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PRESIDENT'S COLUMN by Raymond Kuah Leong Heng

Arbitrator's Jurisdiction. The present judicial climate in Singapore, not least in England; Australia; USA and many other jurisdictions, is given to encourage arbitration as a dispute resolution mechanism put in place by prescription of different regimes on the domestic and the international levels.

There can be no doubt that the Courts do play an integral part in any effective arbitration system, particularly on the question of jurisdiction of an arbitral tribunal which may arise when an application is made by a party to the dispute for a stay of Court Proceedings under **Section 7 of the Arbitration Act (Cap 10)**; or when an Injunction is sought to restrain the arbitral tribunal from proceeding with the reference on the ground of lack of jurisdiction; or when the Enforcement of an arbitral Award is sought.

In order for the arbitral system to be effective, written agreements to arbitrate must be such that they are enforceable and so must arbitration awards which are to be enforced by application to the Courts. The law in relation to the extent and limits of the arbitrator's power are found either in Statute or in the decision of the Courts. The relevant Statute Law is contained in **the Arbitration Acts 1970 and 1985; and the International Arbitration Act 1994**.

On the subject of jurisdiction, it is settled law that the extent and therefore its corresponding limits of the arbitrator's power are essentially contractual. It follows that the arbitrator has the power, and indeed, the duty, to adjudicate the issue or issues that are referred to him by the Parties. Where issues are delineated in the notice appointing the arbitral tribunal, they may similarly affect the jurisdiction of the arbitrator, especially when the arbitration clause requires detailed particulars. Under such circumstance, the award is *pro tanto* bad where it is made without jurisdiction to do so. This all seems quite obvious. But it does not alter the fact that problems can and do arise.

In practice, the question of whether there is a dispute is a fundamental consideration that must be taken into account. In the event, there must be a dispute or difference to be resolved. For instance, the mere admission that a sum of money claimed by the contractor is owing by the building owner under the provisions of a building contract does not amount to a dispute between the contractor and the building owner. On the other hand, if the building owner disputes that any monies are due, clearly there would be a dispute capable of being referred to arbitration.

It is recognised that there is in fact no particular mode of arbitration clause being in universal use. Each clause must be looked at against the matrix of the other contractual provisions. *[Re: Ashville Investments Ltd v Elmer Contractors Ltd (1983) WLR 867]* Most common modes being referred to "**dispute**" between the parties. Difficulties may thus arise in cases where you have met with mere silence in the face of Claimant's demand. In such a situation, there may be no dispute on which adjudication can be made by the arbitrator. Under **the 1970; 1985 Arbitration Acts, by Section 7 (1)**, the Court in Singapore has a discretion to stay an action commenced in Court in respect of a matter which is the subject of an agreed reference to arbitration.

Arbitrator's Jurisdiction

(continue from page 1 of President's Column)

Assuming a dispute is properly established, there may be question as regards whether it is a dispute of a kind which the parties have agreed to submit to arbitration. The agreement of the parties may of course involve not only their agreement as specifically expressed in the contract, whether it is a contract containing arbitration clause, or a specific agreement to refer to arbitration, but also any arbitration rules which they may have incorporated by reference. It has been held by the House of Lords in *Heyman v Darwins Ltd (1942) Ac 356 at 393* per Lord Porter that, however widely drawn, an arbitration clause cannot authorise the arbitrator to make a binding determination as to whether the principal contract ever bound the parties. His Lordship's submission was in the following words: "***The question of the arbitrator's jurisdiction must, therefore, ultimately depend on the wording of the arbitration clause.***" However, it is arguable, even if the arbitration clause were held to be *prima facie* enforceable, that such a clause is to be construed as having any effect should it be concluded that the contract containing the arbitration clause was otherwise found to be void or of no legal effect.

In such event, there may be question as to whether the arbitrator can determine his own jurisdiction. In order to ascertain whether or not an arbitral tribunal can clothe itself with jurisdiction over a particular dispute or claim, it is vital to analyse the true intention of what had passed between the parties to the reference so as to determine whether or not the matter in issue is included therein.

It may however be argued that the jurisdiction of an arbitration tribunal is obviously dependent on the validity of the arbitration agreement. In such event, the question may be framed thus: "If the main agreement is invalid, is the arbitration agreement *ipso facto* invalid ?" There are those who may base their submissions on the ground that the arbitration agreement is an integral part of the main agreement. This argument is *prima facie* logical to assert that an arbitration clause cannot apply to a non-existent agreement. On the other hand, there may be those who may submit that by virtue of the **doctrine of separability**, the main agreement and the arbitration agreement have a separate existence; and the fact that the former is invalid does not affect the validity of the latter; nor is the arbitrator deprived of jurisdiction to determine the validity of the former.

The **doctrine of separability** would appear to rest on the practical necessity to enable the dispute resolution process to be proceeded with. There is an obvious correlation between the principles of separability and arbitrability: *[Re Harbour Assurance (UK) Ltd v Kansa General International Insurance Co. (1993) 1.Lloyds Rep. 456 at 459].* Ultimately, the arbitrability of any issue, other than the validity of the arbitration agreement itself, depends on the construction of the arbitration clause, which stands separately from the main contract.

It is said that an arbitrator cannot confer jurisdiction upon himself beyond the scope of the submission, as the jurisdiction of an arbitrator depends fundamentally upon the consensus of the parties as expressed by them in their arbitration agreement. *[Re Attorney-General for Manitoba v Kelly (1992) 1C 268 at 276].*

It follows that the arbitral tribunal may proceed to investigate the challenge to its jurisdiction and further determine the dispute, leaving the jurisdictional aspects to be resolved by some court of competent jurisdiction at a later stage.

It is submitted that there is no misconduct where there is either no agreement to arbitrate or where there is no valid appointment, ie, there is no jurisdiction: *Kawasaki Kisen Kaisha Ltd. v Government of Ceylon (1962) 1 Lloyds Rep. 424 per McNair J.* It would seem to be logical and for common sense to dictate that an arbitrator cannot have the power to determine disputes which call into question the validity of the agreement to refer under which he was purportedly to have been appointed. The parties may, however, agree to confer a special jurisdiction upon the arbitrator to determine the point. It is further submitted that there is of course nothing to prevent the arbitrator's entitlement to ask if he really has the jurisdiction before proceeding further; and that whatever may be the decision of the arbitrator, it may well be open to challenge. ▲

FEATURE

This article first appeared in the "Asian Building and Construction" magazine earlier this year and is reproduced with their kind permission.

The author, Mr. A.W.A. Coppin, is a Senior Consultant with High-Point Rendel.

LIQUIDATED AND UNLIQUIDATED DAMAGES - PROFITING FROM OTHERS MISTAKES ?

By A.W.A. Coppin, MCIOB, MIMgt, MSIB, MSIArb

PAST AND PRESENT

It is a fact that the multiplicity of contractual problems on construction projects in the West which are eventually resolved via formal proceedings are now increasingly being decided in the same manner in the Asia-Pacific region. The "traditional" method of dispute resolution that prevails in the Asia-Pacific region relies basically upon the parties to discuss their differences over a cup of tea and (usually) a compromise is agreed. This method can still be seen in operation today where problems develop on the smaller projects.

However, all is not well in the sprawl of the concrete jungle. Notwithstanding the exceedingly high profits generated for the property speculators and developers, they are rapidly embracing an alternative route to making profits. This alternative route being formal proceedings. Without dolving too much into the detail of why this process of dispute resolution is increasing in the region at an almost exponential rate, it is worth a couple of paragraphs to explain briefly why this trend had spread from the West.

As construction projects become larger (and inevitably more complex), the capital cost of development increases such that development funding can no longer be wholly provided by one individual or organisation. Furthermore, the risk becomes too great. Consequently, funding is secured from a variety of sources. The various sources demand a return on their investment and that return has to flow from a predetermined date.

Should the construction of the project run into difficulties which results in a delay to its' completion, then the party who has signed the contract with the builder is faced with having to resolve the financial implications that would ensue. The contract would normally include provisions for dispute resolution using primarily the Architect/Engineer, then arbitration and as a last resort, litigation. The Employer, realising his dilemma, usually attempts to recover his losses from the builder, such losses being predetermined as liquidated damages and included in the contract.

Understandably, the builder sees the possibility of not only his profit being reduced to zero, but, worse still, having to complete a project that he knows will either incur a massive loss at the very worst, bankrupt him. The builder, on the other hand, is not afforded the same opportunity to insert an amount which he considers would be his own liquidated damages, in the event that the Employer is responsible for delays.

There is a good reason for this which I will explain later. However, I have heard eminent people in the Asia-Pacific region suggest that there should be provision in standard forms of construction contracts for the builder to insert his own liquidated damages sum. This may seem, prima facie, to be an excellent idea in that the builder would not have to spend time in ascertaining his actual costs, in the event that the claim made by him for reimbursement of his loss and expense was due to delay caused by the Employer. Unfortunately, this innovation could never work for reasons which, after a little thought, are obvious.

Figure 1 demonstrates typical resource requirements for four elements of On Site Overheads. In order for the builder to be able to confidently insert in the contract a "genuine pre-estimate" of his liquidated damages, every line on the graphs would have to be horizontal. It can be seen that even if the average cost were calculated and used as a "genuine pre-estimate", the risk of loss would be as great as the risk for profit. To demonstrate this fact, imagine that the builder, through no fault of his own, suffers delay during the first two weeks of the contract. If the builder's liquidated damages was his average cost, then he would undoubtedly profit. On the other hand, if the delay was suffered half way through the contract period, then a loss would be registered. Consequently, the only acceptable method of determining the loss and expense incurred is for the builder to calculate his actual losses (unliquidated damages) at the time the delay was suffered. Many builders will already know that this task takes a lot of

time and hence expense. The reason why the builder has to calculate his actual loss is that it is the most equitable method of ensuring that he "..... is put back to the position he would have been in, as far as money can achieve, had the delay not occurred".

PRELIMINARY ITEMS IN B.Q.'S

Another method of evaluating a builder's loss and expense is to use the sums stated in the preliminaries Bill of Quantities.

What is wrong with this method ? Well, for a start, such sums are deemed to be values - not costs. And this is the heart of the problem. Many is the time when I have held discussions on behalf of the builder with the Employer and/or his representative (e.g. Architect, Engineer) on the matter of reimbursement of loss and expense to be told by the Employer that the calculation will be based on the values of the preliminary items. In the event that his method is used, the builder can either made a profit or a loss. How many builders actually price preliminary items at a rate which includes the net cost plus an allowance for overheads and profit ? I suspect that this practice hardly ever occurs. From my own experience, I have encountered it once.

Pricing of items and the build up of rates inserted in Bills of Quantities is essentially commercially based. Whilst the estimator may initially price on the basis of estimated cost, by the time the Bills of Quantities are "inked in", the final tendered sum may be the same, but rates have usually been increased or decreased to take account of what management considers as commercial factors. Consequently, the likelihood of recovering costs, in the event that preliminary prices are used to ascertain loss and expense, is very much dictated by the builder's pricing strategy.

I have heard of an arbitration case in the Asia Pacific region where the arbitrator, quite wrongly, awarded the builder his loss and expense based on the preliminary rates, as stated in the preliminary Bill of Quantities, with the result that the builder recovered a lot less that he would have done had the arbitrator taken the time to ascertain the loss and expense based on actual costs. I sincerely hope this method does not prove a favourite with arbitrators in the region.

THE FUTURE

There are a growing number of Employers, both private and government, who are now insisting that builder state what they expect their costs to be in the event that delays occur which are the responsibility of the Employer. This particular practice harkens back to the idea of the builder having provision in the contract to insert an amount for liquidated damages. When bids are compared, it is inevitable that the person assessing the bids is going to apply a quantity to the rate and add the resultant quantum to the bid as stated. Thus, unknown to the builder, his initial bid, whilst being competitive, may be jeopardised simply due to the fact that his "overrun rate" results in an uncompetitive tender.

Employers should take heed of the fact that a builder's costs in respect of preliminary items (i.e. On Site Overheads, etc.) vary week by week and to ask builders to insert a definitive figure is unreasonable. It will surely backfire in the long term as builders will simply look at the item from a commercial standpoint as they do with all other items to be priced. Thus, rates and prices generally will increase.

CONCLUSIONS

The most equitable method is the one that has been tried and tested for numerous years, notwithstanding that builders necessarily have to spend a lot of time compiling their actual costs for submission to the Architect/Engineer/Arbitrator. The key to successfully proving costs must therefore be to maintain accurate records and to record information on a contemporaneous basis. It is a hard slog, but it's definitely worth it. ▲

Footnote: Those who wish to have a copy of original graphs can obtain it from the author.

HAVE YOU CHANGE YOUR ADDRESS ?

If so, have you advised the institute ?

If you have not advised the institute, please do so in order to update the institute's record.

FIRST ENTRY COURSE SINGAPORE

jointly organised by

THE SINGAPORE INSTITUTE OF ARBITRATORS
THE CHARTERED INSTITUTE OF ARBITRATORS

The Entry Course, being the admission requirement to become a member of the Singapore Institute of Arbitrators ("SIArb"), was a 2 1/2 - day weekend course which commenced in the afternoon of Friday, 2 December 1994 and ended on Sunday, 4 December 1994 with a 2-hour written examination. This is the first entry course ever held in Singapore and is now the only means of qualifying for entry to become a Member of the SIArb and also for admission to become an Associate of the Chartered Institute of Arbitrators ("CIArb"). The course was organised jointly by the SIA and the CIArb and covered the law and practice of arbitration. The course directors were the Honourable Justice Neil Kaplan of Hong Kong and Raymond Kuah, the President of the SIArb. Other tutors were Philip Yang, Ben Beaumont, Robin Peard and Peter Caldwell; and Singapore tutors were G. Raman, Engelin Teh, Leslie Chew, Richard Tan and George Tan.

The response to the course was overwhelming. The course which was originally targetted to accomodate 50 participants was eventually expanded to take in 72 participants. Even then, some 43 applications had to be put on the list for the next course which may take place sometime in the last quarter of 1995. Of the 72 participants, 30 were lawyers with the rest comprising professionals like engineers and accountants, insurance adjusters, administrators, management consultants, quantity surveyors, project managers and marine consultants.

The speakers for the course comprised eminent personalities and experienced arbitrators from Hong Kong and also an experienced arbitrator from Singapore, G. Raman, who enlightened the participants on the Special Aspects of Arbitration Law as applied in Singapore.

The purpose of the course was to educate the participants in the basic law and procedure of arbitration. The role of an arbitrator in the conduct of an arbitration is often critical to the validity of the arbitral award, and the participants were shown the various distinctions between a litigation process and an arbitration process. A procedure which may be essential in a litigation process may well result in the setting aside of an arbitral award if imposed arbitrarily in the latter.

The course started with an introduction on the CIArb and the SIArb. Robin Peard then introduced the participants to the concept of arbitration as an alternative dispute resolution to litigation in Court. The participants were brought through the history and the general law of arbitration, with some elaboration on the law and procedure of arbitration in Hong Kong as applicable in domestic as well as international arbitration.

Peter Caldwell then spoke on the powers and jurisdiction of the arbitrator which often formed a critical preliminary issue to be considered before an arbitration can proceed. Such preliminary issues are usually considered at the preliminary meeting stage. This was followed by a demonstration of a preliminary meeting by the local tutors.

The course followed a lecture/tutorial system during which the participants were given talks on various aspects of arbitration which includes the holding of preliminary meetings, the disposal of interlocutory matters, the preparation of pleadings, the different levels of discovery and the procedure for the conduct of an arbitration hearing, including the receipt of oral and documentary evidence.

The participants proved to be a keen and enthusiastic lot judging by the searching questions which were fired in quick succession during the tutorials. The speakers, together with the local tutors, did an admirable job of answering them. Most of the questions touched on the practical aspects of conducting an arbitration to which the experienced arbitrators shared their experience with the participants.

The participants were also shown a mock arbitration hearing demonstrated by the local tutors during which Robin Peard explained the finer points of the procedure involved in an arbitration. The course also included lectures on the law pertaining to the award of costs and interest in an arbitral award. The essentials of an arbitral award were emphasised as being critical to the validity and enforcement of an arbitral award.

The legislature in Singapore has recently passed the International Arbitration Bill to bring into effect the International Arbitration Act 1994 which gave force of law to the UNCITRAL Model Law on International Commercial Arbitration adopted by the United Nations Commission on International Trade Law. Justice Kaplan enlightened the participants on the various provisions in the UNCITRAL Model Law while G. Raman spoke on the Singapore position in relation to the law and practice of

arbitration in Singapore. The course ended with a 2-hour written examination for the participants.

An informal survey among the participants revealed that most of the participants had found the course to be instructive and useful. The lawyers, most of whom were in litigation practice, found the course to be easy-going. The other participants had some problems initially in assimilating the principles taught as the terminology and concepts of law were somewhat technical in nature. However, with the assistance of the lecturers and tutors and their fellow participants who were legally trained, most of the non-legal practitioners found the course to be interesting and useful and the examination to be "entirely manageable".

So it looks set henceforth for the SIArb and the CIArb to require the membership admission through examinations by way of these on-going Entry Courses and International Special Fellowship Courses to be conducted in Singapore regularly. ▲

Engelin Teh

VISITORS FROM INDONESIA

On 4 November 1994, a team of experts/advisors from Indonesia on a fact finding mission visited Singapore. The team is part of a group under the Economic Law and Improved Procurement Systems ("ELIPS") set up by the Indonesian government to deal with reform of economic laws and related matters in cooperation with the Ministry of Justice. The 6 member delegation consists of:

Yahya Harahap (Supreme Court Judge)
Ratnawati (Ministry of Justice)
Taryana Sunandar (National Law Development Agency)
M. Husseyn Umar (Ali Budiardjo, Bugroho, Reksodiputo)
Yani Supriani Kardono (Soewito, Suhardiman, Eddymuri)
JR Abubakar (Badan Arbitrase Nasional)

The SIArb members were represented by Mr Ronald Pereira, Dr Myint Soe, Mr Kenneth Gin and Mr George Tan who met with them at the Singapore International Arbitration Centre (SIAC). The discussion centred around the subjects on: the role of the Institute vis-a-vis the SIAC; the functions and objectives of the Institute; the requirements for membership of the Institute; and the activities of the Institute. ▲

George Tan

AMENDMENT TO LEGAL PROFESSION ACT

On 27 February 1992, the Legal Profession (Amendment No. 2) Act 1991 was passed by Parliament. It came into force on 27 March 1992. The amendment to the Act was rendered necessary by the High Court decision in Turner (East Asia) Pte Ltd v Builder's Federal (HK) Ltd & Anor {[1988] 2 MLJ 280} in which the Court ruled against foreign lawyers appearing in arbitration proceedings. Such amendments had effectively reinstated the right of parties to select their own representation in the arbitral proceedings on condition that where the law applicable to the dispute is Singapore law, a local practising advocate and solicitor is required to appear jointly.

The wordings of the new Section 34A are set out hereinunder:

"34A (1) For the avoidance of doubt, it is hereby declared that sections 32 and 33 shall not extend to any person acting as an advocate and solicitor in -

(a) Proceedings before an arbitrator or umpire lawfully acting under any written law relating to arbitration (referred to in this section as arbitration proceedings) where the law, designated by the parties or otherwise determined by the rules of the conflict of law, as applicable to the dispute to which the proceedings relate is not the law of Singapore; and

(b) Arbitration proceedings, where the applicable law referred to in paragraph (a) is the law of Singapore, if that person appears in the proceedings jointly with an advocate and solicitor who has in force a practising certificate.

(2) Nothing in this section shall be construed as derogating from or adversely affecting any power or right of any person to appear or act in arbitration proceedings or in connection therewith." ▲

Raymond Kuah

XIIth International Arbitration Congress of the International Council for Commercial Arbitration

Report on the ICCA Congress
By G. Raman, Vice President, SIArb

The Congress was held from 3 - 6 November 1994 at Vienna Hiton, Vienna.

The Singapore Institute of Arbitrators was represented by the President, Raymond Kuah, and the Vice-President, G. Raman. C. Arul, a Council member of the Institute, also attended the Congress. The Singapore International Arbitration Centre did not send any delegate and its absence was the subject of friendly enquiry by a number of delegates.

Participants at the Congress came from all parts of the world: the USA, UK, a number of European countries, India, Australia, New Zealand, Malaysia, Singapore, China, Korea and Japan.

Amongst the distinguished participants were professors of law, judges from the International Court of Justice, The Hague, and internationally renowned arbitrators like Professor Giorgio Bernini, Professor Hans Smit, Judge Howard M. Holtzman, Jan Paulsson, Eric Schwartz, Robert Coulson, Dr. Gerald Herrman, the Rt. Hon. Sir Michael Kerr, Sir Laurence Street, and Martin Hunter, to name but a few.

The session was opened by the Austrian Minister for Justice, Dr. Nikolaus Michalek. The participants were then divided into 2 working groups, and the deliberations commenced immediately after the opening ceremony on Friday morning stretching into Sunday afternoon.

A number of well researched and scholarly working papers were presented at the Congress. The remarkable feature of the Congress was that it had delegates from two different legal systems: the European inquisitorial system and the Common Law system. Delegates who came from China adopt a system straddling both the Common Law and Inquisitorial methods. One of the major points discussed at the Congress was the similarity between the two systems and how today's arbitrators are blending the two systems. As Jan Paulsson referred in his paper on the overview of both methods it was a case of "The Fallacy of the Guest Divide".

It was a very well managed Congress with delegates delivering their speeches in three languages - English, French and German. Simultaneous translations of a high standard were available though the main working language was English.

Amongst the more important working papers presented were:

Comparative analysis of civil and common law systems;
UNCITRAL Model Law;
The London Court of International Arbitration;
American Arbitration Association;
The Law Governing the Capacity to Arbitrate;
Mandatory National Procedural Law and Auxiliary Powers of Courts;
International Conventions on Conflicts of Laws and Substantive Law;
Application of International Law.

There were receptions held each evening. The first evening's event was a reception at the magnificent Gothic Vienna Town Hall. In the second evening participants were treated to a cultural event at the Opera House where Mozart's "The Magic Flute" was staged. There was also a dinner at a wine garden. The last day saw the closing speeches followed by an extended and sumptous lunch.

Vienna reminded me very much of Singapore - its cleanliness, orderliness, and efficiency. There was no jay-walking, which is a marked contrast to what we see in Singapore. Even when there were no vehicles on the road, pedestrian would still wait for the "green man" to appear before crossing. This was tutonic discipline.

The delegates from the Institute found the Congress very instructive and enlightening. It is hoped that future Congresses will be attended by the Institute so that we could keep abreast with the developments in arbitration law and practice. The spin-off in attending such Congress is the strengthening of the bond of friendship with other arbitration bodies.

The London Court of International Arbitration and the Chartered Institute of Arbitrators played hosts to a selected group of delegates for breakfast which was held at Hotel Biedermeier. ▲

NEWSFOCUS

The following were admitted to membership of the Institute during fourth quarter of 1994

FELLOWS (By Examination)

Yang Lih Shyng
Peter Scott Caldwell
Chandra Arul

ASSOCIATE MEMBERS

Steven Lee Kim Chuan
Monica Neo Kim Cheng
Anthony Wong Boon Leong
Gan Kok Hua
Michael Nalpon
Koji Miura

TRANSFER FROM MEMBER TO FELLOW

Michael Khoo

CONGRATULATIONS *to Tomas Kennedy-Grant on his appointment as a Master in the High Court of New Zealand.*

CONGRATULATIONS *to Chandra Mohan on being elected as President of the Law Society, Singapore.*

LEGAL DEVELOPMENT AFFECTING ARBITRATORS

Ahong Construction (s) Pte Ltd v United Boulevard Pte Ltd (1942) 2 SLR 735

The case involves construction of a residential complex. Completion of the complex took place 13 months after the Completion Date prescribed by the contract. The matter was referred to arbitration. The arbitrator eventually held that there should be extension of time of 13 months. An award was given that the liquidated damages which the owner deducted from the money due to contractors must be refunded and that the costs and expenses for the prolongation of the contract period must be paid to the contractors. However, the arbitrator refused to award interest on such sums, even after the question of interest was remitted to him on appeal by the contractors. The arbitrator, on remission states that his reasons are that the contractors could have finished the work earlier, and by not telling the owner and architect that the work could not be completed within 90 days from the completion date, which is the maximum extension period prescribed by the contract, the contractors were partly to blame. The contractors applied for leave to appeal against the arbitrator's supplementary award disallowing interest.

The Court states that as a matter of law, an appeal from arbitration must be only on question of law (see Arbitration Act ss 28(2), (3) and (4)) and the applicant's case must satisfy the Nema guidelines :

(1) where the question of law is a "one-off" point, leave will be granted if the arbitrator is clearly wrong on perusal of the award, without the aid of arguments.

(2) where the question of law is not a "one-off" point, eg. where it involves the construction of a standard term contract, leave to appeal should not be granted unless there is a strong prima facie case that the arbitrator was wrong.

The count held that applying the Nema guidelines, the matter was not a "one-off" case, and there was strong prima facie case that the arbitrator was wrong not to award interest. The arbitrator's reasons for not awarding interest needs justification and explanation. If the contractors were entitled to extension of time, it follows that they were competent and efficient in discharging the contract and should be entitled to interests on the sum awarded to them. It would be contradictory for the arbitrator to say on one hand that the contractors were right, that they deserved an extension of time, and on the other hand to say that they should have been more efficient and things could have been completed earlier. Further the matter relating to 90 days maximum extension period was never canvassed at the hearing. Lai Kew Chai J made the following observations :

> "The decision not to award interest, for the reasons given, may well call for some clear judicial guidelines on the principles governing the power and discretion whether or not to award interest."

The SIArb Newsletter is a quarterly publication of the Singapore Institute of Arbitrators. Distribution is restricted to members and those organisations and institutions of higher learning associated with the Institute.