INTERNATIONAL COMMERCIAL ARBITRATION IN SINGAPORE – RECENT DEVELOPMENTS

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Not so long ago, Singapore was not a favoured site for international arbitrations. In the 1988 case of *Builders Federal (Hong Kong)Ltd and Joseph Gartner & Co v Turner (East Asia) Pty. Ltd.*[1] the High Court of Singapore interpreted the Legal Profession Act (Cap 161) as prohibiting foreign lawyers from appearing on behalf of foreign parties in Singapore-based international arbitrations. Understandably, the case attracted some criticism[2].

More recently, however, there are clear signs that the Singapore authorities are making a determined effort to raise the profile and attractiveness of this South East Asian island-state as an international arbitration centre. This article highlights some of the recent developments in the arbitration and litigation spheres which are likely to affect the future of international commercial arbitration in Singapore.

SIAC

The Singapore International Arbitration Centre ("SIAC") was established in July 1991. Since then, the SIAC has actively promoted Singapore as a regional and international centre for commercial arbitrations.

The SIAC has compiled its own arbitration rules called the SIAC Rules which is largely based on the UNCITRAL Arbitration Rules and the Rules of the London Court of International Arbitration. It has also drawn up a panel of accredited arbitrators which includes Singaporean arbitrators and overseas arbitrators from the United Kingdom, USA, Canada, and Australia.

FOREIGN LAWYERS

In February 1992, to correct the status of foreign lawyers following the *Turner Case*, the Legal Profession Act (Cap 161) was amended to allow foreign lawyers to appear in Singapore-based arbitrations. Foreign lawyers are now permitted to appear in Singapore-based arbitrations, regardless whether the governing law is Singapore law or the law of another jurisdiction. However, if the dispute is governed by Singapore law, then the foreign lawyer must appear accompanied by a local lawyer.

COOPERATION AGREEMENTS

A number of agreements have been entered into at the state or

institutional level which are expected to attract international arbitrations to Singapore. For example, in April 1992, Singapore and Vietnam signed a shipping treaty which stipulated that disputes between shipping companies and related enterprises of the two countries are to be settled by arbitration. The agreement specifically referred to the SIAC and the SIAC Rules[3].

In September 1992, the SIAC entered into a cooperation agreement with the Chinese (PRC) arbitration body, CIETAC (China International Economic & Trade Arbitration Commission)[4]. The agreement is intended to facilitate greater cooperation between the two institutions and encourage commercial disputes involving firms from both countries to nominate in their dispute resolution clauses arbitration either at the CIETAC or SIAC .

The SIAC has also entered into a co-operation agreement with the Australian Centre for International Commercial Arbitration (ACICA) and more links have been developed between the two Centres

UNCITRAL MODEL LAW

Potentially the most far-reaching development is the adoption of the UNCITRAL Model Law on International Commercial Arbitration[5]. The Model Law was enacted on 31 October 1994 as a schedule to the International Arbitration Act (Cap 143A) ("IAA"). It came into operation on 27 January 1995.

With the enactment of the IAA, there will be two arbitration regimes in Singapore. The existing Arbitration Act (Cap 10) - which largely follows the English Arbitration Act, including the amendments of 1979 - continues to regulate domestic arbitrations. International arbitrations will come under the IAA and the Model Law. The IAA provides for parties in domestic arbitrations to "opt-in" into the international regime (s 5(1)) and also allows parties in international arbitrations to "opt-out" into the domestic regime (s 15).

Singapore adopted the Model Law with some modifications. These include empowering the arbitral tribunal to award interest as part of an award (s 20 IAA) and empowering a court to restrict the publication of court proceedings relating to arbitration cases in particular circumstances (s 23 IAA). Both modifications appear to follow the Hong Kong example[6].

Of more significance is the modification which grants arbitrators immunity from liability arising from their position as arbitrators. Section 25 IAA exempts arbitrators from liability arising from negligent acts and omissions as well as any mistake in law, fact or procedure during the proceedings or the making of an award. Arguably, this immunity is wider than the immunity under English law generally, which exempts arbitrators only from liability in negligence[7].

Another important modification affects Article 16 of the Model Law. Article 16 allows a party, faced with a decision of the arbitral tribunal on

the question of the tribunal's proper jurisdiction, to appeal to the competent court.

However, there is to be no further appeal from the decision of the competent court. The competent court in this instance is the Singapore High Court: s 8(1) IAA. However, Singapore modified the effect of Art 16 by allowing a party to appeal from the High Court to the Court of Appeal - Singapore's highest court - subject to the High Court giving leave to appeal: s 10 IAA.

LITIGATION SPHERE

Running parallel with the developments in the arbitration sphere are a number of major developments in the Singapore litigation sphere which are likely to have significant future impact on Singapore arbitration.

In 1993, pursuant to the Supreme Court of Judicature (Amendment) Act (No 16 of 1993), Singapore re-structured its superior courts and established the Court of Appeal. In April 1994, appeals to the Privy Council in London were abolished[8]. Thereafter, the Court of Appeal became Singapore's highest judicial body. On 11 July 1994, Chief Justice Yong Pung How issued a practice statement during a sitting of the Court of Appeal announcing that, in future, the Court of Appeal would not hold itself bound by any previous decisions of its own or of the Privy Council which, by virtue of the rules of precedent in effect prior to April 1994, would have been binding upon it[9].

These developments mark a maturing of the Singapore legal system and a cutting of the apron strings with England[10]. Granted, English law will still have some role to play in Singapore through the Application of English Law Act (Cap 7A) passed in 1993[11]. However, with respect to the law of arbitration, the influence of English law may decrease rather than increase in future.

A major reason for this is that Singapore has adopted the Model Law whereas the United Kingdom has not done so[12]. If increasing numbers of Singapore-based arbitrations are held under the Model Law, Singapore arbitration laws are likely to develop along the lines of the arbitration laws of common law jurisdictions which have also adopted the Model Law. Obviously, this would exclude England. This means that, in future, cases concerning arbitration law and practice from jurisdictions such as Australia and Hong Kong - where the Model Law has also been adopted - may well be more relevant to Singapore than cases from England[13].

CONCLUSION

These recent developments reflect the determination of the Singapore authorities to establish Singapore as an attractive site for regional and international arbitrations. Their efforts have not been in vain. From handling a meagre 2 cases involving a total of S$18 million during the 6-month period from July-December 1991, the SIAC handled 42 cases

involving a total S$397 million for the whole of 1994[14].

In the coming years, Singapore may even pose a significant competitor to Hong Kong as an international arbitration centre. This is due to some uncertainty as to Hong Kong's future as a leading Asian arbitration centre given the scheduled hand-over of the territory to China in 1997. Hong Kong currently attracts many Hong Kong-China commercial arbitrations for a number of reasons. One major reason is that Hong Kong arbitral awards are enforceable in many countries by virtue of the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. This Convention applies to Hong Kong through the United Kingdom's ratification of the Convention.

However, as things currently stand, when Hong Kong reverts to China on 1 July 1997, the Convention will apply to Hong Kong through China's ratification of the Convention. This arguably renders Hong Kong arbitral awards in Hong Kong-China disputes as domestic awards. As such, they will not benefit from the Convention[5]. Consequently, if no steps are taken to preserve the international enforceability of Hong Kong arbitral awards, it may be that, post-1997, as far as the arbitration stakes are concerned, Hong Kong's loss may be Singapore's gain.

Meanwhile, the adoption of the UNCITRAL Model Law may have the unexpected effect of bringing Singapore and Australian closer together - at least as far as arbitration law and practice is concerned.

FOOTNOTES

1. [1988] 2 *Malayan Law Journal* 280.
2. For example, see A F Lowenfeld, "Singapore and the Local Bar: Aberration or Ill Omen", *Journal of International Arbitration,* Vol 5 No 3, p 71 (1988).
3. "SIAC Rules Incorporated in Singapore-Vietnam Shipping Treaty", Singapore Arbitrator, July 1992, p 1. Vietnam subsequently established its own arbitration centre, the Vietnam International Arbitration Centre, in April 1993: see "Vietnam Sets up Arbitration Centre", *Singapore Arbitrator,* July 1993, p 1.
4. "CIETAC-SIAC Cooperation Agreement Signed", Singapore Arbitrator, October 1992, p 1.
5. See generally, "International Arbitration Act 1994 Enacted", *Singapore Arbitrator,* January 1995, p 1; Corinna Lim & Cecilia Lim, "Remodelling the Model Law", *Asia Law* (January/February 1995), p 28; and Lawrence G S Boo, "International Arbitration Act 1994 - A Model To Follow, 7 *Asia Business Law Review* January 1995), p 69.
6. Section 34D Arbitration Ordinance (Hong Kong) is the equivalent of s 20 IAA and s 2E Arbitration Ordinance (Hong Kong) is the equivalent of s 23 IAA.
7. *Arenson v Arenson & Casson, Beckman Rutley & Co* [1977] Appeal Cases 405.
8. Judicial Committee (Repeal) Act (No 2 of 1994)
9. The full text of the practice statement is reproduced in *Supreme Court of Singapore: The Reorganisation of the 1990s* (Singapore: Supreme Court of Singapore, 1994 p 91.
10. Singapore's Minister of Law, Professor Jayakumar, was quoted as stating in Parliament during the passage of the Judicial Committee (Repeal) Bill that "The time has come for us to cut the last strands of this legal umbilical cord once and for all.": see "Bill Abolishing Appeals to Privy Council Passed", *The Straits Times,* 24 February 1994.
11. See generally, V Yeo, "Application of English Law Act 1993 A Step in the Weaning Process", 4 *Asia Business Law Review* 69 ('April 1994)

12. Departmental Advisory Committee on Arbitration Law: *A Report on the UNCITRAL Model Law on International Commercial Arbitration* (London: Department of Trade & Industry, 1989) (Mustill Committee).
13. Of course, if parties to Singapore-based arbitrations choose to opt for arbitration under the domestic regime of the Arbitration Act (Cap 10), the outcome may be different. Whether this will occur is still an open question.
14. Information provided by the SIAC on 6 February 1995.
15. J Gray, "Arbitration in Asia: Bringing It All Back Home", *Asia Law* (January /February 1995), p 10 at p 15.

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