

**THE SPECIAL ROLE AND RESPONSIBILITY OF ARBITRAL  
INSTITUTIONS IN CHARTING THE FUTURE OF INTERNATIONAL  
ARBITRATION**

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Ladies and Gentlemen

**I. Introduction**

1. I am honoured to have this opportunity to address you on the “Special Role and Responsibility of Arbitral Institutions in Charting the Future of

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International Arbitration”. In a sense, this is a modern topic. What I mean by this is that as recently as two decades ago, few would have said that arbitral institutions had any role in *shaping* the future of international arbitration. They might have granted it a role in *stewardship*, perhaps, but few would have said that arbitral institutions had the privilege of *initiative*. The prevailing view was that these were essentially “administrative bodies” whose role was only to “facilitate the arbitration designed by the parties or by the arbitrators they have selected”.<sup>1</sup> However true that might have been in the past, it is not an accurate description of the current reality.

2. The modern arbitral institution has been described as a “gatekeeper” to the arbitral process, playing a vital role at every stage in the life cycle of an arbitration, from the appointment of arbitrators, to the determination of applications for joinder and consolidation in certain circumstances,<sup>2</sup> and finally, in the scrutiny of awards.<sup>3</sup> Coupled with the arbitral institution’s broadened supervisory role is a prominent role in thought leadership. In this regard, one need look no further than the SIAC. This past year has seen the launch of the SIAC Academy, the organisation of the first SIAC-CIL Academic-Practitioner Colloquium, and the publication of its memorandum on cross-institution consolidation protocol, which proposes a framework for leading arbitral institutions to work together to ensure the efficient, expeditious, and sensible resolution of disputes that might otherwise be decided in piecemeal fashion in different fora.<sup>4</sup>

3. While the SIAC is perhaps part of the vanguard, it is not alone in these endeavours. Indeed, much of the innovation that takes place in the field of arbitral procedure today comes in the form of rules, codes, and guidelines which are promulgated by arbitral institutions and professional associations such as the IBA, the CIArb, and ICCA. These populate the so-called soft regulatory space that exists outside the scope of international treaties and national laws.<sup>5</sup>

4. The result, as observed by several academics, is that arbitral institutions now play a crucial role in upholding due process and shaping the rights of the parties in potentially far-reaching ways.<sup>6</sup> I suggest that they have not only a special role, but a duty, to shape the future of arbitration. In this address, I will discuss some of the challenges that face the arbitration profession today and suggest that arbitral institutions will prove essential to their resolution.

## **II. The rise of the modern arbitral institution**

5. As a starting point, it may be useful to briefly consider the history of the arbitral institution. In the Medieval period, trade guilds and merchant bodies began regulating disputes within their trades by forming standing bodies dedicated to dispute resolution. Some of these, such as the Stannary Courts in Cornwall, which dealt with disputes arising out of tin mining and related matters, gained recognition as specialised local courts. Others – such as the guild tribunals which first came to prominence in Italy – stayed resolutely

outside the curial structure.<sup>7</sup>

6. However, these were pseudo-courts that functioned in parallel with the state legal system, and are not what comes to mind when one speaks of an arbitral institution. A more recent ancestor of the modern arbitral institution is probably the trade association of post-Industrial Revolution Britain, and perhaps, the most famous of these is the Liverpool Cotton Brokers' Association, which was founded in 1841 and still exists today as the International Cotton Association. What started out as an informal meeting on Friday mornings, of cotton brokers who gathered to collect information for publication in their circulars, soon turned into a permanent organisation that facilitated the resolution of disputes between buyers and sellers without the need for recourse to the courts. Under the system set up by the Cotton Association, buyer and seller would each nominate a broker to represent their interests, and if the two could not agree, a third broker would be selected by the association to arbitrate and break the tie.<sup>8</sup>

7. The role of the Cotton Association was limited to calling into existence an arbitration by constituting the tribunal. It played no further part in the arbitration, which was left entirely in the hands of the tribunal to conduct in whatever way it deemed appropriate, in the light of the parties' election and the strictures of the national law.<sup>9</sup> But because of its success, it provided the blueprint for the modern arbitral institution, which was followed by the very

earliest institutions, such as the LCIA, the PCA, the German Institution, and the ICC's International Court of Arbitration.<sup>10</sup>

8. Today, institutional arbitration has come to dominate the field. Perhaps with the exception of India,<sup>11</sup> the evidence on the whole is that the vast majority of users prefer institutional arbitration. The 2015 Queen Mary International Arbitration Survey showed that 79% of the arbitrations that the respondents had taken part in over the preceding five years were institutional. And this was the continuation of a pattern or predominance: in the 2006 and 2008 editions of the survey, institutional arbitration made up, respectively, 73% and 86% of the arbitrations in which the survey respondents participated.<sup>12</sup> This predominance is also supported by case statistics. The SIAC received 452 new cases in 2017<sup>13</sup> – a more than fivefold increase from the 86 new cases which were referred to the SIAC a decade earlier.<sup>14</sup> The ICC received 810 new cases in 2017, an increase of about 30% over the 599 new cases which were filed with the ICC in 2007.<sup>15</sup> And CIETAC's annual caseload for 2016 was a staggering 2,183 cases, more than triple the 981 cases which it handled in 2006.<sup>16</sup>

9. If one were to seek answers to why this might be so, one would not have to look far. Institutional arbitration offers the advantage of pre-established rules and procedural frameworks which are reasonably predictable in their application and which obviate the need for parties to negotiate matters that

might otherwise prove contentious. Furthermore, arbitral institutions also provide professional administrative and logistical support.<sup>17</sup> In this way, they smooth over many of the difficulties that often attend *ad hoc* arbitration, making the arbitral process simpler to navigate, and more accessible to less sophisticated users. The institutions also commonly assure a degree of quality control by establishing panels of reputable arbitrators and scrutinising awards prior to release.<sup>18</sup> Hence, it is unsurprising that most users tend to prefer institutional arbitration and as early as 1970, Ion Nestor, UNCITRAL's *special rapporteur*, was able to write that "the future of arbitration lies in institutionalization".<sup>19</sup>

### **III. Future challenges and the unique role of the arbitral institution**

10. Of course, this is not to say that all is perfect. In the 2018 Queen Mary Survey, respondents were asked to identify the "worst characteristics of international arbitration", and the top five complaints were:

- (a) costs (cited by 67% of respondents);
- (b) the "lack of effective sanctions during the arbitral process" (45%);
- (c) the "lack of power in relation to third parties" (39%);<sup>20</sup>
- (d) lack of speed (34%); and

(e) lack of insight into arbitrators' efficiency (30%).

11. These problems are neither *unique to nor caused by* institutional arbitration; but given that most of these relate to the internal workings of the arbitral system, there is certainly an expectation that more *can* and *should* be done.<sup>21</sup> More importantly, users believe that arbitral institutions should be the harbingers of change. In the 2018 Queen Mary Survey, a staggering 80% of respondents said arbitral institutions were “best placed to influence the future of international arbitration.”<sup>22</sup>

12. I suggest that the arbitral institutions have already been playing a substantial role in bringing about reform and development in the practice of arbitration. Indeed, almost all of the most exciting procedural innovations that have taken root in recent years, such as the emergency arbitrator, mechanisms for joinder and consolidation, expedited proceedings and summary rejection procedures, have come from arbitral institutions. In my view, there are three critical factors that explain the ascendancy of arbitral institutions in arbitration thought leadership.

13. The first is the structure of law-making in international arbitration. In her study of soft law in international arbitration, Gabrielle Kaufmann-Kohler writes that arbitral institutions and organisations, the legal profession, and academia collectively comprise an “epistemic community”, meaning a community bound, not by national ties or by membership of any organisation, but by common

interest and shared expertise in a common activity.<sup>23</sup> In the absence of any supranational regulatory body, the development of norms in international arbitration takes place through the dialogue between the actors in this community.<sup>24</sup>

14. The example of the emergency arbitrator procedure, which I mentioned earlier, is a useful illustration of this dialogic process at work. The emergency arbitration procedure probably traces its roots to the “Pre-Arbitral Referee Procedure” introduced by the ICC in 1990.<sup>25</sup> However, this did not find favour with users, and a similar proposal mooted by the World Intellectual Property Organisation in the mid-1990s also failed for want of support. It was only when the American Arbitration Association, as well as its external arm, the International Centre for Dispute Resolution, introduced it, in 1999 and 2006 respectively, that the idea caught on. In the short space of ten years afterwards, similar provisions were adopted by almost all major arbitral institutions, including the ICC, the LCIA, the HKIAC and the SIAC.<sup>26</sup> The introduction of this procedure in the 2010 edition of the SIAC Rules prompted Parliament to legislate as to the enforceability of such measures through amendments to the International Arbitration Act in 2012. And while there continue to be differences between the various rules adopted by different institutions, a broad transnational consensus has coalesced through this international sharing of best practices.<sup>27</sup>

15. The second is that arbitral institutions are fundamentally market players who compete for a share of the international arbitration business pie. It is this competition for business that has provided the impetus for innovation and transformed arbitral institutions into critical drivers of transformation and progress. Arbitral institutions tend to compare and benchmark their rules and practice with those of their counterparts in order to consider how they might then improve.<sup>28</sup> In this setting, it is common for one or two leading arbitral institutions to establish certain ideas which, in turn, are closely studied by others, resulting in a process of “intellectual cross-fertilization” that fuels growth and spurs change.<sup>29</sup> In some cases, this has promoted greater convergence, as was the case with the emergency arbitrator procedure; in others, it has promoted a process of “creative destruction”, through which unworkable rules are given a decent burial.

16. The third is that arbitral institutions are able to perform almost immediate reality-testing of their ideas. Because of their role in supervising arbitrations, arbitral institutions are at the coal face, as it were, of the profession. Whenever new provisions are introduced, they have the unique ability to witness their impact in the context of live cases and gather feedback from their arbitrators, who will be able to provide first-hand accounts of the operation of these new rules. Most major arbitral institutions also have established processes for gathering input from their users and gauging their satisfaction with the arbitral process, which closely acquaints them with the needs and preferences of

disputants.

#### **IV. Three challenges on the road ahead**

17. It is therefore clear that arbitral institutions can play and have already been playing a unique role in shaping the practice of arbitration and the conclusion that they have a duty then to shape its future seems to me to be inescapable because arbitration today is a pillar of the transnational system of justice and of the rule of law. For the remainder of my address, I will discuss three key areas in which I suggest arbitral institutions should take a keen interest and play an influential role. These are (a) costs; (b) conduct; and (c) continuity.

##### **A. Costs**

18. I begin with costs. For all its many advantages, it is widely thought that arbitration is, on the whole, more expensive than litigation.<sup>30</sup> As I mentioned earlier, respondents in the 2018 Queen Mary Survey cited the high cost of arbitration as its worst characteristic.<sup>31</sup>

19. If this is the most important concern affecting the users of arbitration, then it seems to me that arbitral institutions must play their part in addressing it. One direct way in which institutions can influence the cost of arbitration is through their role in determining arbitrator remuneration. In this regard, the SIAC has already moved towards fixing arbitrator's fees on an *ad valorem*

basis pegged to the value of the claim, instead of using hourly rates. In theory, this removes any financial interest that an arbitrator may have in drawing out the length of the arbitration and it is to be commended.

20. That said, arbitrators' fees and administrative costs only form a small part of the overall cost of an arbitration. A 2015 study by the ICC Commission on Arbitration and Alternative Dispute Resolution found that arbitrators' fees and expenses accounted for only 15% of the costs of arbitration; administrative fees made up another 2%; while the remaining 83% was made up by sums spent on lawyers' fees and other party costs.<sup>32</sup>

21. It follows that the most significant way (even if not the easiest by any means), in which arbitral institutions can help reduce the overall cost of arbitration is by developing rules that encourage greater efficiency in the disposal of disputes. This is a matter of some importance because arbitration is sometimes said to be losing its lustre as a flexible, expeditious alternative to litigation.<sup>33</sup> The criticism has been that arbitration has become so wedded to its shibboleths that it is slow to adopt measures that would otherwise save time and costs. However, change is afoot.

22. Take, for instance, the development of summary disposal procedures in arbitration. It was not long ago that it was thought that whereas national courts needed powers of summary disposal for public policy reasons, those same considerations did not apply to arbitral tribunals. In fact, it was thought that

summary disposal might be incompatible with the parties' rights to have their case heard.<sup>34</sup> But today, summary disposal procedures are gaining traction. The SIAC was the first major commercial arbitration centre to introduce such a rule,<sup>35</sup> and other institutions have since followed suit.<sup>36</sup> Of course many of the disputes that come to arbitration will be complex, of high value and cost a lot to resolve. But there will be many disputes that can be dealt with much more efficiently.<sup>37</sup> In appropriate cases, summary disposal or expedited procedures can be crucial in helping parties to avoid proceedings that would otherwise be protracted and costly.

23. Apart from such procedural innovations, arbitral institutions can also strive to promote efficiency, and conversely, discourage inefficiency in the conduct of proceedings. 76% of respondents to the 2018 Queen Mary Survey felt that arbitral rules should address consequences for delay by the parties or their counsel,<sup>38</sup> while interviewees suggested that arbitrators should be equipped with procedural tools to address dilatory conduct.<sup>39</sup> I agree with this. For instance, institutions can create rules which explicitly authorise a tribunal to allocate costs *according to* the parties' efficiency and expedition in the conduct of the proceedings.<sup>40</sup> One example of this already exists in Article 38(5) of the 2017 ICC Rules, which provides that "in making decisions as to costs, the arbitral tribunal may take into account such circumstances as it considers relevant, including the extent to which each party has conducted the arbitration in an expeditious and cost-effective manner." Although most

institutional rules already confer the tribunal with wide discretion to allocate costs, the advantage of the ICC's approach is that it explicitly mentions, and puts parties on notice, that conduct encouraging the smooth and efficient running of the proceedings will be viewed favourably when the tribunal deals with costs. This also found favour with the respondents to the 2018 Queen Mary Survey, many of whom said that arbitrators need to adopt a "bolder approach" in conducting proceedings, and – if need be – apply monetary sanctions to discourage the use of dilatory tactics by counsel.<sup>41</sup>

24. Active case and costs management is another important technique in this context. Rule 19.3 of the 2016 SIAC Rules already provides that after the tribunal has been constituted, it must conduct a preliminary meeting with the parties to discuss the procedures that will be "most appropriate and efficient for the case". Early case management can help significantly in limiting costs and delay; however, it must be recognised that a single case management conference will seldom be enough. I have previously spoken (drawing from my personal experience) of the danger that arbitrators might – because of a mounting case-load or otherwise – be tempted to take a hands off approach towards case management by giving a somewhat standard set of broad directions at the start and doing little else in the interim until the hearing is to be held.<sup>42</sup> If the promise of active case management, which today is an established feature of litigation in many countries, is to be realised, then the tribunal must take an active interest in monitoring the progress of a case

throughout its life cycle.

25. That said, what constitutes effective case management will vary in every case. Unsurprisingly, most institutional rules are not unduly prescriptive, and only provide generally that a tribunal should conduct the proceedings in a way that ensures fairness and expedition.<sup>43</sup> But arbitral institutions can provide guidance – in the form of guides or codes of best practices – that will help arbitrators make effective case management decisions without going so far as to write these into their rules. The ICC has perhaps been the most active in this area. It has issued guides on subjects like the Effective Management of Arbitration and Techniques for Controlling Time and Costs in Arbitration<sup>44</sup> and it has also incorporated a set of case management considerations as an Appendix to its Rules.<sup>45</sup>

26. Closely related to the topic of active case management is what arbitral institutions can do to discourage unnecessary argument over peripheral issues. These draw out the time and cost of arbitral proceedings and it affects how clients view arbitration. The findings of the recently released Global Pound Conference Series Report show that while traditional notions of advocacy envision counsel advancing their clients' positions by taking every point, regardless how minor it might be, the reality is that clients want their counsel to take a more collaborative and efficient approach by focusing on core issues of disagreement.<sup>46</sup> Of course, narrowing down the issues in

dispute is primarily the responsibility of counsel themselves and to some extent, the tribunal, but arbitral institutions can play a part by encouraging parties to plan ahead to resolve issues in a cost-effective manner. For example, in arbitrations which heavily involve expert evidence, proceedings might be made more efficient through the use of tribunal-appointed experts, as provided for in Rule 26 of the SIAC Rules, or by encouraging arbitrators to consider the option of witness conferencing.<sup>47</sup>

27. Apart from these, I have previously spoken about some other ways in which the arbitral process could be made more efficient and less costly.<sup>48</sup> Among other things, better use can be made of technology;<sup>49</sup> proceedings can be structured in a less adversarial and more collaborative fashion; and arbitrators can do more to promote settlement.<sup>50</sup> The findings of the Global Pound Conference Series report, which I mentioned earlier, and which gathered voting data from over 4,000 attendees at conferences around the world, suggests that there is appetite for such change. I would not prescribe how arbitral institutions might effect these changes since the possibilities are numerous. But what is clear is that arbitral institutions can and should take the lead in reimagining arbitration to make it more time and cost effective.

## ***B. Conduct***

28. The second area of concern that arbitral institutions might address is that of professional conduct. Much has already been said about the explosive

growth in the number of new entrants to the global arbitration community, and the effect this has had on ethical standards.<sup>51</sup> Before the practice of arbitration became as widespread and as globalised as it is today, practitioners were said to be unified by implied norms or common understandings about what constituted ethical conduct and by shared values.<sup>52</sup> Today, however, the arbitration community is constituted by a far more diverse group of practitioners who come from different legal traditions and cultural backgrounds, so much so that there can no longer be any realistic expectation of *shared* norms.<sup>53</sup> Without clear standards, tensions, misunderstandings and perceived breaches will inevitably arise. One of the world's leading experts on ethics and conduct in international arbitration, Prof Catherine Rogers, has suggested that, over time, this unsatisfactory state of ethical ambiguity could threaten the legitimacy of international arbitration as a whole.<sup>54</sup>

29. The example of the *Hrvatska v Slovenia* arbitration illustrates this point perfectly. There, the claimant requested that the tribunal “recommend” that the Respondent “refrain from using the services” of a particular lawyer on its legal team on the basis that that lawyer and the presiding arbitrator were both members of the same set of chambers in London. In its request, the claimant wrote that this relationship caused “great concern and cast a cloud over [the] proceedings”. Elaborating, it wrote – no doubt sincerely – that:<sup>55</sup>

... what may not, apparently, be cause for concern in London may well be viewed very differently by a

reasonable third person from Africa, Argentina, or Zagreb, Croatia. The Claimant is concerned that the President, and a member of the Respondent's legal team, are from the same Chambers. Viewed from the Claimant's cultural perspective, such concerns are justified, and, indeed, they are unavoidable.

30. For its part, the respondent took the position that it had no obligation of disclosure, given that its lawyer had no professional or personal relationship with the presiding arbitrator, let alone an obligation to refrain from using the services of that lawyer. This is not an isolated example and the lack of a common understanding as to what constitutes acceptable conduct is not only a reality today, but a cause of real and significant problems.<sup>56</sup>

31. There is an emerging view that perhaps something ought to be done. There are now "dozens of efforts at international codes of ethics",<sup>57</sup> at least some of which are gaining traction within the arbitral community. These include the IBA Guidelines on Party Representation in International Arbitration and on Conflicts of Interest. The question is whether there is a role specifically for arbitral institutions to play in this context. The answer, I would suggest, is "yes", for three reasons.

32. First, I reject the notion that the existence of parallel guidelines entails the conclusion that there is no value in the SIAC pursuing its own project. The goal at this stage is to seek some form of transnational consensus on what

constitutes ethical conduct.<sup>58</sup> However, such a goal cannot be achieved overnight, and a number of intermediate steps must first be taken. To expand on a cartographic analogy used by Johnny Veeder, in order to create a map of the world, one first needs to have maps of individual localities.<sup>59</sup> In this regard, I note that the Singapore Institute of Arbitrators (“SI Arb”) is working on a set of Guidelines on Party Representative Ethics which will address issues such as *ex parte* communications with the tribunal and abuses of process. If these guidelines are published, they will provide a useful starting point for a deeper conversation on counsel ethics in Singapore-seated arbitrations. In developing guidelines and principles of its own, or perhaps in collaborating with the SI Arb, the SIAC would contribute to this by articulating the boundaries of acceptable counsel conduct from *its* perspective, informed by the practice at the SIAC.

33. Second, I believe that arbitral institutions are uniquely suited to uphold standards of conduct and ensure fairness in arbitrations because of the tremendous influence they wield over the conduct of arbitrations.<sup>60</sup> After all, arbitral institutions are in the most direct contact with the parties and the arbitrators throughout the proceedings, and have a bird’s-eye view of the cases they administer. This gives them a unique ability to discern problems and develop rules to address any instances of unacceptable practice which might take place under their watch.<sup>61</sup>

34. Third, while a professional organisation like the IBA has the capacity to identify areas of consensus and to articulate norms, what it does not have is a means of enforcement to encourage compliance with these norms.<sup>62</sup> By contrast, arbitral institutions have the power, at least in relation to arbitrators, not only to set and maintain standards but also to apply sanctions that have bite – such as exclusion from their panels; and this allows them to play some role as “custodians of discipline, integrity and professionalism”.<sup>63</sup>

35. If it is accepted that arbitral institutions should have a role in this area, the question then is how that role should be scoped. More specifically, the question is whether arbitral institutions should regulate and exercise oversight over both arbitrators and counsel. In the case of arbitrators, the case for the involvement of arbitral institutions is clearer. One of the core functions of an arbitral institution is to facilitate the selection of a competent arbitral tribunal. To this end, most institutions already require arbitrators to meet stringent criteria in order to be admitted to their panels. Such criteria may include not only requirements of probity and good standing,<sup>64</sup> but also that arbitrators confirm or undertake that they are able to devote sufficient time and diligence to an arbitration before accepting an appointment.<sup>65</sup> This is just another way in which arbitral institutions control the quality of their services. Several institutional rules also empower institutions to remove arbitrators from tribunals if they fall short of the requisite standards; the only question is whether such powers are adequately invoked in practice.<sup>66</sup>

36. What is less clear is whether arbitral institutions ought to prescribe ethical standards for *counsel and party representatives*. Arbitral institutions *generally* have not played a significant role in this area so far,<sup>67</sup> and perhaps for this reason, the notion of arbitral institutions exercising this kind of oversight has sometimes been seen as “revolutionary at first glance” and been met with unease.<sup>68</sup> Professor Born has reportedly opined that for arbitral institutions to act as ethical regulators would require a significant expansion over their currently-understood role.<sup>69</sup> But the truth is that parties have a legitimate expectation that counsel will conduct themselves properly, and they also expect that arbitral institutions should be ready to step in and react when ethical issues arise.<sup>70</sup> It may be noted that 73% of the respondents in the 2018 Queen Mary Survey considered that arbitral rules *should* specifically address the conduct of parties and their counsel.<sup>71</sup>

37. In 2014, the LCIA led the way when it became the first major international arbitral institution to incorporate a set of “general guidelines” for counsel into its rules, and to confer arbitral tribunals with power to enforce these guidelines.<sup>72</sup> Under Article 18.5 of the LCIA Rules, party representatives are required to affirm their willingness to abide by these guidelines, failing which they will not be permitted to appear before an LCIA tribunal. This approach is similar to the practice in the Singapore International Commercial Court, where foreign counsel are required to agree to abide by a Code of Ethics as part of their application for registration.<sup>73</sup> One of the merits of this approach is that it

achieves the goal of regulation in a manner which comports with the principle of party autonomy. Thus, when parties agree to arbitrate according to a set of rules they simultaneously agree that their counsel will undertake to comply with the ethical guidelines prescribed therein; and in like manner, counsel who agree to represent clients in such arbitrations know full well that they might be exposed to sanction if they misconduct themselves, and so accept instructions to represent a party on this basis.<sup>74</sup>

38. Other arbitral institutions have since taken similar steps: for example, the ICC has issued a revised ICC Note to Parties and Arbitrators which incorporates some brief provisions touching on ethical issues.<sup>75</sup> However, the LCIA model is perhaps alone in employing what has been referred to as the “strong sheriff” model of enforcement in which ethical standards are incorporated into the institutional rules, and arbitrators play a key role not only in identifying, but also in punishing, unacceptable conduct.<sup>76</sup> In this regard, Article 18.6 of the LCIA Rules empowers the tribunal, after consulting parties and giving the affected legal representative an adequate opportunity to answer the complaint, to censure misconduct through written reprimands or cautions, references to the legal representatives’ regulatory and/or professional body, or “other measures deemed necessary”.<sup>77</sup>

39. The model is not without its detractors. There are those who say that conferring arbitrators with such powers sits uneasily with the “consensual

foundation of arbitration” because parties nominate arbitrators as adjudicators, and not as disciplinarians to police the conduct of counsel.<sup>78</sup> There are yet others who see a tension between the disciplinary and adjudicative functions that an arbitrator might play.<sup>79</sup>

40. For my part, I do not see why arbitrators cannot file a complaint – whether to a national bar association or professional organisation or otherwise – if they observe any seeming impropriety. After all, the duty of an arbitrator is to decide the dispute before them in a fair and impartial manner. If counsel misconduct themselves, they may well be impeding the fair and impartial resolution of the matter. An arbitrator who calls this out by drawing this to the attention of the relevant bar association or professional organisation is not doing anything other than what the parties might reasonably expect the arbitrator to do. However, the question of whether arbitrators presiding over a case should have a role in *punishment* is trickier; my sense is that in the vast majority of cases, it would be preferable for them not to be so involved, and to leave the matter to the national bar association, in much the same way that a Judge presiding over a matter might refer instances of seeming impropriety to the Law Society for investigation and for any appropriate action to be taken.

### **C. Continuity**

41. I come to the third and final area, which concerns continuity in terms of preparing the future generations of arbitration practitioners. In many ways,

arbitral institutions have perhaps been more active than national bars in investing in and developing young talent. Every major arbitral institution and professional arbitration organisation has a chapter for younger members. Examples include the ICC's Young Arbitrators Forum, the Young International Group of the LCIA, and the Young SIAC. These platforms give younger professionals opportunities to network and exchange ideas on arbitration-related issues.<sup>80</sup> These are valuable initiatives, and I hope they will continue.

42. At the same time, there is perhaps more that can be done to ensure that younger practitioners get the opportunities, training and experience that they need. A 2015 IBA study found that many young practitioners feel that a challenge to establishing a career in arbitration is the fear of competition with experienced arbitration specialists. They also believe that there are insufficient opportunities for new entrants.<sup>81</sup> In another study on the subject of "Diversity On Arbitral Tribunals", some 28% of respondents felt that they had lost appointments as arbitrators because they were considered too young.<sup>82</sup>

43. It is entirely understandable that disputants value experience, and tend to entrust their disputes to more seasoned arbitrators. This is precisely why it is all the more important that our younger professionals be given opportunities for hands-on experience, and to build up their portfolios. Age alone, without experience, does not assure competence. I suggest that arbitral institutions are well placed to assist them with this.

44. What I have in mind is a “low bono” scheme which would allow younger practitioners to gain experience as arbitrators in smaller-value disputes, for a relatively low fee. I am aware that this would overlap to some extent with some of the other options available for the resolution of low-quantum disputes such as the Law Society of Singapore’s pro-bono arbitration scheme. However, the SIAC’s scheme could distinguish itself from the latter in several ways:

(a) First, such a scheme might be open to practitioners who have say, a minimum of five years of post-qualification experience. This is not radical, bearing in mind that the qualifying criteria for a person to be appointed a magistrate is three years’ post-qualification experience, and for a district judge, seven years’ experience.<sup>83</sup> Such a scheme would distinguish itself from the Law Society’s pro-bono model, which is run as a subset of its for-profit arbitration scheme and therefore draws from the members of its panel, all of whom must have at least 10 years of post-qualification experience.

(b) Second, there should be an option for oral hearings to be convened, subject to the discretion of the arbitrator and the election of the parties. This too differs from the Law Society scheme which contemplates a documents only arbitration.

(c) Third, it should apply to disputes with a value of up to, say, \$100,000, with the possibility of going higher than this, with the explicit

consent of the parties. This is higher than the limit of \$20,000 which applies to the Law Society's scheme.

45. The primary focus of such a scheme would be the training of young arbitrators or counsel, rather than enhancing access to justice, even if this would be a very valuable incidental benefit of the scheme. For this reason, the concept should be subject to some important reservations. First, the specific consent of the parties would have to be obtained, although because it will often be impossible to anticipate in advance the likely quantum of a dispute, provision would likely have to be made for the parties to opt for this scheme on an ad hoc basis once their dispute has arisen. Second, criteria must be introduced to ensure that the young practitioners who participate in the scheme have the skills and qualification to handle an actual dispute. This could be achieved, for instance, by requiring that all such arbitrators must be accredited at least as members of the SI Arb, the CI Arb, or their equivalents in order to qualify to preside over a case.

46. Third, the SIAC could also provide guidance for these young arbitrators by having experienced seniors from the SIAC's main panel mentor their younger colleagues, and also by organising training sessions to instruct young arbitrators on areas like ethics and case management. It could also establish a separate "young arbitrators group" for younger arbitrators to share best practices and their experiences.

47. These are just the bones of the idea and no doubt you will put flesh on it if you think it worthwhile.

## **V. Conclusion**

48. Slightly over thirty years ago, I appeared before my predecessor, Judicial Commissioner Chan Sek Keong (as he then was) as junior counsel in *Turner v Builders Federal* and successfully sought an injunction to enjoin lawyers from a reputed international law firm, who were on their way to Singapore for a preliminary hearing, from acting as counsel in a Singapore seated arbitration. The application was grounded on the submission that their doing so would violate the provisions of the Legal Profession Act.<sup>84</sup> We obtained the injunction, but that proved to be a set-back for any aspirations Singapore might have had to establish itself as a centre for international arbitration.

49. That I stand before you today, in one of the most open jurisdictions in the world for arbitration practitioners, to address you on the future of arbitration speaks of the remarkable growth of international arbitration in Singapore. And tied intimately with this story is the success of the SIAC. Today, parties from all corners of the globe routinely elect Singapore as the seat of their arbitrations; and their lawyers regularly appear as counsel here without incident. This is reflected in a report carried in the local media earlier this week, which noted that according to the 2018 Queen Mary Survey, Singapore was third most preferred venue for arbitration, behind London and Paris and

among the reasons underlying this was the existence of a world-class arbitral institution in the SIAC.<sup>85</sup> The success of arbitration in Singapore, and the phenomenal achievements of the SIAC in particular are matters we are immensely proud of; but in a sense, they are a microcosm of the larger Singapore story: that we have got to this point, has been the product of many hands, of great force of will, of pluck and an insatiable desire for continual improvement. If this Congress is anything to go by, this desire has not waned; and the future of arbitration in Singapore is very bright indeed. I have no doubt that the next three decades will be every bit as exciting as the past three and the SIAC will continue to fly our flag proudly.

50. Thank you.

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<sup>1</sup> Tony Cole, “Authority and Contemporary International Arbitration”, (2010) 70(3) LA Law Review 802 at 851.

<sup>2</sup> Article 27.11 of the Hong Kong International Arbitration Centre (“HKIAC”) Administered Arbitration Rules 2013 gives the HKIAC power to determine applications for joinder before the arbitral tribunal is confirmed, based on a prima facie determination of whether the additional party is bound by the arbitration agreement. Applications for joinder after the tribunal is confirmed are decided by the tribunal itself (see Article 27.1).

Rules 7.4 and 8.4 of the Arbitration Rules of the Singapore International Arbitration Centre, 6<sup>th</sup> Edition, 1 August 2016, similarly provide that the SIAC Court of Arbitration determines applications for joinder and consolidation respectively, if the application is made before the constitution of the tribunal. Applications for joinder and consolidation which are made after the tribunal is constituted are determined by the tribunal (see Rules 7.8 and 7.10; and rules 8.7 and 8.9).

Article 7 of the Rules of Arbitration of the International Chamber of Commerce, 1 March 2017, provide for the automatic joinder of additional parties on submission of a request, provided that such request is made before the appointment of the arbitrator. Article 10 provides that the International Court of Arbitration of the ICC determines requests for consolidation.

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Article 22(viii) of the London Court of International Arbitration ("LCIA") Rules 2014 provides that joinder is determined by the tribunal. Under Articles 22(ix) and (x), the power to order consolidation lies with the arbitral tribunal, but any consolidation is subject to the approval of the LCIA Court.

3 Janice Lee, "The Evolving Role of Institutional Arbitration in Preserving Parties' Due Process Rights" (2017) 10 Contemporary Asia Arbitration Journal 235 ("Lee") at 239–241.

4 SIAC Annual Report 2017, available at  
<[www.siac.org.sg/images/stories/articles/annual\\_report/SIAC\\_Annual\\_Report\\_2017.pdf](http://www.siac.org.sg/images/stories/articles/annual_report/SIAC_Annual_Report_2017.pdf)>  
(accessed 25 April 2018).

5 Sundaresh Menon, "Overview of Arbitration", in *Arbitration in Singapore* (2nd Ed) (Thomson Reuters) at para 1.040 (*forthcoming*, 2018).

6 Lee, *supra* n 3, at 238; Duarte G Henriques, "The role of good faith in arbitration: are arbitrators and arbitral institutions bound to act in good faith?" (2015) 33(3) ASA Bulletin 514 at 528.

7 Michael Lord Mustill, "Arbitration: History and Background" (1989) 6(2) Journal of International Arbitration 43 ("Mustill") at 44.

8 Website of the International Cotton Association, "Our History" <[www.ica-ltd.org/about-ica/our-history/1830-1913/](http://www.ica-ltd.org/about-ica/our-history/1830-1913/)> (accessed 26 April 2018); Anthony Connerty, "International Cotton Arbitration" (2013) 29(2) Arb Intl 295.

9 Mustill, *supra* n 7 at 50.

10 Gary Born, *International Commercial Arbitration, Volume I: International Arbitration Agreements* (Wolters Kluwer, 2nd Ed, 2014) at p 174.

11 Stephan Wilske, "The Ailing Arbitrator—Identification, Abuse and Preventing of a Potentially Dangerous Delaying and Obstruction Tool" (2014) 7(2) Contemporary Asia Arbitration Journal 279 at 290.

12 Queen Mary University of London and School of International Arbitration, "2015 International Arbitration Survey: Improvements and Innovations in International Arbitration", available at

<[www.arbitration.qmul.ac.uk/media/arbitration/docs/2015\\_International\\_Arbitration\\_Survey.pdf](http://www.arbitration.qmul.ac.uk/media/arbitration/docs/2015_International_Arbitration_Survey.pdf)> (accessed 20 April 2018) ("QMUL Survey 2015") at p 17.

13 See <[www.siac.org.sg/69-siac-news/560-siac-announces-new-records-for-2017](http://www.siac.org.sg/69-siac-news/560-siac-announces-new-records-for-2017)> (accessed 25 April 2018).

14 See <[www.siac.org.sg/2014-11-03-13-33-43/facts-figures/statistics](http://www.siac.org.sg/2014-11-03-13-33-43/facts-figures/statistics)> (accessed 25 April 2018).

15 2007 Statistical Report, ICC International Court of Arbitration Bulletin Vol 19 No 1 (2008).

16 See <[www.cietac.org/index.php?m=Page&a=index&id=40&I=en](http://www.cietac.org/index.php?m=Page&a=index&id=40&I=en)> (accessed 25 April 2018).

17 Jeffrey Waincymer, *Procedure and Evidence in International Arbitration* (Wolters Kluwer, 2012) ("Waincymer") at p 211; Lee, *supra* n 3, at 241.

18 Waincymer, *supra* n 17, at pp 208 and 211; Adriana Aravena-Jokelainen and Sean P Wright, *The Roles of Psychology in International Arbitration* (International Arbitration Law Library Volume 40) (Kluwer Law International 2017) pp 403 and 407.

19 Special Rapporteur Ion Nestor, "Problems concerning the application and interpretation of existing multilateral conventions on international commercial arbitration and related matters", UNCITRAL 5th Sess, UN Doc A/CN.9/64, reprinted in [1972] III YB UNCITRAL at p 220.

20 Queen Mary University of London and School of International Arbitration, "2018 International Arbitration Survey: The Evolution of International Arbitration", <[www.arbitration.qmul.ac.uk/media/arbitration/docs/2018-International-Arbitration-Survey---The-Evolution-of-International-Arbitration.PDF](http://www.arbitration.qmul.ac.uk/media/arbitration/docs/2018-International-Arbitration-Survey---The-Evolution-of-International-Arbitration.PDF)> (accessed 15 May 2018) ("QMUL Survey 2018"), at p 8.

21 For one such view, albeit in the context of intervening when there are ethical breaches, see: Stephan Wilske, "The Duty of Arbitral Institutions to Preserve the Integrity of Proceedings" (2017) 10 Contemporary Asia Arbitration Journal 201 ("Wilske (2017)") at 205 and 216.

22 QMUL Survey 2018, *supra* n 20, at pp 36–37.

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23 Gabrielle Kaufmann-Kohler, “Soft Law in International Arbitration: Codification and  
Normativity” (2010) 1(2) *Journal of International Dispute Settlement* 283 (“Kaufmann-  
Kohler”) at 296.

24 This is also a point recognised by users of arbitration: see the QMUL Survey 2018, *supra* n  
21, at p 36.

25 Dipen Sabharwal and Rebecca Zaman, “Vive la difference? Convergence and Conformity in  
the Rules Reforms of Arbitral Institutions: The Case of the LCIA Rules 2014” (2014) 31(6)  
*Journal of International Arbitration* 701 at 712.

26 Grant Hanessian & E Alexandra Dosman, “Songs of Innocence and Experience: Ten years of  
Emergency Arbitration” (2016) 27 *American Review of International Arbitration* 235 at 217.  
27 *Ibid* at 228 and Marc J Goldstein, “A Glance Into History for the Emergency Arbitrator”  
(2017) 40(3) *Fordham International Law Journal* 779.

28 Waincymer, *supra* n 17, at p 203.

29 Wilske (2017), *supra* n 21, at 207; Kaufmann-Kohler, *supra* n 25, at 296.

30 Sundaresh Menon, “Some Cautionary Notes for an Age of Opportunity”, Keynote Address  
delivered at the Chartered Institute of Arbitrators International Arbitration Conference,  
Penang, 22 August 2013 (“Cautionary Notes”) at para 15; Piotr Nowczyk & Konrad Czech,  
“Rethinking costs and costs awards in international arbitration: a call for less criticism of  
arbitration costs, but improvement of costs practices” (2015) 33 *ASA Bulletin* 494 at 494.  
31 QMUL Survey (2018), *supra* n 20, at p 8.

32 ICC Commission on Arbitration and Alternative Dispute Resolution, “Decisions on Costs in  
International Arbitration”, available at <[https://www.iccwbo.be/wp-  
content/uploads/2012/03/20151201-Decisions-on-Costs-in-International-Arbitration.pdf](https://www.iccwbo.be/wp-content/uploads/2012/03/20151201-Decisions-on-Costs-in-International-Arbitration.pdf)>  
(accessed 11 May 2018) at p 3.

33 Chan Leng Sun SC & Tan Weiyi, “Making Arbitration Effective: Expedited Procedures,  
Emergency Arbitrators and Interim Relief”(2013) 6 *Contemporary Asia Arbitration Journal*  
349 at 349; Richard Chernick & Zela Claiborne, “Reimagining Arbitration” (2011) 37  
*Litigation* 32 at 32.

34 Judith Gill, “Applications for the Early Disposition of Claims in Arbitration Proceedings” in  
Albert Jan van den Berg (ed), *50 Years of the New York Convention: ICCA International  
Arbitration Conference*, ICCA Congress Series, Vol 14 (2009, Kluwer Law International) at  
516; David Ryan & Kanaga Dharmananda, “Summary Disposal in Arbitration: Still Fair or  
Agreed to be Fair” (2018) 35(1) *Journal of International Arbitration* 31 at 40; Waincymer,  
*supra* n 17, at p 676.

35 “SIAC Announces the Official Release of the SIAC Rules 2016” available at  
<[www.siac.org.sg/images/stories/press\\_release/SIAC%20Announces%20Release%20of%20its%20Arbitration%20Rules%202016\\_27%20May%202016.pdf](http://www.siac.org.sg/images/stories/press_release/SIAC%20Announces%20Release%20of%20its%20Arbitration%20Rules%202016_27%20May%202016.pdf)> (accessed 24 April 2018).

36 Yunus Emre Akbaba, “Summary Procedure in the SCC Arbitration Rules of 2017: Shifting the  
Paradigm of Preliminary Objections in International Arbitration”  
<[arbitrationblog.kluwerarbitration.com/2017/02/01/summary-procedure-in-the-scc-arbitration-  
rules-of-2017-shifting-the-paradigm-of-preliminary-objections-in-international-arbitration/](http://arbitrationblog.kluwerarbitration.com/2017/02/01/summary-procedure-in-the-scc-arbitration-rules-of-2017-shifting-the-paradigm-of-preliminary-objections-in-international-arbitration/)>  
(accessed 24 April 2018); also, in 2017, the International Court of Arbitration of the ICC  
updated its “ICC Practice note to parties and arbitral tribunals” to clarify that an “immediate  
disposition of a manifestly unmeritorious claim or defence” is a procedural tool which is  
available under the ICC Rules: see “ICC Court revises note to include expedited determination  
of unmeritorious claims or defences” [https://iccwbo.org/media-wall/news-speeches/icc-court-  
revises-note-to-include-expedited-determination-of-unmeritorious-claims-or-defences/](https://iccwbo.org/media-wall/news-speeches/icc-court-revises-note-to-include-expedited-determination-of-unmeritorious-claims-or-defences/)

37 Irene Weiser & Christian Klausegger, “Fast Track Arbitration: Just fast or something  
different?” (2009) *Austrian Yearbook on International Arbitration* 259 at 260 and 274; Nigel  
Blackaby et al, *Redfern and Hunter on International Arbitration* (OUP, 6th Ed, 2015) at p  
365. See also QMUL Survey (2018), *supra* n 20, at p 35: Interviewees suggested that “the  
default mindset that an arbitration would last for up to 18 months should be challenged as  
parties in factually and legally uncomplicated cases desire quicker resolution.”

38 QMUL Survey (2018), *supra* n 20, at pp 34–35.

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39 QMUL Survey (2018), *supra* n 20, at pp 34–35; see also Jennifer Kirby, “Efficiency in International Arbitration: Whose Duty Is It?” (2015) 32(6) *Journal of International Arbitration* 689 at 692.

40 Joerg Risse, “Ten Drastic Proposals for Saving Time and Costs in Arbitral Proceedings” (2013) 29(3) *Arbitration International* 453 at p 462.

41 QMUL Survey 2018, *supra* n 20, at p 27.

42 Sundaresh Menon, “The Future is Now: Trends in the Global Village” (Symposium at Keio Law School) (27 April 2016) at para 13.

43 Rule 19(1) of the SIAC Rules 2016; Article 22(1) of the ICC Rules 2017; Article 13.5 of the HKIAC Rules 2013.

44 See the ICC Commission on Arbitration and ADR’s publication, “Effective Management of Arbitration – A Guide for In-House Counsel and Other Party Representatives”, available at <<https://cdn.iccwbo.org/content/uploads/sites/3/2017/05/effective-management-of-arbitration-icc-guide-english-version.pdf>> (accessed 11 May 2018); also the ICC’s “Techniques for Controlling Time and Costs in Arbitration”, available at <<https://cdn.iccwbo.org/content/uploads/sites/3/2018/03/icc-arbitration-commission-report-on-techniques-for-controlling-time-and-costs-in-arbitration-english-version.pdf>> (accessed 11 May 2018).

45 Appendix IV of the ICC Rules 2017.

46 International Mediation Institute, Global Pound Conference Series, “Global Data Trends and Regional Differences” available at <[res.cloudinary.com/lbresearch/image/upload/v1526381676/gpc\\_report\\_154118-1554.pdf](res.cloudinary.com/lbresearch/image/upload/v1526381676/gpc_report_154118-1554.pdf)> (accessed 16 May 2018) (“GPC Series Report”), at p 1.

47 Klaus Sachs and Tom Christopher Prostler, “Ch 24: The Pre-hearing Checklist Protocol: A Tool for Organizing Efficient Arbitration Hearings” in *The Powers and Duties of an Arbitrator: Liber Amicorum Pierre A. Karrer* (Patricia Shaughnessy & Sherlin Tung eds) (Kluwer Law International, 2017) at p 235.

48 Sundaresh Menon, Closing Remarks at the Singapore International Arbitration Forum 2013, Singapore, 2 December 2013.

49 QMUL Survey 2018), *supra* n 20, at p 32.

50 GPC Series Report, *supra* n 46, pp 11, 13 and 23.

51 Cautionary Notes, *supra* n 30, at paras 3–5; Peter Halprin & Stephen Wah, “Ethics in International Arbitration” (2018) 87 *Journal of Dispute Resolution* 87 (“Halprin & Wah”) at 87.

52 Catherine Rogers, *Ethics in International Arbitration* (Oxford University Press, 2014) (“Rogers”) at p 18.

53 *Ibid.* citing Oscar Schachter, “The Invisible College of International Lawyers” (1977) 72 *Northwestern University Law Review* 217.

54 Rogers, *supra* n 52, at p 132.

55 *Hrvatska Elektroprivreda d.d. v Republic of Slovenia*, ICSID Case No. ARB/05/24, Order Concerning the Participation of Counsel dated 6 May 2008.

56 A 2013 study published in the *Journal of International Arbitration*, revealed the marked divergence in the practice and expectations of lawyers in relation to *ex parte* pre-appointment communications between arbitrators and counsel. All the American lawyers surveyed said they had experienced such *ex parte* interviews, as against only 42% of Swedish lawyers who had; and 36% of the American lawyers surveyed expressed the view that such interviews were *always* appropriate, while only 4% of Swedish lawyers thought it to be so: Niklas Elofsson, “Ex Parte Interview of Party-Appointed Arbitrator Candidates: A study Based on the Views of Counsel and Arbitrators in Sweden and the United States” (2013) 30 *Journal of International Arbitration* 230.

57 *Ibid.*

58 Halprin & Wah, *supra* n 51, at 87.

59 V.V. Veeder, “The 2001 Goff Lecture – The Lawyer’s Duty to Arbitrate in Good Faith”, (2002) 18(4) *Arb Intl.* 431.

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60 Jarred Pinkston, “The Case for Arbitral Institutions to Play a Role in Mitigating Unethical  
Conduct by Party Counsel in International Arbitration” (2017) 32 Connecticut Journal of  
International Law 177 (“Pinkston”); Wilske (2017), *supra* n 21.

61 Pinkston, *supra* n 60, at 184.

62 *Id* at 188.

63 Neil Andrews, “Improving Arbitration: Responsibilities and Rights”, Roebuck Lecture 2017,  
University of Cambridge (2 June 2017) at p 14.

64 For example, one of the requirements for admission to the SIAC panel is that the arbitrator  
must be a person of good standing and character: see Standards for Admission to SIAC  
Panel/SIAC IP Panel at <[www.saicorg.sg/our-arbitrators/standards-for-admission-to-siac-  
panel](http://www.saicorg.sg/our-arbitrators/standards-for-admission-to-siac-panel)> (accessed 11 May 2018); the HKIAC requires that the prospective arbitrator provide  
written references and confirms that he has not been found guilty of misconduct by any court  
or disciplinary tribunal at <[www.hkiac.org/arbitration/arbitrators/criteria-application](http://www.hkiac.org/arbitration/arbitrators/criteria-application)>  
(accessed 11 May 2018).

65 Section 3(11), LCIA Notes for Arbitrators (10 May 2018).

66 Rule 17.3 of the SIAC Rules 2016 provides that the President of the SIAC Court may remove  
an arbitrator who refuses or fails to act or perform his functions in accordance within  
prescribed time limits, or if the arbitrator does not conduct or participate in the arbitration with  
due diligence and in a manner that ensures the fair, expeditious, economical and final  
resolution of the dispute; Article 10.2 of the LCIA Rules 2014 provides that the LCIA Court is  
unfit to act if the arbitrator does not conduct or participate in the arbitration with reasonable  
efficiency, diligence and industry. Article 15.2 of the ICC Rules 2017 provides that the ICC  
Court may replace an arbitrator if it decides that the arbitrator is not fulfilling his functions in  
accordance with the ICC Rules, which include rules requiring arbitrators to remain impartial  
and independent.

67 Pinkston, *supra* n 60, at 191.

68 Wilske (2017), *supra* n 21, at 218.

69 Mahdev Mohan, “A Quest for Ethical Regulation in Arbitration” (“Mohan”)  
<[www.singaporelawblog.sg/blog/article/200](http://www.singaporelawblog.sg/blog/article/200)> (accessed 23 April 2018).

70 Wilske (2017), *supra* n 21, at 205 and 216.

71 QMUL Survey (2018), *supra* n 20, at p 35.

72 Annex to the LCIA Rules 2014.

73 Rule 7(2)(c), Legal Profession (Foreign Representation in Singapore International  
Commercial Court) Rules 2014 (S 851/2014).

74 Pinkston, *supra* n 61, at 134–137.

75 Note to Parties and Arbitral Tribunals on the Conduct of the Arbitration Under the ICC Rules  
of Arbitration, 30 October 2017, available at  
<[https://cdn.iccwbo.org/content/uploads/sites/3/2017/03/icc-note-to-parties-and-arbitral-  
tribunals-on-the-conduct-of-arbitration.pdf](https://cdn.iccwbo.org/content/uploads/sites/3/2017/03/icc-note-to-parties-and-arbitral-tribunals-on-the-conduct-of-arbitration.pdf)> (accessed 25 April 2018) at paras 32–34.

76 Pinkston, *supra* n 61, at 134–137.

77 Article 18.6 LCIA Rules 2014.

78 Rogers, *supra* n 52, at p 146 describes this view, citing *Pope & Talbot v Canada*  
UNCITRAL/NAFTA, Decision on Confidentiality of 27 September 2000 and Jan Paulsson,  
“Standards of Conduct for Counsel in International Arbitration”, (1992) 3 American Review  
of International Arbitration 234.

79 Mohan, *supra* n 69.

80 See “YSIAC Objectives”, <[www.siac.org.sg/ysiac/about-us/ysiac-objectives](http://www.siac.org.sg/ysiac/about-us/ysiac-objectives)> (accessed 11  
May 2018)

81 IBA Arb40 Subcommittee, “The Current State and Future of International Arbitration:  
Regional Perspectives” available at  
<[https://www.ibanet.org/Document/Default.aspx?DocumentUid=2102CA46-3DA-48E5-  
AA20-3F784BE214CA](https://www.ibanet.org/Document/Default.aspx?DocumentUid=2102CA46-3DA-48E5-AA20-3F784BE214CA)> (accessed 4 May 2018) at pp 15–16.

82 Berwin, Leighton & Paisner, “International Arbitration Survey: Diversity on Arbitral  
Tribunals – Are We Getting There?” available at  
<[https://www.blplaw.com/media/download/FINAL-Arbitration\\_Survey\\_Report.pdf](https://www.blplaw.com/media/download/FINAL-Arbitration_Survey_Report.pdf)>

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(accessed 4 May 2018) at p 9; the QMUL Survey (2018), *supra* n 20, at p 17 notes that some respondents view arbitrators under the age of 50 years as “young”, in light of the perception that the average arbitrator is likely to be in his sixties.

<sup>83</sup> Sections 9 and 10, State Courts Act (Cap 321, 2007 Rev Ed).

<sup>84</sup> *Turner (East Asia) Pte Ltd v Builders Federal (Hong Kong) Ltd & Anor* [1988] SLR 1037.

<sup>85</sup> K C Vijayan, “Global Arbitration: Singapore ranked 3rd”. *The Straits Times* (15 May 2018) and QMUL Survey 2018, *supra* n 20, p 9.