SINGAPORE INSTITUTE OF ARBITRATORS

NEWSLETTER

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VIEWPOINT

PRESIDENT'S COLUMN
Richard Tan LLB(Hons) FSIArb FCIArb

If our Institute is to realize its aims of serving its members and of achieving the objectives stated in its constitution, it goes without saying that it would have to be run professionally - which means, amongst other things, having the backing of a full time secretariat and a permanent home. Currently, the Institute is run, as it has since its inception, by elected officials who have their own separate careers. Even with the best of wills, the Institute will have difficulty achieving its fullest potential. While I'd like to think that we have gone some way towards achieving some of the short-term goals we set for ourselves in the past couple of years - namely, the organization of more talks, seminars and activities, the formation of Arbitration Groups catering to specialist industries, encouraging members to participate in the work of the Institute's various committees, the setting up of a database of arbitrators from which appointments might be made etc - the physical infrastructure to administer and co-ordinate all the various activities has still been lacking. One of the key long-term goals we have set for ourselves - that of establishing a permanent secretariat and home to properly administer and coordinate the affairs of the Institute - is, however, now closer to being realized!

I am delighted to announce that we have found a new permanent home for the Institute. From January 2002, the Institute's secretariat will be housed at the ground floor of the UIC Building along Shenton Way, leased by the Institute (at attractive rentals, having taken advantage of the current downturn in the property market). At around the same time next year, our website will also be launched.

We have been conscious of course that this exercise will cost the Institute money and there is a risk that the revenue from subscription and membership fees may not be enough to balance our budget. However, after much soul-searching, we in Council believe - and we are confident that this will not amount to wishful thinking - that provided we continue to be active and organize activities that will help to supplement our funds, we should make ends meet. In any event, this will push the limits and ingenuity of future council members to work harder for the Institute and to organize more events. To help defray the rental and administrative costs, the Institute will also make its boardroom available for rental for arbitration hearings. There will be cost savings resulting from the Institute's own premises being used for internal meetings and talks and save the expenses of hiring external facilities. But the most significant benefit of this investment is that we would have a secretariat which would be able to administer the functions and events of the Institute, keep and update members' records and maintain contact with members - from under one roof and in a far more efficient manner than probably at any time in the past. If this investment is the price of progress, then it is simply a price that will have to be paid.

The new premises will not only have a boardroom that can be used as an arbitration room that can accommodate up to about 18 people, but also two breakout rooms for private caucuses. There is ample carpark space in the building and two restaurants in the building itself with lots of eating establishments in the immediate vicinity. The date of the official opening is tentatively set on 15 January 2001 and members will of course be invited to attend the official opening. Invitation cards will be sent out in due course. In the meantime renovations are in progress and members are asked to make donations to help the Institute equip the premises with the necessary facilities and resources. Members are invited to donate generously to this worthwhile cause and return the form attached with this newsletter with their cheques!

The website will allow members easier access to information on the Institute's activities and also enable them to update their details on-line. With the website in place the Institute will also be able to maintain more efficiently its resource database on its members in case of enquiries from the public or members on arbitration work. We will also be able to transmit more quickly information on our courses and developments on arbitration to the members. (At the moment, the Institute's fax broadcast reaches only about 70% of

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the members as many members have not updated the Institute with their particulars.) Having a website will also give the Institute, its members and activities a higher profile domestically and internationally and this in turn, as part of the larger picture, will help enhance Singapore's reputation as a center for arbitration.

Recent developments in arbitration law and practice have been anything but dull and uneventful - thereby creating an ever more important need for the Institute to be on its toes to alert its members to those developments and to respond adequately!

Amendments to the International Arbitration Act were passed and assented to on 17 October 2001 and a new Arbitration Act is expected to come into force very soon. The Institute's Law Review Committee had the opportunity to examine an earlier draft of the Arbitration Bill and make representations thereon, and the Institute will update its members on the effect of the new legislation in the near future.

The Singapore Dispute Resolution Policy (SDRP) - an initiative of the Institute a year or so ago, which led to the signing of a memorandum of understanding between the Institute, the Singapore International Arbitration Centre and the Singapore Network Information Center (SGNIC), mentioned in an earlier edition of this newsletter, will soon be launched. This policy, its Rules and Supplemental Rules will govern the resolution of certain types of disputes involving Singapore domain names registered by SGNIC. Domain name disputes, particularly "cybersquatting"-type disputes or disputes involving bad-faith registrations, can be more conveniently resolved by processes other than court proceedings. Given Singapore's intention to be a leader in information technology and electronic commerce, it was time that a dispute resolution procedure was put in place to allow for a convenient, speedy, inexpensive and relatively fuss-free administrative procedure to deal with such disputes. The SIAC and SMC will administer the dispute resolution process and appoint persons on the panel to hear disputes. The Institute will train persons on the panel and members would already have received information on the training course to be held on 22 November 2001 at the Shangri-La hotel. (Further information is attached with this newsletter.) The Institute is delighted to have received the support of WIPO in this training course. The Institute's members and members of the Institute's IT/IP Arbitration Group will receive a special discount on the fees for the training course - another benefit of membership!

The Institute will be holding another International Entry Course on Arbitration Law and Practice on 23-25 November in conjunction with the Chartered Institute of Arbitrators. Successful candidates will be entitled to apply to become a Member of the Institute and an Associate of the Chartered Institute, provided they fulfill certain other requirements. (At an EGM of the Institute held this year, I am pleased to announce that our Constitution was amended to lower the minimum age for admission as a Member of the Institute from 30 to 25, in response to requests. If at all, this shows the keen interest in becoming a member of the Institute and also the recognition accorded to the status of membership!)

The Institute is presently re-examining its requirements for admission of members as Fellows to the Institute and an announcement will be made in the course of the first quarter of next year.

The Institute also held a number of talks and courses in the last few months all of which received good responses. In particular, the talk on the new SIAC Domestic Rules given by Mr Ang Yong Tong, the executive director of the SIAC, received considerable interest, as did the panel discussion that followed. The panelists, Mr Michael Hwang SC, Prof Philip Chan, Mr Chow Kok Fong, all well known for their arbitration expertise and experience, and myself, provided what I hope were constructive comments on these new rules- which are intended to provide a quick and inexpensive framework for domestic arbitrations held under the auspices of the SIAC. The comments of the panel were generally directed at certain parts of the Rules that attempted to make in-roads into the jealously-guarded principle of party autonomy, thereby curtailing a party's freedom to decide for itself certain aspects of the arbitration process, as for example, the number of arbitrators. Whether or not these Rules will successfully achieve this result notwithstanding sufficiently creative attempts at drafting modifications to the Rules, remains to be seen. This is of course another story and deserves a separate article on the subject. In the meantime, these new and highly innovative Rules are likely to be adopted by parties as the framework for domestic arbitrations in the years to come and members would do well to familiarize themselves with the Rules, which are generally highly pragmatic and well thought out.

We also held a course for the Singapore Institute of Architects (SIA) on arbitration in October. The course was tailor- made to help prepare non-lawyers for the International Entry Course. Lay persons, and by this I mean those without any previous background in the law, who might otherwise be eminently suited to handle arbitrations on technical issues, occasionally require additional tutoring in various aspects of the law to arm them with the confidence to deal with the legal arguments of lawyers on matters involving procedure and evidence, and also to help them understand and apply certain basic legal principles. The SIA has its own panel of arbitrators to hear disputes under its standard forms of building contract and to its great credit, the SIA recognizes the need to have a pool of skilled and professionally trained arbitrators. The SIA encourages its architects on its panel to take the Institute's courses to upgrade their skills and this can only be a good thing for the construction industry in the long term.

The Institute's various Committees will have a busy year ahead of them. We are delighted with the responses to our invitation to members to join Committees and those who have applied and been appointed will no doubt benefit from the discussions at committee level. In the horizon are plans to comment on legislation dealing with mediation (the Mediation Committee chaired by Mr Goh Phai Cheng and Mr YC Yang, has been entrusted with this task); to introduce a code of ethics for member-arbitrators, a procedure for panel member selection, and a mentorship scheme (the Professional Practice Committee chaired by me and Mr Raymond Chan will look into this). The specialist Arbitration Groups will continue to hold activities for their industry sectors. Forthcoming events will include discussions on the role of adjudication in the Singapore construction industry especially for long-term infrastructure projects and dispute review tribunals and the need for legislation. To consolidate and review the work of the various committees and Arbitration Groups, the Activities Committee will organize a mid-term meeting next year at which each Committee and Group will have the opportunity to outline the work it has been doing. Non-Committee members will be free to sit in, observe the events and provide their input. This will help foster camaraderie amongst all members and provide an excuse (if one were necessary) for members to get together in a social setting. A Golf day will also be held to raise additional funds for the Institute's premises.

Finally, I'd like to congratulate all the Council members who have either been elected or re-elected at the last AGM and thank them for their support and dedication and especially for agreeing to undertake the sometimes thankless tasks that await them. Many thanks to Raymond Chan, YC Yang, Wong Meng Hoe, Leslie Chew SC, Goh Phai Cheng SC, C Arul, Lee Fook Choon, Ron Pereira, Johnny Tan and Eugene Seah.

Richard Tan

CASE NOTE : REVISING AN AWARD UNDER THE INTERNATIONAL ARBITRATION ACT - IS AN ARBITRATOR POWERLESS?

Jeffrey Tang Boon Jek (Appellant) v Stanley Tan Poh Leng (Respondent) (Civil Appeal No 107/2000)

Issue raised :

Whether an Arbitrator has the power to revisit or reverse an award made under the International Arbitration Act (Cap 134A) ("IAA") and the UNCITRAL Model Law ("Model Law") on International Commercial Arbitration.

Facts :

The Appellant and the Respondent formed a joint venture company called Dynasty Pacific Group ("DPG") with their respective groups of investors. Disputes arose between them leading to litigation in Australia wherein a Settlement Agreement was reached between the parties. The Settlement Agreement provided for arbitration in the event of further disputes arising.

Further disputes did in fact arise in respect of the parties' obligations under the Settlement Agreement and the matter was referred to arbitration. The Arbitrator, Mr Giam Chin Toon, SC made a reasoned award after considering the respective claims of the parties. It was expressed that the "award is final, save as to costs".

"Additional Awards" granted by the Arbitrator

Subsequent to the Arbitrator's decision, Mr Tang's solicitors wrote to the Arbitrator on numerous occasions raising the following points:

1. The Arbitrator, in dismissing Mr Tang's counterclaim, left out an aspect which related to cash deposits. The Arbitrator thereafter duly made an Additional Award ("Additional Award I"), pursuant to Article 33 of the Model Law.
2. Mr Tang's solicitors raised 2 further points; one that the Arbitrator appeared to have decided the matter on a point which was not argued before him and two, was interest claimable on the cash deposits refunded under the Additional Award I? The Arbitrator then rendered an "Additional Award II", wherein he dealt with the issue of Mr Tang's counterclaim and interest as well as the question of costs (that was reserved from his earlier decision). He conceded that his interpretation of the relevant provision in the Settlement Agreement was erroneous and therefore granted Mr Tang an award in respect of his counterclaim with interest (referred to as the "March Award").

Mr Tan applied by way of motion to set aside the March Award.

Arbitrator's reasoning

The Arbitrator expressed the following reasons for recalling the award and altering it:

1. There are no direct authorities or express provisions on whether an Arbitrator may reconsider the matter or rectify his decision on an international arbitration award. This may result in great injustice, which is inconceivable under the law or public policy.
2. Since there is no procedure of registration or perfection of the award (as argued by Mr Tang's solicitors), an Arbitrator can reconsider the award under Article 33(1) of the Model Law and the general powers given to him to determine the rules and procedures of the tribunal before enforcement, which would include the power to re-consider an award.

HELD: High Court

The arbitrator was functus officio when he made the March Award, thereby making it a nullity. Further, Article 33 of the Model law does not empower an arbitrator to recall an award with a view to reversing it.

Court of Appeal

The primary issue was whether the arbitrator was functus officio when he made the March award, which would make it a nullity. After considering the arguments of both counsel in relation to the "finality" of the award and the interpretations of the term "final award" from various sources, the Court of Appeal decided that:

1. A "final award" must be one that completes everything that the arbitral tribunal is expected to decide, including the question of costs. Therefore until such final award is given, the arbitrator is not functus officio.
2. Although the arbitrator had described his award as "final" in his initial decision and the "Additional Award I", the issue of costs was yet to be adjudicated upon. Accordingly, the arbitrator was entitled to reconsider his decision and to reverse it.

The Court of Appeal allowed the appeal with costs. The order of the court below was set aside.
(Judgment delivered by Chao Hick Tin JA.)

Contributed by
Ms. Janna Kwek of Messrs Khatter Wong & Partners

EDITORIAL COMMENT

The International Arbitration (Amendment) Bill was approved and passed on October 5, 2001. Under the proposed Section 19B to the International Arbitration Act (Cap 143A), Section 19B(2) will provide that, except as provided in Articles 33 and 34(4) of the Model Law, the arbitral tribunal shall not vary, amend, correct, review, add to or revoke the award upon an arbitration award being made. This will include an award made at different points in time on different issues or different parts of a claim, counter-claim or cross claim.

The effect of the proposed amendment reverses the position under the above case and will ensure finality in arbitral awards. It will effectively prevent parties from applying to the tribunal (after the publication of an interim award) to reconsider or reverse the interim award, prior to the publication of the final award.

TALK ON THE NEW SIAC DOMESTIC ARBITRATION RULES AND PANEL DISCUSSION

held on 20 Sept 2001 at Goodwood Park Hotel

Left to Right :
Mr Ang Yong Tong, ▶
Mr Philip Chan,
Mr Richard Tan,
Mr Michael Hwang
Mr Chow Kok Fong

◀ Speaker Mr Ang Yong Tong

SINGAPORE INSTITUTE OF ARBITRATORS COMMITTEES 2001/2002

1. Administration & Finance Committee

Chairman — Mr Richard Tan
Members
Mr Raymond Chan — Mr Wong Meng Hoe
Mr Yang Yung Chong

2. Constitution Committee

Chairman — Mr C. Arul
Vice-Chairman — Mr Leslie Chew, SC
Member — Mr G. Raman

3. Membership Committee

Chairman — Mr Yang Yung Chong
Vice-Chairman — Mr C. Arul
Members
Mr Chow Kok Fong
Mr Vassilios Vareldzis

4. Professional Practice Committee

Chairman — Mr Richard Tan
Vice-Chairman — Mr Raymond Chan
Members
Mr Edwin Khew — Mr Yang Ing Loong
Prof L. R. Penna — Mr Simon Lee Fun
Mrs Jennifer Yeo — Mr Aziz Tayabali
Capt Lee Fook Choon — Mr Jaya Prakash
Mr Prem Gurbani

5. Education/Conference Committee

Chairman — Mr Yang Yung Chong
Vice-Chairman — Mr Johnny Tan
Members
Mr Richard Tan Ming Kirk — Mr Lee Kok Eng
Mr Yang Ing Loong — Ms Pauline Sim
Mr Aziz Tayabali — Dr Teo Ai Lin Evelyn

6. Publication Committee

Chairman — Mr Raymond Chan
Vice-Chairman — Mr Ron Pereira
Members
Mr Lim Meng Tong — Mr Derek Nelson
Mr Pillai Subramanian — Mr K. S. Rajah

7. Activities Committee

Chairman — Mr Ron Pereira
Vice-Chairman — Mr C. Arul
Members
Mr Wong Meng Hoe — Mr Johnny Tan
Mr Edwin Khew — Dr Bernd Gotze

8. Disciplinary Committee

Chairman — Mr Raymond Chan
Vice-Chairman — Mr Goh Phai Cheng, SC
Member — Mr Chow Kok Fong

9. Law Review Committee (ad hoc)

Chairman — Mr Leslie Chew
Members (To be announced)

10. Mediation Committee (ad hoc)

Chairman — Mr Goh Phai Cheng, SC
Vice-Chairman — Mr Yang Yung Chong/ Capt Lee Fook Choon
Members (To be announced)

11. Web Site Committee (ad hoc)

Chairman — Mr Richard Tan
Vice-Chairman — Mr Eugene Seah
Members (To be announced)

ANNOUNCEMENTS

NEWS FLASH !

The Arbitration Bill was approved and passed by Parliament on October 5, 2001. The Bill will be enacted as the Arbitration Act, and will be effective on a date to be announced in the *Government Gazette*. The new Arbitration Act will repeal and replace the existing Arbitration Act (Cap 10) in its entirety.

NEW MEMBERS

The following were, recently admitted to membership of the Institute.

Members	*Associates*
Ms Ho Wun Sing, Sue	Mr Si-Hoe Tat-Chorng
Mr Ng Wai Keong, Timothy	Mr Lockwood David Alan
Mr Lim Meng Tong	
Mr Gopal Denash	
Mr Law Kong Hoi	
Ms Chia Wai Mun	

SINGAPORE INSTITUTE OF ARBITRATORS NEW PREMISES

The Institute will be moving to its permanent premises on the ground floor of UIC Building. Renovation work is currently in progress.

COURSES

INTERNATIONAL ENTRY COURSE 2001 ARBITRATION LAW & PRACTICE

Jointly Organized By
SINGAPORE INSTITUTE OF ARBITRATORS
CHARTERED INSTITUTE OF ARBITRATORS
and supported by
SINGAPORE INTERNATIONAL ARBITRATION CENTRE
on
Friday, 23 November 2001 - 2:00 pm to 5:30 pm
Saturday, 24 November 2001 - 9:00 am to 5:30 pm
Sunday, 25 November 2001 - 9:00 am to 5:30 pm
at Shangri-La Hotel

A one-day training course on
THE SINGAPORE DOMAIN NAME DISPUTE RESOLUTION POLICY

Organized By
SINGAPORE INSTITUTE OF ARBITRATORS
and supported by
SINGAPORE INTERNATIONAL ARBITRATION CENTRE
SINGAPORE MEDIATION CENTRE
on
21 November 2001, 9:00 am to 5:00 pm
Banyan Room, Tower Wing Lobby Level
Shangri-La Hotel

SHANGRI-LA HOTEL
ORANGE GROVE ROAD, SINGAPORE 258350

Registration is still open for the above courses. Interested please contact Salina at 5574 881 or email singarb@cyberway.com.sg

CASE HISTORY ON TRANSNATIONAL MEDIATION

This is a case history of how a collision case involving two ships was eventually resolved by mediation. It was a cross border mediation effort and this example was chosen because of the considerable commercial complexities involved. Despite the cultural and linguistic setbacks, a settlement satisfactory to both parties was achieved. Since this case, the writer had participated in several insurance claim disputes which were settled by mediation. The case history being narrated below, provide a reflection of the high and low points of the mediation effort.

Background of the Case

A collision between two merchant ships occurred in the hours of darkness in the northern approach of the Taiwan Straits sometime in 1994. This collision involved a Chinese ship and a Norwegian tanker. As a result of this collision, the Chinese ship suffered severe flooding in two cargo holds and had to be diverted to a Chinese port to dispose off the damaged cargo and to arrange for the transhipment of the remaining sound cargo. She had to terminate the voyage.

The Norwegian also suffered extensive structural damage to her bulbous bow but managed to proceed to her final destination to discharge her cargo. She was detained at the discharging port by a Chinese Maritime Court pursuant to Chinese law and her owners provided a US$2.8 million guarantee to secure her release. In response to this, the Norwegian owners arrested a sister ship of the Chinese ship in Rotterdam to enforced their claims against the perceived colliding vessel. The Chinese put up a security of US$3,000,000 to secure the sister ship's release.

Both parties were represented by their Chinese lawyers, English lawyers and Dutch lawyers. The claims (inclusive of loss of use claims and damage to cargoes) put up by the Chinese were in excess of US$3 million and the claims put up by the other party were close to US$2 million. The Chinese party started an action in China against the Norwegian party and similarly the Norwegians also commenced a parallel action in Rotterdam.

With the interest, costs and legal fees mounting with each passing day, the writer was approached first by the Chinese insurers and then their counterpart in Norway to attempt a mediation effort. In this instance, both the insurers took the lead and using their considerable leverage, prevailed upon their respective assureds to give mediation a try. Both the owners were skeptical that mediation would work and this is not surprising since traditionally, collision cases are very contentious in nature and had always been resolved through litigation.

Appointment Procedures

Immediately after my appointment, an agreement was drafted and initialled by both insurers. This appointment agreement spelt out the terms of my appointment, powers and responsibilities of the mediator and the payment of fees and expenses.

Working towards an Ice-breaking Meeting

Following my appointment, I experienced enormous difficulty in trying to bring the parties together for an objective discussion. Both parties claimed the moral high ground and expected the opponent to yield to their demands. Both parties felt that the other party is 80% to 90% to be blamed and insisted that there is hardly any room for compromise. It could be said that both parties were guilty of intransigence and lack of objectivity.

To break the ice between the two disputants, I proposed an ice-breaking session to get to know one another and to hear each other's clarification and the substantiation of the respective claims. It was an uphill task even to arrange for such a preliminary meeting. The difficulties encountered include the timing, choice of location, number of representatives allowed to attend, the insistence that respective lawyers were not allowed to attend, the issue as to what documents were to be exchanged and whether such documents were to be exchanged before the meeting or during the meeting, the timing for the exchange of the Statement of Claims with substantiation etc.

After much intervention (by the insurers of both parties), the first ice breaking session took place in a Chinese city in late Feb 1995 or about two months after my appointment. This meeting helped to remove much of the prejudice and adversarial tendencies and towards the end, it took on a decidedly civil facade.

I chaired all the sessions, which lasted about a day and set the agenda with the concurrence of the parties. It was necessary for me to play a moderating role to neutralize the North Europeans' straight talking and the Chinese subtlelities. Besides being the mediator, I also acted as the translator because the members of the Chinese party were not comfortable in conducting the discussions in English though they are more than competent in written English. As mediator and chairperson, I have to be very sensitive and intervened decisively to prevent misunderstanding or brusqueness or impatience from derailing the session. It is also necessary that we were not be too ambitious, knowing that the gulf of differences was too wide for a single session to arrive at a mutually acceptable conclusion.

This session succeeded in breaking the ice and bridging the gap between the disputants through face to face sessions and the hospitality dinners given by the Chinese. We also achieved in obtaining for the first time, the detailed claims statement with supporting invoices and reports, log abstracts, copy of the original working chart, statements etc. I adjourned this ice-breaking session after achieving the objective and gave two months for each party to study the documents and to carry out the necessary analysis. We decided to meet again after two months to discuss the reasonableness of the claims quantum and if possible to move on to the most sensitive part of the mediation, that is, the discussion on the degree of blameworthiness of the respective party.

It must also be mentioned that the Chinese had applied for a stay in court proceedings to allow the mediation to take its course.

2nd Meeting in China

The second meeting was held in May 1995 in a northern Chinese city and as usual, it was held in a hotel and this time round, the Norwegians played host in the arrangement of conference room, meeting rooms, lunch and teabreaks. This meeting is critical as during the intervening period between the first and second meeting, both disputants had scrutinized the opponent's case thoroughly and both had also engaged experts to carry out detailed navigational analysis. The claims and the quantum as to its reasonableness of both parties were examined with a fine toothcomb by the respective parties and they came prepared and ready to argue their case.

To my disappointment, both experts did not carry out an objective study but rather their analysis were rather biased and inconsistent with the realities. Their reports were meant to reinforce and support their paying client's position rather than to help to resolve the dispute.

I chaired all the sessions but it was a hair-splitting time and I had to intervene all the time to maintain a semblance of orderliness and focus. The discussions tended to stray from the agenda with both parties taking every opportunity to reinforce their view on the liability in respect of the apportionment of blame worthiness.

With the agreement of the parties, I decided to stick strictly to the objective of achieving a respective statement of claims which would be acceptable to either party and form the basis of the mediation effort. This was a very long and difficult task but could be achieved under the right encouragement through a caucus of separate meetings. Despite the arguably non-yielding position of both parties, tea-breaks and lunch-breaks helped immeasurably to bring the parties together. In this instance, the Norwegians were also gracious enough to throw a dinner to return the hospitality of the Chinese. Social inter-actions such as this helped to oil the mediation process.

By the next afternoon, we succeeded in working out a Statement of Claims for each party which could be accepted by the respective opponent and indeed form the basis of future liability discussion. The Statements of Claims for both parties were prepared and exchanged. The final Statement of Claims for the Norwegians was reduced by about 30% and that of the Chinese by about 40%. Both claims were inclusive of interest up to the end of 1996.

In the afternoon, we tried to move on to the issue of apportionment of liability. This proved to be impossible and

both parties were quite happy with what had been achieved and decided to terminate the meeting. Both parties, however, instructed the writer to continue with the ongoing process of finding an acceptable solution through mediation.

FOLLOW UP MEDIATION WORK

From May to December 1996, I was working quietly with both parties and there were substantial fax communications and telephone calls. Both parties were always kept in the picture of the progress and as mediator, an even handed approach and neutrality was critical. I had to articulate the grievances of the disputants in a neutral manner. Both parties also tried privately to obtain my personal view on the apportionment of liability but I staunchly refused to part with my opinion in order to facilitate the continuation of the discussion in a fair manner. After many twists and turns, the Norwegians finally came round and accepted the Chinese offer of 60/40 in favour of the Chinese.

This watered down Chinese offer represented a tremendous Chinese concession and if their offer was accepted, the Norwegian interests need to pay the Chinese only less than half a million US dollars but excluding cargo liabilities.

Just as I was preparing the Settlement Agreement, the Norwegian owners rejected the settlement proposal citing the reason that they had been advised that they could get a much better settlement in their favour if the case is allowed to proceed to court in China and Rotterdam. With a heavy heart and downright disappointment, I announced to the parties the suspension of the mediation proceedings.

LITIGATIONS IN CHINA AND IN ROTTERDAM

The Chinese Maritime Court delivered its judgement on 27 March 1997 on the basis of 70/30 in favour of the Chinese. This decision was appealed. To cut matters short, the Rotterdam District Court delivered its judgement in the Dutch proceedings in early March 1999, also 70/30 in favour of the Chinese. The Norwegian party also appealed but their insurers wanted to terminate all appeal actions in Rotterdam and in China and for this purpose, they instructed me to approach the Chinese again for an amicable settlement based on the 70/30 formula.

The writer spent four days in China in late May 1999 to work out an amicable settlement with the Chinese interests.

Quite naturally, the Chinese preferred to wait for the decisions of the appeal court and they were confident of getting much more from both the Dutch and Chinese Appeal Courts. However, commercial considerations weighed in heavily and finally, I was able to arrive at a situation where the Scandinavian insurers would pay the Chinese interests more than US$ one million as an amicable settlement. In percentage terms, the Scandinavians were paying some 135% more than the 1996 mediated proposed settlement. This figure also excluded the considerable legal fees and cargo claims from the cargo interests of the Chinese vessel.

This case was brought to an end by late June 1999.

Factors to Bear in Mind

* Agree as early as possible on the list of documents to be exchanged, preferably before the first meeting.

* The importance of an ice-breaking session with sufficient social interaction to get to know each other better.

* The Mediator must set the agenda, control the progress of the session and be firm in the conduct of all session meetings.

* Encourage parties to work toward a list of agreed issues. This helps the parties to achieve objectivity. This will also eliminate a whole list of unsupportable claims and in the end reduce the time needed to deal with unnecessary contentious issues.

* It is better to let the Mediator appoint any Expert in order to maintain fairness and objectivity. The terms of appointment can be approved by the parties.

* Do not be too ambitious, make progressive small steps to reach a consensus.

* The importance of tea breaks, meal breaks and social dinners.

* Neutrality of the mediator is crucial to maintain the confidence of both parties - this is not an easy task. Justice S P Bharucha, Judge of the Supreme Court of India in his augural address at the workshop on 'Mediation and Conciliation' in New Delhi on 3 Feb 1999 said ... *'A good mediator and conciliator alone can bring them to a meeting point from which the terms of settlement can be crafted and the matter brought to a conclusion acceptable to the parties without any feeling of defeat or loss. Negotiated settlements foster goodwill and mutual trust and not bitterness as in the case of court judgements and arbitral awards'.* His words of wisdom sum up the main thrust of mediation work.

* Patience to chip at the reluctance of the parties to modify their respective position as necessary.

* All communications with any party must be copied to the other party. Transparency is critical for the success of the mediation process.

* Again quoting from Justice Bharucha, he said, ..*'A good mediator can tell parties the strength and weakness of their respective cases and offer suggestions to work out disputes. He can put them in the right frame of mind to see reason and what is ultimately good for themselves.....Mediation is an art. It has to be nurtured and perfected. A good mediator must have the ability to perceive and articulate the grievances of the disputants in a friendly and neutral manner'.*

* Based on my personal experience in handling disputes through mediation involving different nationalities, I wish to add that mediation can solve disputes, making lengthy litigation quite unnecessary. Mediation focuses attention on finding solutions acceptable to the disputants and is not necessarily confined to the question of legal rights. Most disputants want to get on with life, they want quick resolution.

Capt. Lee Fook Choon
Master Mariner, L.L.M, FCIArb, ACII, Chartered Arbitrator
Loss Adjuster / Maritime Arbitrator

REPORT ON 20TH ANNUAL GENERAL MEETING AND EXTRAORDINARY GENERAL MEETING

held on 15 Aug 2001 at Shangri-La Hotel

The 20th Annual General Meeting of our Institute held at the Shangri La Hotel on 15th August 2001 was attended by 50 members. The meeting went through the usual items in the Agenda such as receiving and adopting the Minutes of the previous AGM and receiving and considering the Annual Report and Audited Statement of Accounts for the year ended 31st March 2001. There was also the election for the positions of President, Honorary Treasurer and 3 Council Members.

As these positions were not contested, the Chairman announced and declared that the following nominees were deemed elected:

PRESIDENT	Mr Richard Tan
HON. TREASURER	Mr Yang Yung Chong
COUNCIL MEMBERS	Mr C Arul
	Mr Goh Phai Cheng, SC
	Mr Johnny Tan

The Meeting stimulated much discussion and suggestions on various issues concerning the Institute. The President answered questions from the floor on the formation of the Specialist Arbitration Groups, the organization of further symposiums like the Arbitration Asia 21 held last November and the implementation of a mentorship scheme for members.

Members also suggested to the Council ways to assist new members to become competent arbitrators. One member commented that the November 2000 Arbitration Asia 21 Symposium was very well organized and was very successful.and enquired whether another similar event was being planned for the current year.

The President thanked the members for their comments and suggestions and assured them that their suggestions would be fully considered at the Council Meeting.

The President called the Extra Ordinary General Meeting to order immediately after the close of the AGM. There were several amendments to the Constitution. The President explained that the main reason for the amendments was to change the age restraint on members applying to become fellows, members and associate members of the Institute as currently provided in the Constitution. As there were no votes against the motion, the President declared the motion duly carried and the resolution so passed.

Reported by Lim Meng Tong

Council members for 2001-2002

From left to right

Back row :

Mr Goh Phai Cheng (SC),
Mr Ronald Pereira
Mr Johnny Tan,
Mr C Arul

Front row :

Mr Y. C. Yang, Mr Wong Meng Hoe
Mr Richard Tan, Mr Raymond Chan
Mr Leslie Chew (SC)

Members not in picture:

Capt Lee Fook Choon
Mr Eugene Seah (Co-opted)

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