

MAKING WAVES IN ARBITRATION – THE SINGAPORE EXPERIENCE

I INTRODUCTION

1. Singapore's rise in prominence in the international arbitration scene has been nothing short of remarkable. It was not more than 20 years ago that we were, in the frank assessment of others, a jurisdiction "naïve of the needs of international commercial arbitration" – a country that "*just didn't get it*". Today, however, international opinion about us could not be more different. Take a glance at the recent literature around you and this is immediately apparent. From international surveys to legal bulletins, Singapore has been completely recast as a "regional leader in Asia", a "world-class trailblazer", and a country now firmly finding her place "within a magic circle of global arbitration players". Such admirable recognition certainly gives one a sense of how far we have come, but I believe there is really no better way to appreciate the scale of Singapore's achievements than to look at the numbers which bear this out.

2. In a 2010 survey conducted jointly by Queen Mary, University of London and White & Case LLP, Singapore ranked among corporate users as the third most preferred seat of arbitration in the world. We were then placed only behind the more established arbitration capitals of London and Geneva, and rated on par with Tokyo and Paris. Significantly, in a survey of legal practitioners across 34 jurisdictions which was concluded just this year by Berwin Leighton Paisner LLP, it appears that Singapore's attractiveness has grown yet even further. In this latest survey, some of its key findings were that 42% of respondents said they were more likely to select

Singapore as a seat of arbitration now than they were five years ago, and 70% or more also gave Singapore the highest possible ratings for the “quality of experience” which we offered as an arbitral seat.

3. Our flagship arbitration centre, the Singapore International Arbitration Centre (“SIAC”), has also done tremendously well despite its relatively young heritage to be regarded as the fourth most preferred arbitral institution in the world. The SIAC’s latest annual report shows that in just the span of the last decade, its caseload has increased fourfold, rising from 64 cases in 2003 to a record peak of 259 cases in 2013. The growing size, sophistication and significance of the cases which the SIAC handles is also evident from the rise in the average claim amount by some 60% from \$15.36 million in 2012 to \$24.44 million in 2013. This, I might add, addresses what some have previously regarded as “a fly in SIAC’s ointment”, which was the perception that the volume of cases handled by it were not matched in terms of value. Additionally, it is also significant that, for 2013, 86% of the SIAC’s cases were international in nature, 48% had no connection with Singapore, and the parties involved were of 50 different nationalities.

4. These are glowing statistics of which we can be very proud. At the same time, they also lead one to ask: *what is the magic recipe or secret formula?*

5. Two responses may be readily offered in this connection. First, there is no doubt that Singapore is blessed with an excellent geographical location. We are situated right in the heart of an increasingly integrated South-East Asia while the two fastest growing economies in the world today, China and India, are also not far

away. Singapore is therefore, happily, a convenient location to arbitrate for many businesses in the region. Second, it also cannot be gainsaid that our recent success has coincided with an exponential growth in global transnational commercial activity. The hallmark of our globalised era has been the so-called “death of distance” which, to borrow from the renowned author Thomas Friedman, enables us to “reach around the world farther, faster, deeper, and cheaper than ever before”. It is therefore unsurprising that we have witnessed a tremendous rise in the volume of international trade in the past few decades, and that has in turn fuelled the demand for more cross-border dispute resolution services. Singapore’s arbitration sector is certainly a beneficiary of this.

6. It would be remiss for one to think, however, that Singapore’s success is all down to her own good fortune: a matter of merely being at the right place at the right time. While there is certainly no denying that favourable *external* factors have contributed to Singapore’s rise, it must be underscored that we have only been able to capitalise on these conditions because of a collective *internal* will and vision shared by our various stakeholders to truly make Singapore – as the SIAC’s slogan says – a place “where the world arbitrates”.

II THE SINGAPORE EXPERIENCE

(A) *A pro-active legislature*

7. First, our legislature has consistently demonstrated an unwavering commitment towards enhancing Singapore’s standing in international arbitration.

8. In 1995, it took the first significant step towards putting Singapore on the map through the enactment of the International Arbitration Act (“IAA”). The IAA adopted the 1985 UNCITRAL Model Law and the importance of this cannot be understated. This is because the Model Law was crafted in such a way as to be acceptable to *both* common law and civil law systems, whereas Singapore’s arbitration legislation had until then been guided by English law. The Court of Appeal has therefore aptly described the IAA’s adoption of the Model Law as heralding a “paradigm shift” for Singapore because it gave us an invaluable, *internationally-accepted* legislative framework for international commercial arbitration. The IAA was also significant for another reason: it gave effect to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. This has allowed for the widespread and easy enforceability of arbitral awards from Singapore. By erecting the twin pillars of the Model Law and the New York Convention as part of our arbitration landscape, there is no question that the IAA has been the legislative cornerstone upon which our modern arbitration hub is built. And with its twentieth anniversary just months away, it is indeed timely to pay tribute to the wisdom of our lawmakers in enacting such a critical piece of legislation.

9. Our legislature has, of course, not remained static since the IAA’s inception. To the contrary, it has been most responsive to developments in the law which are perceived to have less than favourable effects to our arbitration ambitions. As the Minister for Law, Mr K Shanmugam, has stated: “[O]ur approach in Singapore is: we see a problem, and where it can be solved legislatively, we are in a position to do

that within three to six months.” Let me now provide you with some examples of this dynamic and robust approach.

Examples of legislative intervention in judicial developments

10. In 2001, s 15 of the IAA was amended in response to two decision of the High Court – *Coop International Pte Ltd v Ebel SA* [1998] 1 SLR(R) 615 and *John Holland Pty Ltd v Toyo Engineering Corp (Japan)* [2001] SLR 262. In both these cases, the High Court had propounded the view that the parties’ choice of arbitral rules was sufficient to impliedly displace the application of the IAA or the Model Law in Singapore. This was surprising. The courts appeared to confuse the procedural rules chosen by parties to govern the conduct of their arbitration and the *lex arbitri*, which is the underlying national legal framework for arbitrations. As has been observed, the established view then was that the latter cannot be “impliedly ousted” by the former and, as a result, much disquiet was generated within the arbitration community. The legislature, however, moved swiftly to quell such concerns by amending s 15 of the IAA to include a new subsection (2). This now clarifies that a provision in an arbitration agreement which refers to or adopts any rules of arbitration *shall not of itself* be sufficient to exclude the application of the Model Law or the IAA.

11. Just a year later, in 2002, the legislature had to make another important intervention. This was in reaction to the decision in *Dermajaya Properties Sdn Bhd v Premium Properties Sdn Bhd and another* [2002] 1 SLR(R) 492 (“*Dermajaya Properties*”). In this case, the High Court noted that, while the amendment to s 15 made clear that the parties’ choice of arbitral rules could not impliedly oust the

IAA/Model Law, it left open the question of what the outcome should be where the two were incompatible. Though it was not strictly necessary for the Judge to state his view on this issue, he nevertheless ventured to say that the parties' choice of rules would be "*completely excluded*" in such circumstances. Again, this resulted in disquiet in the arbitration community. The Ministry of Law received feedback that lawyers in some international law firms had advised their clients that the legal position in Singapore was now uncertain in light of *Dermajaya Properties*. Some of these lawyers also advised their clients to avoid Singapore as a venue for arbitration. Although the observations by the court were merely *obiter* and thus did not have the effect of changing the law in Singapore, the sense of unease within the arbitration circles was sufficient impetus for Parliament to enact a new s 15A of the IAA. This provision reinforces the principle of party autonomy in international arbitration by making it clear that the default position under the IAA is that arbitration rules adopted by parties will be given *full effect*. These arbitration rules will prevail even in the event of incompatibility, unless that incompatibility is with a *mandatory* provision of the IAA/Model Law.

12. My final example concerns the well-known case of *Swift-Fortune Ltd v Magnifica Marine SA* [2007] 1 SLR(R) 629 ("*Swift-Fortune*"). In this case, the Court of Appeal held that Singapore courts did not have the power under the IAA to grant interim relief in aid of *foreign* arbitrations; that power was exercisable only in respect of arbitrations conducted *in Singapore*. The implications of this decision were very significant. It shocked the arbitration community who had long subscribed to the contrary view. Many were concerned that the approach in *Swift Fortune* would make

it “impossible for Singapore to achieve international renown” because it reflected an insular approach towards arbitration. As Professor Lawrence Boo wrote at the time:

Singapore has hitherto been seen as a ‘pro-arbitration’ regime. The position as it now lies with the Swift-Fortune decision cuts a different picture, viz, that Singapore is actually only ‘pro-Singapore arbitration’. If the intention is to pitch Singapore as a serious international arbitration hub, a parochial approach of self-help may actually be self-defeating.

13. The decision in *Swift-Fortune* was therefore clearly of some concern to our arbitration aspirations. Parliament was cognisant of this and, in 2009, it intervened by introducing s 12A of the IAA. This provision augments the powers of the court in respect of foreign arbitrations, but it also places appropriate restrictions on the exercise of these powers in line with our policy of minimal curial intervention.

Pioneering legislative amendments

14. Besides keeping a firm eye on how arbitration law is being developed by the courts, our legislature is also sensitive to the needs of the commercial users of arbitration and is unafraid to make bold, even pioneering, changes to accommodate such needs. The most recent amendments to the IAA in 2012 demonstrate this point well.

15. For example, in this latest round of amendments, we became the first jurisdiction in the world to provide explicit legislative support for the concept of an emergency arbitrator. This was done by expanding the definition of “arbitral tribunal” in s 2 of the IAA to specifically include emergency arbitrators who are therefore now able to exercise the full range of powers available to ordinary tribunals and whose

awards are enforceable in exactly the same way. It bears mention that the idea of an emergency arbitrator is still a relatively new one. Some have described it rather colourfully as “neither fish nor fowl” while others have been more neutral in calling it “*sui generis*”. However, the novelty of the emergency arbitrator scheme alone did not deter Parliament from addressing a clear industry need. Parliament recognised that, in a “fast-moving business environment”, commercial parties might well require emergency interim relief before the constitution of a tribunal; hence it had no reservations in moving in to meet that demand.

16. The 2012 amendments to the IAA are also significant for allowing judicial review of negative jurisdictional rulings despite there being no clear international consensus on the merits of such recourse. Indeed, the position under the Model Law does *not* allow for curial intervention in respect of negative jurisdictional rulings. This is because it was thought inappropriate to compel an arbitral tribunal to continue with the arbitration after it ruled that it was without jurisdiction. However, after conducting a wide consultation with various stakeholders in the industry, it was found that there was “overwhelming support” for the proposal to allow reviews even against negative jurisdictional rulings. Among some of the reasons provided was the fact the absence of recourse against such rulings may well defeat the parties’ intention to arbitrate. Therefore, once again, Parliament had no hesitation in taking the lead by amending s 10 of the IAA. The effect of this amendment is another example of legislative amendment to statutorily “reverse” a decision of our courts – this time the decision of the Court of Appeal in *PT Asuransi Jasa Indonesia (Persero) v Dexia Bank SA* [2007] 1 SLR(R) 597.

(B) A supportive judiciary

The courts' general stance towards arbitration

17. Our legislature has therefore certainly been pivotal in establishing Singapore as a major arbitration player, but no less important is the role played by our courts. The judiciary is highly supportive of Singapore's policy objectives and, in this regard, I can do no better than to quote the following statement by VK Rajah JA (as he then was) in *Tjong Very Sumito and others v Antig Investments Pte Ltd*:

There was a time when arbitration was viewed disdainfully as an inferior process of justice. Those days are now well behind us. An unequivocal judicial policy of facilitating and promoting arbitration has firmly taken root in Singapore. ... [T]he role of the court is now to support, and not to displace, the arbitral process.

18. This pro-arbitration policy which the courts espouse is well-illustrated in many of our local cases. Today, I will provide you with only a sampling.

Examples of pro-arbitration cases

19. I begin with the celebrated case of *Insigma Technology Co Ltd v Alstom Technology Ltd* [2009] 3 SLR(R) 93 where the Court of Appeal upheld a "hybrid arbitration agreement". In this case, the arbitration agreement in question provided for arbitration in Singapore to be administered by the SIAC in accordance with the ICC Rules of Arbitration. The respondent in the arbitration proceedings argued that such an agreement was "pathological" in that it was uncertain or unworkable, thus it could not be enforced. The Court of Appeal, however, dismissed this argument. In

what has been described by a leading author as a “well-reasoned decision”, the Court of Appeal clearly emphasised a preference for the “*principle of effective interpretation*” in so far as the construction of arbitration agreements was concerned. It held that, on account of this principle, the court should seek to give effect to the parties’ intention to resolve their disputes through arbitration where they had evinced a clear intention to do so. This is *even if* certain aspects of the agreement may be “ambiguous, inconsistent, incomplete or lacking in certain particulars”, and so long as prejudice was not caused to either party.

20. Another case illustrating the courts’ willingness to support arbitration is *PT Prima International Development v Kempinski Hotels SA and other appeals* [2012] 4 SLR 98. In this case, the High Court had set aside three out of five arbitral awards on the basis that a point had not been formally pleaded. However, this decision was overturned on appeal. It is clear from the Court of Appeal’s judgment that it had avoided a formalistic approach towards pleadings in arbitration. The court chose to focus on whether the wronged party had truly been *prejudiced* by the other party’s pleadings and found this not to be the case. This decision has been lauded as yet another strong indication of the court’s commitment to the philosophy of minimal curial intervention in the enforcement of awards in Singapore. As one commentator has stated, the decision should be welcomed because “international arbitration must cater to parties from different legal systems that have different conceptions of the rules of pleading”.

21. Finally, in the most recent case of *BLC and others v BLB and another* [2014] SGCA 40 (“*BLC v BLB*”), the Court of Appeal has demonstrated once again that

setting aside an arbitral award in Singapore can be, as some have said, a “near-Herculean task”. In this case, the High Court had set aside part of an arbitral award on the ground that there was a breach of natural justice because the sole arbitrator had failed to consider one of the respondents’ counterclaims. The High Court found that this omission was likely to have occurred because the sole arbitrator had extensively adopted only the appellants’ list of issues. The decision was overturned on appeal because it was found that the arbitrator had in fact considered both parties’ list of issues. The Court of Appeal, nevertheless, went on to observe that the respondent’s case would have failed even if taken at its highest. In the court’s view, *even if* the arbitrator had erroneously decided that the resolution of the appellants’ list of issues would resolve all disputes between the parties, that error went merely to the substantive merits of the arbitrator’s decision because it consisted in the arbitrator conflating issues of law and/or fact which he ought not to have done. In other words, even if the arbitrator had misunderstood the arguments presented to him, it did not follow that there was a denial of natural justice notwithstanding that this would be a serious error of law and/or fact. It is therefore not surprising that *BLC v BLB* has already been widely acclaimed as the latest addition to our growing jurisprudence which entrenches the principle of minimal curial intervention.

22. It is no coincidence that every leading arbitral capital of the world is supported by a mature judiciary. Arbitration players require the assurance that when judicial intervention is necessary, the judiciary is robust enough to act. In that sense, an arbitration institution cannot flourish without the backing of a mature and sophisticated judiciary.

(C) *A growing pool of legal expertise*

23. With a mature and responsive legislature and an equally supportive judiciary, it is clear that Singapore's arbitration laws are designed for her to flourish. The question is whether we have the lawyers to take advantage of that when it comes to servicing their clients' needs. I have no doubt that we do.

24. Over the past few years, as more arbitration work has come to these shores, our local Bar has become increasingly exposed to legal work in this field. There is therefore much more opportunities for our lawyers to hone their craft in arbitration and a much greater stimulus for local firms to broaden their range of capabilities so as to provide first-rate services to their clients. This is further augmented by several initiatives which have been started in Singapore to enhance our arbitration expertise. A fitting example is the Singapore International Arbitration Academy which is an intensive three-week training course conducted by the Centre of International Law at the National University of Singapore. The panel of instructors assembled for this annual course certainly reads like a who's who of international commercial arbitration and, by sharing their wealth of experience, one can only imagine that the participants will learn many a valuable lesson to carry into practice. Ultimately, with the overall quality of legal services being raised, this will inspire the confidence of users in selecting Singapore as their seat for arbitration. It is no doubt a virtuous cycle.

25. It is also pertinent to mention that the government's liberalisation of the legal services sector has also contributed significantly to the deepening pool of legal expertise which can be found in Singapore. In the past few years, a considerable

number of foreign law firms and leading UK Barristers Chambers have set up their offices in Singapore and many of them belong to the top 30 arbitration practices as ranked by the Global Arbitration Review. This has also certainly added to both the number and quality of options available to users.

(D) A world-class infrastructure

26. The final element which gives us an edge as an arbitral seat relates to our hardware, *ie*, our world-class infrastructure. Maxwell Chambers epitomises that.

27. When it first opened its doors in 2010, Maxwell Chambers was *the world's first* integrated dispute resolution complex, boasting generous-sized hearing rooms, breakout and preparation rooms, transcription, recording and interpretation services, lounge facilities, and concierge services. If you prefer a courtroom-like experience complete with uncomfortable chairs, you can choose the Heritage hearing room. Today, Maxwell Chambers houses many international arbitral institutions from Singapore and across the globe. We can also be proud that, despite a growing number of dispute resolution hearing centres in recent years, Maxwell Chambers has retained its status as the pre-eminent venue for arbitrators and lawyers alike. In a recent 2014 survey by the Global Arbitration Review on hearing centres, it is reported that, unlike other centres, Maxwell Chambers drew virtually no negative comments from respondents. Instead, Maxwell Chambers was described rather enthusiastically by those interviewed as “currently the gold standard”, “perfect”, and “the standout facility”.

28. It should be stressed, however, that it is not simply Maxwell Chambers which has been responsible for Singapore's success as an arbitral seat. Many dedicated arbitration hearing centres have sprung up across the world, but what other places might find difficult to duplicate is Singapore's "*overall infrastructure*". That includes our world-class Changi Airport which makes us one of the most easily accessible countries in the world, our excellent public transport and road networks, our island-wide broadband connectivity, and our wide offering of five and six-star hotels. It has therefore been said that the prospect of holding hearings in Singapore has certainly become "every arbitration counsel's and arbitrator's dream".

29. And, of course, our excellent infrastructure has also allowed us to host such prestigious events as the bi-annual ICCA Congress in 2012 which attracted more than 1,000 delegates from across 59 countries. Events such as this certainly raise Singapore's profile as a thought leader in the arbitration scene. In this regard, it is worth mentioning that, at the 2012 ICCA Congress itself, our Chief Justice delivered an award-winning keynote address which has been described as a "game changer".

III MARITIME ARBITRATION AND ITS PROSPECTS

30. The Singapore Experience has therefore been made possible only because a mosaic of different players have worked symbiotically, and tirelessly, over the years to achieve the common goal of making us a major arbitration capital of the world. There is no "*magic*" involved; but a forward-thinking legislature, a robust judiciary, an expanding corps of skilled arbitration lawyers, and a top-notch infrastructure – these can be said to be the ingredients in our recipe for success. With each of these

ingredients now firmly in place, it is apt to say, as the Minister for Law recently has, that Singapore provides an ideal “*ecosystem*” for the conduct of international arbitration.

31. I pause now to take stock of what we have achieved in the commercial arbitration space. In less than a decade, we now stand shoulder to shoulder with the other leading arbitration capitals of the world. How can we translate our success story in commercial arbitration to the maritime arbitration space? In my view, the conditions in Singapore should be even more favourable to develop Singapore as the pre-eminent seat for maritime arbitration. I say this because in addition to riding on the success and impetus of the SIAC, Singapore has the ideal setting to achieve this. Singapore is one of the largest ports in the world. Many of the leading shipowners in the world are either headquartered or have offices here. Through the efforts of IE Singapore, we have attracted many of the leading P&I Clubs of the world to set up offices here with Japan P&I Club being the latest. The Who’s Who of the world’s leading maritime law practices have offices here either in their own right or in collaboration with local law firms.

32. There is now sufficient critical mass of key players in the maritime community in Singapore and the local maritime arbitration community is certainly well-poised to reap the benefits.

33. This optimism appears to borne out by the Singapore Chamber of Maritime Arbitration’s (“SCMA”) data which shows that the SCMA’s caseload has consistently been on the rise since it was reconstituted as a separate entity from the SIAC in

2009. When it started off, the SCMA handled six disputes in its first year but, for the year 2013, that figure stood at 20. In fact, the latest statistics reveal that, by the middle of this year, the SCMA has already logged the same number of cases as its peak for the whole of last year (*ie*, 20 cases). Another indicator of the SCMA's growing profile as an arbitration centre is the internationality of the disputes referred to it. In this connection, the figures for this year show that almost half the cases involved 100% international parties. This certainly speaks of the growing international recognition and acceptability of the SCMA's Arbitration Rules.

34. The maritime arbitration sector is therefore evidently buoyed by the wider so-called arbitration "*hub effect*" which has been generated in Singapore. However, my message to you today is that the maritime arbitration community should not be content merely to ride on this positive wave, much less to take it for granted. I am therefore very heartened to note that the various stakeholders in the maritime industry have worked closely to bring about several recent ground-breaking developments which have raised Singapore's maritime arbitration profile tremendously.

(A) Significant recent developments

Singapore added as an arbitral seat on BIMCO's forms

35. The first of these developments is a most remarkable one – the inclusion of Singapore as an arbitral seat on the Baltic and International Maritime Council's ("BIMCO") forms in 2012.

36. Singapore's efforts in lobbying BIMCO for years are well-documented and it has only been through such perseverance that we have achieved this watershed result. Today, we are named as an official arbitral seat alongside the two traditional maritime arbitration centres of London and New York on forms which are used by around 70% of the world's contracts for maritime trade. After taking into account that BIMCO users also have a fourth "open option", the practical reality is, as the Chief Justice said at last year's SCMA Conference, that Singapore now has a one in four chance of being named as the seat of arbitration in respect of potential disputes arising out of 70% of the world's maritime contracts. That is simply quite a stunning prospect.

37. If I might add, Singapore's inclusion on BIMCO's forms as representing the Asian region also could not be better-timed. It is not uncommon now to hear of how the shipping world's "centre of gravity" is shifting towards Asia or of how Asia appears to be "the most important 'port of call'" for the global maritime industry. A recent review of maritime transport conducted by the United Nations Conference on Trade and Development (UNCTAD) shows that international seaborne trade is at its highest ever, fuelled in particular by China's domestic demand as well as increased intra-Asian trade. And, this buzz in Asian maritime activity looks set only to grow. A survey of global marine trends estimates that the volume of seaborne trade will more than double by 2030 and the key driver of this is identified as the emergence of both China and India as maritime powerhouses in addition to the traditional maritime powerhouses of Japan and Korea. China, in particular, is projected to see the largest growth in commercial fleet ownership rivalling the whole of Europe combined.

38. With all this increased shipping activity occurring just beyond Singapore's shores, our addition on BIMCO's forms positions us well as the focal point in the region for resolving maritime disputes. This is especially so when it is considered that Singapore already has some important practical advantages over other arbitration centres which are further afield, such as the parties' concerns over logistics, time zone, cultural familiarity, or otherwise. As some practitioners have therefore found, the early signs are showing that "[p]arties that would historically arbitrate in London and Hong Kong are already moving to Singapore".

Introduction of the Singapore Ship Sale Form

39. The second recent ground breaking development is the introduction of the Singapore Ship Sale Form ("SSF") which names Singapore as the default seat of arbitration. This form was launched in January 2011 and, within the space of one and a half years, it was reported to have crossed the 100 transactions mark. This is a highly impressive uptake and it appears likely that the SSF will continue to do well. This is especially so given that it has received widespread support from major shipping companies, such as NOL, and ringing endorsement by the Federation of ASEAN Shipowners' Associations and the Asian Shipowners' Forum, which have both encouraged their members to use the form.

40. With the SSF gaining greater traction among buyers and sellers of ships, it comes as little surprise that it has already been reported to have opened up a new stream of cases to the SCMA. Indeed, we can expect even more cases to arrive at the SCMA's door as the SSF becomes better understood by Asian parties, and this

cause is no doubt facilitated greatly by enterprising moves, for example, to provide simple translated guidance versions of the form in Japanese and Chinese. In fact, industry experts have also predicted that given the carefully drafted and balanced nature of the form, “it may well travel well beyond the Asian market”.

41. I recall attending a meeting more than two decades ago when the leaders of the maritime industry first discussed Singapore’s ambition to become a maritime hub with a complete range of vital services including maritime arbitration. Many of the major shipowners of the world were represented at that meeting during which I remarked that if Singapore was to have any serious aspiration to achieve its ambition to become a maritime hub, it had to start with the shipowners represented at that meeting taking the effort to examine their dispute resolution clauses with a view to amending them to refer their disputes for arbitration in Singapore. We have since come a long way. The BIMCO and Singapore Ship Sale forms are excellent initiatives to encourage users to opt for Singapore as their preferred arbitral seat. The fact that Singapore has been able to implement these two ground breaking initiatives is recognition that collectively our stakeholders of the maritime industry have both the clout and the muscle in the international maritime community. I invite the leaders of the maritime community to flex your muscles to *further* promote maritime arbitration in Singapore.

SCMA Expedited Arbitral Determination of Collision Claims (“SEADOCC”)

42. Finally, I also note that the SCMA has recently launched a new procedure called SEADOCC which is intended to deal with the apportionment of liability for ship

collisions through arbitration. Given that SEADOCC is still in its infancy, I have no figures to share with you at this point on how commercial parties have responded to this procedure. However, with all the virtues of being a practical, efficient, and cost-saving way to settle collision disputes, I am optimistic that this will be yet another significant avenue by which cases will be channelled to the SCMA. In this regard, I echo sentiments of the Senior Minister of State for Law, Ms Indranee Rajah, who recently said that SEADOCC represents “a serious effort” to provide parties with an alternative to costly court resolution when they are faced with the thorny and rather complex area of liability apportionment. This is certainly a space to watch.

(B) *Staying competitive for the future*

43. The future for maritime arbitration in Singapore therefore looks very bright with the recent developments which I have just outlined. However, given the fierce competition for arbitration work in the region and around the world, we must always be mindful of ways in which we can enhance Singapore’s appeal as a seat for arbitration. I believe the approach should be, as the Prime Minister has said albeit in a different context, that “*the more you do, the more you need to do*”. It is in that vein that I intend, in this part of my address, to simply highlight some areas where I believe the maritime arbitration community can contemplate taking further steps to boost Singapore’s attractiveness.

Emergency arbitrators

44. My first proposal is for the SCMA to consider following in the way of the SIAC by having an emergency arbitrator scheme. The SIAC Rules introduced this scheme

in July 2010 and to-date it has received more than 40 applications for an emergency arbitrator. The popularity of the scheme has also constantly been on the rise; in 2013, a record number of 19 applications were received by the SIAC.

45. A good illustration of how effective the appointment of an emergency arbitrator can be was given by Professor Michael Pryles some years ago when the SIAC first launched the scheme. This case involved a dispute as to the quality of a consignment of coal between an Indonesian shipper and a Chinese buyer. The coal had been languishing in a Chinese port for three months and it was deteriorating. The shipper therefore wanted to sell the cargo pending the resolution of the dispute but it was the start of the week-long Chinese New Year holidays and so this was difficult to arrange. Fortunately, the shipper was able to apply to the SIAC to appoint an emergency arbitrator and his difficulty was resolved in a most clinical and swift fashion. The shipper notified the SIAC about its application on a Monday morning, filed its papers at 2 pm the same day and, by 5 pm, a very experienced shipping lawyer was appointed as emergency arbitrator. The emergency arbitrator gave his preliminary directions that same evening, scheduled the hearing for the next day and, on Tuesday, made an order permitting the sale.

46. This is just one example out of many which demonstrates how useful the appointment of an emergency arbitrator can be to commercial parties. This, I might add, will be especially so for those in the maritime sector whose needs are typically both extremely time and market sensitive. After all “time is money” to shipowners. Moreover, given that Parliament has already thrown its weight behind the emergency arbitrator scheme in its recent round of amendments to the IAA, I believe that the

time is certainly ripe for the SCMA to consider providing its users with this added option.

Publication of redacted awards as the default rule

47. My second proposal concerns the publication of redacted awards by the SCMA. I am aware that this is already provided for in rule 35.9 of the SCMA's Rules which states that *if* the SCMA considers that an award merits publication (for academic and professional purposes), then it will release a redacted version of the award for publication unless the parties object to this within 30 days of being notified of the SCMA's intention. However, as one would recognise, the scope of publication under this rule is rather limited or selective seeing that it depends on the SCMA's assessment of the merits of the particular decision. My suggestion, therefore, is for the SCMA to go one step further and institute a *default rule* that *all* awards are subject to publication unless the parties object.

48. There are many virtues in doing so. First, it fulfils a wider public interest in the transparency of arbitral proceedings. Second, the gradual accretion of published awards can serve as an educational bank for the training of aspiring arbitrators. Third, it encourages future arbitrators to achieve consistency in the reasoning of their awards. Fourth, it places legal practitioners in a more informed position to advise their clients on the principles applied and approaches adopted by arbitrators. Finally, but no less significantly, a continuous stream of well-reasoned awards flowing from the SCMA can serve only to heighten its visibility, competence and profile as a centre for maritime arbitration disputes.

49. Given these clear benefits, it is not surprising that many maritime arbitration societies do have a practice of publishing redacted awards *as a matter of course* unless parties request otherwise. For example, the Society of Maritime Arbitrators in America (“SMA”) maintains an “Awards Service” which publishes the full text of arbitration awards by its members and this data bank now contains over 4,100 awards dating back to the 1950s. The SMA’s website explains its policy for publishing all awards in the following terms:

Such reasoning [in the published awards] is of great value as it provides insight into the practices and customs of the trade. The awards may therefore serve as a guide, not only for the resolution of disputes, but also as a means of avoiding disputes when negotiating fixtures. While New York arbitrators are not absolutely bound by arbitral precedents, in an effort to maintain consistency, panels do take prior awards into consideration.”

50. Ultimately, as one commentator has put it:

When the [arbitration] process has consistency and predictability, its legitimacy is enhanced because parties know what to expect. They have a greater understanding of the process, leading to greater satisfaction with it, and are therefore more likely to use it again.

(C) A potential challenger from within?

51. Before I close this speech, I pause to make one final observation which concerns the imminent establishment of the Singapore International Commercial Court (“SICC”).

52. As with any major development, news of the SICC has generated its fair share of excited chatter and apprehensive murmurs. What I wish to briefly address today is the sentiment that the SICC may be entering the dispute resolution services ring as a

possible *challenger* to arbitration. Indeed, it has been suggested that, in time to come, the SICC may well prove to be a more economical, faster and transparent alternative “to rival the supremacy of international arbitration as the predominant mode of transnational commercial dispute resolution”.

53. In my view, however, the SICC should not be seen as *competing* with arbitration for dispute resolution work in Singapore. As the Minister for Law has quite rightly said, the SICC is intended to serve as an “important *complement*” to arbitration so that, as part of a trifecta of dispute resolution institutions together with the incoming Singapore International Mediation Centre and the SIAC, it will play its own pivotal role in giving Singapore the holistic edge of providing a “complete suite of dispute resolution offerings to parties”. Indeed, one can readily spot sufficient differences between the SICC and the key characteristics of international arbitration to suggest that the two will not be getting in each other’s way but, instead, can sit comfortably alongside one another in the menu of dispute resolution services offered by Singapore.

Availability of appeals under the SICC

54. The first prominent difference is that arbitral awards may not be appealed against under the IAA but, subject to their prior agreement, parties will have a right to appeal to the Court of Appeal against judgments of the SICC. However, this feature of the SICC does not mean that it is in any way “superior” to arbitration. After all, one of the great enduring strengths of arbitration lies in the finality of awards. This is clearly borne out by the results of another survey conducted by the Queen Mary

School on corporate attitudes toward international arbitration. In this survey, corporations were asked whether they desired having an appeal mechanism and an overwhelming majority said no. In their view, making an allowance for appeals was disadvantageous as it would make arbitration more “cumbersome and litigation-like and essentially negate a key attribute of the arbitration process”.

55. At the same time, however, one also finds enough evidence to suggest that the possibility of an appeal would be welcomed by commercial parties in certain circumstances. For example, it has been well-documented that parties can sometimes be put off by the fact that they have “only one chance to ‘get it right’” in arbitration. And this is most keenly felt where the stakes involved are very high: here, studies have shown that parties may be especially unwilling to “bet the farm” on a single tribunal’s decision. View through the lens of these users, it may be said that “[h]owever desirable finality may be, it is poor recompense for injustice”.

56. What this contrast of opinions and attitudes illustrates is the simple fact that different users can, and frequently do, vary in how they value different attributes of different dispute resolution systems. Accordingly, with the added dimension of permitting appeals, the SICC should be understood as no more than *filling a gap* in the market rather than exploiting a weakness of arbitration.

Inability to select adjudicator under the SICC

57. Another key difference between arbitration and the SICC is the fact that cases before the SICC will be heard by members of the SICC Panel (comprising existing

Supreme Court Judges and Associate Judges appointed on an *ad hoc* basis) whom parties cannot select. This is a complete contrast from arbitration where an integral part of its process involves the constitution of the tribunal through the parties' selection of the arbitrators.

58. Party autonomy is a key feature of the arbitration process and so, by removing the parties' ability to select their adjudicators, I do not imagine that the SICC will be affecting arbitration work detrimentally. However, there is no doubt that there are some, though not a large portion, of arbitration users who, from their experience, may be wary of repeat arbitrators and the possibility of arbitrator bias. For such parties, the Singapore judiciary's qualities of impartiality, integrity and incorruptibility may be precisely what they are seeking in the resolution of their disputes.

Joinder of parties under the SICC

59. Another distinguishing feature between arbitration and the SICC is that the SICC has the power to join non-parties *even without their consent*. However, as the Court of Appeal has recently observed 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 ("*Astro*"), such "forced joinder" is generally not possible in arbitration unless the parties' arbitration agreement or choice of institutional rules unambiguously allows for it.

60. Again, I stress that this is merely another factor which differentiates the SICC from arbitration along a horizontal spectrum of dispute resolution alternatives. I am

certainly not suggesting that the SICC's power to join non-parties results in its vertical elevation above arbitration as a "better" forum for resolving commercial disputes. Arbitration has been such an attractive proposition for commercial parties because of its consensual and confidential nature, yet these twin advantages are precisely what will be eroded if the idea of a forced joinder of non-parties does take root. As the Court of Appeal stated in *Astro*, the notion of a forced joinder is simply "utter anathema to the internal logic of consensual arbitration". Thus I do not think it can be said that arbitration will suffer from what it lacks when it is quite clear that what it lacks is incompatible with its very essence to begin with.

61. I do, of course, acknowledge that, as commercial arrangements and relationships become more sophisticated and complex, an increasing number of present-day disputes are not merely "bi-polar" in that they revolve around the one-claimant, one-respondent paradigm. Today, an important number of disputes are "multi-polar" in nature, for example where string contracts are concerned. In these instances, I recognise that the power to join non-parties can be of great practical benefit to the disputants concerned. For one, parties can avoid unnecessary costs in having to pursue different sets of proceedings in respect of a dispute arising from the same factual substratum. Another advantage is that having the dispute heard with all the interested parties present also eliminates the possibility of inconsistent awards being rendered. Therefore, it is clear that, by being vested with the coercive power to join non-parties, the SICC can appeal to commercial parties which have these interests at the forefront of their considerations. In this particular context, the SICC may again be regarded as filling a gap in consumer demand which arbitration, by its very nature, is not equipped to address.

The idea of user-centricity

62. Ultimately, the point which I have sought to make here is this – by offering as wide a range of options to users as possible, Singapore eschews a one-size-fits-all approach to dispute resolution and, instead, positions herself strategically as one which is guided by a *user-centric* philosophy. After all, as Sir Peter Cresswell recently took pains to emphasise, “[t]he focus should be on the users”. This approach is eminently sound. In my view, it avoids falling into the danger which Lord Mustill had cautioned about many years ago when he said that:

[W]e should be very careful about what we assert as to the preferences of users for various forms of resolution process, and the weight which they attach to various characteristics of those processes. Of course every user would like a dispute which is speedy, fair, and inexpensive, and which yields an award which is final, accurate, and predictable. Quite so, but I have never seen one which combines all those characteristics, and it is for the user to decide (not for us to decide) which of the characteristics is paramount.

IV CONCLUSION

63. We have journeyed far to reach where we are today in the world of international arbitration. The Singapore Experience up to this point has been one of assembling the building blocks together. It has been a short but storied history of getting our legal framework in place, refining our judicial philosophy, deepening our pool of legal expertise, and erecting the infrastructure that allows for all these intangibles to come together to produce a true hub for arbitration.

64. At present, we are reaping the rewards of these earlier efforts. I have highlighted some of the recent milestones achieved by our maritime community in this address and it goes without saying that such progress would not have been possible if not for a sturdy foundation and a track record demonstrating an unstinting commitment to the promotion of arbitration. As the next chapter of the Singapore story unfolds, the focus will turn to how we can maintain our pre-eminent position in an increasingly crowded space for dispute resolution. I have provided some passing suggestions today but these really represent no more than a sampling of what more can be done. My simple hope is that they can at least serve as a catalyst for greater innovation in the never-ending pursuit of staying relevant.

65. I certainly will be watching with keen interest how Singapore's maritime arbitration sector continues to develop and, with the dedication and enterprise of all our stakeholders, I am confident that we will see Singapore making new waves, perhaps legal "*Tsunamis*", in the near future.

Thank you.

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Judge
Supreme Court*
10 November 2014

Speech delivered by Justice Steven Chong at the Singapore Chamber of Maritime Arbitration Distinguished Speaker Series 2014

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