SINGAPORE INSTITUTE OF ARBITRATORS

NEWSLETTER

MICA(P)166/09/2009 APRIL 2010 ISSUE NO. 1

THE PRESIDENT'S COLUMN

As the Institute progresses into 2010, there have been some changes at the Secretariat. Some of you may already know that our Executive Director, Ms Evelyn Chang has left the Institute with effect from 31 January 2010. I would like to on record my thanks to Ms Chang who had been with the Institute for 3 years. I would also like to welcome to the Institute Ms Shevonne Ang and Ms Pauline Wong who have taken over the corporate services and marketing functions of the Institute respectively.

Membership Renewal

By now, you would have received notices of renewal of membership for 2010. Presently our membership stands at 785 members. This is an increase of 72 members from a year ago when our membership stood at 713 members. This represents a membership growth of about 10%. Unfortunately, I regret that there are presently 90 non-current members who have not paid their subscription fees for 2009. Were it not for these 90 non-current members, our membership would today stand at 875 members – a significant growth of 22%!

I believe that most of these non-current members had forgotten to update the secretariat of their change of addresses. Renewal notices and reminders sent to their addresses in our database were returned. I would therefore urge members to update the secretariat of any changes to their contact details. Updated contact details would enable us to keep you updated of the Institute's activities as well as saving staff and administrative costs of sending out reminders. On our part we would do everything possible before terminating the membership of non-current members.

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ANOUNCEMENTS UPDATES & UPCOMING EVENTS

1. The 4th Regional Arbitral Institutes Forum (RAIF) Conference on "Framework for Regional Cooperation in Arbitration" by the Malaysian Institute of Arbitrators on **8 May 2010**.
2. Seminar on "Counsel's Professional Ethics in the Presentation of Evidence" by Mr. Tan Chuan Thye on **18 May 2010**.

NEW MEMBERS

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

Fellows

1. Capt. Sumit Rawla
2. Michael John Fesler
3. Appa Durai Shunmugam
4. Ajinderpal Singh
5. Mustafa Motiwala
6. Olga Turcinovic Makevic
7. Lynette Chew
8. Assoc. Prof. Andrew White

Members

1. Dwight Gwee
2. Lim See Bee
3. David Lewis
4. Ramesh Selvaraj
5. Low Chee Yeen
6. Praveen Kezhukutte
7. Dr Liew Kian Heng
8. Heng Heok Keen, Perry
9. Alfred Yoong
10. Phillip Loots

Associate Members

1. Raymond Tom Fernandez
2. Marisha Maya Miranty
3. Dr Foo Check Teck
4. Capt. G Harinarayanan

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Members Benefits

On a more positive note, I am happy to announce that the Institute has recently secured some membership privileges with some organisations for the benefit of our members.

On 2 February 2010, the Institute concluded an agreement with the Malaysian Institute of Arbitrators that Associates and Members of each institute to be recognised for automatic admission (subject to payment of requisite fees) as Associates and Members of the respective institutes.

On 2 March 2010, SIArb inked a Memorandum of Understanding (MOU) with the Society of Construction Law, Singapore (SCL). Under this MOU, the Parties agree to promote the other's events via their website, newsletters or email updates. Members of SIArb and SCL will enjoy preferential rates for the seminars, conferences and events organised by the respective organisations.

On 5 March 2010, the Institute and SIAC formalised an arrangement for closer collaboration for events organised by the two organisations. This concluded with SIAC extending a 20% discount on all SIAC organised conferences and seminars to SIArb members.

RAIF Conference

The 4thRAIF (Regional Arbitral Institute Forum) Conference, hosted by the Malaysian Institute of Arbitrators, has been scheduled to be held on 7 and 8 May in Kuala Lumpur, Malaysia this year. The theme of this year's conference is "Framework for Regional Cooperation in Arbitration". Members will recall that the Inaugural RAIF Conference was held in Singapore in 2007. This is the fourth of such conferences with previous conferences being hosted in Brunei (2008) and Hong Kong (2009).

The 4th RAIF Conference will also witness the launch of the RAIF website which will act as the gateway portal to all member institutes websites. This will benefit members of SIArb. Firstly, it will provide a convenient entry portal to the websites of all RAIF member institutes with resource links to relevant websites of the members' countries. Secondly, it will also provide an access from members from the regional arbitral institutes access to our membership listings.

Website Revamp

The last time the website was revamped was in 2006. The website now appears dated and static. To leverage on this regional links and exposure that RAIF offers, the Institute has appointed JustIT, a web designer/vendor to revamp our website. JustIT will work under the direction of the Website Committee chaired by Anil Changorath. Anil has assured me that the revamp will be completed mid April and will be formally launched at our Members' Night scheduled for the 3rd week of May.

Conclusion

2010 is going to be an exciting year for the Institute. I am confident that with the strong support from the council and members, the Institute will be able to face the challenges ahead.

To all members of the Institute, I thank you for your continued support and look forward to serving you better.

Johnny Tan Cheng Hye PBM
President

Forensic accountants - assisting the arbitration process

by tony levitt, rgl forensics*

In any arbitration process, the arbitrator must address not only liability issues but also the financial impact suffered by a party. To accomplish that, parties will have at their disposal, an accountant with experience in investigating and evaluating claims for damages.

Lawyers acting for parties may not be aware of the services that an experienced forensic accountant can offer. Such specialists can be valuable in helping to evaluating the damages claimable at the early stages of the arbitration. The services include consultation on disclosure of documents and records, particularly electronic documents, and in reviewing the damages claimed.

The skills and experiences of forensic accountants differ significantly from those who primarily do conventional auditing and tax work. They are, or should be, comfortable in adversarial environments; creative in dealing with incomplete and/or disorganised records; and energetic in searching for alternative approaches. Most of all, they must be comfortable and familiar with the broad range of computer systems, business records and record-keeping practices beyond those used to satisfy financial reporting requirements. In other words, they must be investigators as well as accountants.

Lawyers acting for parties may not be aware of the services that an experienced forensic accountant can offer. Such specialists can be valuable in helping to evaluating the damages claimable at the early stages of the arbitration. The services include consultation on disclosure of documents and records, particularly electronic documents, and in reviewing the damages claimed.

Production of records

Apart from knowing the records that are normally prepared by a company, forensic accountants will also know the records, returns and other documents which are available from all other sources and organisations. They will request for the disclosure of documents and records and management information used, as well as those created purely for accounting recording purposes.

The amount of electronically stored information in the form of financial information, documents or emailthat is held within any company can be vast. Thus, finding relevant information within this data is a constant battle for any investigator, litigator or forensic accountant. A forensic technologist working with a forensic accountant is able to bring the skills, knowledge and equipment to capture and help to make sense of what can sometimes amount to millions of files. Through automatic processes, the text and other information, known as 'metadata', of each file is extracted and added to a huge index. The index can then be easily interrogated with a list of search terms to uncover relevant documents. Other tools allow a contextual or even conceptual view of the entire document set which allow a very quick method of selecting large swathes of potentially relevant material for further review.

Besides satisfying the obvious objective of obtaining records, a well-drawn request for specific documents communicates to the other side an understanding of the documents' significance to the damages claimable and can help set the stage for discussions to achieve a reasonable settlement.

By way of example, in a case by a petrochemical company against an equipment manufacturer, the amount of damages turned on the length of time that the plaintiff's boilers were unavailable. Forensic accountants working with the manufacturer's lawyer obtained a publication from a trade association of the industry-wide boiler downtime. The plaintiff was listed amongst those contributing statistics to the trade association. The records they submitted were therefore known to exist and could now be specifically requested.

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Review of damages claimed

A forensic accountant can conduct an accounting review to evaluate the damages and prepare a claim, attack a claim or develop a counterclaim. During the accounting review, the forensic accountant will become aware of the claim's strengths and weaknesses, and the impact on quantum.

If there are serious deficiencies in the claim, the accountant will assist the lawyer with developing an alternative approach in making his claims. However, the lawyer may prefer merely to attack the claim and not incur the expense of an alternative claim calculation based on the existing claim methodology.

The use of forensic accountants in arbitration can be of assistance to the arbitrator, particularly in relation to evaluating the quantum of damages. The effective use of accountants can serve to clarify the amounts claimed.

As an example, a plaintiff submitted a claim for S$1.5m for lost profits due to the alleged wrongdoing of the defendant. Whilst the claim was professionally prepared by a large and reputable firm of accountants, examination of the claim identified flaws in the assumptions used. Through a regression analysis prepared by the forensic accountant, sales were projected based on historical data. In this manner, a claim for lost profit of S$250,000 was developed. These calculations provided a basis for settlement between the parties.

Attending meetings of experts

Once a claim has been reviewed and the forensic accountant has produced a report for disclosure, it may be appropriate to have a meeting of experts to narrow the issues between them. This meeting can provide a valuable basis for eliminating unnecessary areas of argument and will provide an opportunity for the accounting experts to discuss their points of view. Such meetings would normally be on a "without prejudice" basis and the areas of discussion between the experts may be set out by instructing lawyers. The forensic accountant should be aware that there are strict limits beyond which he has no authority to discuss matters with the opposing expert.

Cross examination support

Accountants should be able to document any deficiencies, errors or duplications discovered in the damage claim. To the extent that this is not already included in the accounting expert's report, this information can be used by counsel during cross-examination. In addition, the forensic accountant will usually attend the hearing to listen to the evidence given by the opposing expert and to assist the parties with questions developed from the responses given by the opposing experts.

Conclusion

The use of forensic accountants in arbitration can be of assistance to the arbitrator, particularly in relation to evaluating the quantum of damages. The effective use of accountants can serve to clarify the amounts claimed. It should also be possible for the accountants to narrow the quantum issues in dispute, so as to leave only the differences in opinion between the parties for the arbitrator to determine.

***Tony Levitt** is the senior partner at RGL Forensics in London. He is a forensic accountant and acts as an expert witness and sits as an arbitrator.

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Bahrain launches new arbitral institution; introduces mandatory arbitration

Bahrain has launched a new arbitration centre, the Bahrain Chamber for Dispute Resolution (**BCDR**), which will significantly change the way in which certain disputes are dealt with in Bahrain. The BCDR is an initiative between the Bahrain Ministry of Justice and the American Arbitration Association (**AAA**). The BCDR aims to provide a modern, effective ADR service that results in the final and binding resolution of commercial disputes, and will offer and provide both arbitration and mediation services.

The most interesting change arising from the introduction of the BCDR is that, in certain circumstances, a new legislative regime (in the form of a Decree which establishes the BCDR and sets out the circumstances in which the BCDR has, or can assume, jurisdiction over a dispute) introduces mandatory arbitration so that disputes that would previously have come within the jurisdiction of the courts of Bahrain *must* now be referred to BCDR arbitration. The main features of the new BCDR are set out below.

All Statutory Arbitrations must be heard by a Bahraini judge (in the case of a sole arbitrator tribunal) or by at least two Bahraini judges (in the case of a three-person tribunal). No such restrictions apply in relation to all other arbitrations under the BCDR Rules.

BCDR jurisdiction

Disputes will be heard by the BCDR in the following circumstances:

1. **Statutory Arbitration: Jurisdiction by law**
   - The BCDR will have automatic and mandatory jurisdiction over any claim exceeding BD500,000 (approximately USD1.3m) which:
     - would have come within the jurisdiction of the courts of Bahrain; and
     - involves either an international (i.e. non-Bahraini) party in a commercial dispute or a party licensed by the Central Bank of Bahrain.
   - A dispute is commercial if its subject matter is of a commercial nature, including, among other things, any transaction for the supply of goods or services, engineering works, construction of factories (it is not clear how widely this will be interpreted), distribution agreements, investment and financing, insurance or consultation services, joint ventures and any other forms of industrial or commercial cooperation.

2. **Non-statutory Arbitration: Jurisdiction by parties' agreement**
   - As with most other arbitral institutions, the BCDR will also have jurisdiction if the parties have agreed in writing to refer any dispute for resolution by arbitration or mediation under the BCDR Rules.

Rights of audience for international lawyers Importantly, the Decree permits non-Bahraini lawyers to appear before any BCDR tribunal. However, any non-Bahraini lawyers must be accompanied by a Bahraini lawyer in any Statutory Arbitration. This is a significant development in the history of Bahrain's legal system, in that it grants foreign lawyers rights of audience to appear on behalf of their clients in arbitrations seated in Bahrain.

Additional Features

- The BCDR Rules very closely follow those of the International Centre for Dispute Resolution (**ICDR**), the international division of the AAA.
- All Statutory Arbitrations must be heard by a Bahraini judge (in the case of a sole arbitrator tribunal) or by at least two Bahraini judges (in the case of a three-person tribunal). No such restrictions apply in relation to all other arbitrations under the BCDR Rules.
- For all BCDR arbitrations, the parties may agree upon the applicable law relevant to the subject matter of the dispute. In the absence of such agreement:
- in Statutory Arbitrations, Bahraini law will apply;
- in all other arbitrations, the tribunal shall determine the applicable law on the basis that it should be the law "*most applicable*" to the subject matter of the dispute.
- An award issued by the tribunal in Statutory Arbitrations will be a "*final judgment issued by the courts of Bahrain*". It will be interesting to see whether awards issued in Statutory Arbitrations will be regarded in other jurisdictions as arbitral awards or as Bahraini court judgments for the purposes

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of enforcement. The BCDR's intention is that its awards will be enforceable globally pursuant to the terms of the New York Convention.

- The BCDR provides a mechanism for an emergency arbitrator to rule on urgent applications prior to the constitution of the tribunal, although it of course remains open to the parties to apply to competent courts for interim relief.

Limited grounds for setting aside awards

Parties may apply to set aside an award issued by a BCDR tribunal before the Bahrain Cassation Court in only a limited number of circumstances, which are set out in the Decree. It is unclear how these provisions will tie in with Bahrain's existing arbitration law, which is based on the UNCITRAL Model Law and sets out its own list of grounds.

The grounds on which parties can apply to the Cassation Court for an order setting aside a BCDR award appear to differ depending on whether the arbitration is statutory or consensual. However, in all cases, challenges can be made on the basis that:

- the award is contrary to public order/policy in Bahrain; and/or
- the party applying to set aside the award:
- was not properly notified of the arbitration or of the appointment of some or all of the tribunal; and/or
- was not given an opportunity to present a defence.

Significantly, in relation to Non-statutory Arbitrations, parties are not entitled to apply to set aside an arbitral award in the Bahraini courts if the parties have agreed in writing:

- to choose a foreign law for the dispute; and
- that they are not entitled to apply to Bahrain's courts to set aside the award; and
- that any such application must be made to the competent courts in another jurisdiction.

Parties can, therefore, choose to exclude the Bahraini courts from having the right to review or set aside an award in Non-statutory Arbitrations.

Conclusion

The BCDR is a further addition to the Middle East's growing list of arbitral institutions and is the second to be established with the assistance of a globally recognised arbitral institution (the first being the DIFC-LCIA in the Dubai International Financial Centre in Dubai).

While the BCDR will expect its services to be used by companies transacting throughout the region, its initial objective will be to enable parties to resolve their disputes in Bahrain in an efficient and timely manner before a neutral tribunal and provide them with an award that should be readily enforced. Due to its mandatory application for Statutory Arbitrations, the BCDR will have an opportunity in the near future to demonstrate how effectively its procedures will work in practice.

While the BCDR will expect its services to be used by companies transacting throughout the region, its initial objective will be to enable parties to resolve their disputes in Bahrain in an efficient and timely manner before a neutral tribunal and provide them with an award that should be readily enforced.

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Adam Vause

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Recent Case Developments
by philip chan

In this issue, three cases will be examined. All three were before the High Court. The first case, Transocean, appears at first sight to be a common application for a stay of court proceedings under International Arbitration Act ("**IAA**"). However, it involved two contracts which are connected with each other whereby one contract contains an arbitration clause while the other has a non-exclusive jurisdiction clause. The matter before the court arose from a dispute from the contract having the non-exclusive jurisdiction clause in an application for a stay wherein the defendant was relying on the arbitration clause of the other contract. It was decided based on the interpretation of the wording of the non-exclusive jurisdiction clause.

In Sui Southern Gas, the case concerns an application to set aside an arbitral award on three grounds but the case proceeded on only two of the grounds. The first ground alleges that the dispute or issues raised in the arbitration were not contemplated or alternatively, not falling within the terms of the submission to arbitration and/or contained decision on matters or issues beyond the scope of the submission to arbitration which is in breach of art 34(2)(a)(iii), Sch 1 of the IAA. The second ground for setting aside was based on the allegation that the Award was in conflict with the public policy which is in breach of 34(2)(b)(ii), Sch 1of IAA. Once again this case highlights the difficulties faced by a party who wishes to set aside an award under the IAA. An interesting point in this case was the attempt to introduce legal principles used by the US courts which did not find favour with our local court.

The third case should interest the practising arbitrators. The matters before the court arose from the consolidated Originating Summonses from the parties. The case, inter alia, concerned the presiding arbitrator applying to the court to extend time for the making of the award after the time to do so had expired. As the applicable law is the 1985 edition of the Arbitration Act, the focus in this examination of the case is on points made by the court about how the arbitrator had conducted the arbitration.

Transocean Offshore International Ventures Ltd v Burgundy Global Exploration Corp [2010] SGHC 31 [Andrew Ang]

The matter before the court was an appeal against the assistant registrar's decision to grant a stay to the defendant in favour of arbitration in Singapore pursuant to Section 6 of the International Arbitration Act (Cap.143A 2002 Rev. Ed.).

In the present case, there was a Drilling Contract and an Escrow Agreement which was entered into to provide for payment into an identified account. What is significant for the purposes of this appeal is that the Drilling Contract and the Escrow Agreement have different dispute resolution clauses.

In the Drilling Contract, there was an arbitration clause and in the Escrow Agreement, there was a non-exclusive jurisdiction clause. These clauses are set out below.

The dispute resolution clause under the Escrow Agreement

Clause 6.2(a) of the Escrow Agreement confers non-exclusive jurisdiction in favour of the Singapore Courts. It reads as follows:

Each of the Parties *irrevocably submits to and accepts generally and unconditionally the non-exclusive jurisdiction of the courts and appellate courts of Singapore* with respect to *any legal action or proceedings* which may be brought at any time *relating in any way to this Agreement*. [emphasis added]

Clause 6.2(b) further provides:

Each of the Parties *irrevocably waives any objection* it may now or in the future have to the venue of any action or proceedings, and any claim it may now or in the future have that the action or proceeding has been brought in an inconvenient forum. [emphasis added]

The dispute resolution clause under the Drilling Contract

The Drilling Contract provides for arbitration in the event of disputes between the parties. In so far as it is material to this appeal, Art 25 (as amended) reads:

25.1 **Arbitration**

The following Dispute Resolution provision ***shall apply to this Contract***.

(a)Any dispute, controversy or claim arising out of or in relation to or in connection ***with this Contract***, including without limitation any dispute as to the construction, validity, interpretation, enforceability, performance, expiry, termination or breach of ***this Contract*** whether based on contract, tort or equity, shall be exclusively and finally settled by arbitration in accordance with this Article XXV. Any Party may submit such a dispute, controversy or claim to arbitration by notice to the other Party.

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The issue before the court was identified as whether the action ought to be brought before a court or an arbitration tribunal, *both of which are in Singapore*. The dispute was hence over the mode of dispute resolution, rather than jurisdiction. This required the court to interpret the dispute resolution provision of the two contracts.

Held, granting the appeal and ordering the order to stay to be dismissed: :

(1) The Court found that the parties had intentionally carved out the Escrow Agreement from the Drilling Contract. Hence this evinced a clear intention of the parties to submit the disputes that arose out of each contract to the separate dispute resolution clause contained therein: [21]

(2) The Court also found that there was no specific incorporation clause in the Escrow Agreement which incorporated Article 25 of the Drilling Contract. Andrew Ang J cited the judgment of Choo Han Teck JC in *L & M Concrete Specialists Pte Ltd v United Eng Contractors Pte Ltd* [2000] 2 SLR(R) 852 and held that arbitration clauses like exemption clauses, must be expressly brought to the attention of the other contracting party: [21]

(3) The court also found that Article 25.1, as properly construed, did not extend to the claim in question. From the wording of the arbitration clause, it was clear that Article 25.1 was principally concerned with claims and disputes arising out of or in relation to the Drilling Contract, even though it also extended to those "in connection with" the Drilling Contract. Further, particular reliance was placed on the introductory sentence of "*The following Dispute Resolution provision shall apply to this Contract*". Andrew Ang J opined that this should not be seen as mere verbiage: [22]

(4) Reliance was also placed on clause 6.2 of the Escrow Agreement which provided that: "*with respect to any legal action or proceedings which may be brought at any time relating in any way to this Agreement*". The court observed that as it is a trite canon of construction that the general should give way to the specific, the court overrode held that given the specificity of clause 6.2 of the Escrow Agreement, it must necessarily override Article 25.1 of the Drilling Contract: [25]

(5) Andrew Ang J was also of the view that where different but related agreements contained overlapping and inconsistent dispute resolution clauses, the nature of the claim and the particular agreement out of which the claim arose ought to be considered. Where a claim arose out of or was more closely connected with one agreement than the other, the claim ought to be subject to the dispute resolution regime contained in the former agreement, even if the latter was, on a literal reading, wide enough to cover the claim: [26]

(6) Lastly, even if proceedings instituted under the Escrow Agreement did fall within the scope of Article 25.1, that provision had been rendered inoperative by the parties entering into the subsequent Escrow Agreement. By introducing a jurisdiction clause in the subsequent Escrow Agreement, the defendant waived the agreement to arbitrate and was, accordingly, estopped from asserting its rights to insist on arbitration: [29]

Sui Southern Gas Co Ltd v Habibullah Coastal Power Co (Pte) Ltd [2010] SGHC 62 [Judith Prakash J]

The matter before the court was an application to set aside the arbitral award under the Section 24 (b) of the International Arbitration Act (Cap 143A, 2002 Ed) ["**IAA**"] and Article 34(2)(*a*)(iii) of the UNCITRAL Model Law on International Commercial Arbitration, Schedule 1 of the IAA.

The applicant alleged that:
(1) the Award dealt with disputes or issues not contemplated by or, alternatively, not falling within, the terms of the submission to arbitration and/or contained decision on matters or issues beyond the scope of the submission to arbitration;
(2) the Award was in conflict with the public policy of Singapore; and
(3) a breach of natural justice had occurred in connection with the making of the Award by which the rights of applicant had been prejudiced

Held, dismissing the application to set aside the award:

(1) In relation to the applicant's argument that the award was perverse, manifestly unreasonable and irrational as the award was so manifestly unreasonable that no reasonable person could have so decided, the court held that such a ground is only open to a court exercising its supervisory jurisdiction over an administrative body. Such a principle does not exist in the context of arbitration: [18]

(2) Judith J further observed that the IAA provides the exclusive means by which a disappointed party to the arbitration may challenge the eventual award. Hence it was not open to the court to set aside the award on the freestanding ground that its substantive decision on the merits was outrageous or irrational. As such, the approach in the United States in America where arbitral awards may be set aside on irrational grounds cannot be adopted: [19] and [21]

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(3) There could also be no rights of appeal based on mere errors of facts or law: [22]

(4) In relation to the argument that the Award dealt with disputes or issues not contemplated by or, alternatively, not falling within, the terms of the submission to arbitration and/or contained decision on matters or issues beyond the scope of the submission to arbitration:

a. This argument is concerned with the jurisdiction of an arbitral tribunal to decide certain matters – it is not concerned with the substantive correctness of the arbitral tribunal's subsequent decision on a matter that was properly within its jurisdiction: [37]

b. Where an arbitral tribunal correctly states but misapplies the law, this is an error of law (and does not cease to be such even if the error is gross or egregious), in respect of which no challenge lies under the IAA: [38]

c. Judith Prakash J also observed that she should not and could not delve into the facts and evidence and the submissions in order to conclude that the Tribunal had erred in both law and fact. This is because the court is not empowered by the IAA to do so.

(5) In relation to the public policy argument:

a. In order for the applicant to make out a ground under the public policy argument, it had to cross a very high threshold and demonstrate egregious circumstances such as corruption, bribery or fraud, which would violate the most basic notions of morality and justice. Its ambiguous contention that the Award was "perverse" or "irrational" could not, of itself, amount to a breach of public policy: [48]

Ting Kang Chung John v Teo Hee Lai Building Constructions Pte Ltd and others [2010] SGHC 20 [Quentin Loh JC]

In this analysis of the case before the High Court, only the part of the decision touching on the conduct of the arbitrator relating to the two prayers as set out below will be examined.

The prayers are as follows:
(1) for the time for the Arbitrator to issue the Arbitration Award be extended; and
(2) for the parties to the arbitration to jointly and severally pay the arbitrator the sum of $199,178.40 being the arbitrator's fee outstanding and due under the Arbitration.

In relation to the first issue, Article 14,1 of the Singapore Institute of Architects Rules states that an arbitrator shall make his award within 60 days of the close of the hearing. In the present case, the award was only made some 1 year and 4 months after the hearing was deemed to have closed.

In relation to the fees, the arbitrator went way beyond the initial deposit which he had requested from the parties, which is that of $20,500 and charged a total fee of $199,178.40

In the present case, the former Arbitration Act (Cap 10, 1985 Rev Ed), ("**AA 1985**") is the applicable Act as the 2001 Arbitration Act (Cap 10, 2002 Rev. Ed.), ("**AA 2001**"), only came into force on 1 March 2002 and this arbitration was commenced in July or August 2001

Held, dismissing the application to extend time and making no orders as to the fees of the arbitrator:

(1) At the preliminary, Quentin Loh JC observed that the Arbitrator's error in overlooking a time limit within which to issue his award was a very serious error. Party autonomy, which is a cornerstone of arbitration, has been emphasized time and again by our highest Court. If the parties have chosen to agree to a time limit within which an arbitrator has to render his award and that contract or arbitration clause contains no provision to extend time, other than by mutual agreement, then no court is in a position to re-write the contract for the parties: [32]

a. The court distinguished the case of *Hong Huat Development Co (Pte) Ltd v Hiap Hong & Co Pte Ltd* [2000] 2 SLR 609 ("***Hong Huat***") which held that a delay of ten (10) years, though deplorable, was no reason for the court to set aside the award. Quentin Loh JC observed that there were no rules governing the arbitration in *Hong Huat* that limited the time for the award to be issued. The case was about setting aside an award based on misconduct and hence *Hong Huat* is of no application in the present situation: [34]

b. While the courts were empowered under Section 15 of AA 1985 to extend time, such a discretion must be exercised judicially. There should be minimal judicial intervention in arbitration proceedings: [39]

c. A clear case to extend the time limit would be to curb abuses where a time limit is imposed by reference to the commencement of the arbitration. In such a case, it is open to a party to frustrate the arbitration by delaying tactics until it becomes impossible to comply with the time-limit: [40]

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d. Section 15 of the AA 1985 should only be exercised by a court to prevent a substantial injustice and provided there is no prejudice to the other party: [41]

   i. First, if an arbitration clause is clearly worded that come what may the arbitrator *must* issue his award within a specified time, a court should not interfere unless there are exceptional circumstances.
   ii. Secondly, unless there are very good reasons, a court should not entertain any application under section 15 if the time limit has expired, *a fortiori*, if the time limit has expired by a large margin.
   iii. Thirdly, the discretion is exercised if in all the circumstances of the case it would cause a substantial injustice if time were not extended. The prejudice to the other party should also be put into the scales when deciding if substantial injustice would result.

e. On top of that, Quentin Loh JC held that other good reasons must be taken into consideration before time can be extended. A good reason would be when the arbitrator fell ill for a long period of time or if all the documents were destroyed: [42]

f. In comparison to AA 2001, under Section 36, three points should be noted. First all available arbitral avenues to extend time must have been exhausted. This includes asking the other party to agree. Secondly, section 36(4) now spells out what was silent in section 15 1985 AA; the Court will not extend time unless it is satisfied, *ie*, the applicant must prove on a balance of probabilities, that substantial injustice would be done if time is not extended. Thirdly, now the parties can, by agreement, exclude the court's power to extend time but the agreement must clearly state and preferably provide that there shall be *no* enlargement of time to make the award, whether by the parties or by the arbitrator: [43]

(2) In the present case, the arbitrator attempted to justify his delays based on the following reasons: [45] to [47] and [50] to [52]

a. The issues were complex and the documents were voluminous.
b. As one of the parties failed to attend the hearing, he had to pour through all the documents without the aid of the counsels.
c. Many interlocutory challenges were made by one of the party.
d. One of the party had made a complaint to the police and this prevented him from making an effective award as he was liable to complaints of biasness and misconduct. If he made an award in favour of the Contractor, then the 2nd Defendant would contend (and presumably proceed to set aside his award on the ground) that he did so to spite them for filing all those reports and proceedings but if he found for the 2nd Defendant then the Contractor would contend that he caved in to pressure (and similarly apply to set aside his award).
e. He was appointed to a new appointment as the president of the Singapore Institute of Architect after his appointment as the arbitrator

(3) The court found little favour in the arbitrator's reasons. The court held that:

a. In relation to the arbitrator's reasons, the court held that the first reason is not valid since the arbitrator should have known of the complexity of the case right at the outset and applied to extend time: [48]
b. Second, the court held that this is a typical case and this just shows the arbitrator's lack of knowledge and experience: [49]
c. Thirdly, in relation the numerous challenges, this is something which an arbitrator has to deal with in the course of his work: [50]
d. As regards the police complaints, the arbitrator should be confident of his own decision and award: [51]
e. As for his new appointment, the court found little favour in such an argument and held that an arbitrator who accepts an appointment should ensure he has the time to complete his task: [52]

(4) In relation to the issue of the fees, the court held that a distinction must be drawn between the number of hours an arbitrator alleges he spent and the number of hours he reasonably needed to do so. The court further opined that the court has the jurisdiction and interest in ensuring a proper level of fees and costs levied, whether of arbitrators or counsel, in domestic arbitrations. As such, no order as to the fee of the arbitrator was ordered.

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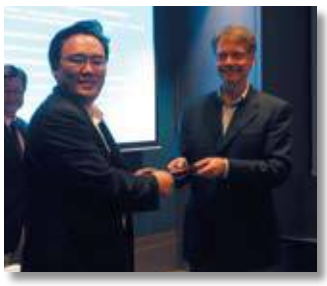
SIARB SEMINARS AND EVENTS
JANUARY TO MARCH 2010

SEMINAR ON "ISLAMIC FINANCE ARBITRATION"






Date	Event	Speaker	Chairperson
28/01/10	Seminar – Islamic Finance Arbitration	Associate Professor Andrew White	Mr. Glenn Cheng

On the evening of 28 January 2010, Professor Andrew White of SMU's Law School gave a talk on "Islamic Finance Arbitration". The talk was chaired by Glenn Cheng of Norton Rose. It was an illuminating and engaging session, and the session was interactive with many practical, philosophical and interesting questions from the audience. For many who attended, it was educational and eye opening. Certainly while there may need to be refinements, the talk underlied the point that Islamic Finance Arbitration has the makings of a valuable and practical means of dispute resolution.

SCL-SIARB MOU SIGNING CEREMONY




Date	Event
02/03/10	SCL-SIArb MOU-Signing Ceremony

On 2 March 2010, under the auspices of the Society of Construction Law, six significant local organizations joined with the SIArb – represented by Mr Johnny Tan Cheng Hye, President – signed jointly a Memorandum of Understanding (MOU) for establishing reciprocal relationships to further the similar objectives and exchange of information in their common field. The MOU was agreed to effect reciprocal benefits for members of the Institute and the six other specialist organizations in Singapore namely the Society of Construction Law (Singapore), The Chartered Institute of Building – Singapore Centre, the National University of Singapore – Law Faculty, the Singapore Contractors Association Limited, the Singapore Institute of Architects and the Singapore Institute of Surveyors and Valuers. Members of the signing organizations will benefit directly from the availability of preferential rates and reciprocal access between the organizations.

SEMINAR ON "SPEEDIER ARBITRATION – DOCUMENTS-ONLY AND FAST-TRACK ARBITRATIONS"






Date	Event	Speaker	Chairperson
16/03/10	Seminar – Speedier Arbitration - Documents-Only and Fast-Track Arbitrations	Mr. Tómas Kennedy-Grant, QC	Associate Professor Neale R Gregson

Mr Tómas Kennedy-Grant, QC gave a presentation on Documents-Only and Fast-Track Arbitrations on 16 March 2010. He took the audience back to the essence of arbitration and explained why such forms of arbitrations are desirable to achieve the objectives of speed, cost efficiency and user friendliness. He surveyed how various institutional rules and national laws have tried to meet these objectives. The seminar was chaired by Mr Neale R Gregson and attracted a lively debate from the participants on the merits and limitations of such arbitrations.

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