SINGAPORE INSTITUTE OF ARBITRATORS

# NEWSLETTER

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## *MESSAGE OF OUR NEW PRESIDENT*

- Richard Tan LLB(Hons) FSIArb FCIArb

The last ten years have seen a significant number of developments in the field of dispute resolution in Singapore. In 1991, the Singapore International Arbitration Centre was set up under the auspices of the Economic Development Board and the Trade Development Board to provide physical as well as administrative services to parties wishing to arbitrate their disputes in Singapore. (In August this year, the Centre was brought under the wings of the Singapore Academy of Law.) The SIAC formulated its own set of arbitral rules in 1991 and last year, published a revised second edition of its rules. In 1995, the International Arbitration Act was enacted which adopted a framework for international arbitrations, based largely on the UNCITRAL Model Law. More recently, the Singapore Mediation Centre, also under the Singapore Academy of Law, was formed to promote dispute resolution through the use of mediation.

Elsewhere in the world, developments in arbitration and ADR techniques have been anything but static. Mediation has captured attention like a house on fire while adjudication seems to have caught on in the United Kingdom after the coming into force of the UK Housing Grants, Construction and Regeneration Act 1996 in May 1998. The changing face of technology and the methods of doing business, particularly developments in e-commerce and information technology, are also throwing up new challenges to those engaged in the practice of arbitration and mediation.

How should the Institute respond to the challenges of the new millennium? In off-the-cuff remarks I made at the AGM of the Institute on 30 July 1999, I alluded to a number of key objectives and goals which I believed the Institute should adopt - and, which I am very pleased to announce, my very able colleagues in Council at our first council meeting held after the AGM, have enthusiastically embraced. I should like to take this opportunity to share some of these objectives and plans with you.

### Continuing Training

At, or very close to, the top of the list of priorities, is the continuing professional training and education of arbitrators and students of arbitration.

We, in the Institute, have always viewed as one of our main priorities, the equipping of those seeking to be arbitrators with the skills and expertise they need for that important role. Arbitration should not be thought of solely as the province of lawyers. In many cases, the arbitrator's experience will lie in a professional field quite outside the law. His usefulness may lie in his experience and familiarity with the business of construction, shipping, insurance or commodities and very likely, in more recent times, with information technology and specialised intellectual property disputes. Judges and lawyer-arbitrators need not learn the lexicon or the subtleties of the industry in which disputes relating to technical matters arise. However, the technical arbitrator must, if he is to conduct an arbitration competently and professionally, possess a sound working knowledge of the law and practice governing arbitration. Such skills are not instinctive and can only be acquired through education, training and practice. Equally, those trained in the courtroom will find that arbitration requires a different set of skills and approach. In order for Singapore to establish itself as a centre of excellence in arbitration, the infrastructure it offers must include a pool of arbitrators possessing the highest standards of skill,

Mr. Jeffery Chan Wah Teck receiving his certificate from the President at the AGM (see inside for AGM report )

**Continue on pg. 2**

competence and integrity from which domestic and foreign users of arbitration can confidently draw upon. The Institute aims to contribute people and know-how to this pool, and for those aspiring to join this pool, the relevant and necessary training and opportunities. The Institute currently runs entry and special fellowship courses on arbitration in conjunction with the UK Chartered Institute of Arbitrators and in past years, has held conferences on major trends and developments in arbitration. It will continue to do so.

### Special Courses and Talks

In addition, it will hold special courses and seminars on arbitrations for specific industries as, for example, the Institute will be conducting a basic course on arbitration for the Singapore Institute of Architects scheduled for the early part of next year publicised elsewhere in this newsletter). The Institute also aims to encourage professionals from industries which are currently non-traditional users of arbitration to join the Institute (for example, the IT industry) and familiarise themselves with arbitration.

The Institute will also keep itself and its members abreast of technological changes and international trends. One significant area of focus will be on-line arbitrations. The Institute will also examine, apart from arbitration and mediation, other dispute resolution mechanisms such as adjudication and the scope for its application in Singapore.

A series of regular luncheon talks will also be held and prominent and foreign speakers will be invited to speak on topical arbitration issues.

### New Web Site

A calendar of events and activities is being drawn up and will be publicised on the Institute's Web page, which is presently under construction and which we hope will be completed and on-line by the end of the year.

### Survey on Members and Update on Particulars

Members will also find in this newsletter a survey form inviting them to provide their feedback on the Institute and an update of their particulars. The members' response to the survey will not only help the Institute to communicate more effectively with members but will provide valuable and necessary data on resources which the Institute can draw upon in executing its programme of activities.

### Committee Work

Members can also look forward to participating in committee work. A Law Review Committee, Professional Practice Committee, Conference/Education Committee, Membership Committee, Publications/Publicity Committee, Activities Committee and Mediation Committee, amongst others, have been set up and under their respective chairpersons, will plan and host separate programmes. Involvement in these committees will help members interact with each other and provide a valuable forum for exchange of ideas and the dissemination of information on arbitration and ADR matters. Members are invited to apply to join these committees on a one-year term. While every effort will be made to accommodate requests, in case of an overwhelming response, members may not however get to sit on the committee of their choice. Members are asked to submit their applications by 30 October 1999.

### Small Claims Arbitration Schemes

The Institute is also acutely aware of the fact that the parties will invariably only wish to appoint an arbitrator who has had actual experience as arbitrator. How then will an aspiring arbitrator without any past experience hope to be appointed? This is a difficult problem which the Institute is currently studying, with the likely solution being to find ways and means to give new or novice arbitrators actual hands-on experience in a supervised environment. The Institute is also looking into small-claims arbitration and mediation schemes.

My Council and I hope that members will support the Institute and help the Institute and themselves face the challenges of arbitration in the next millennium. ▲

## Retired Judge Warren Khoo now heads Singapore International Arbitration Centre

Judge Warren Khoo retired on 14th August 1999 from the High Court and celebrated his birthday on the same day, after serving as High Court Judge for 8 years. Born in Penang, he first worked in Malaysia before joining the Legal Service in Singapore in 1970 as a State Counsel. In 1975, he became head of the civil division at the Attorney-General's Chambers. He also participated as a delegate of Singapore in the work of UNCITRAL and AALCC on international commercial arbitration, including the UNCITRAL Arbitration Rules and Model Law.

In 1982, he resigned to set up his own firm, Warren Khoo & Co. where he practised for 9 years until he was made a High Court Judge. Though he now retires, but he is not ready to call it a day yet as he has been appointed Chairman of the Singapore International Arbitration Centre.

The Institute extends its warmest congratulations to Warren Khoo on his appointment as Chairman of the SIAC.

LEGAL DEVELOPMENTS

# The End of Crouch

Locknie Hsu, Assoc. Prof., Faculty of Law
National University of Singapore

## Introduction

For fourteen years, the dicta in *Northern Regional Health Authority v Derek Crouch Construction Co Ltd & Anor*[1] limiting courts' powers to review decisions or determinations made by an architect under Joint Contracts Tribunal (JCT) form contracts was thought to determine the issue. In the light of the *Beaufort* case, this is clearly no longer the position.

### The Crouch Case

In *Crouch,* the health authority (the building owner) contracted with the main contractor for the latter to build a hospital. This contract was in standard JCT form and contained an arbitration clause. The arbitrator was entitled to "open up, review and revise any certificate, opinion, decision, requirement or notice" given by the building owner's architect. They could, also, through its architect, nominate specialist sub-contractors. The sub-contract form provided for arbitration of disputes between the main contractor, and that if the sub-contractor wished to arbitrate certain matters with the building owner, it would be entitled to do so in the name of the main contractor.

Disputes arose in relation to serious delays of the work. The main contractor issued a writ against the building owner for declarations as to entitlements to extensions and for reimbursement. The main contractor subsequently referred its dispute with the building owner to arbitration. Following that, the sub-contractor, using the main contractor's name, referred to arbitration its dispute with the building owner's architect regarding instructions and extensions of time. (The same arbitrator was appointed in both the arbitrations.) Finally, the building owner applied to the High Court for injunctions to stay both arbitrations, to avoid overlap with the investigations due under the suit filed by the main contractor in the first place. The official referee refused to grant the injunctions and the building owners appealed.

The Court of Appeal dismissed the appeal, stating that if there was an overlap in the issues between the suit and the arbitrations, the arbitrator could refuse to decide such issues. It also held that it would have been unjust to deprive the sub-contractor of its only direct remedy against the building owner in arbitration, since there was no privity of contract between them.

Having decided the appeal, the Court of Appeal went further and expressed its view in *dicta* that, where the contract contained a clause conferring power on an arbitrator to open up, review and revise the discretion exercised by the architect, the courts' powers were limited to determining and enforcing the parties' contractual rights. In other words, the courts would not, in such circumstances, have the same power to open up, review and revise, which was given by agreement only to the arbitrator. It is this very dicta which has come under scrutiny in the *Beaufort* case.

Since *Crouch,* a number of cases related to its dicta have arisen in the English courts. There was clearly unhappiness with the dicta, and in some cases, the courts chose to distinguish their situations from *Crouch.*[2] In most others, the case was accepted as authority, albeit with reluctance in some.[3] Criticisms of *Crouch* and the trail it left behind have also been made in writings.[4] It is therefore clear that the House of Lords' review of the case was timely and welcome.

### The Beaufort Case

In *Beaufort Developments (NJ) Ltd* v *Gilbert-Ash NJ Ltd & Aijor,*[5] the House of Lords unanimously held that that dicta was wrong and overruled it. The consensus was that the presence of a clause allowing an arbitrator to open up, review and revise *per se* specified documents or determinations did not necessarily mean that the courts were precluded from doing the same if the matter came before them. On the contrary, it was held that the courts have the same powers as the arbitrator does.

In Beaufort, the employer contracted by standard JCT form with the contractor to construct an office block. The two relevant clauses in the contract were article 5, which was an arbitration clause, and clause 41, which allowed the arbitrator to "open up, review and revise" certificates, opinions and other decisions of the employer's architects. A dispute having arisen, the contractor issued a writ. The employer later issued a separate writ against the contractor and the architects for negligence and breach of contract. The contractor applied for a stay of this action, which was granted by the master. On appeal, it was affirmed first by the High Court in Northern Ireland, and then by the Court of Appeal there. The House of Lords, however, allowed the appeal and removed the stay. It was of the view that doing so would not deprive the contractor of his rights of remedy contracted for, since the courts had no less power than the arbitrator to review the architects' decisions.

### Reasons for Overruling the Crouch Dicta

The House of Lords was unanimous in their disapproval of the *Crouch dicta*. The Law Lords were convinced that, but for *Crouch,* the lower courts in this case would have held differently and refused the stay.

Lloyd LJ held that, as interim certificates were not conclusive, it was within the court's power to open up and revise them, as part of the court's ordinary powers to enforce the contract according to its terms. Arbitrators' powers, unlike those of the court's, had to be expressly spelt out in longhand since under the old law, they could not decide on their own jurisdiction or rule on whether a contract could be rectified. In contrast, the courts could decide their own jurisdiction as well as rectify contracts. Therefore, he held that the express power conferred on an arbitrator to open and revise certificates did not curtail the court's power to do so.

Nolan LJ was of the view that the clause in question, allowing the arbitrator to open up and revise the architect's decisions, did not confer power on the arbitrator to modify the contract. He pointed out that, in any case, *Crouch* had been "virtually superseded" by section 9(4) of the Arbitration Act 1996, unless and until section 86 (which excludes domestic arbitrations from section 9) comes into effect.

For Hoffman LJ, the important question was whether the parties had intended the particular certificate to be conclusive and binding; such intention would require very clear words. Mere presence of a "second-tier" arrangement allowing an arbitrator to open up and review an architect's certificate did not, in his view, mean such a certificate was otherwise conclusive. Nor did the mere use of the word "conclusive"; there would have to be clear additional language to the effect that the certificate was intended to be conclusive in the sense that an expert's determination would be conclusive.[6] He held that the court in *Crouch* should have followed *Robins v Goddard,* to hold that where the certificate in question was not conclusive, the courts would be at liberty to open up and review it. He also approved of the case of *Gilbert-Ash (Northern) Ltd v Modern Engineering (Bristol) Ltd.*[7] In addition, he

# AGM PORTRAITS

NEW COUNCIL MEMBERS FOR THE YEAR 1999/ 2000

Back standing: C. Arul, G. Raman, Raymond Chan, Goh Phai Cheng, Wong Meng Ho, Lim Cheun Ren

Front Sitting : Leslie Chew, Y. C. Yang, Richard Tan, Hsu Locknie, Raymond Kuah










1 Richard Tan and Zana Pimental
2 Y. C. Yang and Raymond Chan
3 Phang Hsiao Chung, Philip Chan and Hsu Locknie
4 Ronald Boddy, Chris Petrie, Victoria Bui and Vareldzis Vassilios
5 David Howell, Victoria Bui and Raymond Kuah
6 Wong Meng Hoe, Aloysius Leng and Christopher Phelan
7 K. S. Raja, Jeffery Chan and G. Asokan
8 Ang Yong Tong and David Howell
9 Raymond Kuah, Phang Hsiao Chung and Loong Seng Onn

# Annual General Meeting 1999

The Institute held its Annual General Meeting for 1999 on 30 July at the Shangri-La HoteL The meeting was well attended by 40 members and their guests.

This year's keynote speech was delivered by Mr Phang Hsiao Chung, Director of the Singapore Mediation Centre. His speech was entitled, "Resolving Disputes by Mediation", and it was co-delivered by his colleague, Mr Loong Seng Onn.

Apart from the usual formalities of receipt of the minutes of the 1998 AGM, Annual Report and audited Statement of Accounts for the year ending 31March 1999, a new Council was also elected into office for the period 1999 - 2001.

This new Council comprises the following members:

President - Mr Richard Tan
Vice-President - Assoc Prof Locknie Hsu
Honorary Secretary - Mr Yang Yung Chong
Honorary Treasurer - Mr Raymond Kuah
Immediate Past President - Mr Leslie Chew
Council Members - Mr C Arul, Mr Raymond Chan, Mr Goh Phai Cheng SC, Mr Lim Chuen Ren, Mr G Raman and Mr Wong Meng Hoe

In his address, the new President, Mr Richard Tan, thanked the outgoing President, Mr Leslie Chew for his contributions. At the same time, Mr Tan outlined plans for the new Council to take the Institute into the new millennium. These included the introduction of arbitration to sectors not traditionally associated with it, such in intellectual property, information technology and commodities. The plans also include holding more activities for members, such as bi-monthly talks, and the possibility of providing training for members in the form of taking on small arbitrations. The President also stated his intention to increase membership and to have members more involved in the Institute's work through its various committees.

The evening also saw the presentation of certificates to those who had passed the 1998 Entry Course and 1999 Fellowship Course.










1 G. Raman and Simon Lee
2 G. Raman and Bobby Ho
3 Phang Hsiao Chung
4 Richard Tan and Peter Yap
5 David Chung, Johnny Tan and Lim Kheng Chye
6 Lee Tow Kiat
7 Karam Parmar
8 Goh Phai Cheng
9 Johnny Tan, Y.C. Yang, Wong Meng Hoe and Richard Tan

pointed out that in England, legislative chnages had been made, which have dealt with the matter.[8] Hope LJ held that where additional powers were conferred on the architect, engineer or arbitrator as an agreed machinery to give effect to the contract, the court's function was to give effect to the agreement of the parties as to the use of that machinery. This was distinct from the powers conferred contractually for the architect, engineer or arbitrator to take decisions or express opinions, which was not the function of the court. Taking of such decisions or expression of such opinions as part of the contract did not, however, affect the court's ordinary powers to determine parties' rights and obligations if litigation became necessary. Hence, while the court did not have, for instance, the additional power that arbitrator has to issue fresh certificates under the contract, it could, within its ordinary powers, grant remedies for breaches of contract.

*Implications*

What are some implications of the *Beaufort* decision? One implication is that, where a matter relating to an architect's certificate in respect of which an arbitration agreement exists comes before the court, the court would have as much power as the arbitrator does under the arbitration agreement open up and revise the matter, unless the parties have made it very clear that the certificate was meant to be conclusive evidence.

An indirect result is that the courts will no longer be reluctant to stay court proceedings for the reason mentioned in *Crouch,* i.e., that to do so would cause injustice to the parties as the courts lacked the powers conferred on the arbitrator. In the light of *Beaufort,* the court may be more inclined to decide to hear the matter before it, rather than to exercise its discretion in favour of arbitration. In England, however, as pointed out by Hoffman LJ in *Beaufort,* this discretion to stay proceedings in domestic arbitrations has in effect been removed by the mandatory stay provision in section 9(4) of the English Arbitration Act 1996 (until section 86 of that Act comes into effect).

*Singapore position*

The *Beaufort* decision puts English law beyond doubt on the point of the court's powers where clauses such as those in that and the *Crouch* case exist.

On a general examination of the question of powers of courts in Singapore, the Supreme Court of Judicature Act sets out generally the jurisdiction and powers of the High Court in section 18 and the First Schedule.[9] Additionally, the powers of the court in arbitration matters are set out in section 27 and the Second Schedule of Arbitration Act. There is therefore no specific legislative provision setting out the court's powers in cases where there is a clause such as those in *Crouch* or *Beaufort.*[11]

In *Central Provident Fund Board v Ho Bock Kee,*[12] which arose prior to *Crouch,* the Singapore Court of Appeal examined the question of the arbitrator's powers to open up and revise a notice under an arbitration agreement. That case did not raise the issue of the court's powers.

In *Ng Soh Construction Pte Ltd v Cycle & Carriage Ltd,*[13] the Singapore High Court endorsed and followed the view taken in *Crouch.* The decision related to two summons-in-chambers, and Asst Registrar Chua Lee Ming held that he found the "pragmatism" of the *Crouch* approach in assuming that the court had no power to open up or go behind the relevant certificate, "attractive". This was because the court could only enforce the parties' agreement, not substitute the machinery they had agreed on. Thus, if the certificate in question were conclusive according to the contract, it could be opened up only by, and to the extent the contract empowered, the arbitrator. Since, the certificate in *Ng Soh* was held to be conclusive, the conclusion there may not be inconsistent with the reasoning in *Beaufort.*

The Singapore courts are, of course, free to depart from *Beaufort.* Perhaps, besides the reasoning in *Beaufort,* one should also note some practical points which were considered in a case decided in the period between *Crouch* and *Beaufort,* namely, *Partington & Son v Tameside MBC.*[14] In that case, John Davies J. observed as follows:

"The implications of *Crouch* in the two "vexing" areas of application for summary judgment and stay of proceedings under s4 of the Arbitration Act, 1950, remain the subject of continual and often considerable debate. Hardly a week goes by without the need to consider whether the revision of the architect's certificates or opinions is or is not going to be a live issue in proceedings between the parties, whether they involve questions of pure law or construction and whether the hearing of claim and counterclaim should be split between the court and the arbitrator or wholly assigned to the latter. The difficulties are compounded by the fact that at the interlocutory stage of proceeding it is all too often impossible to predicate with any certainty whether and to what extent issues which might go to jurisdiction are really going to figure in disputes when they actually come to be heard. One is often left, I am afraid, with the uneasy feeling that whilst the observations in *Crouch* may have resulted in a shortening of the trial list, this may nevertheless be at the expense of denying one or other of the parties the just benefit of summary procedure where the general merits of the case, questions of jurisdiction apart, are often overwhelmingly in favour of that course. On applications for a stay, the frequently superior merits of the other party's claim to trial are peremptorily defeated by the plea to stay."

For domestic arbitrations under the Arbitration Act, the discretion to stay court proceedings remains as there is no equivalent of section 9(4) of the Arbitration Act 1996 in England. This discretion is seen in section 7 of the Arbitration Act,[15] which allows the court facing a stay application thereunder to decide, depending on whether it finds any "sufficient reason why the matter should not be referred in accordance with the arbitration agreement." Additionally, under section 7(1), the court would have such discretion to entertain a stay application only where it was made at the appropriate stage.[16]

Since the discretion remains in Singapore, unlike in England, this may raise the fear (as shown in *Partington)* that courts here may be more ready to grant a stay if they followed the *Crouch* dicta. However, the courts have shown that the preference under section 7 is to grant a stay, quite apart from the *Crouch* considerations.

The High Court's attitude toward an application for stay under section 7 is illustrated in *Woh Hup (Pte) Ltd & Anor v Turner (East Asia) Pte Ltd:*[17]

"The exercise of the jurisdiction to stay proceedings is discretionary, but if the court is satisfied that there is no sufficient reason why the matter should not be referred to arbitration in accordance with the agreement *the court will seldom refuse a stay."* (Emphasis added.)

This was confirmed in *Kwang Jn Tong Chinese Temple v Fong Choon Hung Construction Pte Ltd,*[18] where the High Court held:

"The application is made under s 7 of the Arbitration Act. This Act governs domestic arbitrations, and the conditions for ordering a stay of legal proceedings are quite different from those provided for in the International Arbitration Act. Section 7 of the Arbitration Act gives the court a discretion whether to order a stay, although once an applicant

has shown that a dispute falls within an arbitration clause, the *court tends to order a stay unless the party opposing the stay can show cause to the contrary.* See Heyman v Darwins Ltd [1942] AC *356* at p 388." (Emphasis added.)

In the case of international arbitrations, of course, the position is even clearer, since the International Arbitration Act requires the court to stay proceedings unless the arbitration agreement is shown to be "null and void, inoperative or incapable of being performed".[19]

In terms of drafting "open up and review" clauses by parties, it is now clear that, under English law, in view of *Beaufort,* very clear words are required in order to make any certificates or decisions of an architect (or other contractually-designated party) conclusive as to be outside judicial review.[20] It remains to be seen whether the Singapore courts will persist in following *Crouch,* or take the view in *Beaufort.* If the Singapore courts choose to follow *Beaufort,* they would look firstly at the question of whether the certificate was intended to be conclusive by the parties; if it was not, they would be able to exercise powers to open up and review it, similar to those given to an arbitrator by the particular contract. ▲

### Footnotes

1 [1984J 2 All ER 175, English Court of Appeal.

2 See *Rapid Building Group Ltd* v *Ealing Family Housing Association Ltd* (1984) 29 B.L.R. 5, Court of Appeal and *Atlantic Civil Proprietary Ltd* v *Water Administration Ministerial Corporation* (1997)13 Const. L. J. 184, Sup. Ct., NSW.

3 See *Oram Builders Ltd* v *MJ Pemberton & C. Pemberton* (1985) 2 Con. LR. *94, Reed* v *Van der Vorm* (1985) 5 Con.L.R. 111, *Balfour Beatty Civil Engineering Ltd* v *Docklands Light RIwy Ltd* (1996) 49 Con. L.R. 1, *Benstrete Construction Ltd* v *Angus Hill* (1987) 38 B.L.R.115, *John Barker Construction Ltd* v *London Portman Hotel Ltd* (1996) 50 Con. L.R. 43, and *Tarmac Construction Ltd* v *Esson Petroleum Co Ltd* (1997) 51 Con. L.R. 187. In *Partington & Son* v *Tameside MBC* (1985) 32 BLR 150, John Davies J. chose to look at the *Crouch* decision anew, and disagreed with it.

4 See Ian Duncan Wallace, Q.C., *Another Loose Cannon in the Court of Appeal: Not What the Parties Meant and the Shadow of Crouch* (1997) 13 Const. L.J. 3, and *Contemporary Developments in Construction Law: the HGCR Act J996, the Arbitration Act J996, and the Crouch Doctrine* (1998)14 Const. L. J. 164. See also, Sandi Murdoch and John Murdoch, *Crouch Down,* June 20, 1998 E.G. 168.

5 [1998] 2 All ER 778, House of Lords.

6 At pp. 784-5.

7 [1974] AC 689.

8 Section 43A of the Supreme Court Act 1981, inserted by section 100 of the Courts and Legal Services Act 1990; and section 9(4) of the Arbitration Act 1996.

9 Cap. 322, 1993 Reprint (as amended).

10 Cap. 10, 1985 Rev. Ed.

11 In the Singapore Institute of Architects' Articles and Conditions of Building Contract (Fifth Edition) (the SIA Form) for Measurement Contracts and Lump-Sum Contracts, the arbitration clause contains the following:
"37.(4) For the avoidance of doubt, in any case where for any reason the Courts and not an arbitrator are seised of a dispute between the parties, the Courts shall have the same powers as an arbitrator appointed under this Clause".
In view of this provision, it would appear that the *Crouch* argument would not have arisen under such a contract. For building contracts which do not contain an express clause like 37(4), the question remains open. The writer wishes to thank Mr Philip Chan for his helpful comments in this regard; any errors remain the responsibility of the writer.

12 [1981] 2 MLJ 162, Court of Appeal.

13 [1989]1 MLJ 1xviii. In a recent case, tlie Malaysian Supreme Court noted *Crouch* in passing in Pembenaan Leow Tuck Chui & Sons Sdn Bhd v Dr Leela's Medical Centre Sdn Bhd [1995] 2 MLJ 57. without any conclusive holding on its correctness.

14 (1985) 32 BLR 150.

15 Section 7 provides:
"(1) If any party to an arbitration agreement, or any person claiming through or under him, commences any legal proceedings against any other party to the arbitration agreement, or any person claiming through or under him, in respect of any matter agreed to be referred, any party to the legal proceedings may, at any time after appearance, and before delivering any pleadings or taking any other steps in the proceedings, apply to the court to stay the proceedings.
(2) The court or a judge thereof if satisfied that there is no sufficient reason why the matter should not be referred in accordance with the arbitration agreement. and that the applicant was, at the time when the proceedings were commenced, and still remains. ready and willing to do all things necessary to the proper conduct of the arbitration, may make an order staying the proceedings."

16 Section 7(1) requires an application for stay to be made any time after appearance, but before delivering any pleadings or taking any other steps in the court proceedings.

17 [1987] 1 MLJ 443.

18 [1997] 3 SLR 876. The cases on certificates and the right to set-off referred to by the House of Lords in *Beaufort* were also discussed in this case. This question was also discussed in *Aurum Building Services (Pte) Ltd v Greatearth Construction Pte Ltd* [1994] 3 SLR 330. See also *Lightweight Concrete Pte Ltd v JDC Corporation and Anor,* decision of Lai Siu Chiu J. in Suit No.146 of 1998 dated 23.5.98.

19 Section 6, Cap. 143A, 1995 Rev. Ed.

20 For general comments on a contractual clause providing for conclusive evidence in the form of a certificate, see *Sal Industrial Leasing Ltd* v *Hyatrolmech Autoniation Services Pte Ltd & Os* [1998J 1 SLR 702.

# In Memoriam

the late

## Justice Mootatamby Karthigesu
### Judge of Appeal
### Supreme Court of Singapore

The Singapore Institute of Arbitrators records with profound sadness the demise of the Honourable Justice M. Karthigesu, Judge of Appeal, on 21st July 1999 at the age of 75.

In 1952, Justice Karthigesu was called to the Singapore Bar. He later served as a Magistrate and as a District Judge before rejoining the Bar and practising for a period of about 26 years. In 1990, he was appointed as a Judicial Commissioner and later as High Court Judge. He was elevated to the Court of Appeal as a Judge of Appeal in 1993.

Justice Karthigesu was a Fellow and a Past President of The Singapore Institute of Arbitrators (1985 to 1987).

# NEWSFOCUS

Candidates who have passed the Written Examination for International Fellowship Course held in May 1999.

FELLOWS ( By Examination SFC May 1999 )

1. Mr. Ang Yong Tong
2. Mr. B. Rengarajoo
3. Mr. Chan Wah Teck Jeffrey
4. Mr. Chuah Chee Kian Christopher
5. Mr. Lee Tow Kiat
6. Mr. Lim Chen Thor Jason
7. Mr. Lok Vi Ming
8. Mr. Mohan R. Pillay
9. Mr. Muthu Arusu s/o Murugayair
10. Mr. Prakash Jaya
11. Mr. Prem Gurbani
12. Mr. Woo Bih Li, SC
13. Mr. Yang Ing Loong
14. Mr. Yang Lih Shyng
15. Mrs. Yeo Lai-Peng Jennifer
16. Mr. Yim Wing Kuen Jimmy, SC

Candidates who have passed the Written Examination for International Entry Course held in November 1998.

MEMBERS ( By Examination IEC November 1998 )

1. Mr. Amdad Lawrence Hussein
2. Mr. Ang Yong Tong
3. Mr. Baxter Graeme Richard
4. Mr. Campos Melville Brian
5. Mr. Chan Lim Yooi
6. Mr. Chan Wah Teck, Jeffrey
7. Mr. Chee Teck Kwong
8. Mr. Chew Siang Tong
9. Mr. Chia Cheok Sien
10. Mr. Chia Leonard
11. Dr. Gotze Bernd J.
12. Mr. Gurbani Prem
13. Ms. Ho Nyuk Tsien, Carrier
14. Mr. Karuppiah Sukumar
15. Dr. Kilgus Stefan
16. Ms. Kuah Boon Theng
17. Mr. Lek Soon Tow Bonaventure
18. Mr. Lim Lei Theng
19. Mr. Nadimuhu L. Kuppanchetti
20. Mr. Ng Sik Suan
21. Ms. Oei Ai Hoea, Anna
22. Mr. Phua Oei Heong, Leslie
23. Ms. Pimental Zana
24. Mr. Reeg Axel
25. Mr. Sathinathan s/o Karuppiah
26. Mr. Seow Eng Geh
27. Mr. Sivaganesh S.B.
28. Mr. Soh Anthony
29. Mr. Tan Boon Seng Benjamin
30. Ms. Tan Lay Pheng
31. Mrs. Tay Momo
32. Mr. Teo Keng Yu, Terence
33. Mr. Vann Nicholas John
34. Mr. Vareldzis Vassilios
35. Mr. Wai Chee Leong, Ronnie
36. Mr. Woo Bih Lih, SC
37. Mr. Yap Patrick
38. Mr. Yap Peter

ASSOCIATE MEMBERS ( 1998 / 1999 )

1. Dr. Rezai Jorabi Hosseein
2. Ms. Yu Vui Ping
3. Mr. Lin Chen Dong
4. Mr. Lee Yam Tong

**CONGRATULATIONS** to the Honourable the Chief Justice **Yong Pung How,** on being conferred the distinguished honour of the Order of Temasek on the occasion of this year's National Day in recognition of his immense and unsurpassed contributions to the administration of justice in Singapore.

**CONGRATULATIONS** to the Attoney-General, **Chan Sek Keong,** on being awarded the Distinguished Service Order on the occasion of this year's National Day for his outstanding public service to Singapore.

## FORTHCOMING EVENTS

**NOVEMBER 12 TO 14,1999**
INTERNATIONAL ENTRY COURSE

**JANUARY 14, 2000**
SIA-SIARB COURSE ON ARBITRATION

**FEBUARY** ( DATE TO BE ANNOUNCED )
LUNCHEON TALK ON ON-LINE ARBITRATION

**MARCH** ( DATE TO BE ANNOUNCED )
SIARB GOLF DAY

**APRIL 2000**
MID-YEAR RETREAT-COMMITTE MEETINGS

**JULY-AUGUST 2000**
INTERNATIONAL CONFERENCE - ARBITRATION 21
( VISION AND CHALLENGES )


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