SINGAPORE INSTITUTE OF ARBITRATORS

NEWSLETTER

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THE PRESIDENT'S COLUMN

SIArb has been busy with good things in the last quarter. We continue to line up seminars of interest to our members, thanks to the generosity of our distinguished speakers who gave their time so freely. In early July, Mr Francis Xavier, SC delivered a timely and well-received update on arbitration case law in Singapore. More recently in August, Mr Lawrence Teh presented a thought-provoking talk on commercial certainty in the law. These seminars tend to attract interesting questions and comments from the floor due to their cosy, less intimidating setting.

SIArb had its headline events of the year in between these two seminars, the Commercial Arbitration Symposium on 31 July 2014 and the Regional Arbitral Institutes Forum (RAIF) Conference the following day on 1 August 2014. The SIArb Symposium has always been a popular and lively annual event, this year even more so because we had the benefit of leading local practitioners as well as a diverse group of arbitration specialists who were in town to attend the RAIF Conference.

The RAIF Conference was a resounding success, attracting 120 delegates from more than 10 countries. Apart from RAIF member countries, the Conference benefited from representatives from the UK, Switzerland, Thailand, Vietnam and Myanmar. The Conference was opened by the Honourable Justice Quentin Loh and ended with a Gala Dinner graced by the Honourable Attorney-General VK Rajah. The Honourable Justice Vinodh Coomaraswamy and other leading lights helped by chairing the sessions. I thank the Organising Committees for these two events, the many speakers who shared their wisdom during the events and our sponsors. I am grateful too for those who turned up to join us and made our efforts worthwhile.

I will keep my comments brief this time as this issue also carries the Keynote Address of the Honourable Justice Quentin Loh and my welcome remarks.

Chan Leng Sun, SC
2 September 2014

ANNOUNCEMENTS UPDATES & UPCOMING EVENTS

1. Pre-AGM Talk: A Day in the Life – Behind the Scenes in an Arbitral Institution (30 September 2014, 5.00pm – 6.00pm)
2. 33rd Annual General Meeting of the Singapore Institute of Arbitrators (30 September 2014, 6.00pm)
3. Fellowship Assessment Course (FAC) (10, 17 – 18 & 20 October 2014, 8.30am – 5.00pm)

NEW MEMBERS

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

Associate Member

1. Gabriel (Roy) Goh
2. Prisotya Budi Martadi
3. Sia Kian Leong

Members

4. Neo Xing Hui, Esther
5. Renato Rondez
6. Reynaldo Agranzamendez
7. John Robert Huntley
8. Tay Leng Kiat
9. Kathleen Ann Metzger
10. Junaid Khalid Daudpota
11. Cecilia Low
12. David Hoicka
13. Chung Sheuan Seen
14. Koo Ming Li
15. Wong Chee Meng
16. Lourdes Maita Andres
17. Adrian Thau Lip Kong
18. Prantika Sengupta
19. Terence Tan

Fellows

20. Ning Siong Loong
21. Eric William Fiechter
22. Shintaro Uno
23. Sanjiv Kumar Rajan

PANEL ARBITRATORS

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

Secondary Panel of Arbitrators

1. C.B. Chidambara Raj
2. Nicholas Lazarus

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RAIF CONFERENCE 2014

WELCOME SPEECH BY THE PRESIDENT OF THE SINGAPORE INSTITUTE OF ARBITRATORS

A very good morning to the Honourable Justice Mr Quentin Loh, Presidents and representatives of RAIF member institutes, ladies and gentlemen. On behalf of SIArb, I warmly welcome you and thank you for joining us today.

The Regional Arbitral Institutes Forum, or RAIF, has its origin in Singapore in 2007. In that year, arbitral institutes from Asia Pacific got together to hold the inaugural Regional Arbitral Institutes Conference. These institutes were the Institute of Arbitrators & Mediators of Australia (IAMA), the Arbitration Association of Brunei Darussalam (AABD), the Hong Kong Institute of Arbitrators (HKIAC), the Badan Arbitrase Nasional Indonesia (BANI), the Malaysian Institute of Arbitrators (MIArb) and SIArb. The Conference which was held in Singapore was a big success and was well attended. In his Keynote Address, then Honourable Justice of Appeal VK Rajah suggested that the Conference be made an annual event that the arbitral institutes formed a grouping which can be a platform for the sharing of ideas and enhancement of standards in arbitration. This proposal was taken up immediately by the arbitral institutes after the Conference and RAIF was formed.

I am very happy to see that RAIF has gone from strength to strength. RAIF is now joined by the Philippine Institute of Arbitrators (PIArb) which held a very successful conference in Cebu last year. BANI has been replaced by the newly formed Indonesian Arbitrators Institute (IArbI).

I would now like to quote from a poem by Pak Husseyn Umar, a well known figure in the Indonesian arbitration circle and a strong supporter of RAIF through its early years. He wrote this poem after attending a conference of lawyers in San Francisco in 1977.

Dua ratus ahli hukum sejagat
berkumpul di tempate ini
berdebat tentang globalisasi hukum
di dunia yang semakin sempit dan padat

Hukum telah menjadi pasar yang besar
yang ada hanya pembeli dan penjual

Loosely translated, it reads as follows.

Two hundred lawyers worldwide
gather in this place
debating the globalisation of law
in an increasingly narrow and crowded world

The Law has become a big marketplace
where there are only buyers and sellers

Well, today we have 120 lawyers gathered here today to debate the globalised practice of arbitration. But far from trying the law into a marketplace, the aim of RAIF and this Conference is quite the opposite. We aim to stem the tide against bad practices and distortion of the idea of justice. To stop arbitration from being reduced to a commodity.

The law and arbitration are not a game of professional football. Cheating is not allowed. No diving, no biting and no Hand of God. As we benefit from the ascendance of Asia as a centre for arbitration, we must not lose sight of the purpose of international arbitration in dispensing justice. Hence, the themes of this Conference reflect this lofty goal. They are: first, Standards; secondly, Ethics; and thirdly, Costs.

The first session is the customary one where Presidents and representatives of RAIF present updates on the developments of arbitration laws in their respective jurisdictions. Such sharing of information and debate on problems that are faced in different jurisdictions can only enhance our awareness and lead to hopefully more uniformity and a common resolution to some of the problems that plague arbitration.

Secondly, Ethics of arbitrators, parties and their legal representatives will be discussed in the second session. It is crucial that the arbitration system remains one of utmost integrity so that faith and confidence in this system are not shaken. We do know that Ethics are a main concern.

Thirdly, costs. Rising costs in arbitration have been a very popular topic in arbitration conferences in the last few years. It may well be that the money saved from not going to some conferences can be diverted to paying lawyers so that they charge a little less. Having said that, there is a very important process to be served in brainstorming, coming together to see how this problem can be arrested.

Fourthly, the final session appropriately looks to the future. Panelists will engage in a little bit of crystal-ball gazing, to give us their ideas on what the future may hold for international arbitration in the Asia Pacific region.

I must thank the Organising Committee led by our Vice-President Mr Chia Ho Choon and Past President Mr Johnny Tan for their tireless efforts in making this event a reality. I must also thank our sponsors and the hard work of Intellitrain, the Secretariat of SIArb.

Finally, I hope that you will join us at the end of this Conference, at the end of a day's work, for a bit of rest and recreation at the Gala Dinner, which will be preceded by a cocktail.
I would now like to invite the Honourable Justice Quentin Loh to deliver his Keynote Address. Thank you.

Chan Leng Sun, SC
President, SIArb
1 August 2014

RAIF CONFERENCE 2014

Opening Address by The Honourable Justice Quentin Loh

Mr Chan Leng Sun SC, Chairman of the Singapore Institute of Arbitrators, Mr Chia Ho Choon, Chairman Organising Committee, distinguished speakers, RAIF members, participants, ladies and gentlemen, good morning.

It is a great honour, and pleasure, to be asked to give this Opening Address. I have attended RAIF Conferences in the past and I am very happy indeed to meet so many old friends and members of the arbitrating community here this morning. In 2012, our Chief Justice gave his Opening Address at the ICCA Congress on the Coming of a New Age for International Arbitration and raised some very uncomfortable home-truths about troubling aspects of international arbitration that have emerged. I am very glad to see that this Conference is squarely addressing some of these concerns and kudos to the organisers for getting such distinguished panel members to discuss these thorny issues.

I will therefore not duplicate any comments on that score and in the short time available, I thought I would instead touch upon two issues.

First, the limits of arbitration.

The very consensual bedrock of arbitration intrinsically entails inherent limitations. As recognised in *Larsen Oil & Gas Pte Ltd v Petropod Ltd* [2011] 3 SLR(R) 414, arbitration is a private consensual dispute resolution process between two parties to an arbitration agreement involving their private remedial claims *inter se*. There, the Court of Appeal, faced with an application for a stay pending arbitration held that where a liquidator seeks to

(i) avoid certain payments made by an insolvent company to its management company on the ground that they amounted to an unfair preference (or were transactions at an undervalue) under the Bankruptcy Act (Cap 10, 2002 Rev Ed) and Companies Act (Cap 50, 2006 Rev Ed), or
(ii) avoid certain other payments made by the company's subsidiaries to the management company with intent to defraud the company as a creditor of the subsidiaries under s 73B of the Conveyancing and Law of Property Act (Cap 61, 1994 Rev Ed),

there could be no stay pending arbitration as such issues were non-arbitrable.

The Court of Appeal referred to s 48(1)(b)(i) of the Arbitration Act (Cap 10, 2002 Rev Ed) and ss 11(1) and 31(4) [enforcement] of the International Arbitration Act (Cap 143A, 2002 Rev Ed); both make references to setting aside an award if the subject matter of the dispute is not capable of settlement by arbitration and parties can only submit a dispute to arbitration if the dispute is an arbitrable one. Insolvency and bankruptcy law are areas "replete with public policy considerations that were too important to be settled by parties privately through the arbitral mechanism." (at [30]). The rights of creditors generally had to be protected and the principles upon which the insolvency regime had been built, for example, the *pari passu* principle, could not be by-passed.

Prof Gary Born writes, in his treatise, *International Commercial Arbitration* (Kluwer Law International, 3rd Ed, 2009, at p.768):

> *"The types of disputes that are non-arbitrable nonetheless almost always arise from a common set of considerations. The non-arbitrability doctrine rests on the notion that some matters so pervasively involve public rights, or interest of third parties, which are the subjects of uniquely governmental authority, that agreements to resolve such disputes by 'private' arbitration should not be given effect."*

Consequently disputes arising from the operation of the statutory provisions of the insolvency regime *per se* are non arbitrable.

The Court of Appeal however drew a distinction between disputes involving an insolvent company that stem from its pre-insolvency rights and obligations and those that only arise upon the onset of insolvency due to the operation of the insolvency regime. The former were capable of being submitted to arbitration. In those cases, the liquidator steps into the shoes of the company and is bound by the obligations of the company, (at [47]); and there was no good public policy reason for not allowing such claims to ascertain, through arbitration, the amount due by the company to the creditor and thereafter for the creditor to prove in the insolvency for that sum. The proof of debt process did not create new rights in the creditors or destroy old ones.

It is no surprise therefore that disputes in relation to legitimacy of marriage, divorce and custody rights, grants of statutory licences, validity of registration of trademarks or patents, copyrights and generally, judgments in *rem* are considered to be non-arbitrable.

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I now come to *Silica Investors Ltd v Tomolugen Holdings Ltd and Ors.* [2014] SGHC 101. The Plaintiff brought a minority oppression claim under s 216 of the Companies Act against 8 Defendants. It had only entered into a share purchase agreement containing an arbitration clause with the 2nd Defendant to acquire approximately 4.2% of its shares in the 8th Defendant. The 1st and 2nd Defendants were the majority shareholders of the 8th Defendant. The 3rd to 7th Defendants were minor shareholders and/or directors of the 8th Defendant and other associated or related companies. The Plaintiff sought reliefs which included a buy-out order and/or an order to regulate the conduct of the 8th Defendant and/or the winding up of the 8th Defendant. The 2nd Defendant applied to stay proceedings under s 6 of the International Arbitration Act and the other Defendants similarly applied for a stay under the inherent jurisdiction of the court. The learned Assistant Registrar refused the stay application, and the Defendants appealed. The appeals by the Defendants against that order were dismissed.

It was held that a minority oppression claim under section 216 of the Companies Act is one of the statutory claims that straddled the line between arbitrability and non-arbitrability.[1] As such, it would not be desirable to lay down a general rule that all minority oppression claims were non-arbitrable.[2] The door should be left ajar with respect to arbitration of minority oppression claims, even though it may only be for the exceptional of cases (eg, where the oppression occurs between two parties to a joint venture, with no other relevant parties, no overtones of insolvency, and no remedy or relief sought that the arbitral tribunal is unable to make).[3]

It is important to note that section 216(1) of the Companies Act provides that upon a minority shareholder satisfying *the court* that the affairs of the company are being conducted in a manner that is oppressive to one or more of the members and in disregard of his or their interests as members or shareholders, then *the court* is empowered to impose various orders or sanctions as it thinks fit *with a view to bringing an end to or remedying the matters complained of.*

Without limiting the generality of these words, section 216(2) then spells out that the court may, *inter alia*, direct or prohibit any act or cancel or vary any transaction, regulate the conduct of the affairs of the company in future, provide for a buy-out, provide for a reduction accordingly of the company's share capital or provide that the company be wound up. These remedies are obviously not remedies an arbitral tribunal can make.

Some might argue that this approach in *Tomolugen* is not in line with a pro-arbitration stance taken by Singapore compared to the approaches taken by the other jurisdictions like England or Canada. Specifically, the English and Canadian courts made some novel proposals in relation to how this thorny issue may be resolved in a manner that, at first blush, appears to be more aligned with a pro-arbitration approach. You will not be surprised to learn that I have given the parties leave to appeal to the Court of Appeal.

A third area where arbitration may not always be the ideal method of dispute resolution arises where there are a string of connected contracts that could be upstream or downstream. Typical cases are those of Employer-Main Contract-Subcontract disputes, see for example the 1982 case of *Abu Dhabi Gas Liquefaction Co v Eastern Bechtel Corporation* [1982] 2 Lloyd's Report 425. Similar cases will be found in insurance-reinsurance-retrocession contracts. Separate bi-lateral arbitrations with inconsistent decisions can be a nightmare.
Secondly, I know there have been concerns as to the role of the proposed Singapore International Commercial Court and its impact on International Arbitration and the arbitrating community. Two questions I am often asked:

- What is the purpose of the SICC?
- Will it not compete with international arbitration, the SIAC or SIArb or the Chartered Institute of Arbitrators?

Consider this fact: despite almost every building contract or subcontract containing an arbitration clause, one may wonder why the Technology and Construction Court in England remains a sought-after forum rather than an arbitral tribunal. One of the main reasons is that where there are string contracts, upstream and downstream, it makes sense for the parties to resolve their disputes before *one* tribunal. Therein lies one of the main answers that you seek.

Arbitrators should not think of the SICC cannibalising their work. Instead they should look upon it as an integral part of a vibrant dispute resolution hub. Just as mediation or adjudication or other forms of ADR complement arbitration, the SICC will do likewise for disputes that do not sit well with the private consensual dispute resolution process. If Singapore succeeds in becoming the premier dispute resolution hub of Asia, the pie will grow, hopefully enormously, your share will also grow, hopefully enormously too, even though it forms a smaller percentage of the whole.

It is therefore important for the arbitrating community to address the issues you are going to discuss in this forum. If they are addressed and stakeholders find that arbitration is still the most relevant and desirable mode of dispute resolution for them, then arbitrators and the arbitrating community should have no fear but instead have every reason to remain optimistic that their future will remain rosy.

It remains for me to wish all of you a very successful conference and I hope you enjoy your time in Singapore as well. Thank you.

Quentin Loh, J
Supreme Court of Singapore
1 August 2014

1 *Silica Investors Limited v Tomolugen Holdings Limited and others* [2014] SGHC 101 at [141].
2 *Silica Investors Limited v Tomolugen Holdings Limited and others* [2014] SGHC 101 at [141].
3 *Silica Investors Limited v Tomolugen Holdings Limited and others* [2014] SGHC 101 at [142].

Recent developments in arbitration law in Singapore

By Margaret Joan Ling

There have been important developments in arbitration law in Singapore in 2014. This article examines three recent Singapore cases pertaining to the International Arbitration Act (Cap 143A, 2002 Rev Ed) (the "**IAA**").

This article examines the decision of the Court of Appeal in *BLC & Ors v BLB & Anor* [2014] SGCA 40 ("***BLC***"), and the High Court decision of *PT Perusahaan Gas Negara (Persero) TBK v CRW Joint Operation (Indonesia) and another matter* [2014] SGHC 146 ("***PT Perusahaan***"), which deal with applications by one party to set aside an arbitral award.

This article also discusses a Singapore High Court judgment regarding a stay application filed pursuant to section 6 of the IAA. The case, *Silica Investors Limited v Tomolugen Holdings Limited & Ors* [2014] SGHC 101 ("***Silica Investors***"), is instructive as to how a dispute should be characterised for the purpose of determining whether it falls within the scope of an arbitration clause. *Silica Investors* is also the first decision in Singapore which deals specifically with the arbitrability of minority oppression claims.

Setting aside of arbitral awards

BLC

In the case of *BLC*, the first appellant owned a group of companies which produced and sold piping components. The second and third appellants were part of this group of companies. The first respondent was initially a wholly owned subsidiary of the second respondent, a company incorporated in Malaysia. Subsequently, the appellants entered into a commercial joint venture with the second respondent to facilitate the transfer of the appellants' business operations in Malaysia to the first respondent. In exchange, the appellants received a minority stake in the first respondent.

In 2005, disputes arose between the parties. The appellants consequently commenced two sets of arbitration proceedings against the respondents for breaches of various agreements:

1. the first set of proceedings pertained to the respondents' breaches of the Shareholders' Agreement (the "**SA**"); and
2. the second set of proceedings pertained to the respondents' breaches of the Business Operations Agreement (the "**BOA**") and the Licence Agreement (the "**LA**"). In particular, the appellants alleged in this set of proceedings that the respondents had failed to deliver goods which satisfied the requisite quality standards. In addition, the respondents counterclaimed for, *inter alia*, the value of the goods that they had delivered to the appellants (the "**Disputed Counterclaim**").

The proceedings in the Singapore Court of Appeal focused on the second arbitration, in which the tribunal allowed some of the appellants' claims (including the claim regarding the defective goods supplied by the respondents) but dismissed all of the respondents' counterclaims. The respondents filed a setting-aside application on, *inter alia*, the ground that the arbitrator failed to address his mind to the Disputed Counterclaim, and therefore committed a breach of natural justice under section 24(b) of the IAA.

In the proceedings before the High Court, the Judge agreed that the arbitrator had failed to deal with the Disputed Counterclaim, and that there was accordingly, a denial of justice in the making of the award. In particular, the Judge opined that:

1. It was common ground in the arbitration that the defective goods which were the subject of the appellants' claim under Clause 4.1 of the LA (the "**Group A goods**") were distinct and separate from the goods that were the subject of the Disputed Counterclaim (the "**Group B goods**").

2. The arbitrator did not expressly find that the respondents were not entitled to the Disputed Counterclaim because of the defects in the goods. Instead, the arbitrator found that it was not necessary to decide on, *inter alia*, the Disputed Counterclaim because the respondents had failed to establish that the appellants:

   (a) were in breach of their obligations under the joint venture agreements; and

   (b) had acted in a manner to frustrate the joint venture

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(referred to as "Issues #13 and #14", respectively, in the Court of Appeal decision).

3. However, in the Judge's view, there was no logical corollary between the Disputed Counterclaim and whether the appellants had breached the joint venture agreements and/or acted in a manner to frustrate the joint venture. In the circumstances, the Judge took the view that this was a case where it had slipped the arbitrator's notice that the Disputed Counterclaim was a claim that had to be dealt with independently of his finding on the other issues.

The appellants filed an appeal against the decision of the High Court. In its judgment, the following issues were identified by the Court of Appeal as being relevant in determining whether the Judge was correct in finding that the arbitrator had failed to address his mind to the Disputed Counterclaim:

- What was the Respondents' case with respect to the Disputed Counterclaim in the arbitration ("**Issue 1**"); and

- In light of Issue 1, whether it sufficed to say that the arbitrator had not addressed his mind to the Disputed Counterclaim ("**Issue 2**").

In relation to Issue 1, the Court of Appeal conducted a detailed and extensive review of, *inter alia*, the pleadings, lists of issues and written submissions submitted by the parties. It opined that both parties had in fact taken the position in the arbitration that the appellants' liability for the Disputed Counterclaim was subject to an absence of defects in the goods, in the general sense of the word and not specifically addressed to the Group B goods.

In relation to Issue 2, the Court of Appeal reiterated its earlier comment in *Soh Beng Tee & Co Pte Ltd v Fairmount Development Pte Ltd* [2007] 3 SLR(R) 86 that:

> "*…it is not the function of the court to assiduously comb an arbitral award microscopically in attempting to determine if there was any blame or fault in the arbitral process; rather, an award should be read generously such that only meaningful breaches of the rules of natural justice that have actually caused prejudice are ultimately remedied.*"

The Court of Appeal held that given the tribunal's finding that the respondents had breached Clause 4.1 of the LA in producing goods that were defective, the appellants were accordingly found to be not liable for the Disputed Counterclaim. Whilst a literal reading of certain parts of the award may have suggested that the arbitrator had dismissed the Disputed Counterclaim on other grounds (*viz*. Issues #13 and #14), the Court of Appeal opined that such a reading should not be adopted. In particular, it observed that "*an award cannot be read like a statute; the ratio of the award ought to be distilled from a reading of the entire award and not of isolated parts*". Thus, while the relevant part of the award could have been better phrased, the Court of Appeal held that reading the award as a whole, the arbitrator could not have meant that all of the counterclaims were determined based solely on his decision with regard to Issue #13 and Issue #14.
In any event, the Court of Appeal stated that even if the arbitrator misunderstood the arguments presented to him and erroneously assumed that the Disputed Counterclaim arose out of Issue #13 and #14, this would only constitute an error of law and/or fact. Such errors, however, did not constitute a ground for setting aside an arbitral award. In this regard, the Court of Appeal reiterated the judicial policy of minimal curial intervention.

The Court of Appeal also made some interesting observations about the operation of Article 33(3) and 34(4) of the UNCITRAL Model Law on International Commercial Arbitration (the "**Model Law**"). By way of background, Article 33(3) of the Model Law permits parties to request that the arbitral tribunal make an additional award as to claims presented in the arbitration proceedings but omitted from the award. Article 34(4) of the Model Law provides for the court's power of remission where an application to set aside an award is made.

The Court of Appeal considered that while a party is not obliged to resort to Article 33(3) before making an application under Article 34 of the Model Law, he runs the risk that the court might not exercise its discretion to set aside any part of the award or invoke its powers of remission under Article 34. In addition, the Court of Appeal noted that Article 34 of the Model Law clearly provided for the matter to be remitted to the *same* tribunal – it was only if the arbitrator himself decided to withdraw (for example, because he felt that it was improper or impossible for him to continue to sit as the arbitrator) that the parties would need to appoint a substitute arbitrator in accordance with the relevant provisions of the Model Law and the applicable procedural rules.

PT Perusahaan

The plaintiff ("**PGN**") in *PT Perusahaan* is a listed state-owned Company in Indonesia which owns and operates gas transmissions systems. The defendant ("**CRW**") is an entity established under Indonesian law, and comprises three Indonesian limited liability companies. In 2006, PGN

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engaged CRW to install a pipeline and optical fibre cable in Indonesia. The contract between the parties adopted a set of standard-form terms and conditions commonly known as the "Red Book".

In particular, Clause 20.6 of the Red Book provided that all disputes arising thereunder were to be resolved with finality by international arbitration under the arbitration rules of the International Chamber of Commerce. The High Court noted that the arbitration agreement applied to all disputes of whatever nature which arise under the Red Book, whether they are "*contentious primary disputes or indisputable secondary disputes*". It also observed that in general, a party wishing to refer a dispute to arbitration under Clause 20.6 had to satisfy three conditions, namely:

1. Either party had to submit the dispute in writing to the Dispute Adjudication Board (the "**DAB**") for determination;

2. Either party must give notice of its dissatisfaction with the determination of the DAB to the other party within 28 days of that determination; and

3. The parties fail to settle the dispute amicably, or 56 days elapse from the notice of dissatisfaction without there being an attempt at amicable settlement.

In 2008, disputes arose between the parties which were referred to the DAB. In particular, these disputes related to certain variation claims brought by CRW under the contract. The DAB subsequently issued a decision ordering PGN to pay the sum of US$17,298,834.57 (the "**Sum**") to CRW. PGN, however, was dissatisfied with the decision, and issued a "notice of dissatisfaction" (the "**NOD**") pursuant to the terms of the Red Book, and alleged that the amount awarded by the DAB was excessive.
CRW subsequently commenced arbitration proceedings against PGN in 2009 to recover the Sum. In this arbitration, CRW only referred to the tribunal the issue of whether PGN was obliged to comply with the DAB decision and pay the Sum. In response, PGN contended that the parties' arbitration agreement did not permit a tribunal to compel PGN to comply with the DAB decision unless the same tribunal went on to hear the primary dispute relating to the variation claims on the merits, and with finality. The tribunal rejected PGN's argument, and issued a final award in favour of CRW.

PGN thereafter sought to set aside this award in the Singapore courts and was successful. In particular, the Court of Appeal held in those proceedings that:

- The Red Book's dispute-resolution regime envisaged one dispute, comprising both the primary dispute and the secondary dispute, moving forward as one from a reference to the DAB until all aspects of that one dispute were finally settled by arbitration;

- By issuing an award which purported to finally settle the parties' dispute, the tribunal erred because it :

  (a) failed to deal with all aspects of that one dispute; and

  (b) shut out PGN's arguments on the merits of the primary dispute.

Following the Court of Appeal's decision, CRW commenced a second arbitration in 2011 against PGN and placed before the tribunal both:

- The primary dispute (regarding the variation claim); and

- The secondary dispute (regarding PBN's failure to pay the Sum).

PGN contended in the 2011 arbitration that the tribunal was not permitted to compel PGN to comply with the DAB decision unless the same tribunal also determined the primary dispute in the *same award*. The majority of the tribunal rejected PGN's argument, and issued an interim or partial award compelling PGN to comply with the DAB decision pending the determination of the primary dispute. Consequently, PGN applied to the Singapore courts to set aside that award, and the court order that was subsequently obtained by CRW for leave to enforce the award. The provisions relied upon by PGN were as follows:

- Article 34(2)(a)(iii) of the Model Law, because the majority exceeded its mandate or jurisdiction by converting the non-final DAB decision into a final award without determining the primary dispute on the merits;

- Section 24(b) of the IAA because the majority resolved the parties' primary dispute with finality in breach of the rules of natural justice by shutting out PGN on the merits of the primary dispute;

- Article 34(2)(a)(iv) of the Model Law, because the arbitral procedure was not in accordance with the parties' agreement.

As a preliminary point, the High Court in *PT Perusahaan* rejected PGN's argument that section 19B of the IAA prohibited a tribunal from issuing a provisional award. This provision states that:

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> *"19B(1) An award made by the arbitral tribunal pursuant to an arbitration agreement is final and binding on the parties and on any persons claiming through or under them and may be relied upon by any of the parties by way of defence, set-off or otherwise in any proceedings in any court of competent jurisdiction.*
>
> *(2) Except as provided in Articles 33 and 34(4) of the Model Law, upon an award being made, including an award made in accordance with section 19A, the arbitral tribunal shall not vary, amend, correct, review, add to or revoke the award.*
> *…*
> *(4) This section shall not affect the right of a person to challenge the award by any available arbitral process of appeal or review or in accordance with the provisions of this Act and the Model Law."*

The High Court held that section 19B only precluded the tribunal and the parties from revisiting the subject-matter of an award that was issued by a Singapore-based tribunal. This, however, did not preclude a tribunal from making a provisional award, or an award granting relief that is only intended to be effective for a limited time, especially where (as was the case in *PT Perusahaan*) the parties' contract gave them a substantial right for provisional relief.

In this case, the award was consistent with section 19B of the IAA as it determined "*with finality*" the secondary dispute, and would not be affected by the tribunal's subsequent determination of the primary dispute. If, for instance, the tribunal later held that the DAB had awarded CRW too little, it could order PGN to pay CRW the additional amount in the final award. Conversely, if the tribunal subsequently found that the DAB had awarded CRW too much, it need only order CRW to refund the excess to PGN.
Reverting to the specific grounds for setting-aside relied upon by PGN, the High Court held as follows:

- There was no excess of jurisdiction in the interim award, nor had the tribunal acted in a manner inconsistent with the parties' agreement. In particular, the interim award only dealt with the secondary dispute with preclusive effect, and the preclusive effect did not extend to other aspects of the parties' dispute apart from the secondary dispute;

- There was no breach of natural justice because the tribunal accorded each party a reasonable right to be heard on the secondary dispute. Nothing in the interim award has rendered the primary dispute *res judicata* nor precluded PGN from contesting the primary dispute on the merits.

Stay applications

Silica Investors

The plaintiff, Silica Investors Limited, was a minority shareholder in the 8th defendant, Auzminerals Resource Group Limited ("**AMRG**"). The majority and controlling shareholder of AMRG was the 1st Defendant, Tomolugen Holdings Limited ("**THL**"). THL was also the sole shareholder of the 2nd defendant, Lionsgate Holdings Pte Ltd ("**Lionsgate**"), who held approximately 9% of the shares in AMRG.

The plaintiff commenced an action before the Singapore High Court for minority oppression pursuant to section 216 of the Companies Act (Cap 50, 2006 Rev Ed) (the "**CA**"). The action was founded on the following four main complaints:

- The purpose for the issuance of shares by AMRG to THL was to dilute the plaintiff's shareholding in AMRG by more than 50%;

- The plaintiff had been wrongfully excluded from participating in the management of AMRG;

- The board of directors of AMRG was under the control and influence of several of the defendants in the action, and had executed guarantees to further the personal interest of those defendants at the expense of AMRG's commercial interests; and

- Some of the defendants had exploited AMRG's resources for the benefit of their own business, and had misled the plaintiff and/or concealed information regarding the affairs of AMRG.

After the action was commenced, Lionsgate applied for a stay of the court proceedings in favour of arbitration pursuant to section 6(1) of the IAA. In this regard, Lionsgate relied on the arbitration agreement contained at clause 12.3 of the Share Sale Agreement dated 23 June 2010 (the "**Arbitration Clause**"). This agreement had been entered into between Lionsgate and the plaintiff, and it was pursuant to this agreement that the plaintiff became a shareholder in AMRG. In addition, several other defendants sought a stay of the proceedings against them pursuant to the inherent jurisdiction of the court.

In determining whether a stay of proceedings ought to be granted, the Singapore High Court identified, *inter alia*, the following issues that needed to be addressed:

- Whether the plaintiff's claim fell within the scope of the Arbitration Clause; and

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- If the plaintiff's claim fell within the scope of the Arbitration Clause, whether a claim under section 216 of the CA was arbitrable.

With regard to the first issue, the court held that the question was whether the proceedings in the suit involved one or more matters which might be the subject of the Arbitration Clause. If so, then subject to the issue of arbitrability, section 6(2) of the IAA mandated that the court proceedings be stayed in favour of arbitration. In this regard, the court relied upon the following 3-step analytical framework established by the Singapore Court of Appeal in *Larsen Oil and Gas Pte Ltd v Petroprod Ltd (in official liquidation in the Cayman Islands and in compulsory liquidation in Singapore)* [2011] 3 SLR 414:

1. First, what is the proper characterisation of the plaintiff's claim;

2. Second, what is the scope of the Arbitration Clause; and

3. Third, whether the plaintiff's claim fell within the scope of the Arbitration Clause.

In relation to the first step, the court adopted the Australian approach that the determination of what was the subject of an arbitration agreement was to be made by reference to the *essential* dispute between the parties, not merely the issues that are to be determined in the course of the proceedings. Having reviewed the parties' pleadings, the court opined that the essential dispute between the parties was whether the affairs of AMRG were being conducted and managed by the defendants in a manner that was oppressive towards the plaintiff as a minority shareholder.

Next, the court sought to identify the scope of the Arbitration Clause. It held that the plaintiff and Lionsgate were regarded as having agreed to have any disputes between them, including statutory claims, resolved by arbitration under the Arbitration Clause.

The court then went on to consider whether the plaintiff's claims fell within the Arbitration Clause. In this connection, the court opined that the factual allegations underlying the plaintiff's minority oppression claim had arisen out of or were sufficiently closely connected to the Agreement.

Whilst the above matters indicated that a stay ought to be granted, the court went on to consider whether the plaintiff's claims were in fact arbitrable since it was not required to grant a stay of the proceedings that involved a non-arbitrable claim. After an exhaustive review of case law from England, Australia and Canada, the court held that the nature of a minority oppression claim and the broad remedial powers of the court under section 216(2) of the CA meant that a minority oppression claim was one that straddled the line between arbitrability and non-arbitrability. In the circumstances, the court opined that it would "*not be desirable*" to lay down a general rule in respect of all minority oppression claims under section 216 of the CA. Instead, much would depend on "*all the facts and circumstances of the case*". For instance, a minority oppression claim may be arbitrable where the court is satisfied that all the relevant parties (including third parties whose interests may be affected) are parties to the arbitration, and the remedy or relief sought is one that only affects the parties to the arbitration. Conversely, a minority oppression claim is unlikely to be arbitrable where, for instance:

> *"…there are other shareholders who are not parties to the arbitration, or the arbitral award will directly affect third parties or the general public, or some claims fall within the scope of the arbitration clause and some do not, or there are overtones of insolvency, or the remedy or relief that is sought is one that an arbitral tribunal is unable to make."*

On the facts, the court found that the plaintiff's minority oppression claim was not arbitrable: first, there were many relevant parties who were not parties to the arbitration; and second, the plaintiff had also sought remedies that the arbitral tribunal could not grant, such as a winding up order.

Conclusion

In summary, the recent decisions highlighted above confirm that the judicial policy in Singapore is one of minimal curial intervention. In particular, the Court of Appeal in *BLC* confirmed that the approach of the courts is to read an arbitral award generously. This decision also demonstrates that where necessary, the courts will not eschew conducting a detailed review and analysis of the records in an arbitration.

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Tax Disputes and International Arbitration

By Edwin Vanderbruggen

Introduction

Taxation policy is an important consideration for any foreign investor contemplating entering a new market and gaining a clear picture of all applicable taxes will be high on the agenda of the investor. Many states offer tax incentives and tax holidays to attract potential investment from overseas and while tax incentives alone will rarely be the decisive factor for an investment decision, any consequent changes in taxation policy or practice will have an important impact on the value of or the return of any investment. States will generally tend to be cautious with regard to taxation policy for foreign investments so as not to deter investors; nevertheless, there will be occasions where a new tax regime will have a substantial impact upon a foreign investment, whether or not that impact was intentional.

Investment contracts with State parties and the need for protection

It is widespread practice for countries to conclude bilateral, multilateral and regional treaties which contain protective measures for foreign investment. Taking the bilateral protections as an example, these treaties are often referred to as "bilateral investment treaties" ("**BIT**") or "investment promotion and protection agreements" and they contain provisions against unfair or discriminatory treatment of foreign investors.

In addition to treaty protections, additional protection for foreign investors can be provided for in specific contractual clauses relating to the economic benefits of the foreign contractor under the contract. One of the major differences between an international commercial contract between two private parties, and an international commercial contract between a private party and a state party is the fact that the state party has the power to change the economic terms of the investment by way of an increase in taxation or a change to other applicable legislation or regulations. This difference is particularly pronounced in the case of extractive industries, where the "Government take" will often comprise of a royalty or production share on the extracted resource, and also receipt of tax revenues from the income and other taxes that are imposed on the contractor. Any increase in taxation would result in an increase in the total profits taken by the Government side despite there being no change in the contractually agreed profit sharing ratio.

In such cases, foreign investors will seek protection from state measures that carry an adverse economic impact to the commercial terms of the contract; these protective measures will often take the form of "stabilization clauses". Stabilization clauses can be worded in general terms but their fundamental purpose is to provide for the revision and adjustment of the commercial terms of a contract in the event of legislative changes, such as tax increases, that have a detrimental effect upon the economic benefits to the contractor. An example of a stabilization clause can be found in Myanmar's Model Oil and Gas Production Sharing Contract:

> *"If a material change occurs to the CONTRACTOR's economic benefits after the Effective Date of the Contract due to the promulgation of new laws, decrees, rules and regulations, any amendment to the applicable laws, decrees, rules and regulations or any reinterpretation of any of the foregoing made by the Government, the Parties shall consult promptly and make all necessary revisions or adjustment to the relevant provisions of the contract in order to maintain the CONTRACTOR's normal economic benefit hereunder".*

Whilst such a clause does not by any means prevent the state party from imposing any additional taxation upon the investor, it does mean that the state party has a contractual obligation to adjust the terms of the contract to ensure that the economic benefits to the investor are restored to what they would have been before the promulgation of any new tax legislation.

Resolving taxation disputes

Such protective measures are toothless unless the foreign investor can be confident that they will be implemented and enforced in practice, a consideration that is particularly pertinent in emerging markets where the rule of law and independence of the judiciary may be questionable. In addition to alleged breaches of contractual terms or treaty obligations, there is a wide scope of other potential tax disputes that might arise between states and foreign investors. Disputes between tax authorities and tax payers are common in administrative appeals and tax courts but this is not the case with international arbitration tribunals, although the number of taxation cases before international arbitration tribunals is on the rise. The benefits of having cases decided under international arbitration rules include the avoidance of uncertainties of local practices that can be associated with litigation in domestic courts, the prospect of a quicker, more efficient decision, the relative enforceability of arbitral awards and the commercial expertise and experience of international commercial arbitrators in comparison to that of adjudicators in domestic tribunals. In

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the specific terms of international investment arbitration, cases are concerned with ways in which state parties may have taken measures – such as taxation increases – that result in loss or damage to the foreign investor.

It is evident that foreign investors are increasingly looking to international arbitration for the resolution of taxation issues and the early jurisprudence of the International Centre for the Settlement of Investment Disputes ("**ICSID**") has given strong indications that tax disputes that are related to an investment are also "legal disputes that arise directly out of the investment" over which the ICSID has jurisdiction. It is important to note that international investment arbitration tribunals are not appeal mechanisms to domestic courts dealing with tax disputes and the functions of domestic courts and international tribunals regarding tax disputes are distinct. The question of whether a certain tax is applicable under the laws of a state is a matter to be decided by the courts of that state, and not a matter upon which an international arbitration tribunal would adjudicate. It is for the international arbitration tribunal to decide whether the state has breached any international law or obligation, for example its treaty obligations under a BIT. However, even if it is held by a domestic tribunal that a state has properly applied and implemented its own taxation legislation, this may still constitute a breach of international law if the state laws are inconsistent with its international obligations. Tax disputes can therefore be both domestic matters for local tax courts to decide in accordance with the laws of the state and also international matters when local laws and practices do not comply with international obligations.

Breaches of bilateral investment treaties

Most BITs comprise more or less the same obligations that are imposed on the host state of an investment, although there are also some important differences between one treaty and another. Most BITs will contain the following obligations upon the host state:

The host state must grant the investor "fair and equitable treatment". Based on an analysis of international case law on the subject, a Working Paper published by the Office for Economic Co-operation and Development ("**OECD**") cites the following elements that are encompassed in the "fair and equitable treatment" standard:[1]Vigilance and protection (due diligence);

- Due process and prohibition of arbitrariness; and
- Prohibition of denial of justice.

Due diligence

This obligation often applies to physical security, seizures and the acts of the state's police and security forces but it is in fact extended to all powers of persons acting under the authority of the state. The obligation is for the state to control its functions, the measures taken by officials so that illegal treatment does not occur. The state is not liable to prevent all violations, but it must take reasonable measures to prevent and remedy violations. When agents of a state enterprise illegally seized two hotels in Egypt, for example, in the context of a dispute between that enterprise and the foreign investor who owned the hotels, the Tribunal found that Egypt had violated its duty to extend fair and equitable treatment, namely due diligence and vigilance. The government knew that the agents of the state enterprise were about to illegally seize the hotels and did nothing to prevent it. Once the seizure was a fact, Egypt did nothing to remedy the situation, the Tribunal considered.[2]

In tax matters, seizures and other measures of pressure or collection are often applied when taxpayers do not (timely) pay the tax debt. The question that arises is thus to what extent the duty to exercise due diligence applies in these cases. As long as the host state's tax collection measures are legal under the law of the host state *and* do not violate international law (including fair and equitable treatment and national treatment under investment treaties) it seems that they cannot lead to a violation of the duty to exercise due diligence on the host state. But if the seizure measures applied are illegal under the host state's domestic law, or when the measures violate international law, then the host state has the duty to take reasonable measures to prevent them or, if they have already been taken, to remedy the situation. It seems that this is not an absolute duty, so it must for example be shown that the host state knew about the measures and could have prevented them. A more fundamental question is exactly when the host state's collection measures may be deemed to violate international investment law; this remains an open question within the current framework on international investment jurisprudence.

Due process and arbitrariness

The concept of arbitrariness was defined by the International Court of Justice as follows:

> *"Arbitrariness is not so much something opposed to a rule of law, as something opposed to the rule of law…It is a willful disregard of due process of law, an act which shocks, or at least surprises, a sense of judicial propriety".[3]The "fair and equitable treatment" standard is often interpreted to include respect for due process and to prohibit arbitrariness. Moreover, many investment treaties include an obligation on the host state forbidding certain unreasonable, discriminatory or arbitrary measures.[4]*

Denial of justice

The principle of "denial of justice" is deemed a part of customary international law and is thus binding upon all

1 OECD (2004), "Fair and Equitable Treatment Standard in International Investment Law", *OECD Working Papers on International Investment*, 2004/03, OECD Publishing. http://dx.doi.org/10.1787/675702255435.

2 *Wena Hotels Ltd. (U.K.) v. Arab Republic of Egypt*, ICSID Case No ARB/98/4 (Award) (Dec. 8, 2000), *[annulment denied]* reprinted in 41 I.L.M. 896 (2002).

3 *Elettronica Sicula S.p.A. (ELSI) (United States of America v. Italy),* ICJ Reports, 1989, p. 15, par. 128.

4 See for example Netherlands Model BIT art. 3.1.

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nations.[5] In its narrow sense, which is used here, "denial of justice" refers to access to courts and to wrongdoing by courts both in terms of procedure and in terms of substantive justice. Foreigners and thus also foreign investors must be given a fair judicial treatment. A fair and independent court can quash unlawful governmental measures and thus remedy a state measure that would otherwise be a violation of international law. That is why tax assessments which are unlawful under domestic law are not (yet) violations of international law. The host state's judicial infrastructure must be allowed to perform its normal function, which does not necessarily mean that a foreign investor is barred from invoking the arbitration procedure under the investment treaty until domestic legal proceedings are finalized.

The problem becomes one of "denial of justice" if the correcting function of a fair domestic legal proceeding does not occur. However, international arbitration tribunals are not appellate courts for domestic judicial decisions that foreigners do not agree with. Even an "error" by a domestic court –supposing one would later establish that the decision was indeed erroneous – does not necessarily constitute a denial of justice under international law.[6] The error must be of such significance, or the procedures applied so unusual and unfair, that it puts into question the legitimacy of the whole proceedings.

In the words of the Arbitral Tribunal of the *Azzinian v Mexico*[7], denial of justice in the strict sense would occur when:

- the relevant courts refuse to entertain a suit; or
- they subject it to undue delay; or
- they administer justice in a seriously inadequate way; or
- there was a clear and malicious misapplication of the law.

In another relevant investment case, *Mondev v USA*, denial of justice was seen as follows:

> *"The test is not whether a particular result is surprising, but whether the shock or surprise occasioned to an impartial tribunal leads, on reflection, to justified concerns as to the judicial propriety of the outcome, bearing in mind on the one hand that international tribunals are not courts of appeal, and on the other hand that Chapter 11 of NAFTA (like other treaties for the protection of investments) is intended to provide a real measure of protection. In the end the question is whether, at an international level and having regard to generally accepted standards of the administration of justice, a tribunal can conclude in the light of all the available facts that the impugned decision was clearly improper and discreditable, with the result that the investment has been subjected to unfair and inequitable treatment. This is admittedly a somewhat open-ended standard, but it may be that in practice no more precise formula can be offered to cover the range of possibilities"*[8]

The implications of "denial of justice" as an element of the "fair and equitable treatment" standard are important for matters involving tax disputes. Denial of justice in the strict sense would occur when:

- the relevant state courts refuse to entertain an appeal in a tax case; or
- they subject it to undue delay; or
- they administer justice in a seriously inadequate way; or
- there was a clear and malicious misapplication of the tax law; or
- there was a lack of transparency; or
- there was a breach of good faith and legitimate expectations.[9]

Conclusion

Investors are well aware that a foreign investment is not without its risks; when investing in a foreign market the prospect of changes to taxation policy and potential disputes that may arise with tax authorities when taxation policy comes into conflict with BITs and international law cannot be ignored. Investors therefore need to be aware of the way in which legal recourse may be sought in the event of such disputes. In certain circumstances, foreign investors may have the right to commence an international arbitration procedure in connection with unforeseen or unreasonable tax claims from tax authorities. The emerging jurisprudence from international investment arbitration tribunals serves to demonstrate that there is increasing support to investors in case of a high-profile tax dispute with a foreign government.

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5 *F.V. García-Amador et Al.*, Recent Codification of the Law of State Responsibility for Injuries to Aliens (180) 1974.

6 Encana v Ecuador, par. 194-196.

7 *Azzinian v Mexico,* ICSID ARB(AF) 97/2, par 102-103 (available at www.investment-claims.com/decisions/Azinian-Mexico-Award-1Nov1999-Eng.pdf) (hereafter "*Azinian v. Mexico*").

8 *Mondev International LTD v. United States of America,* ICSID Case No. ARB(AF)/99/2, par 64 65.

9 *Azinian et al v United Mexican States* (International Centre for Settlement of Investment Disputes, Case No. ARB (AF)/97/2.

Arbitration in Singapore – Some Recent Developments




Date	Event
2 July 2014	Evening Seminar by Mr Francis Xavier, SC on "Arbitration in Singapore – Some Recent Developments"

The Institute was privileged to have Mr Francis Xavier, SC (Partner, Rajah & Tann Singapore LLP) provide an update on the recent developments in arbitration law and practice in Singapore. Mr Xavier shared with members and guests his thoughts on particular trends with reference to recent case law and judicial thinking on issues ranging from arbitrability of subject matters to enforceability of awards in Singapore. The seminar was chaired by Mr Dinesh Dhillon who led a lively question and answer session to close the evening.

How certain is Commercial Certainty in the Law?







Date	Event
18 August 2014	Evening seminar by Mr Lawrence Teh on "How certain is Commercial Certainty in the Law?"

Taking a step back from the subject of arbitration, the Institute hosted an evening seminar on a wider subject matter, that of "commercial certainty". The Institute was honoured to have Mr Lawrence Teh (Partner in Rodyk & Davidson LLP) tackle for us this complex subject with clarity and depth. Specific reference was also made to the practice of arbitration, tribunal's powers and its relevance to the imminent Singapore International Commercial Court. The evening's session closed with an engaging question and answer segment chaired by Mr Kelvin Aw.

SIArb Commercial Arbitration Symposium

Date	Event
31 July 2014	SIArb Commercial Arbitration Symposium followed by post symposium/ pre conference networking

This year's Commercial Arbitration Symposium is the 5th organised by the Institute. The number of registrants this year bears testimony to its popularity as a platform for thought leaders in this area to exchange ideas on issues concerning arbitration. No doubt, the adoption of the interactive format inspired by the Tylney Hall tradition saw the participants engaged on a range of issues relating to the conduct, practice and procedure, jurisdiction of the tribunal and the supervisory role of the Courts. The Institute would like to express its gratitude to Schellenberg Wittmer for kindly sponsoring the post symposium reception, which also ushered in the pre conference networking for the Regional Arbitral Institutes Forum Conference 2014.

Regional Arbitral Institutes Forum Conference

Date	Event
1 August 2014	Regional Arbitral Institutes Forum Conference followed by Gala Dinner

The Regional Arbitral Institutes Forum or RAIF began in Singapore in 2007 by way of a conference, which has become an annual platform for arbitral institutes from Asia Pacific to meet and explore ways of collaboration. Having made its round in the region, the Institute is honoured to play host again to this year's RAIF Conference. Aside from hearing the respective country's report on significant developments in international arbitration, the Conference also witnessed the signing of a memorandum of understanding among all RAIF members to cooperate on joint programmes and courses. The Institute was honoured to have the Honourable Justice Quentin Loh open the Conference and the delegates locked horns on emerging issues regarding ethics, time and costs and the future of commercial arbitration in the region. The Institute had the good fortune of the Honourable Attorney-General VK Rajah gracing the Gala Dinner. There was certainly no lack of merriment as the delegates paired the scrumptious dinner with boisterous ambience that spoke so much of the talent, friendship and of course the camaraderie among the RAIF members. The Institute would like to express its gratitude to all sponsors of the event, including Fountain Court Chambers, KhattarWong LLP, Rajah & Tann LLP and Baker & McKenzie.Wong & Leow.

Corruption in Arbitration / What Textbooks don't teach you about Arbitration





Date	Event
11 September 2014	Evening seminar by Mr Michael Hwang, SC on "Corruption in Arbitration" and "What Textbooks don't teach you about Arbitration"

Members and guests of the Institute were treated to a rare sharing of an arbitrator's perspective on cutting-edge issues in arbitration practice. The Institute is indeed honoured to have Mr Michael Hwang, SC share his thoughts on the issue of corruption in arbitration and to provide snippets concerning witness conferencing, chess clock time-management technique for complex cases in international arbitration and appointment of the presiding arbitrator. Attendees were treated to a video presentation of Mr Hwang's interview given in London to Transnational Dispute Management (TDM), an online arbitration journal, which was based on an essay he wrote on the same topic. This was followed by an interactive session on emerging procedural innovations currently adopted in the international arbitration circuit. The entire session was kept interactive by the Chairman, Mr Chan Leng Sun, SC who also ensured that participants were thoroughly engaged on the subject matter. Mr Hwang closed the session with an introduction to his recent publication "Selected Essays on International Arbitration" which contains his candid views on both substantive law and procedural innovations, as an internationally acclaimed arbitrator.

Call for Contribution of Articles

The SIArb Newsletter is a publication of the Singapore Institute of Arbitrators aimed to be an educational resource for members and associated organisations and institutions of higher learning. Readers of the newsletter are welcome to submit to the Secretariat at secretariat@siarb.org.sg well-researched manuscripts of merit relating to the subject matter of arbitration and dispute resolution. Submissions should be unpublished works between 1,500 to 2,500 words and are subject to the review of the editorial team.

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