SINGAPORE INSTITUTE OF ARBITRATORS

NEWSLETTER

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CONTENTS

VIEWPOINT

THE PRESIDENT'S COLUMN

As the newly elected President of the Singapore Institute of Arbitrators, I am pleased to introduce the Council for the year 2007/2008:

Mr Johnny Tan Cheng Hye	President
Mr Mohan Pillay	Vice-President
Dr Philip Chan Chuen Fye	Honorary Secretary
Mr Govindarajalu Asokan	Honorary Treasurer
Mr Goh Phai Cheng, SC	Council Member
Mr Yang Yung Chong	Council Member
Mr Naresh Mahtani	Council Member
Mr Chan Leng Sun	Council Member
Dr Chris Vickery	Council Member

In addition, at its first Council Meeting on 27th August, the Council co-opted the following into the Council:

Mr Richard Tan	Council Member
Ms Meef Moh	Council Member
Mr Tan Siah Yong	Council Member

The Council and I look forward to serving you, the Members, and the Institute.

The Council intends to focus on three key tasks for this coming Council year:

- Modular Programme for Fellowship Assessment Course
- Introduction of Scheme Arbitration
- Developing a regional network for members through the Regional Arbitral Institutes Forum (RAIF)

Modular Programme for Fellowship Assessment Course

The Fellowship Assessment Course is currently a two-day weekend programme, which ends with an Award Writing Exam. Passing the Award Writing Exam qualifies the person to apply to be a Fellow of the Institute. In addition, the Singapore International Arbitration Centre requires that anyone seeking to be on its panel must be a Fellow of the Institute.

Feedback from the last Fellowship Assessment Course is that candidates, and in particular, non-lawyers, find it rather rigorous. The programme assumes that candidates already have a fundamental understanding of the arbitral procedures and rules.

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I hope to introduce a modular programme leading to the Fellowship Assessment Course to assist candidates to prepare for the Award Writing Exams. The programme will consist of the following modules:

- Contract, Tort and Evidence (aimed primarily at non-lawyers)
- Arbitration Law and Practice (aimed at both lawyers and non-lawyers with no arbitration background) and
- Award Writing

With the exception of the Award Writing module, which is compulsory for the Fellowship Assessment Course, the other modules are optional and designed to assist candidates in the Award Writing Exams.

With this, we hope to help candidates better prepare themselves to gain entry as Fellows of the Institute.

Scheme Arbitration

We are also in the process of introducing Scheme Arbitration to resolve disputes involving consumers and businesses. Discussions have been held with various industries to introduce Scheme Arbitration. The primary objective of Scheme Arbitration is to provide a cost-effective, quick and efficient service to resolve disputes arising in certain sectors of business. A sub-committee, chaired by Mr Richard Tan has been formed to drive the Scheme Arbitration.

A secondary objective is to provide Fellows of the Institute an opportunity to act as arbitrators and to enlarge the present pool of arbitrators. The modular programme for the Fellowship Assessment Course aims to ensure the quality of the arbitrators appointed to the Scheme Arbitration.

Finally, It will also provide an additional source of revenue for the Institute, to help meet rising operating costs and sustain the level of activities that the Institute can offer to its members.

Regional Arbitral Institutes Forum (RAIF)

In his speech at the opening of the recent Inaugural Regional Arbitral Institutes Conference in Singapore on 12 – 13 July 2007, the Guest-of-Honour, Judge of Appeal Justice VK Rajah encouraged members of the Institutes participating in the Regional Conference take the opportunity of the network formed through the Memorandum of Co-operation between the various institutes and the Conference to continue with fostering closer co-operation among institutes from the region.

I am happy to report that at the post-conference meeting, the representatives of Arbitration Association of Brunei Darussalam (AABD), Badan Arbitrase Nasional Indonesia (BANI), Institute of Arbitrators and Mediators Australia (IAMA), Hong Kong Institute of Arbitrators (HKIArb), Malaysian Institute of Arbitrators (MIArb) and the Singapore Institute of Arbitrators (SIArb) agreed to take up the suggestion and form a Regional Arbitral Institutes Forum (RAIF) comprising the five member institutes, with Singapore serving as the Secretariat initially. The Secretariat will be rotated among member institutes with the institute hosting the next Conference taking over the chair.

The mission and objective of RAIF are to provide a forum for educational and social exchange among members of the RAIF. An annual conference will be held with the host country rotated among its members. The 2008 Conference will be hosted by AABD.

The arbitral institutes also agreed to organise joint training programmes with preferential rates offered to all RAIF members. A website will be set up to provide information on coming events, arbitration updates, rules and statutes of each jurisdiction, code of ethics, and names of the Panel of Arbitrators of each RAIF member institute. I hope this will assist members with cross-border disputes to access information through the website.

We will keep members informed of the Conference and launch of the website.

Finally, I would like to invite more members to participate actively in the Institute's programmes by volunteering to serve on its many committees. The Institute aims to bring fresh blood into the Council. However, the Constitution requires that persons wishing to serve on the Council must have served as a member of a committee of the Institute for at least one term of the Council or represented the Institute in an official capacity on an outside body for at least one term of the Council.

Those wishing to serve on one of the committees should contact the Institute's Executive Director, Ms Evelyn Chang at 63231277 or email to *ed@siarb.org.sg*.

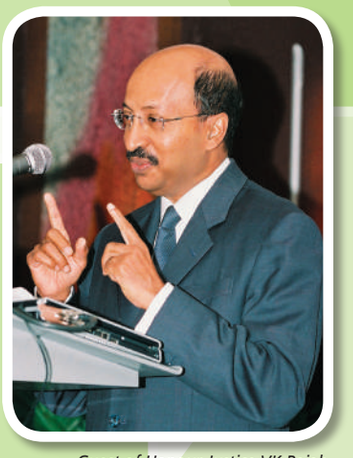
My team and I look forward to your support and collectively building rapport within the Institute as well as our associates in Singapore and abroad.

Johnny Tan Cheng Hye
President

Regional Arbitral Institutes Conference

12 & 13 July 07

Signing of MOU with Arbitration Association of Brunei



Guest of Honour Justice VK Rajah

Organizing Committee

Role of the Arbitral Institution in Fostering Development of Arbitration

Paper delivered by Raymond Chan at the session on "Towards an Effective Arbitration Culture: Regional Initiatives and Development" at the Regional Arbitration Conference organized by the Malaysian Institute of Arbitrators on 22 & 23 June 2007, Kuala Lumpur, Malaysia

I am quite sure that all arbitral institutions worldwide, including the Chartered Institute of Arbitrators and the American Association of Arbitrators, declare the promotion of arbitration or the fostering of the development of arbitration as an important part of their mission.

As for the Singapore Institute of Arbitrators, our mission statement states: *"the promotion of arbitration and the training and education of arbitrators in Singapore"*

In my view, Arbitral Institutes such as the Malaysian Institute of Arbitrators and the Singapore Institute of Arbitrators have a vital role to play in fostering the development of arbitration. Since arbitration is consensual and involves essentially the resolution of a dispute through private means as opposed to the courts, private organizations like our Institutes are more suited to fulfill the role of encouraging the development of arbitration than state agencies.

Although different Institutes face their own unique challenges, I would like to take this opportunity to share the approach which our Institute had taken in fulfillment of our mission statement to promote arbitration in Singapore.

Essentially, we adopted a two step approach:

a. Firstly, we decided to enhance the capabilities of arbitrators and to provide opportunities for the training for potential arbitrators.

b. Secondly, we decided to collaborate closely with specific trades, organizations and professions which we identified were already involved with arbitration.

A. Enhancing the Capabilities of Arbitrators

We took the view that enhancing the capabilities of our existing pool of arbitrators together with the provision of structured training and upgrading courses for potential arbitrators is a key component in fostering the development of arbitration, particularly in the long term. The enhancement of the arbitrators' capabilities and the upgrading of their skills and expertise will invariably result in an increase in the number of trained arbitrators. These trained arbitrators will in turn provide the foundation for the greater use and adoption of arbitration to resolve disputes in business and industry.

Our goal was to provide and make available training courses to train about 50 to 70 arbitrators annually up to a standard or level where they could qualify to join our Institute as Fellows. Once they attain Fellowship status, these arbitrators would have the requisite qualifications to be considered for admission to various Arbitral Panels such as the Singapore International Arbitration Centre's Regional Panel.

In the longer term, this pool of trained arbitrators will provide readily available arbitration expertise for international arbitrations held in Singapore and hence contribute to the development of arbitration.

The training and upgrading courses were conducted either by our Institute, or in collaboration with the National University of Singapore ("NUS") Law Faculty and the Chartered Institute of Arbitrators. An example of such a course is the NUS Graduate Certificate in International Arbitration Course ("GCIA Course") conducted by the Law Faculty with teaching support from our Institute. This course has been running for the last 3 years and has produced about 90 graduates to date.

As part of the said collaboration, our Institute signed a Memorandum of Understanding with the Faculty of Law, National University of Singapore and the Chartered Institute of Arbitrators in October 2004 to provide that the successful graduates of the NUS GCIA Course will be exempted from the relevant examinations for admission as Fellows of our Institute.

Another such course in which the Institute agreed to provide recognition of its graduates for admission as Fellows is the Joint Kings College -National University of Singapore Masters of Science in Construction Law and Arbitration Programme.

On our own, we conduct an annual Fellowship Training Course to enable existing members to upgrade to Fellowship level. This course is also open to non members. In the last course that was conducted in April this year, we attracted 41 participants.

Together with the Chartered Institute of Arbitrators, we also successfully conducted the Diploma in International Commercial Arbitration Course in December 2004. The successful candidates in this Course were eligible to join our Institute as Fellows.

Further, in collaboration with the Chartered Institute of Arbitrators, we conduct the Fast Track Fellowship Assessment Course annually and have done so since 2001 to enable members and other professionals to qualify as Fellows of both our Institutes.

B. Collaboration with specific trade groups, organizations and professions

The second approach we adopted was to focus our efforts on specific trades, professions and industries which we identified were already involved in arbitration.

We then customized our courses in accordance with their own specific needs. These professions and trade groups included

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the Real Estate Developers Association of Singapore, the Singapore Shipping Association, the Singapore Accountancy Academy and the Institution of Engineers Singapore, to name a few.

For members of trade groups and professions that were less exposed to arbitration, we conducted introductory courses explaining the basic concepts of arbitration, the conduct of the proceedings and emphasized the advantages of arbitration over court proceedings.

For some groups that were more experienced in arbitration, we provided specially tailored training courses for their members. For instance in the case of the Singapore Institute of Architects, we conducted an Arbitrator's Surgery Workshop Course which is an advance course for practicing arbitrators on common issues facing arbitrators during the course of the proceedings.

Through our courses we were able to introduce the basic concepts of arbitration to over 200 participants over a two year period from 2004 to 2006.

Participants from these trade groups, professions and industries that attended our courses and were interested in learning more about arbitration were encouraged to attend our International Entry Course. This International Entry Course which we run jointly with the Chartered Institute of Arbitrators is conducted annually. The successful candidates of this course qualify to join our Institute as Members.

Another trade group that we recently collaborated with is the Singapore Manufacturers Association ("the SMA") which has more than 5,000 members. In March this year we signed a Memorandum of Co-operation with the SMA to jointly promote arbitration to the SMA members. Under this Memorandum, we agreed to develop a country listing of arbitrators for use by their members in the countries where they have business dealings.

C. Other Approaches and Strategies

I shall now mention about the other approaches and strategies which we adopted apart from the two mentioned above in fostering the development of arbitration.

(i) Scheme Arbitrations.

We plan to introduce Scheme Arbitrations before the end of this year. The Scheme Arbitrations will be similar in concept to the scheme arbitrations now currently in place in the United Kingdom. Under this Scheme we will administer domestic arbitrations involving the consumer and specific industries such as the travel and retail furniture industries. We believe that such small scale arbitrations will promote the use of arbitration among consumers and introduce and make arbitration available to the public in this way.

(ii) International Arbitration Journal

Another idea which we shared with the SIAC to promote arbitration was to raise the profile of arbitration in Singapore. We intended to do this by producing an international arbitration journal on arbitration of high academic standards. This publication would also provide an avenue for arbitrators, and persons interested in arbitration to share their views and have their articles published for an international readership. As such, our Institute together with the Singapore International Arbitration Centre ("SIAC") and in co operation with Kluwer Law International launched the Asian International Arbitration Journal in 2005. This Journal is published twice yearly.

(iii) Hosting of International Arbitration Conferences

Another way in which we felt that arbitration could be promoted was for our Institute to host International Arbitration Conferences in Singapore either on our own or jointly with other Institutes. Such international conferences would generate public interest in arbitration through coverage of the event by the local media. Further, such international conferences would also provide an opportunity for our local arbitrators to network with their foreign counterparts and enable them to publicize their expertise as arbitrators.

Accordingly, in December 2004, we made a joint bid with the SIAC and the Maritime Lawyers Association of Singapore in London to host the XVI Conference of the International Congress of Maritime Arbitrators (ICMA) 2006/2007 in Singapore. We were successful in our efforts and the XVI ICMA Conference took place in Singapore in February 2007. This ICMA Conference attracted more than 180 participants worldwide and was a great success.

Our Institute hosted another international conference, namely the Inaugural Conference of Arbitral Institutes, with representatives from the regional arbitral institutes on 12 and 13 of July this year.

Conclusion:

If the increase in our membership is a reflection of the results of our efforts in fostering the development of arbitration in Singapore, then I am pleased to say that our efforts have indeed yielded results. In July 2004 our total membership was 420 members. By May 2007 our membership had increased by more than fifty percent to 630 members.

Raymond Chan
Immediate Past President
Singapore Institute of Arbitrators

Annual General Meeting

2 Aug 2007

Guest Speaker, District Judge, Leslie Chew

SIAC New Rules Seminar

31 July 2007

Panellists: Prof. Lawrence Boo, Deputy Chairman, SIAC; Michael Hwang SC; Raymond Chan and Richard Tan.

International Entry Course 2007

18, 19 & 25 Aug 2007

Instructors & Students

Fellowship Assessment Course 2007

30 March to 1 April 2007

Course Director, Michael Hwang SC

Legal developments affecting Arbitration

- By Dr Philip Chan Chuen Fye

Introduction

In this issue, two cases are examined, both of which were governed by the Arbitration Act (Cap 10, 2002 Rev Ed) ("AA").

The first case involves the dental industry, where there was a dispute between a retiring partner and the remaining partners. This case touches on the importance of pleadings and evidence in an arbitration, as well as the test imposed by the AA to determine whether leave should be given for an appeal to the Court of Appeal against a decision of the High Court on an appeal against the arbitrator's award.

The second case involves a dispute between the employer and the contractor in construction industry. This case is useful to the stakeholders of arbitration as well as the users of the SIA Form of building contract.

Ng Chin Siau and others v How Kim Chuan [2007] SGHC 31 [2007] 2 SLR 789 [Judith Prakash J]

This case report comprises two parts. The first part is the decision of the High Court in respect of an appeal against the decision of the arbitrator. The second part of the judgment sets out the decision of the same judge who is hearing an application for leave to appeal to the Court of Appeal against her decision found in the first part. The learned Judge gave leave to appeal to the remaining partners against the retiring partner on one point of law.

Appeal against the arbitrator's award

In the first part of the judgment, two important points touch on the significance of pleadings and the use of evidence in an arbitration. The learned judge had emphasized that in arbitration, it is an essential rule that an arbitrator must decide the case as set out in the pleadings, where the arbitration rules so provide. [See paragraph 26, set out below] In this case the applicable rules were the SIAC Domestic Arbitration Rules. The learned judge accepted the cases of *Multi-Pak Singapore Pte Ltd v Intraco Ltd* [1992] 2 SLR 793 and *Yap Chwee Kim v American Home Assurance Co* [2001] 2 SLR 421cited in paragraph 18 of the judgment) as authorities for the same principles applicable to the courts and applied them to the present case concerning an arbitration.

- "26 …in an arbitration governed by rules of procedure that provided for each party to set out its case in a statement of case in the same way as parties to litigation set out their cases in their pleadings, the arbitrator would be bound to decide the case in accordance with the parties' pleadings. He would not be entitled to go beyond the pleadings and decide on points on which the parties had not given evidence and had not made submissions. If an arbitrator considers that the parties have not framed their cases correctly and that certain points need to be addressed then he must indicate his concerns to the parties and allow them to make such amendments to their pleadings and to adduce such additional evidence as may be necessary to deal with those concerns. He is not entitled to make a decision on points that have not been addressed by the parties. The necessity of abiding by this rule is important in litigation but it is essential in arbitration proceedings where the right of appeal is severely restricted."

  On the second point, practising arbitrators should take heed of what the learned judge said in paragraph 29, the relevant extract being set out below, about not using evidence which the parties have not adduced for the purpose of deciding the substantive issues but for an ancillary evidential purpose (for instance as evidence of the conduct of one of the parties).

- "29 …The arbitrator was wrong in law to rely on an expert report that had not been adduced by the claimant or by the respondent for the purpose of deciding the substantive issues before him but had only been produced in the proceedings for the purpose of cross-examination when the partners sought to show that Mr How had shopped around for valuers who would compute a value that was to his liking."

Leave to appeal to the Court of Appeal

The relevant section in the AA is section 49(11). In the judgement, the learned judge had identified three phrases in section 49(11) that require the court's interpretation in order to establish the necessary test to determine whether the matter put before the court is worthy of a grant of leave to appeal. The three phrases are (a) "question of law"; (b) "of general importance"; and (c) "special reason".

- "…Section 49(11) The Court may give leave to appeal against the decision of the Court in subsection (10) only if the question of law before it is one of general importance, or one which for some other special reason should be considered by the Court of Appeal." (See paragraph 32 of the judgment)

"question of law"

- "…the Court of Appeal's observation in *Northern Elevator Manufacturing Sdn Bhd* v *United Engineers (Singapore) Pte Ltd [2004]* 2 SLR 494 that a question of law is a finding of law that the parties dispute and that requires the guidance of the court to resolve." (In paragraph 32 of the judgment)

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"of general importance"

- "…a good definition of a "question of law… of general importance" was given by Lai Kew Chai J in *Anthony s/o Savarimiuthu* v *Soh Chuan Tin [1989]* SLR 607 where he stated that the question should be one of general principle upon which further argument and a decision of a higher tribunal would be to public advantage…." (In paragraph 32 of the judgment)

"special reason"

- "…"special reason" may not have been intended to include errors of law. As this point was not argued in full before me, I express no concluded opinion. For the purpose of this application I am content to assume that it would be a special reason justifying leave to appeal if the question of law which is to be brought before the Court of Appeal is a question on which the judge's decision has been obviously wrong. I think that the formulation "obviously wrong" imposes a higher burden on the prospective appellant than the formulation "prima facie error of law" does, though perhaps others might consider the difference a fine one." (See paragraph 34 of the judgment)

It would be most interesting to lawyers involved in arbitration to note the policy behind section 49 as expressed by the learned judge in paragraph 34 and set out below.

- "34 The policy behind the enactment of s49 of the Act is that curial intervention in the arbitral process is to be minimised. That is why there is no appeal as of right against the arbitrator's decision or against the decision of the High Court on such an appeal. That is also why the first pre-condition specified in s49(11) is that the legal point at issue should be of general importance rather than something that is only relevant to the parties or a very limited situation. Thus, in relation to the second pre-condition it would negate the purpose of such restriction if one were to give a wide reading to the words "special reason". If any error of law on the part of the court hearing the appeal from the arbitrator were allowed to found an appeal to the Court of Appeal, then such appeals would practically be as of right. Whilst it may not seem right for the legal system to allow mistakes of law to stand uncorrected, in view of the policy considerations underlying the present legislation it is my judgment that in relation to errors of law, if at all they are to found a basis for appeal, only the correction of egregious errors of law should qualify as "special reason" to allow leave to appeal. This analysis is I think supported by the legal principles that apply to the grant of leave to appeal against the arbitrator's decision itself. These are set out in s49(5) of the Act which provides inter alia that based on the findings of fact in the award it must be shown that the decision of the arbitral tribunal was obviously wrong or the question is one of general public importance and the decision of the tribunal is open to serious doubt. The threshold for leave to appeal to the Court of Appeal cannot be lower than that. On the other hand, I am cognisant that the legislature did not in s49(11) see fit to specify that an error of law of any kind would provide ground for appeal to the Court of Appeal as it could so easily have done in the same way as it did in the preceding s49(5) …"

Anwar Siraj and another v Teo Hee Lai Building Construction Pte Ltd [2007] SGHC 29 [2007] 2 SLR 500 [Andrew Ang J]

The value of this case report comes from the seven points on which the learned judge made findings, four of which concerns the interpretation of the arbitration clause 37 of the Articles and Conditions of Building Contract in the Singapore Institute of Architects Lump Sum Contract (6th Ed, August 1999) (hereinafter referred to as the "SIA Contract") and the remaining three points concerns the interpretation of the AA. (See paragraph 4 of the judgment).

The case before the learned judge was an appeal from a decision of the assistant registrar ordering that the action brought by the plaintiffs in Suit No 348 of 2006 be stayed and referred to arbitration and that the plaintiffs pay the defendant costs in the sum of $2,500. (see paragraph 1 of the judgment).

Interpretation of clause 37

The clauses interpreted in this case were sub-clauses (1), (7) and (11) of the SIA Contract. There are two points related to the interpretation of clause 37(1). First, the learned judge held (at paragraph 18) that a dispute over an interim certificate issued pursuant to clause 31(4) which is effectively a correction certificate falls squarely within clause 37(1). Second, as the court would have jurisdiction only when a plaintiff's claim is indisputable even in the presence of an arbitration clause, a finding by the learned judge that prima facie there is a bona fide dispute would mean that a stay of proceedings would generally be granted. (See paragraphs 33, 36, 37, 40 and 42).

The next clause examined by the court was clause 37(7). It was held by the learned judge (at paragraph 44) that the said clause does not create an option by the parties to choose between litigation and arbitration as a dispute resolution method. Indeed, such an interpretation would run counter to clause 37(1) which is essentially and arbitration clause requiring the parties to refer any dispute to arbitration.

- "44 In my view, cl 37(7) cannot be read as allowing a party the option of suing in court or referring a dispute to arbitration. It merely states what power the arbitrator or the courts (if they are seised of the dispute) have. Contrast the language in cl 37(7) with that in cl 37(11) where it is clearly stated that none of the provisions of cl 37 shall be construed so as to limit or prevent either party from requesting the courts to exercise their discretion to refuse a stay of proceedings in the circumstances therein described. To read cl 37(7) in the manner suggested by the plaintiffs would be to disregard cl 37(1) without clear sanction."

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The court had also to consider the interpretation of clause 37(11). It was held by the learned judge that the said clause does not assure the party seeking to bring the dispute to court would succeed as the court is still required to exercise its discretion on whether to grant such an application by the party concerned.

- "52 Clause 37(11) merely gives liberty to the parties to apply to the court to exercise its discretion to refuse a stay. In the present case, I see no reason to exercise my discretion to set aside the assistant registrar's order staying proceedings in favour of arbitration. If the court were to allow the arbitration agreement to be bypassed each time this happens, cl 37(1) will be as good as "writ on water".

Interpretation of the AA

The court in this case also had to give meaning to three concepts in the AA, namely, the concept of *functus officio* status of an arbitrator, a fraud allegation against a party and the ready and willing status of the claimant to pursue arbitration.

Functus officio status of an arbitrator

The learned judge was required to make two decisions. First, he held that an arbitrator is *functus officio* "when the arbitrator gives notice to the parties that the award is ready for collection". It does not matter that parties do not want to collect the award and therefore have no knowledge of the contents of the award.

- "45 In law, once the arbitrator has published his award, the arbitration proceedings are concluded. An award is made and published when the arbitrator gives notice to the parties that the award is ready for collection and not when they have notice of the actual contents of the award: *Hong Huat Development Co (Pte) Ltd v Hiap Hong & Co Pte Ltd* [2000] 2 SLR 609. Thereafter the arbitrator is *functus officio*. As the plaintiffs pointed out, the arbitrator stated as much in his letter of 28 April 2006 to the parties."

Second, in the present case, the arbitrator might have the status of *functus officio* in respect of the interim certificates that he had already dealt with, but he did not have that status in respect of the correction certificate issue pursuant to clause 37(4). It was observed by the learned judge that this "later" dispute might be even be presided by a new arbitrator.

- "46 ...However, whilst I would agree with the plaintiffs that the arbitrator for the earlier disputes is *functus officio*, it does not follow that the present dispute between the parties should bypass arbitration altogether. The agreed procedure in cl 37(1) for referring the dispute to arbitration should be followed with regard to this dispute. As the learned assistant registrar quite rightly pointed out, a new arbitrator can be appointed and fresh arbitration proceedings commenced."

A fraud allegation against a party

The point on fraud was quickly dealt with by the learned judge by deciding that the existing dispute is governed by the new Arbitration Act which does not provide that the dispute be dealt with by the courts if the dispute is tainted with fraud on the part of one of the parties.

- "47 ...any arbitration proceedings commenced in regard to Interim Certificate No 13 (being proceedings commenced after 1 March 2002) would be governed by the Arbitration Act (Cap 10, 2002 Rev Ed) ("the new Act") rather than its predecessor in the 1985 Rev Ed ("the old Act"): see s 65(1) of the new Act."

- "48 ...The power previously given to the court to order that the arbitration agreement shall cease to have effect, where there are allegations of fraud against one of the parties to the agreement, has been omitted from the new Act so that there is no limitation on the arbitrator deciding an issue of fraud. Accordingly, there is no longer any justification for a court to refuse a stay of proceedings brought in breach of an arbitration agreement even if an allegation of fraud was raised by the party applying for the stay. The plaintiffs' attempt to invoke s12(2) of the old Act is therefore misconceived."

The ready and willing status of the claimant to pursue arbitration

In applications for stay under the AA, it is imperative that the defendant/claimant must be ready and willing to pursue arbitration, otherwise, the court may order that the parties remain in court instead of referring the matter to arbitration. In this case, the court held that it was satisfied that the defendant/claimant was willing and able to go to arbitration.

- "54 That the defendant was willing to go to arbitration can be seen in its solicitor's letter dated 13 June 2006 wherein they conveyed the defendant's view that the dispute had to be resolved by arbitration."

- "55 I am satisfied that the defendant was willing and able to go to arbitration."

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Announcements

Invitation to Members to Join Sub-committees

Members wishing to serve on one of the committees should contact the Institute's Executive Director, Ms Evelyn Chang at 63231277 or email to ed@siarb.org.sg.

- Education/Conference
- Publications
- Activities
- Law Review
- ADR
- Construction Arbitration Group
- Maritime Arbitration Group
- IP/IT Arbitration Group
- Insurance Arbitration Group

• NEW MEMBERS •

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

Fellos

1 Devaraj Sanmuganathan
2 Chew Yee Teck Eric
3 Khong Heng Kow Arthur
4 Dr Bernhard F. Meyer-Hauser
5 Koh Chee Meng Kelvin (transfer)
6 Oh Beng Teck Danny (transfer)
7 Lee Chang Cheong Edward (transfer)
8 Hee Way Chang Harold (transfer)
9 Rajan Menon (transfer)
10 Sng Yeow Keng Andy (transfer)
11 Goh Siong Pheck Francis
12 Chooi Yue Wai Kenny (transfer)
13 William Leung
14 Audrey Pere
15 Lim Teong Jin George
16 Wong Meng Yun
17 Tan Beng Leong
18 Tan Kay Kheng
19 Liong Chiew Woei
20 Tan Tee Jim SC
21 Goh Kok Kee Alfred
22 Eugenie Lip (transfer)
23 Sharma Sundareswara
24 Poh Kiong Kok Paul (transfer)
25 John NLC Fernando

Members

1 Prakash Rasaily
2 Lui Yen Chow
3 Rodolphe Gautier
4 Ng Ming Fai

• UPCOMING EVENTS •

1. "Dealing with misbehaving arbitrators and dealing with misbehaving parties" by David Hacking on **11 October 2007**
2. Latest developments in ICC Arbitration by Pierre Tercier, Jason Fry, Anne Marie Whitesell and Chan Leng Sun on **16 October 2007**
3. Fast Track to Fellowship Programme by Neil Kaplan QC (Course Director) on **19, 20** and **21 October 2007**

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