SINGAPORE INSTITUTE OF ARBITRATORS

NEWSLETTER

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THE PRESIDENT'S COLUMN

Singaporeans woke up on the start of the working week of Monday 23 March 2015 to learn that its founding father, the late Mr Lee Kuan Yew, has passed away. He left behind not just his loving family, but a nation which owes him a tremendous debt. As my friend Mary Wong puts it, all should acknowledge his vision of "*a peaceful, meritocratic, multi-cultural and multi-racial society.*" The success of Singapore, including its legal infrastructure, sprung from the ethos of clean governance and vigorous industry that is his legacy.

As a mark of respect, the Institute decided to postpone its Members' Nite which was fixed on Tuesday, 24 March 2015. The notice was extremely short and I apologize to all those inconvenienced by the sudden postponement. I am sure we have their support and understanding in this decision. The new date for the Members' Nite is 16 April 2015.

On the business of the Institute, 2015 had started off well with a number of activities. Professor Lawrence Boo's annual round-up kicked off the year with his January seminar on *Developments in Singapore Arbitration Law*. As usual, it was informative and comprehensive. Not surprisingly, it attracted a loyal following.

On 29 January 2015, the Institute held an Extra-Ordinary General Meeting ("EGM") to receive and consider the audited annual accounts for the Financial Year 1 April 2013 to 31 March 2014.

ANNOUNCEMENTS UPDATES & UPCOMING EVENTS

1. Evening Seminar: Arbitrating Complex Financial Disputes by Ms. Lucy Reed (15 April 2015) at Intellioffices, Level 11, 146 Robinson Road, Singapore 068909.
2. The Members' Nite (16 April 2015) at the Procacci Restaurant at 7.30 pm.
3. International Entry Course 2015 (24 and 25 April 2015 with an examination on 27 April 2015). Candidates who pass an examination at the end of this Course may apply to be Members of the Institute and subject to meeting membership requirements may use the abbreviation "MSIArb" as part of their credentials.
4. 9th Regional Arbitral Institutes Forum (RAIF) Conference 2015 (8 and 9 May 2015) Kuala Lumpur.

NEW MEMBERS

The Institute extends a warm welcome to the following new associates, members and fellows

Associate Members

1. Lim Hseng Iu
2. Kelvin Goh Ken Jin
3. Leong Pei Koe
4. Ng Chi Wai Dany
5. May Kong
6. Chan Siew Pang

Members

1. Rahul Singhal
2. Marybelle Marinas
3. Yeh Siang Hui
4. Ho Bee Lan Karen

Fellows

1. Ramesh Selvaraj
2. Phin Sovath
3. Bun Youdy
4. Wong Tack Chow
5. Kathleen Ann Metzger
6. Yee Weng Wai Bernard
7. Tham Wei Chern
8. Derek Johnston
9. Benjamin Franklin Hughes
10. Yap Tuck Kong, Jimmy
11. Sathinathan S/O M.R. Karuppiah
12. Terence Tan
13. Rakesh S/O Pokkan Vasu
14. Matthew Paul Richards
15. Earl Joyce Dolera
16. Bobby Mok Wing Hong
17. Poh Chee Seng
18. Koh Chia Ling
19. Eugene Ooi Chin Chai
20. Brenda Chark
21. Anthony D'Cruz

PANEL ARBITRATORS

The Institute congratulates the following on their admission to the panel of arbitrators

Secondary Panel of Arbitrators

1. Ramesh Selvaraj

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A tentative set of unaudited accounts had been circulated at the Annual General Meeting in 2014 but the accounts were not finalized and audited until recently. The audited accounts were adopted by the EGM after they were presented and explained to the members. The EGM also approved the appointment of Ardent Associates LLP as the new auditors of the Institute.

The EGM was preceded by a seminar on *International Litigation and Mediation for International Businesses in Asia - Singapore's Game-Changing Initiatives*. Mr George Lim, SC who is the Deputy Chairman of the newly established Singapore International Mediation Centre ("SIMC") gave a succinct presentation, introducing the SIMC and the services that it offers. Following from George, it fell upon me as a member of the Committee on the Singapore International Commercial Court ("SICC") to explain the rationale for the SICC and its unique features.

On 10 March 2015, Dr Stanley Lai, SC presented a seminar on the *Arbitration of IP Disputes – Challenges & Opportunities*. This useful specialist presentation was chaired by Mr Goh Phai Cheng, SC.

I trust that members are enjoying the camaraderie and activities offered by the Institute. You may want to inform your friends and colleagues of the upcoming International Entry Course ("IEC") in April 2015. The IEC serves as both an educational workshop as well as a gateway for those seeking qualification as a Member of SIArb.

Given that most of you are busy professionals whose calendar for the year is being rapidly filled up, you might want to take early notice of this year's Regional Arbitral Institutes Forum ("RAIF") Conference. Singapore hosted it last year to great success, thanks to both tremendous local support and all those who specially flew in to participate in the event. The Malaysian Institute of Arbitrators is hosting the Conference on 9 May 2015 this year. Our own the Honourable Attorney-General Mr V. K. Rajah, SC will deliver the Keynote Lecture at the Conference. I am sure it will be another great opportunity to learn, to network and to have fun. Some will do so not necessarily in that order.
I look forward to seeing you in the weeks to come.

Chan Leng Sun, SC
25 March 2015

Recent Developments in Arbitration Law

By Tan Weiyi / Andrew Chin

In this issue, we review a recent Singapore High Court decision concerning the interpretation of a bilateral investment treaty, as well as a recent decision of the Hong Kong Court of First Instance, where it upheld an arbitral award that was denied full enforcement by the Singapore Court of Appeal in the case of *PT First Media TBK (formerly known as PT Broadband Multimedia TBK) v Astro Nusantara International BV and others and another appeal* [2013] SGCA 57.

A. Government of the Lao People's Democratic Republic v Sanum Investments Ltd [2015] SGHC 15.

B. Astro Nusantara International B.V. and others v PT First Media TBK (formerly known as PT Broadband Multimedia TBK) and others HCCT 45/2010

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A. *Government of the Lao People's Democratic Republic v Sanum Investments Ltd* [2015] SGHC 15.

Introduction

1. This case involves an appeal against the Tribunal's decision on jurisdiction under section 10 of the International Arbitration Act (Cap 143A, 2002 Rev Ed) ("**IAA**").

2. The dispute was between the Government of Laos and a company incorporated in the Macau Special Administrative Region of China ("**Macau**"), and the arbitration was commenced pursuant to the dispute resolution clause contained in Article 8 of a bilateral investment treaty ("**BIT**") between the People's Republic of China ("**PRC**") and the Lao People's Democratic Republic ("**Laos**"). The central question concerned the applicability of the BIT to Macau.

3. The Singapore High Court considered the following preliminary and substantive issues:

   a. whether the application only raises issues of international law which are non-justiciable;
   b. whether two diplomatic letters exchanged between the Laotian Ministry of Foreign Affairs and the PRC Embassy in Vientiane, Laos (the "**Two Letters**"), which were not adduced before the Tribunal, were admissible as evidence in the application. The Two Letters expressed both parties' view that the PRC-Laos BIT did not apply to Macau;
   c. whether the PRC-Laos BIT applies to Macau; and
   d. whether the Macau company's expropriation claims fell outside the scope of the PRC-Laos BIT.

4. On the preliminary issues, the Court held that the question of international law is justiciable as it bears on the application of domestic law. It also held that the Court has discretion to decide whether to admit fresh evidence based on reasonable conditions, and exercised its discretion in favour of admitting the Two Letters after considering the relevant factors.

5. On the substantive issues, the Court held that the PRC-Laos BIT does not extend to Macau. The Court also commented, in *obiter*, that it was of the view that the Macau company's expropriation claims fell outside of the PRC-Laos BIT because the claims did not only relate to the amount of compensation for expropriation.

Background Facts

6. The PRC-Laos BIT was signed in 1993. At that time, Macau was considered "Chinese territory" over which Portugal exercised administrative power. In 1999, the PRC "resumed sovereignty" over Macau and established it as a special administrative region. This handover was planned in 1987, when the PRC and Portugal signed a joint declaration on the question of Macau, which provided that the PRC would resume sovereignty over Macau with effect from 20 December 1999.

7. The Macau company, Sanum Investments Ltd ("**Sanum**"), made certain investments in the gaming and hospitality industry in Laos. Disputes arose in relation to those investments and Sanum commenced arbitration proceedings against the Government of Laos, under the PRC-Laos BIT.

8. Sanum argued that it fell within the definition of "investor" under the PRC-Laos BIT because it was incorporated in Macau. The Government of Laos raised a preliminary objection to the Tribunal's jurisdiction on the basis that the territorial scope of the PRC-Laos BIT did not include Macau. Sanum's claims were therefore not arbitrable.

9. The Tribunal held that the PRC-Laos BIT applied to Macau and that it had jurisdiction to arbitrate the defendant's expropriation claims. In reaching this conclusion, the Tribunal relied on the application of the general rule found in Article 29 of the Vienna Convention on the Law of Treaties 1969 ("**VCLT**") and Article 15 of the Vienna Convention on the Succession of States in respect of Treaties 1978 ("**VCST**"), which states that a treaty is binding on the entire territory of each contracting state. The Tribunal also found that there was insufficient evidence to rebut the general rule. Parties were in agreement that both Article 29 of the VCLT and Article 15 of the VCST were rules of customary international law.

The Preliminary Issues

(i) Whether the application raised only international issues which are non-justiciable

10. Sanum submitted that the application only concerned questions of pure international law because it stems from an investment treaty arbitration which operates on an international plane different from typical international commercial arbitrations. It also argued that a decision on the interpretation of the PRC-Laos BIT would potentially have significant consequences for approximately 130 other BITs to which the PRC is a party.

11. The Court disagreed.

12. The Court held that as the application is made under Section 10 of the IAA to seek a review of the Tribunal's positive ruling on jurisdiction, the issue evidently has a bearing on the application of Singapore law and the right of the Government of Laos to have the Tribunal's ruling on jurisdiction reviewed by the Court.

13. A similar approach was taken by the English court in the Court of Appeal decision of *Republic of Ecuador v Occidental Exploration and Production Co* [2006] 2 WLR 70. There, the English court held that it had jurisdiction to interpret a BIT between an international instrument (in that case a BIT between the USA and Ecuador) where it was necessary to do so in order to determine a person's rights and duties under domestic law.

14. Further, the issues raised in the application did not concern the exercise of sovereign or legislative prerogative in matters of high policy such as sovereign immunity, deployment of troops overseas, boundary disputes or recognition of foreign governments. The Court was only concerned with the legitimacy of the challenge to the Tribunal's jurisdiction under Section 10 of the IAA which in turn involves an interpretation of the PRC-Laos BIT.

15. The Court also opined that in considering the issue of jurisdiction under Section 10 of the IAA and Article 16(3) of the Model Law, the standard of review is generally regarded as *de novo*, applying the recent Court of Appeal decision of *PT First Media TBK (formerly known as PT Broadband Multimedia TBK) v Astro Nusantara International BV and others and another appeal* [2014] 1 SLR 372.

(ii) Whether the Two Letters were admissible as evidence

16. The Two Letters were diplomatic letters exchanged between the Laotian Ministry of Foreign Affairs and the PRC Embassy in Vientiane, Laos in which parties expressed their view that the PRC-Laos BIT did not apply to Macau. They constituted a key plank of the case of the Government of Laos, and Sanum sought to argue that they were not admissible for the following reasons:

   a. The Government of Laos did not satisfy the *Ladd v Marshall* conditions for the admission of further evidence, in that it could have but did not obtain the Two Letters at an earlier stage with reasonable diligence.
   b. there were doubts as to the authenticity and credibility of the letter issued by the PRC Embassy in Vientiane, Laos. There was no reference to the author's department or designation and there was no indication that a PRC governmental entity was involved in its preparation. This letter was issued within two days, which suggested that no consultation with any PRC governmental authority had been undertaken. Further, the translation provided was suspicious because the PRC national emblem that appeared in the letter was also affixed to the translation.

17. The Court held that the *Ladd v Marshall* principles, which apply in respect of the adduction of fresh evidence before the Court of Appeal under Section 37(4) of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed), do not strictly apply in relation to an originating summons commenced in the High Court. However, the Court has discretion to admit such evidence and reasonable conditions must be set.

18. In exercising its discretion, the Court nevertheless took into account the *Ladd v Marshall* test. It was of the view that fresh evidence may be admitted if:

   a. the party seeking to admit the evidence demonstrates sufficiently strong reasons why the evidence was not adduced at the arbitration hearing;
   b. the evidence if admitted would probably have an important influence on the result of the case though it need not be decisive; and
   c. the evidence must be apparently credible though it need not be incontrovertible.

19. The Court reviewed the circumstances leading up to the Two Letters and was of the view that the Two Letters were a culmination of communications and meetings between the Government of Laos and the PRC government which undoubtedly took some time.

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There was no evidence that the Government of Laos would have obtained the letters earlier if it tried. There was also no reason for the Government of Laos to have dragged out the process of obtaining the Two Letters given that they could have been used in its favour at the arbitration proceedings.

20. As to the second requirement, it was held that the Two Letters did have an important influence on the result of the application because they are indicative of parties' intentions in drafting the PRC-Laos BIT and this goes towards answering the central question of whether the PRC-Laos BIT applied to Macau.

21. On the issue of the authenticity of the Two Letters, the Court decided that the Two Letters satisfied the requirement of apparent credibility. Laos' Vice-Minister for Foreign Affairs had filed an affidavit attesting to the authenticity of the Two Letters and there was no evidence to suggest otherwise. There was nothing suspicious or sinister about the appearance of the PRC emblem in the translation of the letter. There was also no dispute as to the accuracy of the translation.

The Substantive Issues

(iii) Whether the PRC-Laos BIT extends to Macau

22. The Court referred to Article 29 of the VCLT and Article 15 of the VCST in addressing the issue of whether the PRC-Laos BIT extends to Macau. In summary, the effect of Article 29 of the VCLT and Article 15 of the VCST is that a treaty is binding on the entire territory of each contracting state unless it (a) appears from the treaty; or (b) is otherwise established that the contracting states had intended otherwise.

23. The Court also referred to Article 31(3)(a) of the VCLT, which provided that in interpreting a treaty, any subsequent agreement between the parties regarding the interpretation of the treaty or application of its provisions shall be taken into account.

24. On the above basis, the PRC-Laos BIT is *prima facie* applicable to the entire territories of Laos and the PRC which undisputedly includes Macau, unless it appears from the treaty or is otherwise established that the contracting states had intended otherwise.

25. In deciding this issue, the Court considered the Two Letters, as well as several international instruments, documents and academic writings. The Court found that the Two Letters signify an agreement under Article 31(3)(a) of the VCLT between the PRC and Laos that the PRC-Laos BIT does not apply to Macau.

26. On the other hand, the other BITs and documents were generally of limited utility as no definitive conclusions could be drawn from comparing the nuances of the various documents. A summary of the international instruments and documents considered is as follows:

    a. The PRC-Russia BIT, which specifically excludes Hong Kong and Macau from its application. Sanum argued that since the PRC-Laos BIT does not specifically exclude Macau, the treaty was intended to apply to Macau. The Court took the view that the absence of an express exclusion for Macau post-handover does not lead inevitably to the conclusion that the PRC-Laos BIT must apply to Macau. While the imminent handover was well known to both the PRC and Laos, they may have thought it unnecessary to exclude Macau because the PRC did not at that time exercise sovereignty over Macau.
    b. The PRC-Portugal BIT, the PRC-Netherlands BIT, the Macau-Portugal BIT and the Macau-Netherlands BIT. The Tribunal had considered these BITs and found that the articles on the settlement of investments disputes are substantially the same. The Tribunal took the view that these similarities tend to prove that the rules of the PRC-Laos BIT were compatible with their application in Macau. The Court, however, did not think that any definitive conclusions could be drawn from the existence of the four parallel BITs. The four BITs did not cast light on what parties to the PRC-Laos BIT had intended.
    c. The Mexico-PRC BIT, which defines the territory of the PRC and provides by way of a footnote that the governments of Hong Kong and Macau can separately negotiate and enter into BITs with Mexico. The Government of Laos argued that this would have been unnecessary if the Mexico-PRC BIT automatically applies to Hong Kong and Macau. The Court rejected the argument and opined that the footnote is, strictly speaking, irrelevant to whether the PRC-Laos BIT applies to Macau. It also commented that no definitive conclusion may be drawn from the mere fact of Macau's powers to enter into treaties in its own capacity. If it had no power to enter into treaties, then it can be said that PRC's BITs would apply to Macau. But the converse is not necessarily true.
    d. The 1987 PRC-Portugal Joint Declaration, which affirms the PRC's one country, two systems principle. It states that the application to Macau of international agreements to which the PRC is or becomes a party shall be decided by the PRC's government, in accordance with the circumstances of each case. The Court noted that this was relevant evidence towards establishing the PRC's intention that the PRC-Laos BIT does not apply to Macau. There was also no evidence that the PRC had taken measures to extend the scope of the PRC-Laos BIT to Macau.
    e. The 1999 Note to the United Nations Secretary General (the "**1999 Note**"), which makes reference to the 1987 PRC-Portugal Joint Declaration and lists multilateral treaties that are applicable to Macau, which did not include the PRC-Laos BIT. The Court noted that the 1999 Note only listed multilateral treaties and the PRC-Laos BIT, being a bilateral treaty, would not have been listed by the PRC in the 1999 Note in any event. As such, no weight was placed on the 1999 Note in determining the issue of whether the PRC-Laos BIT applies to Macau.
    f. The international legal position regarding the application of the PRC's treaties to Hong Kong. The Court was of the view that the Hong Kong experience, while not conclusive, is relevant to the present application, as the approach and arrangements made with respect to Hong Kong were likely to have been used as a model for Macau. It noted that identical wording was used in both the 1984 PRC-UK Joint Declaration and the 1987 PRC-Portugal Joint Declaration in relation to the applicability of the PRC's treaties to Hong Kong and Macau respectively. In relation to Hong Kong, the work of the Joint Liaison Group for Hong Kong in negotiating and concluding bilateral agreements on behalf of Hong Kong during the period leading up to the 1997 handover suggested that the PRC's treaties would not automatically apply to Hong Kong. As such, the PRC was likely to have been of the view that its treaties would not automatically apply to Macau after the 1997 handover.
    g. The 2001 WTO Trade Policy Report on Macau, which stated, *inter alia*, that apart from a double taxation agreement with Portugal and a bilateral agreement on investment protection with Portugal, Macau has no other bilateral investment treaties or bilateral tax treaties. The Court took the view that the report suggests to a limited extent that the PRC-Laos BIT does not apply to Macau, although it is not conclusive on the issue as the report explored a wide range of issues and was probably not intended to express a conclusive view on the applicability of the PRC-Laos BIT to Macau.

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27. Having regard to the reasons above, the Court held that it was established, on the balance of probabilities, that the PRC-Laos BIT does not apply to Macau.

(iv) Whether Sanum's expropriation claims fell outside the scope of Article 8(3) of the PRC-Laos BIT

28. While it was not necessary for the Court to rule on whether Sanum's expropriation claims fell outside the scope of the PRC-Laos BIT given its conclusion that the PRC-Laos BIT did not apply to Macau, it considered the issue and opined that Sanum's expropriation claims fell outside the scope of Article 8(3) of the PRC-Laos BIT.

29. Article 8(3) of the PRC-Laos BIT provided that a dispute "*involving*" the amount of compensation for expropriation may be submitted at the request of either party to an *ad hoc* arbitral tribunal if it cannot be settled through negotiation within six months.

30. The crux of the issue was whether the word "*involving*" should be given a limited interpretation, such that the Tribunal's jurisdiction would be limited exclusively to disputes on the amount of compensation.

31. The Court was of the view that the phrase "*a dispute involving the amount of compensation*" in Article 8(3) of the PRC-Laos BIT should be given a restrictive meaning. There were three main reasons for this:

    a. The word "*involve*" is also capable of being interpreted restrictively to mean "*imply*", "*entail*" or "*make necessary*". The Court compared the choice of the word "*involve*" in Article 8(3) with the use of the phrase "*in connection with*" in Article 8(1) of the PRC-Laos BIT. The Court took the view that the PRC and Laos could have used the phrase "*in connection with*" for consistency with the phrasing in Article 8(1) if they had truly intended for an arbitral tribunal to have a broad jurisdiction of all aspects of an expropriation dispute and it is significant that they have not done so.
    b. The limited scope for the submission of a dispute to arbitration would be consistent with the thinking that, and understandable given that, communist regimes possessed a certain degree of distrust regarding investment of private capital and were concerned about the decisions of international tribunals on matters over which they have no control. The Court was of the view that this formed an important context in which Article 8(3) of the PRC-Laos BIT should be interpreted. While the purpose of any BIT is to promote investments, it did not mean that every ambiguity found in such treaties should be resolved in favour of the investor and due consideration has to be given to the context in which they were made.
    c. There has been a shift from the PRC's "first-generation" BITs to "second-generation" BITs, which suggested that the PRC-Laos BIT, which fell into the former category, should be read restrictively. In particular, the Court observed that since 1998, more expansive dispute resolution clauses were included in the PRC's "second-generation" BITs. One example was the BIT between the PRC and Germany, which provided for arbitration of "*any dispute concerning investments*". This is to be contrasted with the use of the phrase "*a dispute involving the amount of compensation*" in the PRC-Laos BIT.

32. In conclusion, the Court took the view that the Tribunal did not possess subject-matter jurisdiction over Sanum's expropriation claims because only disputes over the amount of compensation for expropriation can be submitted to arbitration under Article 8(3) of the PRC-Laos BIT.

B. *Astro Nusantara International B.V. and others v PT First Media TBK (formerly known as PT Broadband Multimedia TBK) and others HCCT 45/2010*

Introduction

33. In this case, Justice Anthony Chow of the Hong Kong Court of First Instance (the "Court") considered, inter alia, the following issues.

    a. Is there a doctrine of good faith under the New York Convention which precludes a losing party from resisting enforcement of an arbitral award?
    b. How does an applicant for an enforcement of an arbitral award satisfy the statutory conditions for the application if it was not a signatory to the arbitration agreement?
    c. Whether the Court has the power to consider an extension of time to set aside an order giving leave to enforce an arbitral award after the time for applying to set aside the judgment has expired and judgment has been entered?
    d. What factors does the Court take into account in determining whether to extend time to set aside an order granting leave to enforce an arbitral award after the time permitted to apply to set aside the order has expired?

34. The Court's decision in this case would be of great interest to Singapore arbitration practitioners because both jurisdictions share many similarities:- they are both signatories to the New York Convention and have materially similar arbitration legislation and adopt similar legal principles. Notwithstanding this, it is worth noting how Justice Chow decided not to follow the Singapore Court of Appeal's decision to refuse enforcement of a large part of the arbitral awards.

Background Facts

35. This dispute arose out of a Subscription and Shareholders' Agreement signed on 11 March 2005 ("**SSA**"), which was a joint venture between an Indonesian conglomerate (the "**Lippo Group**") and a Malaysian conglomerate (the "**Astro Group**") for the provision of multimedia and television services in Indonesia.

36. The SSA contained various conditions precedent which were to be fulfilled before the joint venture could materialize. In the meantime, funds and services were supplied by three companies under the Astro Group who were not signatories to the SSA (the "**Additional Parties**") to the joint venture.

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37. When it became clear that the conditions precedent would not be fulfilled, the Additional Parties stopped the funding and services to the joint venture. A dispute arose between the Lippo Group and the Astro Group over the continued funding and services to the joint venture. As a result, Ayunda, one of the companies in the Lippo Group, commenced litigation in Indonesia against the Additional Parties.

38. The SSA provided for arbitration under the Singapore International Arbitration Centre ("**SIAC**") and that Singapore would be the governing law of the SSA.

39. The Astro Group and the Additional Parties commenced an SIAC arbitration against the Lippo Group claiming for, *inter alia*, an anti-suit injunction against the Indonesian court proceedings, a declaration that the Additional Parties had no continuing obligation to provide funds and services to the joint venture and payment of certain sums on the basis of *quantum meruit* and/or restitution.

40. As the Additional Parties were not parties to the SSA, the Astro Group applied to the Tribunal for a ruling on a preliminary issue that the Additional Parties be joined pursuant to Rule 24(b) of the SIAC Rules (2007 Edn), which was resisted by the Lippo Group.

41. The Tribunal made a jurisdictional award on the preliminary issue that the Additional Parties be joined. The Lippo Group reserved its position on the Tribunal's jurisdiction over the joinder, but it did not appeal against the Tribunal's ruling under Article 16(3) of the Model Law and continued to contest the arbitration on the merits.

42. A series of arbitral awards was made by the Tribunal in favour of the Astro Group and the Additional Parties in excess of US$130 million, the significant bulk of which was in favour of the Additional Parties.

43. The Astro Group and the Additional Parties took steps to enforce the arbitral awards in Hong Kong. The Court issued orders granting leave to enforce the arbitral awards and gave the Lippo Group 14 days to apply to set aside the orders (the "**Enforcement Orders**"). The Lippo Group did not resist enforcement at that time because it believed that it had no assets in Hong Kong to be enforced against. Accordingly, the Court entered judgment against the Lippo Group in terms of the arbitral awards.

44. After judgment was entered on 9 December 2010, the Astro Group enforced the judgment by obtaining a garnishee order *nisi* on 22 July 2011 attaching a debt of US$44 million due to First Media (one of the companies in the Lippo Group) by First Media's parent company. The Lippo Group therefore had to take out a summons to apply to set aside the Enforcement Orders out of time.

45. The Astro Group in turn applied for a stay of the summons on the grounds that:

    a. there were pending proceedings in Singapore by the Lippo Group to resist enforcement of the arbitral awards as the Tribunal had no jurisdiction over the Additional Parties; and
    b. the issues to be decided for the summons were largely the same as those to be decided by the Singapore courts.

46. The Court granted a stay pending determination of the Singapore enforcement proceedings. In separate court proceedings, the Court granted a stay on execution of the garnishee order (which has since been made absolute) for the same reasons.

47. On 31 October 2013, the Singapore Court of Appeal ("**SGCA**") held that the Tribunal had no jurisdiction over the Additional Parties and set aside that part of the arbitral awards in their favour. However, enforcement of the arbitral awards by the Astro Group was granted, which was only a small fraction of the total sum under the arbitral awards.

48. After the SGCA judgment, the Astro Group, the Additional Parties and the Lippo Group resumed the hearing of the summons by the Lippo Group to extend time to set aside the orders granting leave to enforce the arbitral awards on December 2014. The judgment was handed down on 17 February 2015 shortly before the Chinese New Year.

<u>*The Issues*</u>

49. As the Court observed that an appeal was inevitable regardless of how it decided the case, it dealt first with the major substantive issues before the procedural issues.

(i) Is there a doctrine of good faith under the New York Convention which precludes a losing party from resisting enforcement of an arbitral award?

50. The Court acknowledged the SGCA's ruling that a party who was unsuccessful in contesting the tribunal's jurisdiction had a choice of active remedies and passive remedies. The distinction between the active remedies and the passive remedies available to the unsuccessful party were as follows.

    a. The losing party could take active steps to attack the arbitral award on jurisdiction by either appealing to the court of the seat of arbitration under Article 16(3) of the Model Law during the arbitration or applying to set aside the arbitral award under Article 34 of the Model Law.
    b. Alternatively, the losing party could passively wait for enforcement of the arbitral award and then attack the arbitral award on jurisdiction.

51. Accordingly, the Lippo Group did not waive its right to resist enforcement of the arbitral awards on jurisdictional grounds (i.e. passive remedy) by failing to appeal against the jurisdictional award under Article 16(3) of the Model Law (i.e. active remedy).

52. The Court observed that the following principles applied in determining whether a party can resist enforcement of an arbitral award.

    a. Section 44 of the Arbitration Ordinance (Cap. 341) (which applied to the arbitration and is now superseded by Section 89 of the Arbitration Ordinance (Cap. 609)) is a statutory enactment of Article V of the New York Convention that sets out the grounds for resisting arbitral awards.
    b. The New York Convention has a pro-enforcement bias, which means that enforcement of an arbitral award is mandatory unless a ground for refusing enforcement has been made out. Even in those circumstances, the Court retains a residual discretion to enforce the arbitral award.
    c. It is desirable that the New York Convention be applied in a consistent manner across all jurisdictions.
    d. However, as Section 44 is a piece of domestic legislation, the Court should apply Hong Kong law and its own jurisprudence whether to refuse

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enforcement of an arbitral award. This means that the Court is not bound by the decision of another enforcing court (even if it is the court of the seat of arbitration), even though that court may also have applied the New York Convention.

53. The Court identified two stages to the inquiry on whether to enforce an arbitral award.

    a. What is the correct legal approach under Section 44 in respect of the circumstance in which a party is precluded from proving a New York Convention ground for resisting enforcement?
    b. What is the proper approach to the exercise of the discretion where a ground for refusing to enforce an arbitral award is made out?

54. The Court then reviewed two key Hong Kong decisions[1] and distilled the following legal principles.

    a. "*These two decisions support the proposition that the court has a discretion under* [Section 44] *to decline to refuse enforcement, even if a ground for refusal might otherwise be made out, in circumstances where there has been a breach of the good faith, or bona fide, principle on the part of the award debtor.*"
    b. "*In my view, what was considered so objectionable in* [these two key decisions] *was the idea that a party to an arbitration while being fully aware of an objection (whether in relation to the jurisdiction of the tribunal or the procedure or conduct in the course of the arbitration), should be permitted to keep the objection in reserve, participate fully in the arbitration and raise the objection in the enforcing court only after an award has been made against him by the tribunal.*"
    c. The breadth of this principle has not been fully set, but it is wide enough to cover situations of waiver and estoppel under domestic law.

55. Applying the legal principles above to the first stage of the inquiry, the Court held that the Lippo Group had not acted in good faith by failing to appeal the jurisdictional award under Article 16(3) of the Model Law and keeping the jurisdictional challenge in reserve to resist enforcement. The fact that the Lippo Group did challenge the jurisdiction of the Tribunal does not make a difference. Accordingly, the Lippo Group "*should not be permitted to rely on* [Section 44] *of the Ordinance to resist enforcement of the Awards because it has acted in breach of the good faith, or bona fide, principle.*"

56. If the Court was wrong on this point, it next considered the second stage of the inquiry.

57. The Court observed that the residual discretion to permit enforcement of an arbitral award where a ground for refusal of enforcement is established is a narrow one. It would take a very strong case to enforce an arbitral award which was made without jurisdiction. On the facts of this case, the Court <u>would not</u> exercise its residual discretion to enforce the arbitral awards.

(ii) How does an applicant for an enforcement of an arbitral award satisfy the statutory conditions for the application if it was not a signatory to the arbitration agreement?

58. There are two stages to the enforcement of arbitral awards.

    a. Under Stage 1, the award creditor must apply for leave to enforce the arbitral award. Section 43 of the Arbitration Ordinance (Cap. 341) (which applied to the arbitration and is now superseded by Section 88 of the Arbitration Ordinance), which is similar to Section 30(1) of the Singapore International Arbitration Act (Cap. 143A), sets out the evidence which must be presented to the Court:
        i. a duly authenticated original award or a duly certified copy of it; and
        ii. the original arbitration agreement or a duly certified copy of it.
    b. Under Stage 2, if the award debtor contests enforcement, the Court will decide whether a ground for refusal of enforcement of the arbitral award has been established under Section 44 and if so, whether to exercise its residual discretion to enforce the arbitral award.

59. The Lippo Group argued that the evidential requirements under Section 43 for enforcement of the arbitral awards under Stage 1 could not be satisfied because the SGCA has ruled that the Additional Parties were not parties to the arbitration.

60. The Court dismissed the Lippo Group's arguments.

    a. The Court reviewed the English case of *Dardana Ltd v Yukos Oil Company Petroalliance Services Co Ltd* [2002] 2 Lloyd's Rep 326 ("**Dardana**") and held that it also stated the position under Hong Kong law on the relationship between Stage 1 and Stage 2.
    b. Applying *Dardana*, the Court held that, as long as the arbitral award was made by the Tribunal purporting to act under the arbitration agreement, then the evidential requirements are satisfied.
    c. Any arguments relating to the validity of the arbitral awards or any other grounds for refusal of enforcement will be dealt with under Stage 2.
    d. In this case, the Astro Group did satisfy the evidential requirements by:
        i. producing the arbitral award which identified the Additional Parties as parties to the arbitration; and
        ii. producing the arbitration agreement in the SSA under which the Tribunal purported to act.

(iii) Whether the Court has the power to consider an extension of time to set aside an order giving leave to enforce an arbitral award after the time for applying to set aside the judgment has expired and judgment has been entered?

61. The Astro Group argued that, once judgment has been entered in terms of the arbitral awards, the Lippo Group can only appeal against the judgment out of time. In other words, it cannot seek leave to set aside the orders giving leave to enforce the arbitral awards as judgments (the "**Enforcement Orders**").

62. Neither side's counsel could identify any case precedents where this point has been expressly decided, so the Court had to revert to first principles.

63. The Court was not prepared to accept a rigid rule that an Enforcement Order cannot be challenged once judgment has been entered. As a matter of principle, if time is extended to set aside the Enforcement Orders, the judgment would fall away. The situation is "*analogous with the ordinary situation where the setting aside of a default judgment (whether regular or irregular) would generally result in the setting aside of any garnishee order nisi or absolute obtained by the judgment creditor pursuant to the default judgment.*"

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1 *Hebei Import & Export Corp v Polyteck Engineering Co Ltd* (1999) 2 HKCFAR 111; *China Nanhai Oil Joint Service Corporation Shenzhen Branch v Gee Tai Holdings Co Ltd* [1995] 2 HKLR 215

In Collaboration with:

KLIAW 2015
KUALA LUMPUR INTERNATIONAL ARBITRATION WEEK 2015

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RAIF CONFERENCE 2015

Time	Program	Speakers / Presenters
8:00am	Registration	
9:00am	Welcome Remarks Opening by RAIF Conference 2015 Chairman	**Lam Ko Luen** **Sudharsanan Thillainathan**
9:20am	Address by Guest of Honour	**Director of KLRCA, Professor Datuk Sundra Rajoo**
9:35am	Distinguished Speaker Lecture	**VK Rajah, SC, Attorney General of Singapore**
10:35am	Coffee Break	
10:50am	ASEAN Round Table Discussion Can ASEAN Prosper Without an Economic Union?	***Panellists*** *Datuk Dr. Rebecca Sta Maria* *Tan Sri Dr. Munir Majid* *Manu Bhaskaran*
12:20pm	Regional Updates (Hong Kong, Philippines, Indonesia, Australia)	**Presidents of RAIF Member Institutes**
1:00pm	Lunch	
2:00pm	Regional Updates (Singapore, Brunei, Malaysia)	**Presidents of RAIF Member Institutes**
2:30pm	Investor State Arbitration	**Professor Chester Brown** ***Panellists*** *Harpreet Kaur Dhillon* *TBC*
3:30pm	Coffee Break	
3:45pm	A Session On The Judiciary And Arbitration Featuring An International Panel Of Judges And Arbitrators	***Panellists*** *TBC*
4:45pm	Closing Remarks	**Sudharsanan Thillainathan**

FEATURING

V K Rajah, SC
Attorney General of Singapore

Professor Chester Brown
Professor of International Law and International Arbitration Faculty of Law, University of Sydney

Tan Sri Dr. Munir Majid
Chairman of Bank Mualamat Malaysia Bhd.

Datuk Rebecca Fatima Sta Maria
Secretary-General, Ministry of International Trade and Industry, Malaysia

Datuk Dr Cyrus V Das
Principal, Cyrus Das

Manu Bhaskaran
Director & CEO of Centennial Asia Advisors

Harpreet Kaur Dhillon
Practice Fellow, Centre for International Law (CIL)

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(iv) What factors does the Court take into account in determining whether to extend time to set aside an order granting leave to enforce an arbitral award after the time permitted for applying to set aside the order has expired?

64. The Lippo Group's summons to extend time to set aside the Enforcement Orders was made 14 months out of time because it believed it had no assets within Hong Kong to be enforced against until the Astro Group obtained a garnishee order nisi attaching a US$44 million debt payable to First Media (a company within the Lippo Group) by its parent company.

65. The Court reviewed a series of English cases and distilled the following principles.

    a. The court will '*look at all relevant matters and consider the overall justice of the case. A mechanistic approach is not appropriate.*'
    b. The following factors are relevant to this determination, of which the first three factors are the primary factors.
    c. the length of the delay;
        i. whether the party who permitted the time limit to expire and subsequently delayed was acting reasonably in the circumstances in doing so;
        ii. whether the respondent to the application or the arbitrator caused or contributed to the delay;
        iii. whether the respondent to the application would by reason of the delay suffer irremediable prejudice in addition to the mere loss of time if the application were permitted to proceed;
        iv. whether the arbitration has continued during the period of delay and, if so, what impact on the progress of the arbitration, or the costs incurred in respect of the arbitration, the determination of the application by the court might now have;
        v. the strength of the application;
        vi. whether in the broadest sense it would be unfair to the applicant for him to be denied the opportunity of having the application determined.

66. The Court identified the three main reasons below as detrimental to the Lippo Group's application to set aside the Enforcement Orders out of time.

    a. The delay of 14 months was very substantial when viewed in light of the 14 days provided under the High Court Rules and the fact that the application dealt with resisting enforcement of a Convention award.
    b. The delay was a calculated and deliberate decision by the Lippo Group when it took the risk of there being no assets in Hong Kong to be enforced against.
    c. The arbitral awards remain valid because they have not been set aside by the Singapore courts. The Lippo Group therefore remains bound to satisfy the arbitral awards notwithstanding that the SGCA refused enforcement of a large part of the arbitral awards.

67. In addition, the Court noted that, in light of its ruling that the Lippo Group is precluded from resisting enforcement of the arbitral awards due to its lack of good faith, the Court would similarly refuse an extension of time for this reason.

Tan Weiyi
Local Principal
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Why More Options for Amicable Dispute Resolution in Singapore Matter

By Francoise Lewalle

A few months after the launch of the Singapore International Mediation Centre ("**SIMC**") in November 2014 and amidst the interest shown by the media and the business community in the latest changes to the Singapore dispute resolution landscape, it is useful to "*freeze the image*" to look carefully at some of the assets of SIMC and what SIMC can offer to potential business users and to the legal community.

Before we underline the specificity of the model clause for Arb-Med-Arb, the so-called "Singapore clause", and the originality of the Arb-Med-Arb Protocol designed by SIMC together with the Singapore International Arbitration Centre ("**SIAC**") (the "**Protocol**"), this article will consider the practical advantages of having institutional mediation with SIMC (as opposed to *ad hoc* mediation) and the importance of involving the arbitrators and other stakeholders in alternative dispute resolution ("**ADR**") within the new environment created in Singapore.

Ad hoc mediation or mediation at SIMC?

You may think that because business parties are perfectly capable of negotiating on their own or with the help of their counsel, they may be able to set-up a mediation, appoint their mediator outside the framework of pre-determined rules and the control of an institution with less costs and at a shorter time.

You may be right, but you may also be wrong…

When parties have a dispute, it may be useful to refer to pre-established rules of the game. When parties are not able to talk to each other, it can be very problematic for them to decide to refer their case to mediation, agree on the choice of their mediator, the timeframe of the mediation or even the venue for the mediation. Why put the mediation at risk, and allow procedural matters to possibly reduce the chance of finding a solution to the dispute? SIMC can play the role of a neutral third party, look into the specificities of the case in order to find the most suitable mediator from its

Continued from page 10

panel of eminent experienced mediators, get in touch with the mediator, liaise with the parties for the payment of the mediator's fees, and refer to its rules to set the procedural parameters of the mediation, determine the venue and negotiate rates for the rental of rooms and catering.

Even if parties get along well and come to agreement on some issues, it may still be useful to have SIMC manage the case on behalf of the parties. The following are some examples.

Let us assume that one party is familiar with mediation, having used it several times in the past, but that the counterparty and its lawyers do not have that same familiarity. It may be helpful to rely on SIMC to explain to the other party the process of a mediation, highlight its advantages and help both parties with the drafting of a mediation agreement. The existence of procedural rules, even as flexible as SIMC's are, offer guidelines that parties who are not familiar with mediation may find reassuring. The whole process is described transparently in the SIMC Mediation Rules and its Schedule of Fees. Hence parties know, from the commencement of the mediation, what they will encounter in the process of mediation, how the mediation will be conducted and, last but not least, what the costs of the mediation are.

Another example: in the course of mediation, the mediator may find out that he/she has a conflict of interests that he/she should disclose. The mediation is interrupted. It may be very useful for the parties to receive assistance from SIMC to swiftly replace the mediator and liaise with both parties for the (re)calculation of fees, collection of deposits and rescheduling the mediation in order to keep it within tight timelines.

Instead of lawyers using their resources to ensure that procedural matters are on track, they could rely on SIMC, for which those matters constitute its core business. They can then focus on matters for which their clients have consulted them, where they can add value as mediation advocates: the preparation of statements of case, the search for constructive solutions and the preparation of the mediation session with their clients.

About the importance of ADR solutions in Singapore

Today, the business community wants to choose from multiple avenues to solve their disputes: apart from Court litigation, parties in a dispute would rely on arbitration and mediation as well as on other forms of ADR, such as early neutral evaluation, mini-trial or peer review[1].

Why such diversification? In a global economy with the crisis in Europe and the dull world economic outlook for 2015[2] as a backdrop, the business community is looking for legal solutions that would fit each of the circumstances it encounters and preserve their resources in time, manpower and costs. Why use litigation if there will be no recognition of a foreign decision? Why commence arbitration if the award will likely be set aside easily in the country of enforcement? Why not try to avoid lengthy legal proceedings with early dispute resolution mechanisms? Why not mediate to preserve a long-term business relationship?

Singapore has prepared the ground to diversify its offerings to the international business community in response to its needs. In the past years, Singapore has built up a reputation for the outstanding quality of the arbitration services through SIAC. To accelerate the pace of diversification, Singapore launched in November 2014 and January 2015, SIMC together with the Singapore International Mediation Institute ("**SIMI**"), a centre to enforce high standards of mediation, ensure the professionalism of mediators in Singapore and promote mediation, and the Singapore International Commercial Court ("**SICC**"). Consistent with its choice to support the developments of the dispute resolution landscape, Singapore will enact a Mediation Bill this year. It has already put in place tax exemptions[3] and a work pass exemption[4] for non-resident mediators who mediate in Singapore, as it already provides for arbitrators.

Why should arbitrators get involved in the mediation process?

Should arbitrators be worried by the attraction other ADR services have for business stakeholders? Should they welcome this new era? In short, what role can they play in the new international ADR scene?

Arbitrators cannot pretend that the increasing trend for business to prefer other ADR modes does not exist, or that it is not their concern: for the simple reason that if parties in a dispute cannot find the institution/services that respond to their needs or if they do not receive the right advice in the place where they do business, they will be diverted to other fora which offer those services and where those services are promoted. The entire legal community in that particular place will likely suffer as a whole from this loss.

The steady growth of the trade and investment flows in Asia will result in a new request for dispute resolution solutions in the region. The creation of the ASEAN Economic Community is a huge vector for the further enlargement of business activity: the progressive disappearance of trade barriers and the opening of more frontiers will trigger new flows into the Asian economy. Where business is flourishing, stakeholders statistically may encounter more problems with their business partners. They will need a neutral place to receive legal advice, legal services of all kinds and not the least to resolve their differences. If they find suitable services for their different needs in Singapore, they will not have to pick and choose legal services from different locations. The business community will elect Singapore if it is aware of the options which are offered and if the lawyers are ready to respond adequately to their needs.

At this stage, what needs to be done is to convince the business stakeholders of the attractiveness of Singapore as a dispute resolution hub through the promotion of the complete suite of dispute resolution services that are now on offer.

The capacity to promote those new services to the international business community naturally lies with the different centres mentioned above, but first and foremost with the lawyers and the arbitrators based here in Singapore. Arbitrators and lawyers are in prime position to assist the business community with cross-border disputes and guide their choices. They are also the ones who can highlight the diversity of services offered in Singapore to international clients and explain to them the advantages of each service depending on their specific needs.

They have the choice to hear the business community's voice and adapt their skills to the market needs. The lawyers and arbitrators who are also trained as mediators, will further be acquainted with the advantages of mediation and will be able to serve as mediation advocates as well as advise on other ADR solutions. They will gain the trust of their clients/parties, who will be confident in the fact that their needs will be met, their interests preserved and that lengthy proceedings are not commenced if those can be avoided. In the light of the likely growth of cross-border disputes,

1 Thomas Stipanowich and J. Ryan Lamare: *Living with 'ADR': Evolving Perceptions and Use of Mediation, Arbitration and Conflict Management in Fortune 1,000 Corporations* (2013) – 19 Harvard Negotiation Law Review 1

2 IMF Survey Magazine 20 Jan 2015: *World Economic Outlook Update -Global Growth Revised Down, Despite Cheaper Oil, Faster U.S. Growth* - 20 January 2015

3 https://www.iras.gov.sg/irasHome/page04.aspx?id=16109

4 http://beta.mom.gov.sg/en/passes-and-permits/work-pass-exempt-activities/eligible-activities

Continued from page 11

experience in ADR will be very valuable to allow lawyers to render complete advisory and support services to the business community.

The business stakeholders will choose to elect Singapore as their usual centre for dispute resolutions, if arbitrators and lawyers welcome the new trend in dispute resolution, and if they are ready to go the extra mile to promote the ADR services offered in Singapore. They will then gain from the virtuous circle instead of being embroiled in destructive competition.

Arb-Med-Arb procedure

Those who are familiar with ADR are probably aware of the concept of Arb-Med-Arb and appreciate the value and advantages such a procedure has. As the concept of Arb-Med-Arb may encompass different approaches to this combined mode of dispute resolutions, it is not redundant to provide a short explanation of what is intended by Arb-Med-Arb under the SIMC Mediation Rules and the Protocol.

Arb-Med-Arb is a proceeding where arbitration and mediation alternate and combine into a single procedure. The arbitral tribunal is constituted in the first phase of the Arb-Med-Arb procedure before the case is passed to SIMC for the mediation. The solution reached by the parties in mediation, the settlement agreement, can be converted into a consent award, which is recognised and enforceable as an arbitral award under the New York Convention in approximately 150 countries. If the parties cannot reach a settlement, either totally or partially, they will resume the arbitration proceedings with the arbitral tribunal. The SIMC Arb-Med-Arb service has the flexibility of a consent procedure, the balance of a concerted solution for all the parties involved, the finality and enforceability of an arbitral award, all of which achieved within a short period of time (the SIMC Mediation Rules provide for an 8-week timeline for the mediation to be completed as a default position).

To commence an Arb-Med-Arb procedure under the SIMC Mediation Rules and the Protocol, the parties have two main options:

1. at the time of the conclusion of their contract, the parties may incorporate the Singapore Clause or a similar clause, which refers arbitration to SIAC and mediation to SIMC (Arb-Med-Arb Clause); or
2. once the dispute has arisen and while the parties are arbitrating at SIAC, they decide to refer their case to mediation under the Protocol.

The Singapore Clause is the combination of an arbitration agreement with a mediation agreement, by which parties directly elect both SIAC and SIMC as independent centres to manage their disputes. The Protocol sets out the procedural rules of the Arb-Med-Arb procedure and provides for an economy of means to avoid any duplication of effort on the part of the parties, for example in filing requests for arbitration and mediation or making payments to both institutions.

What are the practical aspects of this procedure?

The claimant in the arbitral proceedings commences arbitration in the usual mode prescribed under the arbitration rules and sends a Notice of Arbitration to SIAC, mentioning the existence of an Arb-Med-Arb Clause, and the two Centres will take the lead in the management of the Arb-Med-Arb procedure.

After the payment of a combined case filing fee of SGD 3,000 (not including GST) for SIMC and SIAC, SIAC will deal with the commencement of the arbitration proceedings in accordance with the arbitration rules.

Parties will exchange their statements of case (limited at this stage to the Notice of Arbitration and the Respondent's Response to the Notice of Arbitration) and supporting documents and SIAC will proceed with the constitution of the tribunal in accordance with the arbitration rules and/or parties' arbitration agreement.

SIAC is responsible for collecting the deposits, both for SIAC and SIMC, pursuant to the arbitration rules and SIAC Schedule of Fees and SIMC Mediation Rules and Schedule of Fees. All the deposits are refundable once the arbitration and/or the mediation are/is completed and the actual costs of the arbitration and/or the mediation are calculated.

At this stage, unless otherwise agreed by the parties and the tribunal, the arbitration is suspended for 8 weeks (default period) and the case is sent to mediation. The parties do not have to contact SIMC and send a formal request to mediate or duplicate their documents: SIAC will liaise with SIMC and will transfer the case to SIMC.

Mediation will commence and SIMC will request any additional information required and also that the parties nominate their mediator within 10 days. SIMC will appoint the mediator if parties cannot reach an agreement on the nomination of the mediator.

If the mediation results in a full settlement of the dispute, the parties can request the arbitral tribunal to write a consent award on the agreed terms of the settlement agreement, or if the mediation has not resulted in a settlement (partially or totally), they can resume arbitration easily, as the tribunal is in place and the agenda of the procedure has been set during the preliminary meeting.

Conclusion

The golden age of international arbitration has not yet come to an end[5] and for the reasons submitted above, the number of international disputes is not likely to fall. However, it is important for arbitrators and lawyers to hear the different criticisms that have been raised by the business community on arbitration in the past years and to address them.

What has changed today is the users' ability to look for alternatives to arbitration and their willingness to do so.

To respond to this trend, professionalism among mediators has been rising, with the existence of certification schemes and the creation of independent institutions credentialing experienced mediators. New centres for international mediation have been created or have developed a new image, offering high-end services to the potential users of international arbitration.

Singapore has recently made available powerful tools for the use of the parties in cross-border disputes and this positions Singapore as a unique platform where business stakeholders can not only do business in the region but can receive the full spectrum of legal services from credible institutional providers.

Arbitrators who will adapt to the new market trends will certainly benefit from these extraordinary comparative advantages existing now in Singapore.

Francoise Lewalle
Director, Mediation Services
Singapore International Mediation Centre
Master of Law - Université de Liege - Belgium
Former Judge, Commercial Court of Brussels

5 Attorney General Sundaresh Menon SC - Opening Plenary Session ICCA Congress 2012- *International Arbitration: The coming of a New Age for Asia (and Elsewhere)*

In the Hot Seat!

In each issue of our newsletter, we interview an SIArb member to get their views on the alternative dispute resolution scene in Singapore, and to obtain some insight into what makes them tick. In this issue, we interview **LEONG KAH WAH**, Head, Dispute Resolution at Rajah & Tann LLP.

- **How would you describe yourself in three words?**

  Tall dark handsome.

- **How did you first get involved in arbitration work?**

  Boss asked me.

- **In the course of your work, do you notice a trend in clients preferring arbitration over litigation as a form of dispute resolution?**

  Yes before they get into one, and no after they see the bills.

- **What is the most memorable arbitration or arbitration-related matter that you were involved in, and why?**

  The last one because it may well be my last.

- **What advice do you have for a young fellow practitioner interested in arbitration work?**

  Our time will come.

- **What are the challenges you think arbitration practitioners will face in the upcoming years?**

  Rising costs and increasingly, an arbitration resembles a litigation: time consuming; overly formalistic and expensive. Further, it is not a level playing field when 1 side's legal representatives are governed by a professional body and the other side's not.

- **With the establishment of the Singapore International Mediation Centre and the introduction of the SIAC-SIMC Arb-Med-Arb Protocol, do you see mediation as now having a bigger role to play in assisting parties to resolve their disputes?**

  Yes if a case settles, and no if it adds another layer.

- **Who is the person(s) who has had the greatest impact and/or influence on your career?**

  My mom and her cane.

- **If you weren't a lawyer, what profession would you be in?**

  When I grow up, I want to be a Formula 1 safety car driver.

- **What's your guilty pleasure?**

  My car.

- **What is one talent that not many people know you have?**

  My falsetto singing because most people have not heard me.

- **Fill in the blank: "Arbitration is to dispute resolution as salt is to ___"**

  Ice.

Developments in Singapore Arbitration Law





Date	Event
16 January 2015	Evening Seminar: Developments in Singapore Arbitration Law

The Institute was indeed honoured once again to have Professor Lawrence Boo, Head of Arbitration Chambers, Singapore present this year's round-up of developments in Arbitration law in Singapore. The various judicial decisions highlighted by Professor Boo touched on themes ranging from enforcement of arbitration agreements to setting aside of awards. Generally, Professor Boo observed from these decisions that while the Singapore Courts remain supportive of arbitration, they are increasing prepared to undertake a detailed examination of arbitral awards where necessary. As a bonus topic, Professor Boo provided members and guests an exposition to the Arb-Med-Arb (AMA) Protocol managed by the Singapore International Arbitration Centre in conjunction with the newly formed Singapore International Mediation Centre. The seminar was chaired by Mr Dinesh Dhillon.

International Litigation and Mediation for International Businesses in Asia – Singapore's Game-Changing Initiatives





Date	Event
29 January 2015	Evening Seminar: International Litigation and Mediation for International Businesses in Asia – Singapore's Game-Changing Initiatives

2014 and 2015 is widely regarded as pivotal in anchoring Singapore as the forum of choice for dispute resolution for international businesses in Asia. In November 2014, the Singapore International Mediation Centre (SIMC) and the Singapore International Mediation Institute (SIMI) were launch, widely regarded as a milestone in the alternative dispute resolution circuit. In tandem with this development, the establishment of the Singapore International Commercial Court has attracted a lot of interest in the international litigation space. The Institute was honoured to have Mr George Lim, SC and its President, Mr Chan Leng Sun, SC preside over this evening seminar to shed light on the thinking and the potential opportunities these game-changing initiatives present to the way international businesses resolve their disputes in Asia. This seminar was chaired by the Institute's Honorary Secretary, Mr Naresh Mahtani who led a lively discourse touching on various issues and concerns that members and guests may have in response to these initiatives.

Extraordinary General Meeting of the Singapore Institute of Arbitrators

Date	Event
29 January 2015	Extraordinary General Meeting of the Singapore Institute of Arbitrators

The Institute held its extraordinary general meeting to receive and consider the audited annual accounts for financial year 1 April 2013 to 31 March 2014, as was agreed at the annual general meeting held on 30 September 2014. The meeting also considered and appointed auditors for the present financial year 2014 to 2015.

Arbitration of IP Disputes – Challenges & Opportunities






Date	Event
10 March 2015	Evening Seminar: Arbitration of IP Disputes – Challenges & Opportunities

In this evening seminar, members and guests were privileged to hear from Dr Stanley Lai, SC, who is a specialist in all forms of intellectual property / information technology disputes and has appeared as counsel in many reported decisions of the Singapore Courts in this area. Dr Lai delivered an engaging presentation on common challenges and emerging opportunities concerning intellectual property law and arbitration, with a particular focus on the issue of arbitrability of intellectual property disputes. Dr Lai also shared various statistics of various arbitral institutions which showed that the number of intellectual property law disputes referred to arbitration have been on a steady rise. The seminar closed off with a lively exchange of questions and answers led by Mr Goh Phai Cheng, SC who was also the Chairman of the evening's proceedings.

Call for Contribution of Articles

The SIArb Newsletter is a publication of the Singapore Institute of Arbitrators aimed to be an educational resource for members and associated organisations and institutions of higher learning. Readers of the newsletter are welcome to submit to the Secretariat at secretariat@siarb.org.sg well-researched manuscripts of merit relating to the subject matter of arbitration and dispute resolution. Submissions should be unpublished works between 1,500 to 2,500 words and are subject to the review of the editorial team.

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