

THE GROWTH OF ARBITRATION IN SINGAPORE

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Headnotes

This article seeks to provide an insight on the factors leading to the growth of arbitration in Singapore and the steps taken to respond to the challenges posed by an ever-changing business environment.

I. INTRODUCTION- THE 21ST CENTURY IS THE ASIAN CENTURY

1. Global trade continues to grow at a rapid pace and a high proportion of this trade and international capital has been captured by Asia. For instance, in 2014, Foreign Direct Investments (“FDI”) into Asia already accounted for about a third of global FDI.² In 2013, the combined Association of Southeast Asian Nations (“ASEAN”) economies achieved an

annual growth of 5% while economic growth in the rest of the world was only about 3%.³ The dynamism of the Asian economy has led to an increase in the number and complexity of cross-border disputes within Asia, and a heightened demand for dispute resolution institutions which are able to resolve these disputes swiftly, efficiently and predictably.⁴ This has provided Singapore, which is strategically located within Southeast Asia, with a springboard to develop itself into a world-class centre for arbitration.

II. HISTORICAL DEVELOPMENT OF ARBITRATION IN SINGAPORE

A. Initial Stages

2. In the 20th century, arbitration was not

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² See United Nations Conference on Trade and Development Press Release on 24 June 2014 <<http://unctad.org/en/pages/PressRelease.aspx>>

³ See Opening Speech by Minister for Law, K Shanmugam at the In-House Counsel World Summit 2014 <<https://www.mlav.gov.sg/content/minlaw/en/news/speeches>> at para 9

⁴ See Chief Justice Sundaresh Menon, ‘Response by Chief Justice Sundaresh Menon’ (Opening of the Legal Year 2015, 5 January 2015) <www.supremecourt.gov.sg/news/speeches> at para 20(a).

- widely accepted as an alternative to traditional court based dispute resolution.
3. Singapore's first Arbitration Act was enacted after its independence in 1965. However, this was simply a preservation of the 1953 Arbitration Ordinance when it was part of the Crown Colony that did not distinguish between domestic and international arbitrations. Even in 1986 when Singapore acceded to the *Convention on the Recognition and Enforcement of Foreign Arbitral Awards Concluded at New York on 10th June 1958* ("New York Convention") and enacted the *Arbitration (Foreign Awards) Act* (Cap 10A), there was no separate framework for the conduct of arbitrations in Singapore involving foreign elements.⁵
 4. The first impetus came in 1991 with the establishment of the Singapore International Arbitration Centre ("SIAC") to promote Singapore as a centre for arbitration which aims to meet the demands of the international business community for a neutral, efficient and reliable resolution of disputes in Asia.
 5. When it began operations in 1991, the SIAC handled just two cases⁶. Between 1991 and 2002, SIAC's case load managed to grow from about 20 cases per year to about 70 cases per year⁷. Even then, it was not as well-known as other venues or institutions in Asia⁸.
- ### ***B. Building on Singapore's strengths***
6. Singapore's growth into a prime location for arbitration in the Asia Pacific region must be understood in light of its general approach towards economic restructuring and improvement. At the dawn of the 21st century, the Singapore Ministry of Trade and Industry was already actively promoting and developing knowledge-driven industries for Singapore to be a bigger global business and investment hub.⁹ The following characteristics made Singapore particularly attractive for foreign investments:-
 - (a) English was the language of administration, law and business in Singapore;

⁵ See Michael J. Moser and John Choong, "Asia Arbitration Handbook" at pp. 673-674

⁶ See Singapore Straits Times Articles published on 11 March 2017 <<http://www.straitstimes.com/singapore/arbitration-centre-hits-record-numbers>>

⁷ See Professor Michael Pryles, Chairman, SIAC, "Singapore: The Hub of Arbitration in Asia" <<http://siac.org.sg/en/2013-09-18-01-57-20/2013-09-22-00-27-02/articles/198-singapore-the-hub-of-arbitration-in-asia>>

⁸ For example, Hong Kong

⁹ See Reports of the Economic Review Committee of the Ministry of Trade and Industry of the Republic of Singapore, February 2003 <<https://www.mti.gov.sg/ResearchRoom/Documents>>

15. THE GROWTH OF ARBITRATION IN SINGAPORE

- (b) Singapore was a trusted country for business, being voted consistently as having a good business environment with stable government and little political risk, a good legal and judicial system and low corruption.¹⁰
- (c) By reason of its geographical location in the heart of Southeast Asia, Singapore was surrounded by the countries of the region, including Indonesia, Malaysia, and Thailand.¹¹ It had 6,600 scheduled flights a week to 320 cities and nearly all major cities in the Asia-Pacific such as China and India were within a 7-hour flight.¹²
- (d) Singapore was a regional and financial hub that served as a gateway between the East and West. With its open economy and business environment with little trade barriers, it had an attractive regional headquarters and had been a host to over 7,000 multinational firms.¹³ Multinationals were especially enticed by Singapore's trade connectivity with intra-Asian regional businesses¹⁴ such as its membership within ASEAN that afforded preferential tariffs for trade with other member states.
- (e) Last but not least, Singapore's cosmopolitan demography made it a comfortable place for people from all over the world to reside and to conduct their businesses.
7. With these advantages, Singapore promoted itself as a hub for dispute resolution and marketed the SIAC as a leading arbitral institution in the region to countries such as China and India¹⁵.

¹⁰ See Professor Michael Pryles, Chairman, SIAC, "Singapore: The Hub of Arbitration in Asia" <<http://siac.org.sg/en/2013-09-18-01-57-20/2013-09-22-00-27-02/articles/198-singapore-the-hub-of-arbitration-in-asia>>; Singapore is also ranked no. 1 in Asia and no. 7 in the world for the least corrupt public sector based on the Corruption Perceptions Index in 2016;

¹¹ See Professor Michael Pryles, Chairman, SIAC, "Singapore: The Hub of Arbitration in Asia" <<http://siac.org.sg/en/2013-09-18-01-57-20/2013-09-22-00-27-02/articles/198-singapore-the-hub-of-arbitration-in-asia>>

¹² See website of the SIAC <<http://siac.org.sg/64-why-siac>>

¹³ See website of the SIAC <<http://siac.org.sg/64-why-siac>>

¹⁴ Singapore is currently China's 10th largest trading partner in terms of export sales (see <<http://www.worldstopexports.com/chinas-top-import-partners>>); Singapore was also the top destination for overseas investment by Indian companies in FY 08/09 (see Speech by Law Minister K Shanmugam at the "Arbitration for Indian Industry" Conference jointly organised by the Singapore International Arbitration Centre and Confederation of Indian Industry <<https://www.mlav.gov.sg/news/speeches/speech-by-law-minister-k-shanmugam-at-the-arbitration-for-indian-industry-conference-jointly.html>> at para 7

¹⁵ See for example, Speech by Law Minister K Shanmugam at the "Arbitration for Indian Industry" Conference jointly organised by the Singapore International Arbitration Centre and Confederation of Indian Industry at <<https://www.mlav.gov.sg/news/speeches/speech-by-law-minister-k-shanmugam-at-the-arbitration-for-indian-industry-conference-jointly.html>>

C. Pro-arbitration policy by legislature and judiciary

8. The growth of arbitration in Singapore would not have been possible without the ideal conditions provided by Singapore's legal system and the active steps taken to foster a pro-arbitration environment in Singapore.
9. In 1991, the Singapore government considered the reform of local laws on commercial arbitration.¹⁶ Its sub-committee appointed by the Attorney-General found that the United Nations Commission on International Trade Law ("UNCITRAL") Model Law on International Commercial Arbitration 1985 (the "Model Law") would appeal to international businesses who are unfamiliar with the common law and English concepts of arbitration.¹⁷ Freedom from curial intervention was also desirable in international arbitrations.¹⁸ On the other hand, it was recognized that the courts should have closer supervision on domestic arbitration so as to be able to uphold public policy considerations and national interests involved in purely domestic disputes.¹⁹
10. Singapore therefore proceeded on a dual arbitration regime. International arbitrations were to be governed by the International Arbitration Act (Cap 143A) ("IAA") which was enacted in 1995 to give effect to both the Model Law and the New York Convention. On the other hand, domestic arbitrations were governed by the Arbitration Act (Cap 10A) ("AA").
11. In 2004, amendments were made to the *Legal Profession Act* (Cap 161), allowing foreign lawyers who are not admitted to the Singapore bar to represent parties in arbitration proceedings even when the substantive law involved in the dispute is Singapore law.²⁰
12. The judiciary's pro-arbitration stance is observed from the Singapore Court's aversion towards any interference with international arbitration. The Singapore courts would decline to set aside an arbitral award even where there are errors of law or fact by the tribunal.²¹ Enforcement of arbitral awards are also only refused where it meets the high threshold of being able to "shock the conscience", being "clearly injurious to the public good", "wholly offensive", and/or violates the "most basic notion of

¹⁶ See Ahmad, Jawad; Yeap, Andre. "Section 2: Overviews - Arbitration in Asia". *The Asia Pacific Arbitration Review* 2014

¹⁷ See Singapore Parliamentary Reports, vol 63, col. 627, 31 October 1994.

¹⁸ See Sub-Committee on Review of Arbitration laws at para 12

¹⁹ See Sub-Committee on Review of Arbitration laws at para 13

²⁰ See Legal Professional (Amendment) Bill 2004 (B17/2004)

²¹ See *Quarella SpA v. Scelta Marble Australia Pty Ltd* [2012] SGHC 166 at [51]-[54]

morality and justice".²² This pro-arbitration judicial policy was clearly articulated by the Singapore Court of Appeal in *Tjong Very Sumito and Others v Antig Investments Pte Ltd*²³:

"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..."

13. Finally, credit ought to be given to the professional training and accreditation bodies such as the Singapore Institute of Arbitrators ("SI Arb"), the Chartered Institute of Arbitrators ("CI Arb") and educational institutes such as the National University of Singapore ("NUS") and the Singapore Management University ("SMU") which organize talks, seminars, and training courses on arbitration. The Ministry of Law has also supported the development of specialized centres to further enhance Singapore's reputation as a thought

leader in law and to anchor regional legal expertise in Singapore.²⁴

D. Singapore's success as an arbitration centre

14. With a pro-arbitration environment in place, arbitrations administered by the SIAC increased from about 70 cases in 2003 to about 100 cases in 2008. The first indication that the SIAC was ready to take-off as a global arbitration centre came in 2009 with the SIAC administering 160 cases in that year. The number of cases administered by the SIAC has not reduced since then and the SIAC saw itself administering 198 cases in 2010 and 188 cases in 2011.²⁵

15. Based on a 2006 international arbitration survey conducted by Queen Mary (University of London), a sizeable number of respondents were already supportive of the development of stronger regional arbitration institutions such as the SIAC.²⁶ By 2010, in the 3rd edition of the same survey, Singapore was reflected as being the regional

²² See *PT Asuransi Jasa Indonesia (Persero) v Dexia Bank SA* [2007] 1 SLR 597 at [59]

²³ [2009] 4 SLR 732 at [28]

²⁴ For example, the Centre for Asian Legal Studies, the Centre for Banking and Finance Law, and the Centre for Law and Business (See Speech by Minister for Law, K Shanmugam, during the Committee of Supply Debate 2017 <<https://www.mlaw.gov.sg/content/minlaw/en/news/parliamentary-speeches-and-responses/speech-by-minister-for-law-k-shanmugam-during-the-committee-of0.html>> at para 20-22)

²⁵ See website of the SIAC <<http://siac.org.sg/en/2013-09-18-01-57-20/2013-09-22-00-27-02/articles/198-singapore-the-hub-of-arbitration-in-asia>>

²⁶ See International Arbitration: Corporate attitudes and practices 2006 <<http://www.arbitration.qmul.ac.uk/docs/123295.pdf>>

²⁷ See 2010 International Arbitration Survey: Choices in International Arbitration <<http://www.arbitration.qmul.ac.uk/docs/123290.pdf>>

leader in Asia and Singapore Law was popular as the governing law of contracts.²⁷

16. Within 5 years, the 6th Edition of the same survey announced that, the SIAC was the most improved arbitration venue and was one of the five most preferred arbitral institutions in the world.²⁸ This was reflected in SIAC's increasing case load between 2012 and 2015.²⁹ In 2016, SIAC broke its own record with the total sum in dispute for all new case filings amounting to USD11.85 billion. This was 2.75 times the total sum in dispute of USD4.41 billion in 2015.³⁰
17. In May 2013, SIAC opened its first overseas office in Mumbai, India. This was subsequently followed by the setting up of offices in both Shanghai and South Korea and most recently in Gujarat in August 2017.
18. Notwithstanding the aforesaid, it has to be highlighted that SIAC only administers a fraction of international arbitrations in Singapore. The other main arbitration institutions such as the International Chamber of Commerce ("ICC") International Centre for Dispute

Resolution ("ICDR"), the London Court of International Arbitration ("LCIA"), the World Intellectual Property Organization Arbitration and Mediation Centre Singapore Office ("WIPO"), and the Singapore Chamber of Maritime Arbitration ("SCMA") are also important players in Singapore's arbitration landscape.

19. The SCMA is a prime example of industry-specific arbitration afforded in Singapore. It was initially established in 2004 under the management of SIAC, and subsequently reconstituted in May 2009 as an independent institution in response to the maritime industry's feedback on the incompatibility of administered arbitration. The SCMA Rules are similar to that of the London Maritime Arbitrators Association ("LMAA") Rules. In this regard, the SCMA does not administer the arbitration, but is available to facilitate the process when called upon to do so.³¹ As such, no administration fees are payable to the SCMA and parties are at liberty to select the tribunal from an international panel of maritime arbitrators, and even to reach an agreement on the tribunal's fees.³²

²⁸ See 2015 International Arbitration Survey: Improvements and Innovations in International Arbitration <<http://www.arbitration.qmul.ac.uk/docs/164761.pdf>>

²⁹ SIAC administered 235 cases in 2012, 259 cases in 2013, 222 cases in 2014, 271 cases in 2015 and 343 cases in 2016 (See SIAC Statistics <<http://www.siac.org.sg/2014-11-03-13-33-43/facts-figures/statistics/64-why-siac>>)

³⁰ See SIAC Annual Report 2016 p 14

³¹ See Website of SCMA <https://www.scma.org.sg/about_us.html>

³² See SCMA Rules 3rd Edition 2015

20. On 28 June 2017, it was announced that the International Court of Arbitration of the International Chamber of Commerce (“**ICC Court**”) will set up a case management office in Singapore that is expected to commence operations in the first quarter of 2018.³³ This will be the ICC Court’s fourth overseas case management office after Hong Kong, New York and Brazil.³⁴

21. Not forgetting the needs of domestic arbitration, the Law Society of Singapore (“**LawSoc**”) Arbitration Scheme (“**LSAS**”) was launched in 2007. This scheme provides for cost-effective and expedient commercial arbitration. The LSAS rules are designed to be simple and flexible and parties can expect to have an arbitral award published in 120 days from the commencement of arbitration. Parties may even elect for the dispute to be determined based on documentary evidence alone.³⁵ In March 2017, the Law Society Mediation Scheme (“**LSMS**”) was initiated which complements the LSAS and provides parties with the option of having their disputes mediated

either before or after LSAS arbitration proceedings have commenced.³⁶

22. As gleaned from the above, it is evident that Singapore has within 10 years, evolved into a world-renowned venue for the conduct of arbitration both in the domestic and international domains.

III. INFRASTRUCTURE AND FACILITIES

23. To meet the demands for the conduct of arbitrations in Singapore, an integrated dispute resolution complex was planned in 2005. This culminated in the opening of Maxwell Chambers³⁷ on 21 January 2010 which is the home of SIAC as well as other arbitral institutions such as WIPO, SCMA, and the ICC Court. Maxwell Chambers also houses the Singapore International Mediation Centre (“**SIMC**”), ICC Academy, CIArb, and several other barristers chambers and law firms.

24. Maxwell Chambers provides state-of-the-art-facilities with fully equipped hearing rooms, preparation rooms,

³³ See International Chamber of Commerce News 28 June 2017 <<https://iccwbo.org/media-wall/news-speeches/singapore-ministry-law-international-chamber-commerce-sign-mou-boost-arbitration/>>

³⁴ See Singapore Ministry of Law Press Release 28 June 2017 <<https://www.mlaw.gov.sg/content/minlaw/en/news/press-releases/singapore-ministry-of-law-and-international-chamber-of-commerce.html>>

³⁵ See Law Society of Singapore Arbitration Scheme Handbook 2017 pp. 1-3

³⁶ <http://www.lawsociety.org.sg/For-Public/Dispute-Resolution-Schemes/Mediation-Scheme>

³⁷ Maxwell Chambers is located at 32 Maxwell Road, #03-01, Singapore 069115

³⁸ See website of Maxwell Chambers <<http://www.maxwell-chambers.com>>

³⁹ See Ross, Alison “Singapore: City state reflects on progress”, Global Arbitration Review 2010

transcription services, and even food & beverage options on site.³⁸ It has been nominated by Global Arbitration Review (“GAR”) as one of the “*best developments*” in the arbitration industry³⁹ as has been labelled as being “*currently the gold standard*”.⁴⁰

25. It is planned for Maxwell Chambers to triple its capacity by taking over a neighbouring building in 2018. This will allow it to accommodate about 50 new offices for international dispute resolution institutions, arbitration chambers, law firms and ancillary legal services.

IV. GROWING AN ARBITRAL TECHNOLOGY FOR THE FUTURE AND OTHER RECENT INITIATIVES

26. Initiatives are continuously being taken to meet the challenges of the future.

A. Education and training

27. The Singapore International Arbitration Academy was launched in 2012, and is organised and conducted annually. It provides an intensive and in-depth

programme on international arbitration for government officials, private practitioners and legal academics that blends theory, substantive and procedural law, and skills training.⁴¹

28. There is also an active forum known as the Young SIAC (“YSIAC”) for legal professionals aged 40 years and under to exchange expertise, ideas and experience in international arbitration.⁴²

B. Responding to the market’s needs

29. Singapore also recognizes the interest of preserving relationships, maintaining confidentiality, and achieving an expeditious resolution in commercial disputes. With the opening of the Singapore International Mediation Centre (“SIMC”) in 2014, the SIAC-SIMC Arb-Med-Arb Protocol (“AMA Protocol”) was launched which allows a stay of arbitration proceedings administered by the SIAC in favour of mediation conducted by the SIMC. If mediation is successful, parties can then record their settlement agreement before the arbitral tribunal as an enforceable consent award.⁴³

⁴⁰ See Samuels, David “*Hearing Centres Survey*”. Global Arbitration Review’s Guide to Regional Arbitration 2013

⁴¹ See website of the National University of Singapore, Centre for International Law <<https://cil.nus.edu.sg/research/international-dispute-resolution/topics/singapore-international-arbitration-academy>>

⁴² See website of the SIAC <<http://siac.org.sg/ysiac/about-us/ysiac-objectives>>; The YSIAC also maintains an affiliate blog on the Kluwer Arbitration Blog with the latest news on arbitration relating to Singapore.

⁴³ See AMA Protocol <<http://simc.com.sg/siac-simc-arb-med-arb-protocol>>

30. In addition, the Singapore International Commercial Court (“SICC”) was officially launched in 2015 which affords litigants with well-designed court-based mechanism alongside with the flexibility of arbitration.⁴⁴ Comprising of a panel of specialist judges and international judges from both common law and civil law jurisdictions, the SICC conducts its proceedings in open court and publishes its decisions. Yet, there is flexibility in procedure. For instance, parties may apply for proceedings to be heard in camera, and for court documents to be sealed.⁴⁵ Questions of foreign law may, in appropriate situations, be determined based on legal submissions instead of having to be proven as a matter of fact.⁴⁶ Foreign counsel who are registered with the SICC may also represent a party in SICC proceedings.⁴⁷
31. Finally, legislative changes have been effected to boost Singapore’s competitive edge amidst stiff competition from other arbitration centres around the world. Until 2016, agreements for third-party funding of dispute resolution proceedings were

unenforceable in Singapore despite being a feature in other leading arbitration centres around the world. In recognizing that third-party funding provided an additional means of financing valid claims that would not have been otherwise pursued due to financial constraints⁴⁸, third-party funding is now made available for international arbitrations conducted in Singapore pursuant to the Civil Law (Amendment) Act 2017.⁴⁹

V. CONCLUSION

32. As illustrated by Singapore’s story on the growth of arbitration, size is not everything. A country’s strategy to its development as a dispute resolution hub must cater to its own unique characteristics. It must also be prepared to constantly adapt and stay responsive to the needs of the present and future market.

⁴⁴ See website of the SICC <<https://www.sicc.gov.sg/Home.aspx>>

⁴⁵ See Order 110 rule 30 of the Rules of Court (Cap 322)

⁴⁶ See section 18L of the Supreme Court Judicature Act (Cap 322); Order 110 rule 25 of the Rules of Court (Cap 322)

⁴⁷ See section 18M of the Supreme Court Judicature Act (Cap 322); Section 36P of the Legal Profession Act (Cap 161)

⁴⁸ See Second Reading Speech by Senior Minister of State for Law, Indranee Rajah SC, on the Civil (Amendment) Bill 2016 <<https://www.mlaw.gov.sg/content/minlaw/en/news/parliamentary-speeches-and-responses/second-reading-speech-by-senior-minister-of-state-for-law--indra3.html>> at para 11- 12

⁴⁹ This is subject to certain regulatory controls stipulated in the accompanying Civil Law (Third Party Funding) Regulations 2017.