

**THE PAST, PRESENT AND FUTURE OF  
INTERNATIONAL ARBITRATION IN SINGAPORE**

*Justice Steven Chong*

**I. Where we began**

1. Today, I have been invited to share with you how international arbitration has evolved in Singapore over the last 50 years. However, I do not propose to wind the clock back to 1966; that would take us to a time when Singapore had just gained independence and was faced with pressing existential concerns over homes, jobs, racial tensions, corruption and many other fundamental matters on a national level. In this climate of uncertainty, Singapore's early years naturally saw no movement of note insofar as international arbitration was concerned. This is why my narrative this morning begins only in 1987 with one of the first few cases to shed some light on our early thinking about international arbitration. Here, I am referring to the well-known—or some would say infamous—case of *Turner (East Asia)*.<sup>1</sup>
  
2. In *Turner*, the applicant was the main contractor in a building project in Singapore governed by Singapore law. A dispute arose with the respondent sub-contractors and this was referred to arbitration in Singapore. Pertinently, the respondents were represented by lawyers from the reputable American law firm, Debevoise & Plimpton.

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<sup>1</sup> See *Turner (East Asia) Pte Ltd v Builders Federal (Hong Kong) Ltd and another* (“*Turner*”) [1988] 1 SLR(R) 281. The injunction was first granted *ex parte* in 1987, although the decision in the contested hearing was handed down later in 1988.

3. A preliminary hearing was called by the arbitrator in Singapore. The lawyers from Debevoise indicated that they would attend. In fact, they were on their way to Singapore from New York when, in rather dramatic circumstances, the applicant successfully applied for and obtained an *ex parte* interim order restraining Debevoise from acting or appearing for the respondents in the arbitration. The basis of the application was that such foreign representation or appearance in the Singapore-seated arbitration would contravene our Legal Profession Act.
4. An *inter partes* hearing was thereafter convened to determine whether the interim order should stand. The Law Society of Singapore was represented at this hearing and supported the applicant's position. The respondents, represented by local counsel, objected vigorously. They submitted that the Singapore Legal Profession Act did not apply to the arbitration proceedings as these were fundamentally different from court proceedings.
5. The High Court in *Turner* held that the "primary object" of the Legal Profession Act was to protect the public from the unauthorised practice of Singapore law.<sup>2</sup> Importantly, it found that this primary object was engaged even in arbitration because parties to such proceedings were "no less members of the public" than those who chose to have their disputes resolved through the courts. Equally, it found that foreign lawyers who represented parties in arbitration proceedings governed by Singapore law were no less engaged in the practice of Singapore law. Seen from this dual perspective, the High Court concluded that the common law right of parties to retain whomsoever they

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<sup>2</sup> See *Turner* at [34].

desired in Singapore-seated arbitrations had been “taken away by the Act”; instead, their choice of counsel was limited to the pool of lawyers holding valid practising certificates under the Legal Profession Act.

6. As was expected, *Turner* was met with widespread criticism.<sup>3</sup> The decision portrayed Singapore as an insular jurisdiction driven more by the parochial concerns of protecting the local Bar than by the commercial imperative of creating conditions conducive to international arbitration.

## **II. How we have progressed**

7. I will return to *Turner* shortly but what is notable at this juncture is that if *Turner* represents one of the lowest ebbs in Singapore’s arbitration journey, then we have done incredibly well over the last three decades to haul ourselves to where we are now. Today, Singapore is regarded as one of the five most preferred arbitration seats alongside London, Paris, Hong Kong and Geneva.<sup>4</sup> We have also emerged as the “most improved” among these seats in the past five years. And looking more regionally, the latest ICC report also confirms our ranking as the number one seat in Asia for ICC arbitrations.<sup>5</sup>
8. How was this remarkable turnaround achieved within such a short space of time? As I have commented elsewhere, we owe this to a right blend of software and hardware fashioned through the collective spirit of numerous

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<sup>3</sup> See, for example, Andreas F Lowenfeld, “Singapore and the Local Bar: Aberration or Ill Omen” (1988) 5(3) *Journal of International Arbitration* 71 at p 72; see also David W Rivkin, “Restrictions on Foreign Counsel in International Arbitrations” in *Yearbook Commercial Arbitration 1991* (Albert Jan van den Berg ed) (Kluwer Law International, 1991) at p 411.

<sup>4</sup> See the results of the survey jointly conducted by Queen Mary, University of London, and White & Case LLP, “2015 International Arbitration Survey: Improvements and Innovations in International Arbitration” at p 2, accessible at <<http://www.arbitration.qmul.ac.uk/docs/164761.pdf>>.

<sup>5</sup> See “Singapore confirms status as Asia’s most sought-after dispute resolution hub” (14 June 2016), accessible at <<https://singaporeinternationalarbitration.com/2016/06/14/singapore-confirms-status-as-asias-most-sought-after-dispute-resolution-hub/>>.

stakeholders to promote international arbitration in Singapore.<sup>6</sup> Today, I intend to touch only on the important contributions of two of these stakeholders, namely, the legislature and the courts.

**(a) A mature and responsive legislature**

9. A mature legislature attuned to the needs of the arbitration community has been pivotal to Singapore's success story in the arbitration space. As I hope to illustrate, this is evident from a cascade of legislative reforms throughout the last two decades. However, in terms of relative importance, nothing eclipses the legislature's inspired decision to enact our International Arbitration Act ("IAA") in 1995.
10. The IAA was significant for two main reasons. First, it adopted the 1985 UNCITRAL Model Law which was drafted to be suitable to both common law and civil law countries. Until then, Singapore's arbitration legislation was based exclusively on English law. Therefore, what the IAA did was to signal a "paradigm shift" in Singapore towards a more universally accepted framework for dealing with international arbitration.<sup>7</sup> In short, it made us more attractive to a greater community of users. Second, the IAA gave effect to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. This allowed arbitral awards made in Singapore to be enforced widely and without fuss, a quality greatly desired by businessmen.

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<sup>6</sup> See, for example, Justice Steven Chong, "Making Waves in Arbitration – The Singapore Experience", address delivered at the Singapore Chamber of Maritime Arbitration Distinguished Speaker Series 2014, accessible at <<http://www.supremecourt.gov.sg/news/speeches/justice-steven-chong--singapore-chamber-of-maritime-arbitration-distinguished-speaker-series-2014>>.

<sup>7</sup> See the observation made by the Singapore Court of Appeal in *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 at [54]

11. For these reasons, the IAA was unquestionably a turning point for Singapore. But our upward trajectory since then did not flow as a natural consequence from the adoption of the Model Law. Instead, our legislature has had to be constantly alert in reacting to several judicial decisions from our own courts which might have been negatively perceived by the arbitration community. Let me offer some examples of this.
12. My first example concerns an amendment to s 15 of the IAA in 2001. This came as a response to two decisions of the High Court in *Coop International*<sup>8</sup> and *John Holland*.<sup>9</sup> In both these cases, the court was confronted with a conflict of the parties' choice of procedural rules to govern their arbitration and the law of the arbitral seat (or *lex arbitri*). The court held that the former could impliedly oust the latter. This unsettled the arbitration community but, before long, the legislature moved in without waiting for an appellate court to definitively decide the issue. The result was the enactment of a new subsection in s 15 which affirmed the conventional view that the parties' choice of arbitral rules could not of itself exclude the IAA.
13. Barely a year later in 2002, the legislature had to intervene again. This was spurred by the High Court's *obiter dicta* in *Dermajaya Properties* that the arbitral rules chosen by parties would be "completely excluded" where these were incompatible with the IAA.<sup>10</sup> Such an approach understandably caused a stir as it detracted from the autonomy of parties to choose their own arbitral rules.<sup>11</sup> The legislature was again quick to detect this and amended the IAA to

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<sup>8</sup> See *Coop International Pte Ltd v Ebel SA* [1998] 1 SLR(R) 615.

<sup>9</sup> See *John Holland Pty Ltd v Toyo Engineering Corp (Japan)* [2001] SLR 262.

<sup>10</sup> See *Dermajaya Properties Sdn Bhd v Premium Properties Sdn Bhd and another* [2002] 1 SLR(R) 492 at [69].

<sup>11</sup> See Assoc Prof Ho Peng Kee, *Singapore Parliamentary Debates, Official Report* (1 October 2002) at col 1107.

clarify that the parties' choice of arbitral rules would prevail even in the event of incompatibility, unless that incompatibility was with a mandatory provision of the IAA. These amendments were swiftly introduced to address the perceived shortcomings of the IAA because the legislature was constantly in tune with the needs of the arbitration community.

14. I mentioned earlier that I would return to *Turner* and I do so now to tie the loose end on that story. There is no question from my earlier account that *Turner* had cast Singapore in a poor light. But, happily, we have shed that negative view as a result of legislative reforms to the Legal Profession Act which finally culminated in amendments made in 2004. Today, foreign lawyers are expressly permitted to appear in Singapore-seated arbitrations, even where the applicable law of the arbitration is Singapore law.<sup>12</sup> In other words, *Turner* has been completely reversed by statute.
15. My final example takes us to 2007 and the case of *Swift-Fortune*.<sup>13</sup> This was a case which reached Singapore's highest court, the Court of Appeal, after two conflicting decisions in the High Court. The issue was whether our courts had the power under the IAA to grant interim relief in aid of *foreign* arbitrations. With some reluctance, the Court of Appeal decided in the negative, holding that such power could only be exercised *vis-à-vis* arbitrations *in Singapore*. Much like *Turner*, the decision in *Swift Fortune* was criticised for its parochial posture.<sup>14</sup> But once again, the legislature wasted no time in introducing amendments to statutorily vest our courts with the power to grant interim relief in aid of foreign arbitrations.

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<sup>12</sup> See Legal Profession (Amendment) Act 2004 (No 23 of 2004).

<sup>13</sup> See *Swift-Fortune Ltd v Magnifica Marine SA* [2007] 1 SLR(R) 629.

<sup>14</sup> See Lawrence Boo, "Arbitration Law" (2006) 7 *SAL Annual Review* 51 at para 3.24.

**(b) A robust judiciary**

16. At this point, one could say that some of the court's "negative" arbitration rulings might have served to interrupt the growth of international arbitration in Singapore. However, I would say that the reality is to the contrary. Each of those "negative" rulings actually stimulated further development. Indeed, if our arbitration laws today are seen as comprehensive and well thought-out, it must be remembered that this was not always so. Our arbitration framework inevitably started off with "gaps" in it. What the courts have done is to identify these "gaps" which are then filled by a responsive legislature through statutory amendments. Seen from this perspective, the courts' earlier arbitration rulings may be appreciated as adding to the richness of our arbitration tapestry in an "on-going reformation of the arbitration framework".<sup>15</sup>
17. I wish to lend two further dimensions to the court's important role in Singapore. The first is in the context of applications to stay court proceedings commenced in breach of an arbitration agreement. The second is in the context of applications to set aside arbitral awards.
18. On the first of these two dimensions, there are few better examples of our courts' robust enforcement of arbitration agreements than the Court of Appeal's landmark decision in *Tjong Very Sumito* in 2009.<sup>16</sup> The question in that case was whether a "dispute" had arisen within the meaning of an arbitration clause. The Court of Appeal found that there was, holding that a

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<sup>15</sup> See Chief Justice Sundaresh Menon's Patron's Address at the Chartered Institute of Arbitrators London Centenary Conference delivered in July 2015 (at para 20), accessible at <<http://www.supremecourt.gov.sg/news/speeches/chief-justice-sundaresh-menon--patron-s-address-at-the-chartered-institute-of-arbitrators-london-centenary-conference>>.

<sup>16</sup> See *Tjong Very Sumito and others v Antig Investments Pte Ltd* [2009] 4 SLR(R) 732 ("*Tjong Very Sumito*") at [28]–[29].

“dispute” should be interpreted broadly to exist unless the defendant had *unequivocally* admitted that the claim made against him was due and payable.<sup>17</sup> Significantly, the Court of Appeal also stated that it would not delve into the genuineness of a “dispute” since this should properly be left to the arbitral tribunal to assess in accordance with the parties’ contractual bargain.<sup>18</sup> It therefore follows that, so far as the Singapore courts are concerned, “it is sufficient for a defendant to simply assert that he disputes or denies the claim in order to obtain a stay of proceedings in favour of arbitration”.<sup>19</sup> This is entirely in line with our court’s policy of minimal curial intervention in arbitration.

19. On the second dimension relating to setting aside applications, I noted in a recent judgment that such applications are often founded on creative interpretations which seek to expand the conventional boundaries of what might constitute a breach of natural justice.<sup>20</sup> However, these arguments tend to fall flat because our courts have been scrupulous in distinguishing genuine instances of procedural unfairness from arid technical complaints that mask what is essentially a second bite at the cherry.<sup>21</sup>
20. A recent decision of the Court of Appeal illustrates well how the malleable notion of breach of natural justice is closely guarded by the courts. In *AKN v ALC*, the Court of Appeal partially reinstated an arbitral award that had been set aside in its entirety by the High Court for breach of natural justice.<sup>22</sup> In so

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<sup>17</sup> See *Tjong Very Sumito* at [69(c)].

<sup>18</sup> See *Tjong Very Sumito* at [69(e)].

<sup>19</sup> See *Tjong Very Sumito* at [49], emphasis in original.

<sup>20</sup> See *Coal & Oil Co LLC v GHCL Ltd* [2015] 3 SLR 154 at [2] and the cases cited therein at [3].

<sup>21</sup> See *Soh Beng Tee & Co Pte Ltd v Fairmount Development Pte Ltd* [2007] 3 SLR(R) 86 at [65(b)].

<sup>22</sup> See *AKN and another v ALC and others and other appeals* [2015] 3 SLR 488 (“*AKN v ALC*”).

doing, the Court of Appeal emphasised the need to be careful in distinguishing between an arbitral tribunal's absolute failure to even consider an argument, which is a breach of natural justice, and its decision *no matter how uninformed and mistaken* to reject an argument, which is not.<sup>23</sup> While it might be tempting to conflate the two and give in to an impulse to do what is perceived to be "correct" in every case, the Court of Appeal noted that judicial interference in the latter scenario would actually defeat party autonomy and so undermine a crucial facet of arbitration.

21. At this juncture, I hasten to add a point which I made recently at an arbitration summit in Beijing last month. The point is that a judiciary which is supportive of arbitration does not mean one that blindly upholds arbitral awards in all instances. That constitutes not only an abdication of the judicial function, it also harms arbitration by giving it a dangerous hint of lawlessness that could drive more conservative parties away. Our courts are conscious of this and so we have interfered with arbitral awards where appropriate.<sup>24</sup> This has included situations where a tribunal has wholly failed to consider a party's submissions leading to a genuine breach of natural justice,<sup>25</sup> where a tribunal has rendered a final award on a dispute outside the scope of the arbitration agreement,<sup>26</sup>

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<sup>23</sup> See *AKN v ALC* at [46].

<sup>24</sup> Similar observations have been made by Singapore's appellate judges elsewhere. See, for example, Chief Justice Sundaresh Menon's address at the ASEAN Law Association Malaysia & Kuala Lumpur Regional Centre for Arbitration Talk & Dinner 2013, "Judicial Attitudes towards Arbitration and Mediation in Singapore" (at paras 30–32), accessible at <<http://www.supremecourt.gov.sg/docs/default-source/default-document-library/media-room/judicial-attitudes-to-arbitration-and-mediation-in-singapore.pdf>>; see also Judge of Appeal Justice Andrew Phang's address at the China-ASEAN Justice Forum 2014, "Alternative Dispute Resolution and Regional Prosperity – A View from Singapore" (at para 5), accessible at <<http://www.supremecourt.gov.sg/docs/default-source/default-document-library/media-room/china-asean-justice-forum---adr-and-regional-prosperity-%28final%29-11092014-%28phang-ja%29-highlighted.pdf>>.

<sup>25</sup> See *Front Row Investments Holdings (Singapore) Pte Ltd v Daimler South East Asia Pte Ltd* [2010] SGHC 80; revisited by the Singapore Court of Appeal in *AKN v AKC* at [40]–[47].

<sup>26</sup> See *PT Perusahaan Gas Negara (Persero) TBK v CRW Joint Operation* [2010] 4 SLR 672.

and where a tribunal has made an award purporting to bind non-parties to the arbitration agreement.<sup>27</sup>

22. To round off my discussion on the courts, allow me to quote a passage from the leading judgment in *Tjong Very Sumito* which I referred to earlier and which, I think, encapsulates the essence of how the Singapore judiciary sees its relationship with arbitration. The passage reads as follows:<sup>28</sup>

*... An unequivocal judicial policy of facilitating and promoting arbitration has firmly taken root in Singapore. It is now openly acknowledged that arbitration, and other forms of alternative dispute resolution such as mediation, help to effectively unclog the arteries of judicial administration ... More fundamentally, the need to respect party autonomy ... has been accepted as the cornerstone underlying judicial non-intervention in arbitration. ...*

*... In short, the role of the court is now to support, and not to displace, the arbitral process.*

### III. **What the future holds**

23. I hope this has provided a sufficiently useful snapshot of the significant legislative and judicial developments in Singapore in the field of international arbitration. But before closing my address, I wish to make some concluding observations on what the future might hold for Singapore.

24. International arbitration, as we know, is firmly entrenched today as the preferred mode of dispute resolution for cross-border commercial disputes.

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<sup>27</sup> See *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.

<sup>28</sup> See *Tjong Very Sumito and others v Antig Investments Pte Ltd* [2009] 4 SLR(R) 732 (“*Tjong Very Sumito*”) at [28]–[29].

But we cannot take this state of affairs for granted. Indeed, there is already a palpable sense that international arbitration is groaning under the weight of mounting complaints from disenchanted users. High costs in increasingly drawn out proceedings, a lack of transparency in decision-making, ethical conundrums in empanelling a tribunal, the use of guerrilla tactics to frustrate the arbitration process, and the increasing judicialisation of arbitral rules – all of these concerns, and more, have grown in prominence over the last few years and are now swirling in a vortex of discontent. It is no exaggeration to say that, if we keep on our current path, international arbitration’s “golden age” will be at an end sooner rather than later.

25. In this delicate context, I think that Singapore has an important role to play. I have shown you how we spent the last three decades finding our feet, and then our balance, in the world of international arbitration. Now, we must find our voice. What I mean by this is that we must embrace the role of an established arbitration player and lead by example in stimulating new ideas and ways of keeping arbitration as an attractive option for commercial users.
26. The recent amendments to the Singapore International Arbitration Centre’s (“SIAC”) Rules that came into effect in August provide some evidence of this. One such notable amendment has been the introduction of an early dismissal procedure which allows a tribunal to summarily dismiss unmeritorious claims and defences. The SIAC is the first arbitral institution in the world to introduce such a mechanism which will no doubt bring costs and time savings to parties

who invoke it judiciously.<sup>29</sup> The SIAC's recent round of amendments also include revisions to two novel innovations which it first introduced back in 2010 – the first is the concept of an emergency arbitrator who may be appointed at short notice to grant interim relief before the constitution of a tribunal; and the second is the expedited procedure which involves placing certain suitably urgent disputes on a special track towards quicker resolution.<sup>30</sup>

27. More generally, Singapore has also stepped up efforts at encouraging dialogue among international stakeholders on the important issues that confront international arbitration today. Indeed, it was at the 2012 ICCA Congress held in Singapore where Chief Justice Menon delivered a thought-provoking speech that brought home many of the uncomfortable truths about international arbitration I had outlined earlier.<sup>31</sup> Since then, we have kept the momentum going. For example, at the 2013 Singapore International Arbitration Forum, distinguished arbitration practitioners gathered to engage in some blue sky thinking on re-imagining the world of international arbitration. This led to thoughtful exchange on a range of sensible ideas, such as involving arbitrators at an earlier stage of the proceedings, limiting the scope of documentary production, and adopting inquisitorial processes more readily where appropriate.<sup>32</sup> While it remains to be seen whether these ideas will

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<sup>29</sup> See "The New SIAC Rules 2016: What you need to know" (18 Aug 2016), accessible at <<http://www.startupdecisions.com.sg/blog/new-siac-rules-2016/>>.

<sup>30</sup> See "The Emergency Arbitrator and Expedited Procedure in SIAC: A New Direction for Arbitration in Asia", accessible at <<http://siac.org.sg/2013-09-18-01-57-20/2013-09-22-00-27-02/articles/420-the-emergency-arbitrator-and-expedited-procedure-in-siac-a-new-direction-for-arbitration-in-asia>>.

<sup>31</sup> <sup>31</sup> Sundaresh Menon, "International Arbitration: The Coming of a New Age for Asia (and Elsewhere)" in Albert Jan van den Berg (ed) *International Arbitration: The Coming of a New Age?* ICCA Congress Series vol 17 (Kluwer Law International, 2013).

<sup>32</sup> Sundaresh Menon, "Where We Have Been, Where We Should Go" in Albert Jan van den Berg (ed) *Legitimacy: Myths, Realities, Challenge* ICCA Congress Series vol 18 (Kluwer Law International, 2015) at p 1035.

eventually take root, what is important to note is that Singapore is doing her part to create the conditions conducive for such critical brainstorming.

28. I wish to conclude on this note by commending our hosts for organising what promises to be a conference both deliberative and dynamic in equal measure. Indeed, this is an important platform for us to think boldly, share freely, and engage passionately over the urgent issues that loom over international arbitration. I therefore wish you a fruitful conference ahead.

29. Thank you.

Justice Steven Chong  
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\*I would like to record my appreciation to Assistant Registrar Bryan Fang for his assistance in the preparation of this address.