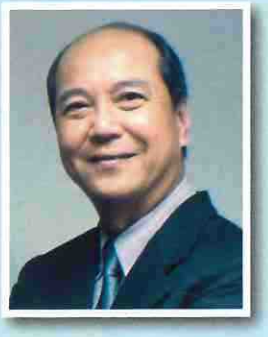
SINGAPORE INSTITUTE OF ARBITRATORS
NEWSLETTER
MICA (P) 228/08/2007 **APRIL** 2008 **ISSUE** NO. 2

CONTENTS

VIEWPOINT

THE PRESIDENT'S COLUMN

Continuing Professional Development (CPD) Framework



As a professional body, we seek to equip ourselves with professional competence on a continuing basis. It is a core value which the Institute upholds firmly and proudly. The need for life-long learning will continue to be reinforced and it is our belief that it should be accomplished in a systematic manner. In the face of a dynamic and knowledge-based environment, undertaking continuing professional development has certainly struck a chord with the Institute as with most of the other professional bodies.

The Institute has always been an organisation that champions the promotion of arbitration and the training and development of arbitrators in Singapore. As an extension of the on-going courses and seminars which the Institute organises, we have formed the Continuing Professional Development (CPD) Committee tasked to formulate a framework through which the continuing and sustainable professional development of our members can be faithfully pursued.

The CPD Committee is geared towards launching this framework by year 2009. The priority of the scheme is to devise a structure that encourages members to embrace a culture of continual learning and professional development.

Initially, the CPD scheme will only be compulsory for members on the Panel of Arbitrators and Fellows seeking to gain admission to the Panel. However, it is hoped that all members will voluntarily commit themselves to life-long learning to broaden their knowledge base and increase awareness of developments in the arbitration practice and the evolving market conditions in their specific specialist areas.

To allay any fears that the scheme may be onerous, accumulation of CPD hours should not and will not be an uphill task. For members based outside Singapore and who have difficulty participating in CPD activities in Singapore, participation in courses, conferences or seminars organised by other recognised institutions will also be accorded recognition.

Another feature that we seek to incorporate into the system is that the scheme will be on an honour and self-administration system. In other words, it will be self-certifying with members maintaining a record of their CPD activities. Systems will be set up to allow for random audits of CPD compliance to complement the self-administration system. This approach is adopted both in recognition of the integrity of our members as well as for practical administrative reasons.

Continued from page 1

An official announcement will be made some time in the middle year of this year to explain the features of the CPD scheme in preparation for its launch in January 2009. I hope that with the implementation, the Institute will be poised to enter yet another phase of growth in the light of its continuing enhancement of members' specialist capabilities.

Panel of Arbitrators

The current three-year term of the panelists admitted to the Institute's Panel of Arbitrators is due for renewal on 1 March 2009. The Secretariat will be in touch with the Panel Members on the renewal process in the light of the implementation of the CPD scheme in the future.

As an extension of the current Panel of Arbitrators, I am pleased to announce the formation of the Secondary Panel of Arbitrators. Coupled with the CPD scheme, this Secondary Panel will promote the development of a pool of new arbitrators that will sustain the future growth of the arbitration community. It is also envisaged that arbitrators for the Institute's Scheme Arbitration will be drawn from this Secondary Panel. Invitations are open to members who seek admission to either the main or secondary Panel of Arbitrators based on its admission criteria. Details of admission requirements are posted on the Institute's website, at *www.siarb.org.sg*

Finally, once again I would like to thank all of you for your ongoing support in driving the Institute's initiatives. Your commitment of support goes a long way towards the Institute's efforts in the development of arbitration in Singapore and the region through our partners in the Regional Arbitral Institutes Forum (RAIF).

Johnny Tan Cheng Hye
President

UPDATES & UPCOMING EVENTS

Speed, Performance and Seaworthiness Obligations in Time Charter Parties

This will be a seminar by Capt. Lee Fook Choon and Chan Leng Sun on **29 April 2008**.

Regional Arbitral Institutes Forum (RAIF)

The 2nd RAIF Conference is scheduled to take place later this year or early next year, and is be hosted by the Association of Arbitration Brunei Darussalam (AABD).

The objectives and activities of RAIF include fellowship and co-operation amongst arbitral institutes and arbitration practitioners in the region, including promoting best practices in arbitration and mutual co-operation in continuing professional development programmes.

Training Programme Proposal for Singapore Institute of Architects (SIA)

SIArb will be providing training for members of the the SIA's Panel of Arbitrators, with modular programmes for subjects such as Contract, Tort & Evidence and Arbitration Law & Practice.

Education Committee

The next Fellowship Assessment Course (FAC) is scheduled for **29 August** (Fri) and **30 August 2008** (Sat). The syllabus will be on a modular basis with A/Prof. Neale Gregson as the Course Director.

Annual Dinner

The SIArb Annual Dinner has been scheduled to be held on **22 October 2008**. Details will be announced in due course.

MERRILL LEGAL SOLUTIONS

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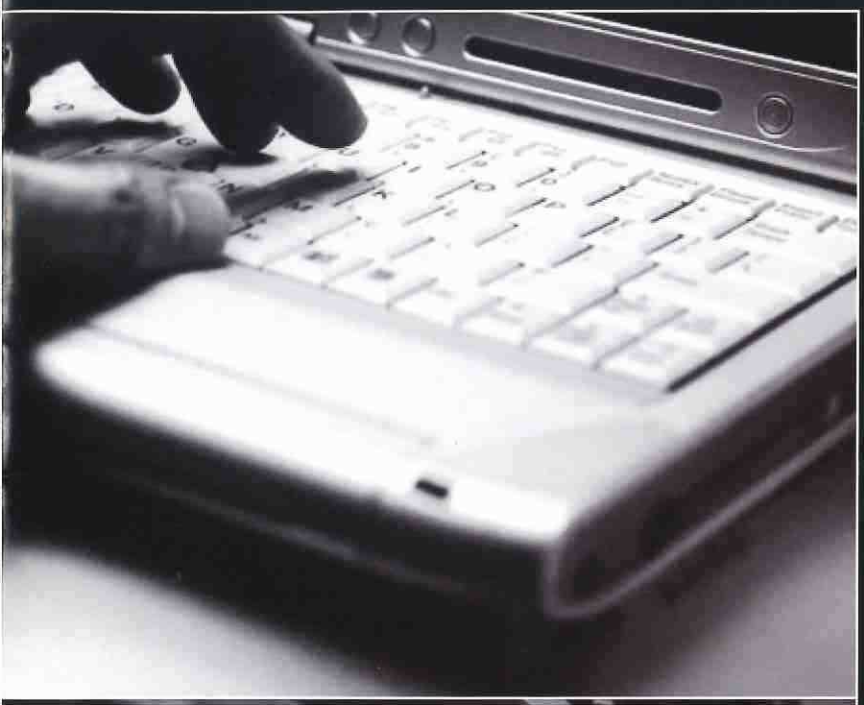

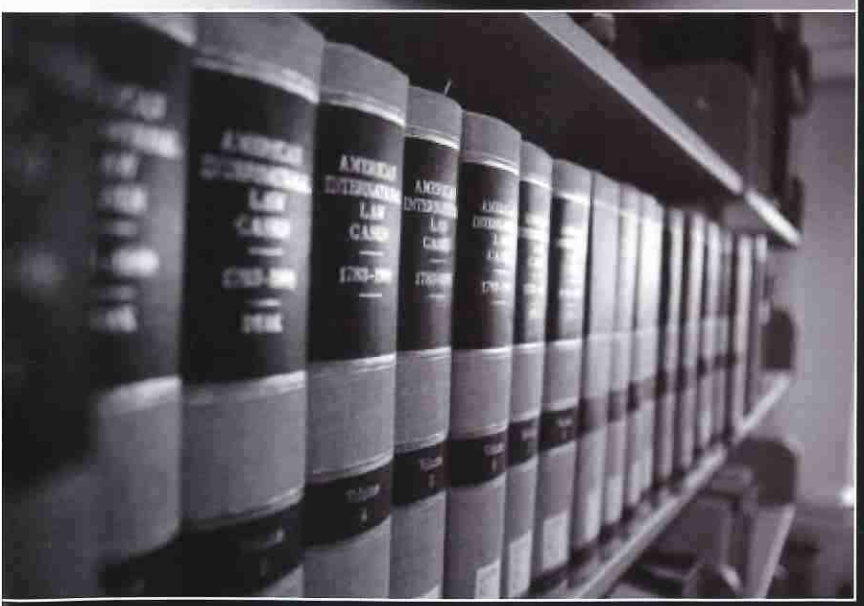

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CHALLENGES TO THE JURISDICTION OF ARBITRATORS IN SINGAPORE

BY GOVIND ASOKAN

I Introduction

1. In an arbitration, 2 or more persons submit a dispute to an arbitral tribunal for a binding decision (the arbitration award) instead of the Court[1].

2. Besides the many substantive issues that frequently arise in arbitrations, preliminary issues sometimes also arise. One of the preliminary issues that not uncommonly comes before tribunals, is whether the tribunal has jurisdiction to hear the matter.

3. The issue of jurisdiction can at times be a thorny one and deserves consideration.

II The basis for the Tribunal's jurisdiction

4. Without an agreement to arbitrate, there can be no valid arbitration. By the arbitration agreement, parties relinquish their right to resort to the Court.

5. Consequently, a tribunal may only validly determine disputes that the parties have agreed that it should determine[2]. The basis for the jurisdiction of an arbitral tribunal to hear a dispute derives from the consent of the parties themselves[3].

6. Such consent can be found in the arbitration clause itself or can be the result of a separate or collateral agreement that empowers the tribunal to hear the matter.

7. In the absence of such consent, an arbitral tribunal would have no jurisdiction to hear the dispute. The dispute would have to be resolved by the parties themselves or by a Court having jurisdiction to hear the matter.

III Jurisdiction of the Tribunal to rule on their own Jurisdiction.

8. Parties may therefore challenge an arbitral tribunal's jurisdiction principally on the basis that there was no consent or no agreement that allows the particular tribunal to exercise jurisdiction to hear the dispute.

9. An interesting question which arises is whether a tribunal therefore has jurisdiction to decide whether it has jurisdiction.

10. The doctrines of "separability of the arbitration clause" and "competence-competence" have evolved to allow tribunals to rule on their own jurisdiction[4].

11. The doctrine of separability of the arbitration clause basically allows an arbitration clause in an agreement to be treated as a self-contained contract, collateral or ancillary to the underlying contract[5]. The effect of this is that if the contract is terminated, for instance by breach, frustration or illegality, the arbitration clause remains valid and enforceable.

12. The doctrine of "competence-competence" has been described as a necessary corollary to the doctrine of separability. The doctrine obviates the necessity to refer issues of jurisdiction to the Court[6]. It relates to the ability of an arbitral tribunal to rule on its own jurisdiction and is essentially that an arbitrator has competence (jurisdiction) to determine whether he has jurisdiction to hear the substantive dispute[7].

13. The "competence-competence" doctrine therefore gives effect to the separability doctrine[8].

14. In Singapore, these doctrines are reflected in the International Arbitration Act (Cap 143A). Article 16(1) of the Model Law states:

    "Article 16. Competence of arbitral tribunal to rule on its jurisdiction

    (1) The arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. For that purpose, an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null and void shall not entail *ipso jure* the invalidity of the arbitration clause."

15. Therefore, under the International Arbitration Act (Cap 143A), an arbitral tribunal may rule on its own jurisdiction and in particular, may rule on any objections with respect to the existence or validity of the arbitration agreement itself.

16. These doctrines also find expression in the arbitration rules commonly used in Singapore.

IV Common Jurisdictional Issues

17. Since the basis of the arbitrator's jurisdiction derives from the agreement of parties, one common challenge to jurisdiction is that there is no arbitration agreement which is binding on the parties in the first place.

18. Parties have also challenged the Tribunal's jurisdiction on a number of other similar grounds. Some of the main challenges to jurisdiction include:

(a) One party claims that it did not sign the agreement containing the arbitration clause[9].

[1] Halsbury's Laws of Singapore, Arbitration, Building and Construction, Volume 2, page 3. [2] Newman and Hill, "The Leading Arbitrators' Guide to International Arbitration", 2004, Juris Publishing, page 83. [3] Ibid. [4] Halsbury's Laws of Singapore, Arbitration , Building and Construction, Volume 2, page 29. [5] Newman and Hill, "The Leading Arbitrators' Guide to International Arbitration", 2004, Juris Publishing, page 85. [6] Halsbury's Laws of Singapore, Arbitration , Building and Construction, Volume 2, page 30. [7] Ibid. [8] Ibid. [9] Newman and Hill, "The Leading Arbitrators' Guide to International Arbitration", 2004, Juris Publishing, page 84

Continued on page 5

Continued from page 4

This situation commonly arises when the contract is signed by one company and performed by another. The party intending to rely on the arbitration clause would not uncommonly rely on the doctrine of agency or assert an assignment of the rights under the contract.

(b) One party may also claim that the arbitration agreement has been varied or superseded by another enforceable agreement.

This situation may also arise where the agreement which contained the arbitration agreement had been superseded by another enforceable agreement that did not incorporate the arbitration agreement in the initial agreement.

(c) The arbitration agreement may also specify that the arbitrator must be a member of a certain institution or qualified in a particular manner.

There is no special qualification required of an arbitrator except that which parties agree[10]. Parties may however specify special qualifications in the arbitration agreement. For instance, parties may specify that that the arbitrator be a member of a particular profession or a member in a particular association. Where the agreement requires the arbitrator to possess certain special qualifications, the arbitrator must be qualified as such[11].

(d) One party may claim that the arbitration agreement is void as it was entered into under duress or that there was fraudulent inducement with respect to the signing of the contract containing the arbitration clause.

Allegations of duress do not commonly arise. However, to the extent that one party alleges that there are vitiating factors that avoid the contract, an arbitrator or Court, as the case may be, would have to determine whether these arguments are sufficiently made out on the facts.

(e) One party may claim that the agreement is not arbitrable under the substantive law which governs the dispute.

Not every dispute is arbitrable. Generally, issues which have a strong public interest element may not be arbitrable. Such issues include the winding up of companies, the bankruptcy of debtors and the validity and registration of trade marks[12].

Under the International Arbitration Act (Cap 143A), for a dispute to be arbitrable, it would have to be "commercial" in nature. Under the Model Law, the term "commercial" is generally given a wide interpretation so as to cover matters arising from all relationships of a commercial nature, whether contractual or not. Relationships of a commercial nature include, but are not limited to, the following transactions: any trade transaction for the supply or exchange of goods or services; distribution agreement; commercial representation or agency; factoring; leasing; construction of works; consulting; engineering; licensing; investment; financing; banking; insurance; exploitation agreement or concession; joint venture and other forms of industrial or business cooperation; carriage of goods or passengers by air, sea, rail or road.

(f) One party may also claim that the commencement of arbitration proceedings was made conditional upon certain condition precedents which had not been fulfilled.

Since the jurisdiction of the tribunal is derived by agreement, it is a question of construction as to whether a party a Tribunal may hear the dispute or whether it can only so after certain conditions precedent are met.

(g) In the event that Court proceedings have been initiated, one party may claim that there has been waiver of the arbitration clause and that accordingly, the tribunal concerned has no jurisdiction to hear the matter.

Not uncommonly, a party may, in breach of an arbitration agreement, start an action in Court. Usually, the other party would object to the Court's jurisdiction and apply for a stay of the Court proceedings on the basis that there is an arbitration agreement between the parties and that initiating proceedings in Court would amount to a breach of the arbitration agreement. However, at times, instead of objecting to the Court's jurisdiction, the other party may enter an appearance and defend the suit. The taking of such steps in the proceedings raises the issue as to whether there has been waiver on the part of the party which took such steps.

(h) The arbitration agreement refers to a different institution or the institution named in arbitration clause does not exist[13].

If a clause is too uncertain to be enforced, a party may justifiably challenge the arbitrator's jurisdiction on the basis that the arbitration agreement is void for lack of certainty. A Singapore Court will generally try to uphold an arbitration clause unless the uncertainty is such that it is too difficult to make sense of the clause.

19. In addition to the more common challenges to jurisdiction described above, it should be noted that the International Arbitration Act (Cap 143A) specifically allows a challenge on the following grounds:

a) Real likelihood of bias; and
b) Justifiable doubt as to his impartiality and independence.

V Conclusion

20. Hopefully, this short article provides a succinct overview of some of the most common challenges to jurisdiction. Ultimately, the common thread that runs through these various challenges is the "agreement of the parties". Therefore, the central question in a challenge to jurisdiction is often: *What did the parties agree?*

[10] Halsbury's Laws of Singapore, Arbitration, Building and Construction, Volume 2, page 53. [11] Ibid. [12] Halsbury's Laws of Singapore, Arbitration, Building and Construction, Volume 2, page 5.
[13] Newman and Hill, "The Leading Arbitrators' Guide to International Arbitration" page103

Handling Construction Accelera

16 Janu

Resolving Disputes Through Alternative Dispute Resolution

6 March 2008

Joint seminar by Singapore Institute Of Arbitrators, Singapore Manufacturers' Association and Singapore Mediation Centre

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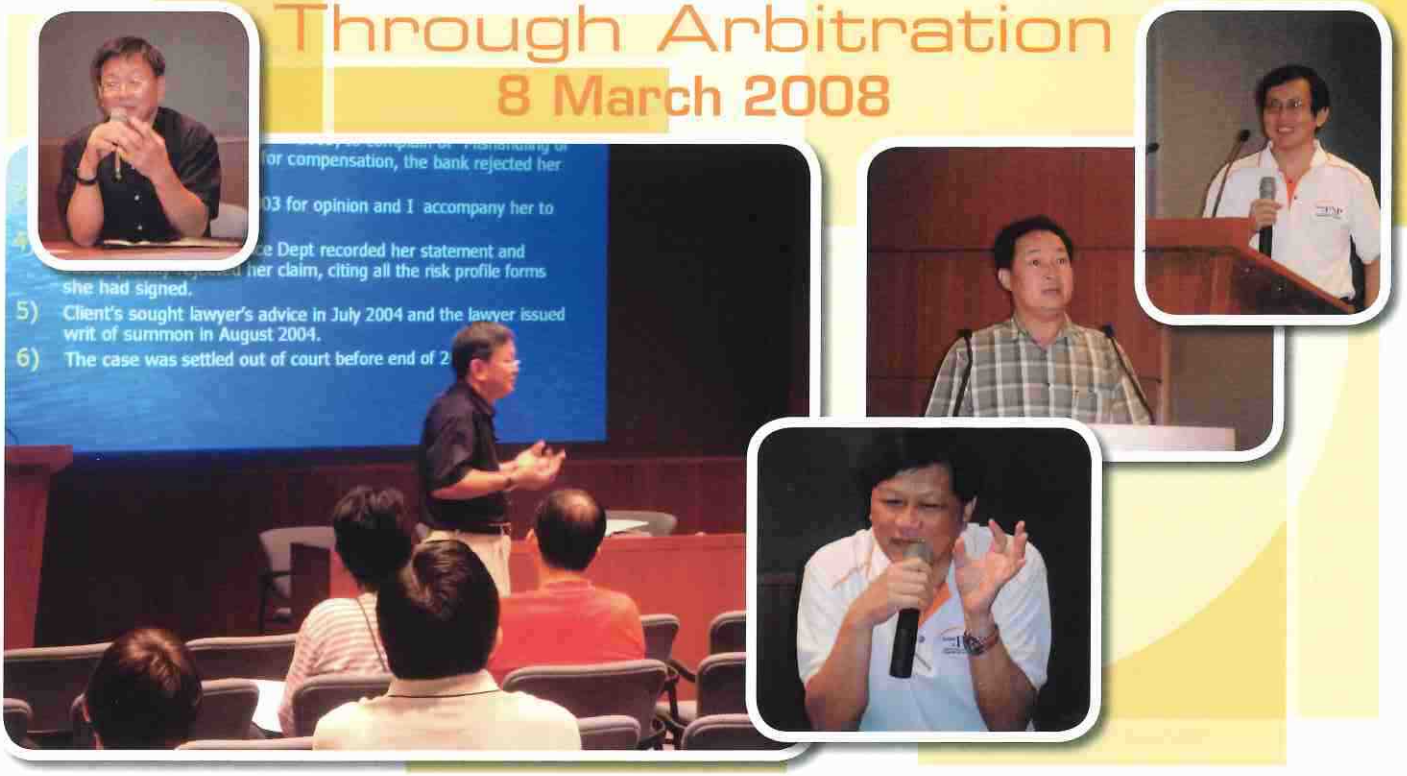
Settling Disputes in Financial Services and Medical Claims Through Arbitration
8 March 2008



LEGAL DEVELOPMENTS

BY PHILIP CHAN

Introduction

In this issue, we examine the case of **V V v V W [2008] SGHC 11**. It is, according to the learned judge the honourable Judith Prakash J., the first time in Singapore that any party to an international arbitration has tried to set aside an award on costs under the International Arbitration Act (Cap 143A, 2002 Rev Ed) (the Act).

The decision of this case is instructive to all the stakeholders in an arbitration. Whilst the parties are now made aware of their very limited rights in setting aside an award on costs, the lawyers are given a lesson on the interpretation of the extent in which public policy, natural justice and issues relating to jurisdiction are applied as grounds for setting aside an award on cost. Practising arbitrators are also treated to a lesson on how an arbitrator might be guided in awarding costs in an international arbitration. This is set out in the last section of this article and practising arbitrators are urged to read this section.

This case is one of a few cases to have invoked the right to remain anonymous as allowed by section 23 of the Act. Hence the case is cited as VV and Another v VW [2008] SGHC 11. I would like to observe that perhaps the name of the arbitrator concerned should also not be revealed in such cases for added security against an unwitting breach of the privilege of anonymity.

Brief facts

The High Court was invited to set aside an award made in an international arbitration governed by the Act. The plaintiffs were the claimants in the arbitration and the defendant was the respondent.

The award on costs awarded to the defendant a total sum of $2,805,498.52 as legal costs and expenses for the arbitration. The plaintiffs considered that award to be completely out of proportion to the amount of time spent in the arbitration proceedings, the issues that were submitted for the decision of the Arbitrator and the amount involved. The arbitration took approximately nine months from the appointment of the Arbitrator to the issue of the Main Award and the amount claimed by the plaintiffs in this limited arbitration was just under $1m. (see paragraphs 2 and 4 of the judgment).

The grounds relied upon by the defendant for setting aside the award were: (a) public policy; (b) lack of jurisdiction to make the cost award in respect of counterclaims made by the defendant; and (c) breach of natural justice. These grounds are summarized in paragraph 16 as follows:

> "16 The plaintiffs mount their attack on the Costs Award on the following main grounds:
>
> (a) The Costs Award is in conflict with the public policy of Singapore in that it awards the defendant a quantum of costs that is wholly disproportionate to the amount at stake in the arbitration *ie* it offends against the principle of proportionality.
>
> (b) The arbitrator had no jurisdiction to award costs to the defendant in respect of counterclaims made by the defendant over which the arbitrator in the Main Award had already declined to assert jurisdiction.
>
> (c) The arbitrator acted in breach of natural justice when he awarded costs on a scale based on an alleged international arbitration practice on which no evidence was given."

Before proceeding to consider the merits of the application, the learned judge gave a reminder to the parties (in paragraph 15) that the court does not exercise any appellate function and therefore an award cannot be overturned even if it is based on errors of law or fact.

The decision

The judgment states in no uncertain terms that "the Costs Award was a disproportionate one" (paragraph 38) for the reasons given in the judgment. In fact, the honourable judge also remarks (in paragraph 29) that if this case appeared before her as a review of taxation proceedings, it is likely she "would have opened it up to determine whether it was reasonable for one party to have to pay such a high quantum of costs".

However, the learned judge dismissed the setting-aside application for the following reasons:

- On the public policy ground: the plaintiffs have no basis to challenge the Costs Award on public policy grounds. This decision is not dependent on whether the principle of proportionality is a part

Continued on page 9

Continued from page 8

of Singapore procedural law or not or the content of that principle or the issue of whether the Costs Award offends the principle. (see paragraph 32)

- On the jurisdiction ground: the Arbitrator had jurisdiction over the whole of the claim and the whole of the defence. The fact that in the circumstances (due to the failure of the claim) it was not necessary for the Arbitrator to consider the merits of the set-off defences cannot deprive the Arbitrator of that jurisdiction which included the power to decide on how the costs of the arbitration should be borne. (see paragraph 45)

- On the natural justice ground: The Arbitrator had no evidence before him of the number of hours Senior Counsel for the defendant spent on the case. This cannot, however, help the plaintiffs' case. Any mistake made by the Arbitrator would be a mistake of fact and would have no impact on this application as it is not an appeal and the Costs Award cannot be set aside on that ground. What is relevant to the case is that as the Arbitrator had indicated his views to the parties there cannot be said to have been a breach of natural justice. (see paragraph 58)

The public policy ground

In respect of the public policy ground, the learned judge had introduced her analysis by stating that it was a difficult task to rely on this ground to set aside the award. She made reference to the Court of Appeal case of *PT Asuransi Jasa Indonesia (Persero) v Dexia Bank SA* [2007] 1 SLR 597 (the *Asuransi* case) where it could be said that the concept of public policy of the State under the Act encompasses a narrow scope. As captured in the paragraph 17 of the judgment, public policy should only operate in the following instances:

- where the upholding of an arbitral award would *shock the conscience*
- is *clearly injurious to the public good*
- *wholly offensive to the ordinary reasonable and fully informed member of the public*
- *where it violates the forum's most basic notion of morality and justice.*

There are other requirements imposed on those who wish to rely on the public policy ground, i.e.:

- assertions of breach of public policy cannot be vague and generalized
- a party seeking to challenge an award on this ground must identify the public policy which the award allegedly breaches and then must show which part of the award conflicts with that public policy.

The learned judge decided not to refer to case authorities on public policy from other legal jurisdiction on the ground that, where there is direct authority from our Court of Appeal as to the relevant tests, such authority must be followed and it would not be right for me to try and put a gloss on the principles expressed by the Court of Appeal by reference to the pronouncements of judges in other jurisdictions. (see paragraph 18)

The judgment does enquire and analyse as to whether there is a public policy or principle of proportionality in relation to costs in arbitration proceedings in Singapore.

Amongst other things, the Court noted that in Australia, the idea of proportionality in costs seems to be gaining ground (paragraph 24) and the current Civil Procedure Rules (CPR) in the United Kingdom introduced, amongst other things, specific rules to incorporate the concept of proportionality in the assessment of costs. Proportionality in that context in the UK has regard to all the circumstances of a case, including but not limited to the quantum of the claims. However, the procedural regime that still applies in Singapore is similar to that in England prior to the introduction of the CPR in England (paragraph 23).

The learned judge noted the following.

- None of the case authorities cited dealt directly with the concept of proportionality *in relation to arbitration costs* (see paragraph 25) even though the plaintiffs cited those relating to proportionality in relation to litigation and the judicial process (in paragraphs 21 to 24).

- Even though the SIAC Rules provide for capping of the costs of arbitration (which the plaintiffs cited as recognizing the principle of proportionality in arbitration), the legal fees incurred by the parties are not covered by the SIAC Rules and there is no provision for such fees to be capped or to be proportionate to the amount in dispute (see paragraph 25).

- *Guideline 9: Guideline for Arbitrators on Making Orders Relating to the Costs of the Arbitration* of *The Practice Guide* (the Arbitration Practice Guide) issued by the Chartered Institute of Arbitrators was not completely helpful to the plaintiffs as it appears to indicate that applying

Continued on page 10

Continued from page 9

the principle of proportionality is an *option* rather than a requirement in assessing the legal costs of a party to an arbitration (see paragraph 26).

- There is another passage in the same guide (s 1.6) which explains that there is no requirement that arbitrators must act judicially in the sense that they must follow the same principles that a court would in making costs orders (see paragraph 26).

The learned judge held at paragraph 31 that, **"it is not part of the public policy of Singapore to ensure that the costs incurred by parties to private litigation outside the court system *eg* arbitration whether the same is domestic or international, are assessed on the basis of any particular principle including the proportionality principle."**

However, the learned judge immediately gave a warning, **"That is not to say that arbitrators should not follow established legal principles when assessing costs payable by one party to another but simply that there are no public policy implications connected with that procedure."**

The learned judge then explained the reasons why there is no public interest involved in the legal costs of parties to one-off and private litigation. The following reasons were given.

- Such litigation (on legal costs to parties) sets no precedents and binds no one apart from the immediate parties.

- The concern that has been expressed by judges and others as to keeping the costs of litigation in proportion to the circumstances of the case has been a concern that related to court litigation and the general rubric of access to justice.

- From a policy perspective, this concern does not extend to private arbitrators despite personal misgivings at the quantum of any costs award in such litigation.

- She did not think that the amount of costs awarded by an arbitrator to a successful party in an arbitration proceeding could ever be considered to be injurious to the public good or shocking to the conscience no matter how unreasonable such an award may prove to be upon examination.

- The courts adhere to the policy of party autonomy embodied in the Act and reflected by the limited grounds on which they may interfere in the arbitral process.

- The prevailing public policy being that substantive arbitral awards are inviolable notwithstanding mistakes of fact or law, it would be odd for the courts to be able to justify interfering with the quantum of costs awarded by an arbitrator by invoking public policy.

The jurisdictional ground

As regards the issue of jurisdiction, the learned judge considered the plaintiffs' arguments that the abitrator had no jurisdiction over the costs of the counterclaims, since he had ruled he had no jurisdiction over them as independent claims in this arbitration and since he found it unnecessary to consider the counterclaims as defences of set-off after dismissing the plaintiffs' claim. In paragraph 45, the learned judge states: "Whilst, initially, the plaintiffs' arguments appeared attractive, I have concluded on further consideration that they should be rejected on the following grounds":

- Once the plaintiffs had submitted their claim to arbitration the defendant was entitled to raise all defences that it possessed to the same including any counter claims that could be set-off against any award made in the plaintiffs favour.

- The Arbitrator's jurisdiction to determine the plaintiffs claim obviously included a jurisdiction to hear and determine the defendants' defence and that would mean he also had jurisdiction to hear the set-off claims.

- The merit or lack of merit of the counterclaims insofar as they constituted set-offs and the issue whether it was reasonable for the defendant to raise all of them could only go towards influencing the nature and quantum of the costs order.

- The manner in which those points were determined could not in itself confer jurisdiction on the Arbitrator to make a costs order or deprive him of the jurisdiction he already had to make orders on how the costs of the arbitration should be apportioned.

Breach of natural justice

The learned judge rejected the applicants' submission that the Arbitrator's expression of and reliance on a matter of fact to fees charged by leading counsel in international commercial arbitrations without any evidence of those fees being provided, nor any opportunity given to the plaintiffs to test that evidence,

Continued on page 11

Continued from page 10

was in clear breach of the rules of natural justice. In so doing, the learned judge gave the following reasons.

- The requirement for the rules of natural justice to be observed does not mean that every conclusion that an arbitrator intends to make to be put before the parties. In the recent decision of *Soh Beng Tee & Co v Fairmount Development Pte Ltd* [2007] 3 SLR 86, the Court of Appeal observed that the rules of natural justice cannot be applied mechanically; (see paragraph 52)

- It is also pertinent to note that the assessment of costs is an exercise in estimating what reasonable fees are and it is not a determination of an issue of fact. Therefore, it is not something to which the rules of evidence apply so as to preclude the adjudicator from having regard to information that he has which has not been adduced in evidence by either party. (see paragraph 53)

- The taxing of costs done by judicial officers is based on their general knowledge and experience as well as on the precedents cited to them by counsel. The same approach is taken when the taxation of a bill of costs is reviewed by the judge in chambers. It has never been argued that a judge is not entitled to use his general knowledge and experience to influence his assessment of the reasonableness and appropriateness of the costs claimed. As a matter of principle, an arbitrator must be similarly entitled. (see paragraph 56)

The learned judge states (in paragraph 58) that she has some sympathy with the view that the arbitrator made a mistake in his assessment of costs (paragraph 58), but that this could not help the plaintiffs case as a mistake of fact in an arbitration was not subject to appeal.

Lessons for the practising arbitrator

However, the learned judge did slip in a few observations that practising arbitrators might want to note. It is interesting to note, as mentioned above, that the learned judge concluded at paragraph 38 that the Costs Award *was* a disproportionate one while in an earlier paragraph, she referred to the need for the courts to be able to curb excesses in very restricted and specific circumstances. The following are some of the observations made in the judgment in paragraph 30 to 35 (emphasis added):

- "From the authorities cited to me it is clear that in international arbitrations the entitlement of the successful party to costs and the way in which such costs should be assessed are hotly debated issues. For example, concerns have been expressed about the differing levels of costs incurred depending on which jurisdiction the counsel employed come from as rates, naturally, vary substantially from country to country. "

- "Essentially this means that the parties choose a person they trust to adjudicate their dispute fairly and must then stand or fall by that choice."

- "Where an institution administers an arbitration, it must scrupulously supervise and keep track of how an arbitrator performs. Reputable institutions do perform this function well."

- "...the proportionality principle is not limited to a relationship between the amount involved in the dispute and the amount of costs awarded. What is truly meant by this principle is that when legal costs have to be assessed, all circumstances of the legal proceedings concerned have to be looked into, not only the amount of the dispute though that is an important factor, especially when assessing whether the amount of work done was reasonable, but also everything else that occurred."

- "...the defendant in putting forward its full counterclaims, was in fact putting forward an exaggerated claim and, in my view, should have been allowed only the costs necessary to pursue its reasonable claim that was sufficient to meet the plaintiffs' claim. It was not necessary, in my view, for the defendant to pursue all ten counterclaims when a combination of two or three would have been more than sufficient to extinguish the quantum of the plaintiffs claim if the same had succeeded."

- **"I sometimes wonder whether or not in cases like this where the parties have no other recourse, not even the publication of an award or a discussion of how the arbitration was handled due to confidentiality, the courts should in very restricted and specific circumstances exercise a supervisory role to prevent or curb excesses. *That, however, is not something I can do under the present regime. Legislative intervention would be required to change it.*"**

ANNOUNCEMENTS

REMINDERS TO MEMBERS

1. Update of E-Mail Addresses

Members are reminded to provide the Secretariat with quick updates of their email addresses or any changes in their correspondence addresses by dropping them a line at siarb@siarb.org.sg or fax +65-6323 1477.

2. Payment of Membership Subscription Fees

Members are reminded to kindly make prompt payment of membership subscription fees when they become due and payable on 1st April of each Financial Year, so that your membership rights and privileges continue undisrupted and so as to avoid any administrative and re-entry charges. We appreciate your understanding in this regard.

• NEW MEMBERS •

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

Fellows

1. Chang Wei Mun
2. Collin Seah
3. Ghwee KS Keith
4. Jia Fei Jessica
5. Lim Pitt Kong
6. Matthew J Wills
7. Yap Fook Ken Kenny

Members

1. Adrienne L Beatrice
2. Arun Parmar
3. Chng Eng Hui
4. Hui Chiu Fung
5. John Frederick Rolfe
6. Lam Koy Soon
7. Prof. Chew Soon Beng

Associate Member

Khong Kwok Wai

MEETING ROOM FOR HIRE

Please DO consider the Institute if you are looking for a meeting venue. The Institute offers competitive members' rate of S$200 per day/ S$100 per half-day inclusive of two breakout rooms and free flow of refreshments. We welcome all enquiries. Please give us a call at 6323-1276 or email us at siarb@siarb.org.sg. You may also log-on to our website at www.siarb.org.sg for more details.

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