tribunal, because the witnesses of fact are not capable of doing so.

Both can perform a valuable service, but experts need managing like any other part of the process. First experts need to have the opportunity to review the pleadings, disclosed documents and witness statements before they finalise their reports. I have seen arbitrations where the experts are required to produce reports or draft reports before this information is available to them; I can see no purpose to such reports unless they are of the purely scientific or technical variety.

What is needed are a series of without prejudice meetings of the experts of each discipline in order to try to narrow the issues. The longer that can be given to this process, the more likely it is that the issues in dispute will be narrowed. What I also see in construction arbitrations is a generally poor standard of expert, not that the experts are incompetent, but that they fail to understand their obligation to be truly impartial or at least they fail to put into practice any understanding which they do have. I have little patience with experts who see it as their role to advocate their client's case or who fail to agree issues with their opposing expert. With the exception of genuinely held differences of professional opinion, experts should be able to agree most of their reports with each other, if they have truly acted in an independent way.
Expert reports can take a long time to prepare and if they prove to be largely unnecessary because issues are subsequently agreed, the time and cost of preparation has been a complete waste.

Ensuring the parties comply with time limits

At the preliminary meeting the arbitrator will have set a timetable for various activities, including reducing the issues to writing, dealing with possible lack of particularity, documents, witness statements, experts, bundles, the hearing etc. Almost inevitably that timetable will slip somewhere, even in the best ordered case. If an arbitrator is busy, perhaps like myself with more than 20 active cases, it may be difficult to keep tabs on compliance with dates. I have developed a very simple procedure for doing so.

After every preliminary meeting, interlocutory meeting or piece of correspondence affecting timetable, I enter the details of the activity and the date for compliance onto a computer spreadsheet. The dates are linked electronically so that if one date moves, all the dates dependent on that activity, for example, due to happen say 28 days later, are automatically adjusted. The activities on all my arbitrations are sorted into date order and printed off; I produce a revised listing every day.

In that way I have an instant reminder of what activities are due to happen in that particular week. If, two or three days after I should have received a particular document, for example, a statement of defence and counterclaim, has not arrived, I write immediately to the parties pointing out the default and if the default is not remedied immediately I take steps to put in hand such peremptory powers as are open to me; all of this without, or possibly without, any complaint from the other party.

Case management conferences

I have found that regular contact with the parties is a constant reminder to them of the need to maintain progress and avoid delay. It is worth having a review, even by telephone conference, every three months in order that potential delays can be identified early rather than after they have happened.

Some arbitrators wait for some time before fixing a hearing date. Personally I think this is bad practice. As soon as the parties understand the nature of the case each is making, there is no reason why a realistic estimate cannot be made of the hearing length and the dates firmly fixed. Many arbitrators, including myself, have very busy diaries and it is not unusual to book cases up to 18 months ahead. It is totally unacceptable for the parties to be ready for trial but then they have to await a slot in the arbitrators' schedule because the hearing was booked too late.

Controlling the length of the hearing

A scenario to be avoided at a hearing is for the parties and the arbitral tribunal to find that insufficient time has been allocated when the hearing is part way through. What then happens is that at the expiry of the time set aside, the hearing is adjourned and nothing more happens until another date can be found that is convenient for the tribunal and the parties' counsel.
There is nothing worse than a hearing being allowed to drift on endlessly because the parties are pursuing every piece of minutiae as far they can. Recently I gave evidence in the Construction Court in London. The case was split into two tranches; the first tranche was listed for so many days. By the time I came to give evidence even the first tranche had gone on for twice as long as predicted by counsel, even at the pre-trial review when the issues were all clear. No arbitrator should allow this to happen unless the parties agree.

To avoid that and to guarantee as far as one can that the hearing will be complete within the period set aside, I urge the parties to adopt a guillotine or chess clock procedure which ensures that the hearing will be completed no later than the final day set for the hearing period.

The procedure I adopt is as follows:- I guillotine the time each party may take to present its evidence and oral submissions. I encourage as much as possible to be reduced to writing. Subject to illness or some other unexpected calamity, I can guarantee that the hearing will finish not later than a certain day and it will not go part heard. The parties can also predict with some certainty the costs of the hearing, 'which is essential in considering the commercial realities of the case.

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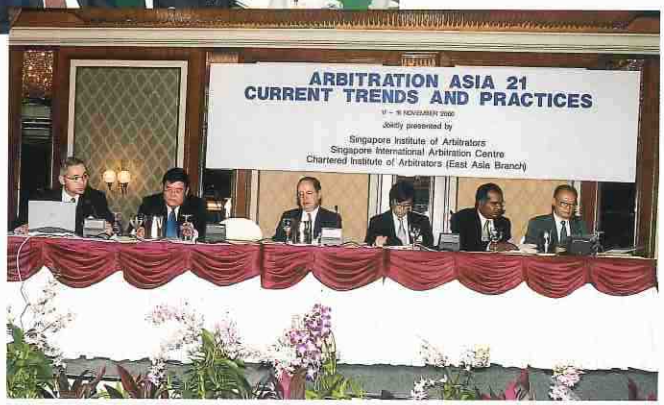

Arbitration Asia 21 Symposium held on
:h & 18th Nov 2000 at Marina Mandarin,
gapore

19th Annual General ▶
Meeting on 4th Aug 2000 at
Shangari-la Hotel, Singapore

◄ Signing Ceremony of Memoradium Understanding between Singapore Network Information Centre (SGNIC) Private Limited, Singapore International Arbitration Centre and The Singapore Institute of Arbitrators.

Luncheon talk by ► Mr David Lewis Malcolm Alwyn, organised by Maritime Arbitration Group on 20th Apr 2001.

◄ Luncheon talk by Mr Harold Crowter Past-Chairman, Chartered. Institute of Arbitrators held on 20th Oct 2000.

A typical order for directions might be as follows:

1. The hearing will be subject to a guillotine or chess clock procedure, whereby each party will be allocated 47_ hours, representing an estimate of 50% of the time available during the 20 days set aside for the hearing, to use as they wish to complete their case. No more time will be allowed, unless there are exceptional reasons for me to do so. The time to count against each party will include oral opening and closing submissions (if any) during the hearing itself, examination in chief (if any) and re-examination of that party's witnesses and cross-examination of the other party's witnesses. Time will be recorded to the nearest minute and the cumulative total time used by each party will be agreed at the end of each day's hearing. Time taken in questions by me of clarification during testimony will count against the party examining at that time. Time taken in questions asked by me at the close of a witness's testimony will not count against either party. The time spent in dealing with housekeeping matters, unless otherwise ordered, will be divided equally between each party.
2. Time spent in dealing with applications by either party during the course of the hearing will be counted as part of the total time set aside and will be allocated as between the parties as part of my decision on the application.

3. Submissions of counsel shall be reduced to writing wherever possible. Written closing submissions shall not be computed as part of the chess clock procedure ordered above.

4. Statements of witnesses of fact or opinions of experts will not be deemed to be proved merely if not challenged in cross examination by the other party.
5. Neither party shall be under any absolute duty to put all of the relevant parts of its case to each witness of the other party.

6. No more time wilt be allowed to either party unless there are special and unanticipated reasons for me to do so, such as an amendment to pleadings during the course of the hearing. I will only exercise my discretion to allow additional time in exceptional circumstances.

7. It is for each party to organise the presentation of its case to ensure that all of the evidence it wishes to adduce has been heard during the time allotted. If a party runs out of time and part of the evidence it wishes to adduce has not been heard, I will proceed to make my award on the basis of the evidence heard up to the time that the allotted time allowance expired, unless I am persuaded to exercise my discretion to allow more time under paragraph 6 above.

8. Save as provided above, neither party will be permitted to have any evidence heard after the allotted time has expired.

Every evening I agree the exact periods used by each party with their representatives. It has the effect of limiting the excesses of counsel, attorneys or lay advocates. The advocates have to actively manage their own time; only the really important issues are canvassed. I can honestly say that justice has not suffered in any case in which this system has been adopted, because insufficient time has been allowed. Obviously it is important that an adequate time period is allowed initially.

Ingenuity has to be used to adapt the procedure to cope with events like late amendment of pleadings during the course of the hearing. In such a case, if I am persuaded to allow the amendment at that late stage, I might add some time to the allowance given to the other party so that they could deal with 1:he amendments.

Preliminary points of law

It often seems artificially attractive for the tribunal to order that a preliminary point of law be decided early in advance of the main hearing, on the basis that if this point of law was decided in a particular way, then it would be likely to save time later on. There are, of course, cases when taking a preliminary point of law does have real benefits, but it is my experience that often the decision on the point of law will not dispose of the case or most of it at all and almost certainly the main hearing will be delayed while the point of law is dealt with. I therefore view requests for preliminary points of law with great caution as more often than not they are likely to lead to delay.

Proportionality

This is a new word introduced into English court civil procedure in 1999. Its effect is to ensure that every step taken in a case is proportional to the amount in dispute and the importance of the outcome to the parties concerned. It seems to me to be an excellent maxim for arbitrators; to ensure that time and money spent by the parties and the tribunal are proportional to the amount in dispute.
Of course in arbitration, the parties are free to agree how their dispute is resolved and this may involve what may objectively be considered as delay and the undue expenditure of money. An arbitrator is normally bound by the parties' agreement but should exercise all the persuasion in his armoury to try to prevent delay occurring even if what the parties have agreed will itself lead to delay.

Some pointers from the UK as to how Arbitration Statute Law can encourage the avoidance of delay in construction arbitrations

Section 33 of the English Arbitration Act 1996 is a model of good practice; in my view it should be magnified and framed in every arbitrator's office:-

33. - (1) The tribunal shall -
(a) act fairly and impartially as between the parties, giving each party a reasonable opportunity of putting his case and dealing with that of his opponent, and
(b) adopt procedures suitable to the circumstances of the particular case, avoiding unnecessary delay or expense, so as to provide a fair means for the resolution of the matters falling to be determined.

(2) The tribunal shall comply with that general duty in conducting the arbitral proceedings, in its decisions on matters of procedure and evidence and in the exercise of all other powers conferred on it.

This Section is mandatory, the parties cannot agree to opt out of it.

What are the consequences if the arbitrator does not fulfil his statutory obligations under Section 33?

Providing substantial injustice has been or will be caused to the complaining party, the court may remove an arbitrator who has refused or failed properly to conduct the proceedings or has refused or failed to use all reasonable despatch in conducting the proceedings or making an award - see Section 24(1)(d).

24. Power of court to remove arbitrator

(1) A party to arbitral proceedings may (upon notice to the other parties, to the arbitrator concerned and to any other arbitrator) apply to the court to remove an arbitrator on any of the following grounds

(d) that he has refused or failed

(i) properly to conduct the proceedings, or

(ii) to use all reasonable despatch in conducting the proceedings or making an award, and that substantial injustice has been or will be caused to the applicant.

(4) Where the court removes an arbitrator, it may make such order as it thinks fit with respect to his entitlement (if any) to fees or expenses, or the repayment of any fees or expenses already paid.

So, if removed under this Section, the arbitrator may lose his entitlement to fees and expenses (Section 24(4)).

"Conducting the proceedings" in Section 24(1)(d) must in my submission, amongst other things, refer to the general duty of the arbitrator under Section 33.

If the arbitrator proceeds to an award, the award may be challenged under Section 68(1) for "serious irregularity" affecting the arbitrator, the proceedings or the award if the arbitrator fails to comply with Section 33 (Section 68(2)(a)). If the court upholds the challenge of "serious irregularity", the award may be set aside (Section 68(3))

68. Challenging the award: serious irregularity

(1) A party to arbitral proceedings may (upon notice to the other parties and to the tribunal) apply to the court challenging an award in the proceedings on the ground of serious irregularity affecting the tribunal, the proceedings or the award.

(2) Serious irregularity means an irregularity of one or more of the following kinds which the court considers has caused or will cause substantial injustice to the applicant -

(a) failure by the tribunal to comply with section 33 (general duty of tribunal);

(3) If there is shown to be serious irregularity affecting the tribunal, the proceedings or the award, the court may-

(a) remit the award to the tribunal, in whole or in part, for reconsideration,

(b) set the award aside in whole or in part, or

(c) declare the award to be of no effect, in whole or in part.

It can therefore be seen that there is a considerable statutory incentive for the arbitrator to satisfy the requirements of Section 33.

Equally there is a requirement on the parties to prevent delay themselves. Section 40 provides as follows:-

40. -(1) The parties shall do all things necessary for the proper and expeditious conduct of the arbitral proceedings.

(2) This includes -

(a) complying without delay with any determination of the tribunal as to procedural or evidential matters, or with any order or directions of the tribunal, and

(b) where appropriate, taking without delay any necessary steps to obtain a decision of the court on a preliminary question of jurisdiction or law (see Sections 32 and 45).

Conclusion

It is an almost impossible task to identify all of the reasons why construction arbitrations can be delayed; there is often a combination of problems, the original contract, the arbitration agreement, the parties themselves and the commercial pressures they are under and not least the arbitral tribunal.

I have tried to address a few of the problems from the arbitrator's perspective and to provide possible solutions. However I have set myself an impossible task; to deal with the issue properly would take a conference in itself. Inevitably I have only scratched the surface, but I trust I have provoked a little thought, if not outright disagreement, which at least may start a debate.

Harold Crowter

Brief biodata of the speaker

Chartered Arbitrator; Fellow and Past-Chairman of the Chartered Institute of Arbitrators (1998-99); Fellow of the Royal Institution of Chartered Surveyors; Fellow of the Hong Kong Institute of Arbitrators Author of standard educational text on arbitration: "Introduction to Arbitration" published by Lloyds of London Press (LLP). ▲

Independence Of Arbitrators, Conflicts Of Interest And The Scope And Extent Of Disclosure.

By Dr. Julian Lew,

Selection of the Arbitral Tribunal

One of the principal reasons why parties choose arbitration as the dispute resolution process for international disputes is that they are able to select the arbitral tribunal. In this way, the parties avoid the perceived bias that litigating in their opponent's local court might involve. The parties are also able to reflect their economic, cultural and social backgrounds, fundamental to the formation in the first instance of the contract in dispute, in the arbitral tribunal appointed to resolve that dispute.

Having selected the arbitrators, three criteria are generally expected of them. The first is that the party's nominated arbitrator should be open minded but not committed to support at all costs the position of the nominating party. Second, the arbitral tribunal should render an enforceable award, thereby resolving the dispute in favour of one party or the other. Third, the arbitrators should act fairly and provide a fair resolution of the dispute.

The notion of fairness is embodied within the rules of all the international arbitration institutions. It is fundamental to the confidence of the parties in the arbitral process and therefore underpins the continued success of such institutions as fora for international dispute resolution. The institutional rules safeguard the principles of fairness by reference to the neutrality, impartiality and independence of the arbitrators.

Neutrality

Neutrality is defined by reference to the nationality of the parties. It is based on the belief that the arbitrator will, inevitably if subconsciously, be more receptive to arguments advanced by a party of his own nationality. The rules of many arbitration institutions therefore provide that the Chairman of the arbitral panel or sole arbitrator must be of a different nationality to the parties. Some, such as the ICSID Rules, even go as far to preclude all arbitrators of the same nationality of either party from the arbitral panel.

However, nationality brings to the tribunal an understanding of the cultural and economic environment of the parties and background to the dispute. In the interests of fairness, issues of nationality should not therefore be excluded entirely from the arbitral process.

Impartiality

Although impartiality can be simply stated as the absence of bias or prejudice against a particular party, and because it primarily involves a state of mind, identifying and preventing instances of impartiality presents special difficulties.

The consequences of impartiality or bias have been highlighted in a number of recent cases that stem from Lord Hewitt's dictum in R v. Sussex Justices Ex Parte McCarthy [1924] 1 KB 256 that justice should not only be done but should "manifestly and undoubtedly be seen to be done".

In the case of R v. Gough [1993] AC 646 it was held that actual bias, a real danger of bias or apparent bias resulting from a pecuniary or proprietary interest or such that the judge was seen to be so closely connected with the matter in dispute as to be acting in his own interests, would lead to disqualification. Lord Hoffman in the case of Ex Parte Pinochet (No 2) [2000] 1 AC 119 was held to fall into this latter category because, as a result of his position as Chairman of an Amnesty International charity, it could be said that he had an interest in the outcome of the proceedings concerning the immunity from prosecution of the Senator.

Locabail v. Bayfield Properties [2000] 2 WLR 870 held that a real danger of impartiality would depend on the facts of the case. Although no objection could be based on grounds of, for example, religion, gender, social or employment background or associations of which the judge was a member, a real danger would arise in cases of personal friendship or animosity, or a close acquaintance with any of the parties to the case.

In the light of the Locabail decision, the ruling in FLS v. Laker Airways (unreported) that an arbitrator from the same set of barristers chambers as one of the parties' lawyers was not biased was, given the professional relationships and friendships that develop between members of the same set of chambers, surprising. The Laker Airways decision also highlighted the need for sensitivity to issues of bias as perceived by the parties to the arbitration particularly given the consensual nature of the arbitral process and the need for the dispute to be resolved by a tribunal acceptable to both sides.

Independence

Independence is defined as freedom from continuous and substantial social, professional or business relationships with either party. In many situations, the issue of independence can be easily resolved. For example, a direct family relationship with or substantial financial interest in one of the parties will clearly impinge on an arbitrator's independence.
However in just as many situations, the position as to a potential conflict will be less clear. For example, a distant family relationship, a friendship or acquaintance with one of the parties, or a professional or commercial relationship that might also impact upon career advancement all give rise to potential conflict of interests.. Each of these circumstances raises issues as to independence that cannot be easily resolved without clearly defined rules or formula that are presently absent.

The Need for Disclosure

The need to maintain the parties' confidence in the fairness of the arbitral procedure by allowing the parties to select the tribunal is fundamental to the arbitral process. In order to maintain that confidence and safeguard the parties' faith in the arbitrators that they have selected, the parties should be given every opportunity

to decide for themselves whether an arbitrator has breached his obligations of neutrality, impartiality and independence.

In the absence of clearly defined rules or formula stating what facts or circumstances offend an arbitrator's impartiality or independence, it is imperative that full disclosure of such facts or circumstances, however remote, is made. This will inevitably require due diligence of, for example, financial interests that a nominated arbitrator may have in, as well as careful consideration of the relationships, however tenuous, that that arbitrator may enjoy with, either party. In case of any doubt, full disclosure should be given. In this way, the parties can judge for themselves issues of impartiality and independence and therefore maintain their confidence in the arbitration tribunal that will ultimately resolve the dispute.

Summary

The ability to select the arbitration tribunal and therefore reflect the cultural and economic background of the parties, and the dispute, as well as maintain the parties' confidence in the fairness of the arbitral process, is fundamental to the success of the arbitration as the preferred procedure for the resolution of international disputes. As a result of the selection process, issues of neutrality, impartiality and independence will inevitably arise which cannot be easily resolved whilst at the same time maintaining the confidence of the parties in the arbitration process. Such issues can, however, be resolved and the confidence of the parties maintained if full disclosure of potentially offensive facts and circumstances is given at an early stage. This affords the parties the opportunity to decide largely for themselves whether such facts and circumstances disqualify the arbitrator from acting in the arbitral process. ▲

Dr. Lew is a partner and head of the international arbitration practice group at the law firm of Herbert Smith

MISCONDUCT

Misconduct on the part of an arbitrator can take several forms. The more obvious form will be where an arbitrator is biased towards one party. Turner (East Asia) Pte Ltd v. Builders Federal (Hong Kong) Ltd [1988] 2MLJ502. An arbitrator can also be guilty of technical misconduct when he fails or refuses to decide in accordance with the law, for example when he refuses to award interest to a successful claimant. Ahong Construction (S) Pte Ltd v. United Boulevard Pte Ltd [1995] 1SLR548.

Delay in publishing an award can also amount to misconduct. In the reported case of Hong Huat Development Co (Pte) Ltd v. Hiap Hong & Co Pte Ltd [2000] 2SLR606, Hong Huat Development Co (Pte) Ltd (Hong Huat), the developers employed Hiap Hong & Co Pte Ltd as building contractors to construct and complete the now Serangoon Shopping Centre pursuant to a building contract which adopted the pre-1979 SIA conditions of contract. Disputes arose between the developer and contractor and these disputes were referred to arbitration in 1986. An arbitrator was appointed to hear and determine the disputes between the parties. The contractors claimed the balance contract sum and interest for late certification by the architect.

The arbitration hearing before the arbitrator was completed in March 1988. Nothing was heard from the arbitrator until June 1990 when he requested the assistance of a quantity surveyor on certain aspects of valuation. A quantity surveyor was duly appointed. Three years later in August 1990, the arbitrator wrote to the parties stating that he had received the final accounts from the quantity surveyor and that consequently he would be able to publish his award by the October 1993 latest. Unfortunately nothing was heard from him for more than five years despite requests and reminders from the contractors. Towards the end of 1998 the contractors' solicitors wrote to the arbitrator stating that if he did not publish his award soon, they would seek the courts' further directions. On 24 December 1998, the arbitrator wrote to the parties to say that his award was ready for collection upon payment of his fees amounting to $47,516. Both sides initially did not take up the award as they refused to pay his fees. The parties then entered into negotiations and discussions as to sharing of the arbitrators' fees but these broke down. Not wanting to wait any longer, the contactors paid the arbitrators' fees in full and collected the award on 8 March 1999. Fortunately for them, the award was in their favour and they were granted substantially all the reliefs claimed. The developers paid the sums adjudicated under the final accounts but refused to pay the sums awarded for late certification by the architect.

Being dissatisfied with the award, the developers applied for leave to appeal against the award and if leave was granted, to appeal on a question of law arising from the award pursuant to section 28(2) of the Arbitration Act. However they were out of time in filing the application for leave as a result of which the developers had also to apply for an extension of time to file their application. These applications culminated in the Court of Appeal's decision in March 2000 whereby the developers were granted leave to appeal on the question as to "what is the nature or extent of the term to be implied as regards the duties of the appellants as employers in relation to the certifying functions of the architect under the SIA Conditions."

That question was determined in favour of the developers by the court below who set aside part of the award. The Contractors appealed against the decision to the Court of appeal which dismissed the appeal.

The decision in Hong Huat touched on several issues one of which was the delay by the arbitrator in publishing his award. The Court deplored the delay of 10 years the arbitrator took to publish his award and held that a delay of this magnitude was inordinate and cannot be tolerated. Such delay on the part of an arbitrator can only undermine faith in arbitrations. In the absence of any specific rules applicable to the arbitration, an award should be made within a reasonable time. What then is a reasonable time? Under the Singapore Institute of Architect's Rules of Arbitration (1999) an arbitrator must make his award within 60 days from the close of the hearing. Under the SIAC rules, an arbitrator must make his award within 45 days. In most instances, the time to publish an award can be extended with the consent of the parties. However,

it is not unusual in complex cases for arbitrators to take longer to publish their awards especially if the tribunal consists of three arbitrators.

The second point which the Court of Appeal made was that the court would have removed the arbitrator had an application been made before he published his award. It is misconduct on the part of an arbitrator to delay publishing his award for such a long time. Such delay can constitute a ground for his removal upon the application by any of the parties under section 17(1) of the Arbitration Act. In reality of course, as in the Hong Huat case, parties would be reluctant to make such an application for fear, firstly that if such an application is unsuccessful, the arbitrator may be inclined to make an award which is unfavourable to the party making the application. Secondly, if the arbitrator is indeed removed, parties will have to incur additional time and expense in starting the arbitration all over again with the appointment of a new arbitrator. Quare : Can the parties recover such costs from the first arbitrator?

The moral of this story for an arbitrator is that he should make and publish his award with due dispatch after the close of the hearing. He should bear in mind that he is duty bound to the parties who have submitted their disputes to him for adjudication to publish his award as soon as possible. He would be doing injustice to the parties if he unduly delays the publication of his award. ▲

John Chung
LL.B(Hons), B.Arch(Hons)
Head, Construction Dept.
Khattar Wong & Partners

The User's Perspective of Arbitration

This joint presentation by David Edwards and Chow Kok Fong was enlightening to the Arbitrators attending the Symposium; insofar that it revealed the expectations of parties resorting to Arbitration.

The confidentiality aspect was emphasized, as the dispute issues may be sensitive and Arbitration would ensure that objective. Also, as the objective of most cases is to resolve a dispute, it was felt that by seeking Arbitration, the claiming party would encourage the other side to come to the table and take their claim seriously. However, both felt that endeavours should be made during the preliminary part of the proceedings to mediate the dispute; as success at that stage would save costs and preserve relationship, which was especially important in the Engineering and Construction Business.

It was reasoned that a 3-Arbitrator Tribunal would be desirable for large claims, as this would minimize aberrant awards. However it was recognized that there were difficulties in forming the Tribunal made up of technically and qualified Arbitrators (appointed by the parties), who could agree on the in the Contract the procedure for appointing Arbitrators and the rules which would apply (ICC, UNCITRAL, etc). Another way of getting over this hurdle would be to agree on the identity of the Arbitrators and who would take their place if they were unavailable for any reason and have the names included in the contract documents.

Users of Arbitration were generally looking for a level playing field with reasonable expectancy of a fair hearing and a rational result. They also wanted fairness of the process and for the hearings to be conduced at a neutral location; to shield the Arbitrators from outside or unfair influence and enable them to be transparent. Most importantly. Non-interference by local courts and enforceability of awards was desired.

The users of Arbitration also felt that the cost of Arbitration is expensive and suggested that this could be made more user-friendly by fixing lump sum fees for Arbitrators; limiting the number of experts and witnesses on each side and allocating time for each party to present their case at the hearing; also limiting discovery of documents to the bundles of documents submitted by each side and supplementing it with documents, which he Arbitrators agree could have some bearing on the case and should be submitted for consideration.

It was also felt that evaluation by documents only (no oral hearings) for relatively simple disputes or disputes over items below say US$100,000 could significantly reduce the cost of Arbitrations.

Finally, it was stressed that speed was the essence, as disputes left unresolved for protracted periods tend to affect the progress of ongoing projects and the good relationship which may exist between the parties in dispute.

Book Review

ADR (ALTERNATIVE DISPUTE RESOLUTION) PRINCIPLES AND PRATICE
2nd Edition by Henry Brown and Arthur Marriott

This is an update of an excellent study of ADR (Alternative Dispute Resolution Principles and Practice written by two very prominent international practioners of the art of ADR. Although written in the context of UK law and practice, it nevertheless serves as a valuable guide to all practitioners of ADR.

This second edition reflects the radical change to the civil justice system in the United Kingdom as ADR attains greater importance in dispute resolution. Retaining the same emphasis on the basic principles, philosophy and practice of ADR as the first edition, the authors have reworked substantial chapters of the book.

This book is essential for practitioners as it illustrates, very comprehensively, the basic tenets of ADR, the developement of ADR, as well as the application of ADR in various situations, and the related legislation in the United Kingdom. Beyong examining ADR theoretically, the writers have dealt with the practical aspects, for instance, the role and duties of practitioners in advising clients to seek ADR. In addition, the appendices contain helpful drafting precedents for mediation, as well as practice directions, statements and notes.

At the start, a general overview and background to the new litigation procedures introduced by the CIvil Procedure Rules are discussed. The chapter on arbitration deals with the history of arbitration, the workings of the Arbitration Act 1996, the characteristics and the types of arbitration available. This is followed by an examination of court annexed ADR in the US, New Zealand and Australia, and the principles applicable to bilateral negotiations.

The chapters dealing with mediation have been extensively amplified in this edition, especially in respect of family matters. The role of mediation in the different fields of activity are given detrialed treatment, in particular, the areas of family law, employment, community disputes, victim-offender mediation and mediation of environment and public policy issues. In those chapters, there are references to case studies, the legislative background to the development of mediation in those areas, and the governmental authorities that form the supportive network. There is also a chapter devoted to practical aspects of being a mediator, such as the role of a mediator and the skills required.

The use of various non-binding, evaluative ADR processes are also discussed, and compared with adjudicatory, binding ADR. The opportunities and challenges offered for the use ADR in the area of information technology, the internet and cyberspace are considered, and some practical issues highlighted.

The central theme of this book is that effective dispute resolution involves an informed choice of the process most suitable to the individual dispute, and this is reflected in a chapter aimed at assisting practitioners make such choices. This is done by providing a brief comparative summary of the key features of each process, and guiding practitioners on the optimum timing for the use of ADR processes, whilst providing some cautions about the use of ADR. The chapter that follows then discusses how a lawyer can best represent his client in mediation, and achieve the best result for the client. The writers also describe the jurisdiction for ADR processes, the issues surrounding the choice of forum and the applicable law.

Moral and ethical aspects which ashould be maintained by practitioners and mediators, the legal issues of confidentiality and privilege, and the recent developments therein are examined. The last few chapters deal with enforcement of ADR, the debate on regulating ADR, how ADR is presently funded, professional indemnity assurance, and ends with a discussion on the future direction of ADR.

Christopher Lau, SC

Ang & Partners.

ANNOUNCEMENT

The following were, recently admitted to membership of the Institute.

Fellows

Mr Vassilios Vareldzis (transfer)
Mr Chow Kok Fong
Mr Hargobind Jholl Singh
Mr Chelva Retnam Rajah, SC
Mr Simon Stewart Davidson
Mr Neale Richard Gregson (transfer)
Mr Shamim Nomanbhoy Khambati

Members

Mr John James Lumley-Holmes
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Mr Mahendra Prasad Rai
Mr Sujoy Guha Thakurta
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Mr Tan Leng Cheo, Frankie
Ms Belinda Koh Yuh-Ling
Mr Derek Nelson
Mr Vinodh Coomaraswamy
Mr Hoon Tai Meng
Mr Vijai Parwani

Associates

Mr Tan Peng Lin, Melvyn
Mr Tai Kok Siang
Mr Chew Tong Huat, Alex
Mr Lau Seek Chiang
Mr Ng Wai Keong, Timothy
Mr Tan Tze Pei
Mr Donald Edward Payne
Mr Alastair John Henderson
Mr Tan Wei Kiang, Daniel
Ms Allyson Shee Heng Leng
Mr Devinder Kumar Rai
Mr Subramanian Pillai
Mr Aswin Kumar Atre
Mr Scott Thillagaratnam
Mr John Paul Harris

TWENTIETH ANNUAL GENERAL MEETING

Of the Singapore Institute of Arbitrators
On 15 August 2001 (Wednesday) at
RED GARDENIA ROOM
SHANGRI-LA HOTEL, SINGAPORE
ORANGE GROVE ROAD SINGAPORE

CURRENT TRENDS AND PRACTICES, 17 & 18 November 2000, Marina Mandarin, Singapore

The Singapore Institute of Arbitrators, the Singapore International Arbitration Centre and the Chartered Institute of Arbitrators (East Asia Branch) joined forces to present a two-day international arbitration symposium in Singapore in November 2000.

The symposium was attended by delegates from Singapore, England, Hong Kong, PRC, Malaysia, Philippines, Japan, Indonesia and New Zealand.

On the first day, after a brief welcome from Mr Anthony Houghton, Chairman of the Chartered Institute of Arbitrators (East Asia Branch), the keynote address was delivered by the Honourable the Chief Justice Yong Pung How.

The Chief Justice's address entitled "the Strategic Imperatives for Arbitration in the New Millennium" highlighted four major imperatives:

1. Leveraging on internet facilities and legal information technology;
2. Leveraging on the flexibility of the arbitration process;
3. Adopting a legal infrastructure which is conducive to international arbitration; and
4. The development of a strong arbitration community: the human factor.

The Chief Justice had recently given approval for the Singapore technology courts' considerable resources to be made available to parties mediating and arbitrating under the auspices of the Singapore Mediation Centre (SMC) and Singapore International Arbitration Centre (SIAC). As such, they will now have unlimited access to the entire database on Singapore law on LawNet if the choice of law is Singapore law.

Noting the phenomenal growth in e-commerce, the Chief Justice made mention of the new e-commerce dispute resolution process, being a service which is driven by the Singapore Subordinate Courts and which offers court mediation as well as private online mediation and arbitration by SMC and SIAC.

The symposium which followed fielded speakers from various jurisdictions who covered a vast range of topics which included the infrastructure of arbitration in Asia, updates and developments in the law, approaches to ADR and evidential considerations.

A demonstration arbitration prepared by Mr Anthony Houghton and which featured various delegates "playing" the parts of arbitrator, counsel and witnesses was also presented in 2 parts through the course of the symposium.

The two days' proceedings were rounded off with a visit to the SIAC.

The level of energy and enthusiasm ran high throughout the symposium and gratitude goes to all who attended for their contribution to what was a memorable event in this year's calendar.

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5 Shenton Way #21-01 UIC Building, Singapore 068808
Tel: 557 4881 Fax: 225 9352

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