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[From Left to Right] Mr Kabir Singh, Mr John Savage, Ms Sapna Jhangiani, Ms Melissa Thng, Mr Cavinder Bull, SC.
Since 2011, Myanmar has seen a renewed effort at reforming its political, social and economic landscape. As part of the reforms, on 15 July 2013, Myanmar formally acceded to the New York Convention 1958. Myanmar had however not enacted local legislation or revised its archaic Arbitration Act of 1944 to give effect to its international law obligations under the New York Convention. This gap has now been plugged. Recognising the importance of providing a strong and certain dispute resolution framework to foreign investors in the country, on 5 January 2016, the Myanmar Union Parliament adopted the Arbitration Law (Union Law No. 5/2016) (the “Arbitration Law”). Much of Myanmar’s Arbitration Law is based on the UNCITRAL Model Law on international commercial arbitration (the “MAL”).

However, not all MAL jurisdictions are equal and while Myanmar seeks to incorporate most of the MAL into its provisions, there are a few modifications. There may however be some lack of precision in the wording of the provisions, primarily due to translation from English to Burmese and vice versa.

We set out below a brief summary of the main features of the Arbitration Law.5

Structure of the Arbitration Law

• The Arbitration Law is a composite piece of legislation applicable to domestic arbitrations, international commercial arbitrations and enforcement of foreign awards. Chapters 1 to 8 of the Arbitration Law incorporate the provisions of the MAL and govern the conduct of arbitrations seated in Myanmar. Chapter 9 governs the powers of courts in relation to domestic awards.

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1 The phrase is thanks to Dr Julian Lew QC who spoke in October 2012 at the Hong Kong Arbitration Week, of the shift of economic power from the West to the East and predicted that countries that have adopted the UNCITRAL MAL will be at the vanguard of developing international arbitration law and practice for times to come.
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5 The summary presented in this article is based on an unofficial English translation of the Arbitration Law (from the Burmese original) available on file with the authors.
Enforcement of foreign awards

- The Arbitration Law incorporates Articles IV and V of the New York Convention on the requirements to be met by a party applying for recognition and enforcement; and the grounds for refusal of recognition and enforcement of a foreign award by a local court. The Arbitration Law therefore paves the way for the potential enforcement of foreign awards from 155 other New York Convention signatories in Myanmar.

Scope of application of the Arbitration Law

- Section 2(a) of the Arbitration Law incorporates Article 1(2) of the MAL to clarify that the intended law will apply where the place of arbitration is Myanmar. Even though Section 23 of the Arbitration Law is an ostensible adoption of Article 20 of the MAL, the reference to “venue of arbitral proceedings” in Section 23 as opposed to the “place of arbitration” may be misinterpreted. However, the recognition of the primacy of the seat of the arbitration in the Arbitration Law is fairly apparent.

- In addition, Section 2(b) provides that certain provisions relating to grant of interim measures of protection, court assistance in securing evidence in support of arbitration and, for enforcement of a tribunal’s orders and directions continue to apply even where the place of arbitration is not in Myanmar.

- The Arbitration Law further defines an ‘international arbitration’ in substantially similar terms as Article 1(3) of the 2006 MAL version.

Party autonomy and independence of the arbitral process

- Section 8 of the Arbitration Law incorporates Article 6 of the MAL which, read with Section 22 (incorporating Article 19 of the MAL), now recognises the principle of party autonomy in providing free choice to parties to select the rules and procedure to be applied to the arbitration. This is also recognition of the right to select an institutional set of arbitration rules.

- The Arbitration Law also recognises and codifies the principles of kompetenz-kompetenz, i.e. the power of the tribunal to rule on its own jurisdiction; and of separability, i.e. the arbitration agreement is a distinct agreement from the substantive contract. These are important and internationally accepted principles of international arbitration law, and Myanmar’s adoption of these principles is a welcome step.

- Interestingly, the Arbitration Law adopts the Singapore IAA position, in granting a right of appeal against both positive and negative determinations of jurisdiction by an arbitral tribunal within 30 days of such a ruling.

- The Arbitration Law also recognises that in an ‘international arbitration’ i.e. where a foreign element
is involved, parties are free to choose a substantive law of the contract of their choice. However, a similar provision provides that in a domestic arbitration, i.e. where both parties are from Myanmar, the tribunal shall decide the dispute in accordance with the prevailing substantive law of Myanmar. There is no equivalent provision in the MAL and as such, this provision must be carefully applied particularly if courts are dealing with subsidiaries of foreign companies in Myanmar who are contracting parties. A similar provision in the [Indian] Arbitration Act has been misread as implying that two Indian parties (irrespective of whether they were in fact representative or subsidiaries of a foreign entity) could not contract to select a seat of arbitration outside India. Myanmar courts would do well to avoid any similar confusion while interpreting the Arbitration Law.

**Court support for domestic and foreign arbitrations**

- Section 7 recognises the important principle enshrined in Article 5 of the MAL that a court shall not intervene in any matters governed by the Arbitration Law except as provided therein.

- The Arbitration Law adopts Article 8 of the MAL and requires a court before which an action is brought, that is otherwise the subject matter of an arbitration agreement, to refer parties to arbitration, unless it finds that the agreement is null and void, inoperative or incapable of being performed. Such a decision of the court is not appealable. Importantly, the provision applies irrespective of whether the seat of arbitration is in Myanmar or not.

- Section 11 of the Arbitration Law expands on Article 9 of the MAL and sets out in some detail the nature of interim measures of protection that may be ordered by a court in aid of arbitration. The provision clarifies that an order of the court granting interim measures of protection shall cease to have effect if a tribunal makes an order on the same issues.
• Section 30 contains detailed provisions on the ability to seek the assistance of courts in obtaining evidence. The powers granted are wider than those contemplated under Article 27 of the MAL. The Arbitration Law specifically confers powers upon the courts to obtain testimony, issue subpoenas for examination of witnesses and production of documents, and to send any such evidence gathered directly to the arbitral tribunal.

• Pursuant to Section 2(b), a Myanmar court has the jurisdiction to exercise powers under Section 11 (concerning interim measures) and Section 30 (obtaining evidence) even in the case of an arbitration seated outside Myanmar. The inclusion of these provisions is a progressive step given that the availability of such powers to courts has been an issue that has seen some limelight in other MAL jurisdictions such as Singapore and India.

• It is also notable that pursuant to Section 2 (b) read with Section 31, the Arbitration Law adopts the spirit of Article 17 H of the 2006 MAL version empowering the Myanmar Courts to enforce (interim) awards, orders and directives of an arbitral tribunal seated within and outside Myanmar. Very few jurisdictions globally have similar provisions in their arbitration legislations.
Myanmar joins the UNCITRAL MAL Asian Vanguard

**Adoption of MAL on other aspects**

- The Arbitration Law also adopts the MAL in respect of other areas concerning the conduct of the arbitration including the appointment of arbitrators, challenges to arbitrators, removal of arbitrators, filings, hearings, form and content of the award, termination of proceedings, among other matters.

Coming on the heels of the new draft foreign investment law released in 2015, there is much hope that the Arbitration Law is a step in the right direction in creating a positive impact on foreign investment by building investor confidence in the government’s efforts to harmonise Myanmar’s laws and update them to international best practices. Equally, there is hope that Myanmar will now be “in the vanguard” of the development of international arbitration law and practice and contribute equally to the emergence of a “global free-standing body of substantive arbitration law”, to use the words of Chief Justice Sundaresh Menon of Singapore (then the attorney general) in his keynote address to the ICCA Congress in Singapore in June 2012.

**Recourse against award**

- The Arbitration Law adopts Article 34 of the MAL in entirety in setting out the grounds for setting aside an award by a court in an arbitration seated in Myanmar. Given the jurisprudence on Article 34 in several MAL jurisdictions, this provision will hopefully provide certainty to the manner in which the courts of Myanmar apply the standards to consider challenges to awards.

- In addition, the Arbitration Law also permits a party to appeal to a court on an issue of law against a domestic award on certain limited grounds. An important aspect to consider when drafting an arbitration clause with a seat in Myanmar is that the Arbitration Law allows parties to contractually exclude the remedy of an appeal against a domestic award.
Exclusive Interview
with Cavinder Bull, SC and John Savage

By
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we would spend our time at the beach.

CB: It’s not necessarily my favourite memory, but I distinctly remember that when I was 4 or 5 years old I used to go down to the canal next to my school to catch fish and tadpoles with the other children.

Q: If you had to pick one, who do you count as your personal or professional mentor, and what was the single most important lesson that you learned from him or her?

JS: Emmanuel Gaillard. He’s a brilliant lawyer and advocate. I worked for and with him for 17 years and I learnt a lot from him. The single most important thing I learnt from Emmanuel was to surround yourself with good people – people who are better than you (although he made an exception for me).

CB: The biggest impression was made on me by my first boss, Chief Justice Yong Pung How. This was the first job I had ever had and I learnt many lessons from him. He did not deliberately sit any of us down to teach us, but he led by example and I learnt

Q: Describe where you grew up?

JS: I was an army brat. I was dragged around bases throughout Europe - Germany, the UK, Cyprus and Norway - and so in that sense I have no home town.

CB: I was born and raised in Singapore. The first time I went to a western country was for university.

Q: Describe your favourite childhood memory?

JS: Summers in Cyprus, where

CB: It’s not necessarily my favourite memory, but I distinctly remember that when I was 4 or 5 years old I used to go down to the canal next to my school to catch fish and tadpoles with the other children.

Q: If you had to pick one, who do you count as your personal or professional mentor, and what was the single most important lesson that you learned from him or her?

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CB: The biggest impression was made on me by my first boss, Chief Justice Yong Pung How. This was the first job I had ever had and I learnt many lessons from him. He did not deliberately sit any of us down to teach us, but he led by example and I learnt
many things just by clerking for him. One thing I can recall as having made a particular impression on me was how he looked after those who worked for him. He would have dinners once a year, not just for his clerks and their partners, but also for alumnae and their partners. Even after I had stopped clerking for him for some time and spent 2 years in the United States, I received an invitation to his dinner upon my return. By this time, I had not seen him for 3 years and he had never met my son (because he was born overseas) but he asked after my wife and son by name. He had that personal touch with his clerks.

**Q: What is a talent that you have which is not well-known?**

**JS:** I enjoy playing the guitar.

**CB:** I can juggle.

**Q: Acoustic and heavy metal?**

**JS:** A little bit of both.

**Q: What is your favourite restaurant?**

**JS:** Ichigo. It is a Japanese skewer restaurant in Singapore.

**Q: Any favourites overseas?**

**JS:** Mozaic in Ubud, Bali. The restaurant surprisingly also has a connection to arbitration because the chef’s father is an arbitrator!

**CB:** Mine is an Italian restaurant called Campo de Fiore Vail, Colorado. I would bring my family there to eat every time we go to Vail to ski.

**Q: What was the last concert you went to?**

**JS:** Metallica was my last concert. In terms of music genre, I like heavy metal (eg. AC-DC), and also African guitar music.

**CB:** The last concert I went to was Jason Mraz at Madison Square Garden.
“Be courteous, reasonable and don’t sweat the small stuff. Find your own style.”

Q: On to the more serious stuff. What influenced you down this path of being a disputes lawyer/international arbitrator?

CB: I decided I would be a lawyer when I was in school. I didn’t know what it entailed. I used to go to Sunday school at Church and they taught us that God gives you talents and you should make good use of those talents to help others. In secondary school I thought very carefully as to what my talents were, and came up of a list of 3 things. Being a lawyer was one of them. Once I decided that this was what I was going to be I just executed the plan.

As to what type of lawyer, I suppose the image of a lawyer that you get from watching television and in books is that of a disputes lawyer – so that was what I decided to be!

Q: We have to ask, what were the other two things on your list?

CB: (Laughs) I’ve been asked this before but I’m going to keep that a secret for now.

JS: I became a lawyer by process of elimination. When I was trying to decide on a university course, I came across one that involved stints in both London and Paris and it happened to be law. At the end of that, I didn’t have more imagination than to go into the law! I did my training at Clifford Chance and during 1 of my 4 transactional seats, I was enlisted to help on an arbitration and loved it. I then applied for (and got) a job in international arbitration with Emmanuel Gaillard at Shearman and Sterling and I’ve never looked back since.

Q: If you were not a lawyer, what would you like to be?

JS: A real estate agent or something really popular like that! I always fancied being the Chairman of a football club.

CB: I’m honestly not sure what job I would have done, but as a subject to read at university, I would have read history.

Q: What tips do you have for arbitration advocacy?

JS: Don’t be boring!
CB: Clarity is incredibly important. Don’t try to be too sensational- adjectives don’t win cases.

JS: Be courteous, reasonable and don’t sweat the small stuff. Find your own style. Being really prepared makes things easier. One of the worst examples I have seen of arbitration advocacy is cross-examination of an expert where the cross-examiner said: “I put it to you you’re a hired gun” – I’d never heard “I put it to you” being used in cross-examination until then!

CB: One more thing, people pretending that they know something that they don’t know. Goes on a lot more in arbitration than in court.

Q: Why do you think so?

CB: People are generally more afraid of judges than tribunals. There are also sanctions for bad behaviour in Court which are absent in arbitration. Plus, the proceedings are confidential.

JS: Arbitration is also very international. It may be seated away from a person’s home jurisdiction and involves people with different backgrounds and cultures. What may seem to be a questionable practice in one jurisdiction may be a regular occurrence in another and carry no stigma.

Q: You are both Directors of SIAC and VPs of the SIAC Court of Arbitration. What do those roles entail?

CB: As the Deputy Chairman of the Board, my role is more about governance- making sure the organisation is run well.

JS: As a Director of the SIAC- it is the same as being a director of any other company. As a Vice-President of the Court, you support and advise the President on various arbitration-related matters and may sometimes have to step in for him where needed. The President has a statutory role in relation to the appointment of arbitrators.

CB: The SIAC Board of Directors is comprised of talented people, but not all of them have an arbitration background. It falls to us to share the arbitration perspective with them, and John and I act as a bridge between the Board and the Court. Our roles as Vice-Presidents of the Court are very different. The Court takes care of legal work, such as challenges, the appointment of arbitrators and the revision of the SIAC rules. The President takes the lead, whether the current President Gary Born or the former President Michael Pryles, and we support and advise him.

Q: What is SIAC’s strategy going forward?

CB: The most important thing is to make sure the product we offer continues to be excellent. Good case management and keeping the rules up to date are fundamentally important. Sales and marketing is important, but you need something great to sell.

JS: Especially so for arbitration, as it is a very competitive market.

“Good case management and keeping the rules up to date are fundamentally important.”
Q: What are the biggest challenges facing international arbitration in Asia? How will SIAC meet these challenges? Is competition a challenge?

JS: The biggest challenge for international arbitration in Asia is not competition but enforcement. Enforcement in Asia is challenging and it’s a real issue. There are a lot of arbitrations which could have gone the distance, but do not because of these concerns. It’s not SIAC’s job and not something that SIAC has very much control over, but we do what we can to make our awards as enforceable as possible, for example, through supervision of the arbitral proceedings and procedure and scrutiny of awards. We also try to focus on marketing and education in the region so as to foster greater acceptance of arbitration and enforcement of awards.

CB: SIAC gets a large number of cases partly because we are based in Asia. Asia is diverse, not homogeneous, and the diversity comes in the form of parties, their counsel as well as the members of the tribunal. Operating in that sort of environment makes things interesting – but brings with it day to day challenges, and we have to get it right. It is not as simple as saying that there are some civil law jurisdictions and some common law jurisdictions. If we are blind to the diversity, we can’t be a leading arbitral institution in Asia. One way that SIAC has tried to tackle this issue is by appointing case managers from all over the world and trying to build a diverse panel of arbitrators from within the region.

Q: Speaking of which, how diverse would you say the SIAC panel of arbitrators is?

JS: We have an extremely diverse panel. Also, we work with several arbitrators from within the region who are party-appointed and may not have been on our panel before. I would say that they are quite representative of the region, but fewer from civil law jurisdictions than one might expect.

CB: Even though there are many Singaporean arbitrators, the majority of the SIAC panel is not Singaporean. The President of the SIAC actually decides less than 50% of all arbitrator appointments and so if there is any lack of diversity it is perhaps because parties generally tend to choose Singaporean arbitrators.

Q: As you know, Hong Kong is actively looking at relaxing its approach to third party funding in international arbitration. Do you think Singapore is likely to follow suit? Would that be a good thing?

JS: I’d be surprised if in a couple of years it has not happened. I think it’s a good thing if properly regulated, which no doubt it would be. If doesn’t happen, Singapore will be disadvantaged in my view.

CB: I don’t know if Singapore will follow suit – this is a decision for the policy makers. I do know that they have been thinking about this for a while so even if they did allow it, they would not be “following suit” so to speak. Singapore has been looking into it for as long as Hong Kong has – but we have not moved to actually change the law as yet. Two weeks ago, at the Chief Justice’s invitation, Professor Catherine Rogers spoke at an event on this topic in Singapore. The Ministry of Law also sought public input on the issue of third party funding in its consultation paper when it was considering amendments to the International...
INTERVIEW with Cavinder Bull, SC and John Savage

Arbitration Act some time ago. There has been a continued discussion and the debate has gone on from that point.

Q. How big an issue are conflicts (either actual or “business” conflicts) in preventing lawyers in law firms from acting as arbitrators? Does this limit the pool of practitioner arbitrators?

JS: It is a big issue, especially in international law firms. Business conflicts present a bigger problem than actual conflicts, and then there is the issue of “aspirational” conflicts, where a firm is trying to cultivate a relationship with a client, though has not yet formed one. Then there is also the issue of how much you need to disclose when such situations arise. The fact is that it is not profitable for lawyers from large law firms to act as arbitrators, given their business model.

CB: Yes, it’s an issue. That being said, I don’t think SIAC has struggled to maintain a good pool of arbitrators despite it, or that it has really affected SIAC’s ability to appoint arbitrators for any specific matter.

Q. What is the strangest thing you have seen happen in an arbitration?

JS: I was at a hearing in London last year. The parties, arbitrator and lawyers were based in Asia, but the hearing was fixed in London to accommodate the schedule of one expert. After everyone had flown to the venue for the hearing, the arbitrator did not turn up and was then uncontactable! It turned out later he kept his own diary and had noted down the wrong hearing date. Fortunately we were able to start the following day.

CB: I was involved in a case where parties had reached a settlement just before the evidentiary hearing. When everyone turned up at the hearing expecting to record the settlement, the other side’s counsel said that even though there was a signed settlement agreement, it
was not valid because changes were ‘slipped in’ before signing. Counsel actually said that he didn’t read the final version before his client signed it. This ended up spawning another dispute and another arbitration.

**Q. Good example of international arbitration at its best?**

JS: A raucous night out at the Post Bar with opposing counsel and clients on both sides directly after a hard-fought, difficult arbitration. Festivities went on into the early hours of the morning and many beers were discreetly charged to the room of the opposing counsel at the Fullerton Hotel! He didn’t complain...

CB: There was this very acrimonious arbitration in Milan, at which both parties were very bitter and counsel therefore had to maintain some distance from each other. On the last day, during a break between oral closings, counsel for one of the other parties got an Italian barista to come in to serve espressos to everyone – on him. It was a nice touch. This broke the ice for the lawyers, but unfortunately not the parties. And I don’t think his client was very pleased with it – he refused to drink the coffee!

**Q. How do you juggle your role at SIAC with your other professional responsibilities?**

JS: My role with SIAC is my main extra-curricular activity, and I limit other ones. That helps.

CB: It’s not that difficult. The SIAC team is very good. The role as Vice-President of the Court is more time-consuming than the director role, but we receive a lot of support from the SIAC team, who are very good and make our lives very easy. This gives us space and time to address the more difficult issues and frees up our time to do other things.

JS: Yes, they make it easy for us to do our job.

**Q. How do you juggle professional responsibilities with home and family life?**

JS: I am married to a woman who used to be a partner in a law firm, so there are low expectations! The key is quality time with the family, even if the quantity is not achieved.

CB: My wife’s a lawyer as well so she tends to be understanding. My kids are different though. You must make them a priority and my kids come first. Many years ago, I was quoted in a newspaper article as saying that if I am in a meeting and a call comes in from one of my kids, I would step out of the meeting to take it. Some people were concerned about the impression this created on clients, but I received supportive letters from a couple of clients afterwards!

**Q. What advice do you have to young practitioners wishing to forge a career in international arbitration?**

JS: Network! Publish, speak, get involved in young members’ groups. It helps if you are in a practice that has high quality work. When hiring, we don’t look for international arbitration experience or qualifications. We look for people who are academically gifted and have a personality compatible with our team. You need to be hardworking, have a good sense of humour, and be a team player. Language skills or other unique credentials you may have (e.g. industry experience) are also very useful. Solid ties to the region in which you want to practise are also important. We want to know that our candidates intend to stay over the long term.

CB: They must be willing to own their client’s problem.
Korea’s New Legislative Proposals

By

Sue Hyun Lim
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1 Introduction

2015 marked a year of ambitious initiatives by the Korean government to enhance Korea’s attractiveness as one of the key arbitration hubs in Asia.

One of the initiatives is a legislative proposal to amend the Korean Arbitration Act such that it will be in line with the 2006 UNCITRAL Model Law. This proposed amendment bill is the result of a study conducted for more than a year by a government-led working group committee, and revisions after months of public consultation. If passed during this legislative term (before the end of April 2016), it will become the first amendment of the Korean Arbitration Act since its enactment in 1999.

Another, and perhaps more significant, initiative is the brand new legislative proposal titled “Framework Act on the Promotion of Arbitration Industry” (“Arbitration Industry Act”) spearheaded by the Ministry of Justice, which is also waiting passage at the National Assembly.

The Arbitration Industry Act is the first of its kind, and promises to provide governmental support of unprecedented scale to the boosting of the Korean arbitration industry, and could potentially benefit arbitration cases seated in Korea as well as cases which designate Korea as their hearing venue.

Separately, the Korean Commercial Arbitration Board also did its part by presenting a new set of arbitration rules for public consultation. This was an attempt to further modernize the rules and keep pace with the recent wave of revisions of the arbitral rules of world-class institutions such as the SIAC.

This article outlines some of the key features of the pending changes, and some thoughts on what influence, if any, these changes could have on arbitration in Korea.

2 Amendment of the Korean Arbitration Act: Adopting the 2006 UNCITRAL Model Law

Korea’s Arbitration Act has remained unchanged since it was enacted in 1999 on the basis of the 1985 UNCITRAL Model Law. After the 2006 UNCITRAL Model Law was introduced,
there had been talk of the need to revise the Korean Arbitration Act to incorporate some of the new features of the Model Law, but there was no momentum for implementing the necessary legislative changes, at least not until the last few years.¹

In early 2013, a working group committee, comprising leading academics and private practitioners in the field of international arbitration, was commissioned by the Korean government to study the 2006 Model Law and consider the need or desirability of revising the Arbitration Act. After numerous sessions of debates, a series of study reports and a public hearing in October 2015, an amendment bill was finally presented to the National Assembly. The amendment bill includes many of the key features in the 2006 Model Law, and prunes some of the obsolete provisions in the current Korean Arbitration Act.

**i) Expanding the scope of arbitrability**

Article 2 of the current Arbitration Act prescribes the scope of disputes referable to arbitration as “disputes in private law”. As a result, the prevailing view was that only disputes arising out of, or related to, contracts between private parties were referable to arbitration. The proposed amendment substitutes “disputes in private law” with “any disputes relating to economic interest, and those to non-economic interest that can be resolved by parties’ settlement.”

The intent of the revision is to encompass disputes with a public interest angle, provided that the nature of the dispute lends itself to

¹ The UNCITRAL Model Law was last revised in 2006, and a handful of Model law based jurisdictions were quick to amend their existing legislations after the 2006 Model law, notably Singapore, Hong Kong, Australia and New Zealand. http://www.unctral.org/uncitral/en/uncitral_texts/arbitration/1985Model_arbitration_status.html
However, the new (draft) KCAB Rules include a separate section on emergency arbitrators, and it will be interesting to see whether this disparity affects the use of the emergency arbitrator procedure in KCAB cases. The content and scale of revisions of the KCAB Rules, which are pending as they are dependent upon the passage of the amendment proposal for the Arbitration Act, are the subject of another article.

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**ii) Relaxing the form requirements of an arbitration agreement**

The amendment bill adopts Option 1 of Article 7 of the 2006 Model Law so as to allow more flexibility in the recognition of the form of arbitration agreements. While the previous language required the agreement to take the form of signed documents by exchange of “letters, telex, telegrams, fax...”, the revised provision accepts all forms of record of such agreement (“recorded in any form, whether or not the arbitration agreement or contract has been concluded orally, or by conduct or by other means”) and includes any means of electronic communications, such as e-mails.

**iii) Interim measures by the Tribunal.**

Articles 18-1 through 18-8 of the proposed amendment are almost a wholesale adoption of Articles 17A, 17D, 17E(1), 17F(1), 17G, 17H of the 2006 Model Law. The proposed amendments remove the previous limitation that interim measures must take the form of a “decision”, which has until now limited the types of interim measures a tribunal could order. The revised language also broadens the scope of the subject matter of the interim measures such that even matters that are not the direct subject-matter of the dispute can also be the subject of interim measures.

Article 18-2 of the proposed amendment further clarifies the elements for granting interim measures, thereby increasing the predictability of when an application for the grant of an interim measure could be accepted. In Articles 18-6 and 18-7, detailed procedures are provided to facilitate enforcement of (or grounds of refusal for) interim measures.

The revised proposal, however, does not capture everything in the 2006 Model Law. It omits the phrase “irrespective of the country it was issued” in Article 17(A) of the 2006 Model Law, suggesting that the courts will not adopt a robust approach towards enforcing interim measures granted by tribunals sitting outside of Korea.

Provisions allowing for preliminary orders and the use of emergency arbitrators have also not been included in the proposed amendment.2

**iv) Expanded support by the courts in taking evidence.**

The amendment bill goes further in expanding the manner of support by the courts in taking evidence. The proposed amendment now includes provisions that allow tribunals to seek the court’s order to summon witnesses or compel production of documents. In case the court is entrusted by a

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2 However, the new (draft) KCAB Rules include a separate section on emergency arbitrators, and it will be interesting to see whether this disparity affects the use of the emergency arbitrator procedure in KCAB cases. The content and scale of revisions of the KCAB Rules, which are pending as they are dependent upon the passage of the amendment proposal for the Arbitration Act, are the subject of another article.
Enacting legislation that addresses these problems, while allowing flexibility in the manner of sourcing the funds, will be a significant improvement.

tribunal to take evidence in support of an arbitration proceeding, the tribunal and parties are allowed to attend the court session, which is an improvement on the current provisions.

v) Pruning of obsolete provisions

Provisions that imposed impractical formalities (such as the requirement to submit the original arbitral award with certified translations when applying for enforcement), have been done away with in the proposed amendment bill.

3 Framework Act on the Promotion of Arbitration Industry

The Arbitration Industry Act provides the legal basis for the government to create a special fund to be used for long-term projects that support the growth of the arbitration industry.

The act grants the Ministry of Justice the power to establish mid- to long-term plans for the promotion of the Korean arbitration industry. The Ministry will then have both the authority and the responsibility to implement its plans by requesting cooperation from the relevant government agencies, provinces and municipalities. It can also set up a fund for investment in projects that enhance Korea’s attractiveness as an arbitration hub. One obvious candidate project for this fund is a construction project to build a world-class arbitration facility, similar to the Maxwell Chambers in Singapore.

The source of funding is not just limited to funds derived from government grants, but can also be supplemented by contributions from non-government entities, loans, and from the profits resulting from the operation of the arbitration facilities. The act also provides a general legal foundation for different types of government support, such as loaning of government land to build arbitration facilities, or tax breaks for entities and/or professionals involved in arbitration in Korea.

Like in any country where government actions are closely scrutinised by national audit boards, public media and interest groups, hitherto it was not easy to use the government budget for the implementation of projects without any clear mandate by the law. The lack of proper designation of the responsible ministry was also a limitation. Enacting legislation that addresses these problems, while allowing flexibility
in the manner of sourcing the funds, will be a significant improvement.

4 Implications

As at the time of this article, the proposed bills were still pending at the National Assembly. However, even if passed, why should these legislative developments be of any interest to anyone? There could be several reasons, depending on how one reads the developing trends of arbitration in Asia.

A few decades ago, international arbitration was considered heavily Euro-centric, and the number of high-value cases lodged at arbitral institutions based in Asia was not particularly high. That trend has changed dramatically over the last 10 to 15 years. The changes did not come spontaneously, but through the convergence of efforts by the legal community, local institutions and systematic government support. Singapore is viewed by the Korean government as a model case of success in that aspect.

Korea is recognized as an important jurisdiction for most arbitral institutions.

However, it is predominantly a “user” jurisdiction in that the professional users (law firms) and end-users (parties to the dispute) still tend to go out of the country to arbitrate. Systematic support by the government could change that dynamic. Of course, revising the national rules to be in line with the 2006 Model Law may not bring about immediate changes, nor would opening a brand new arbitration facility be a quick solution. There are intangible and cultural factors besides pro-arbitration legislation that must be in place; it is essential to have a pro-arbitration judicial environment, a growing community of users with faith in arbitration as a fair and reliable system, and continuous interaction with potential users that build up the name recognition of Korea as an arbitration seat or venue.

However, there is no doubt that the recent legislative proposals signal the Korean government’s determination to promote and encourage arbitration on a national scale. As anyone with experience in legislative projects would know, creating sufficient momentum for a change of law requires a great deal of resources, dedication and awareness. The recent proposals are clearly indicative of that momentum. On a larger scale, all this could lead to more opportunities for arbitration practitioners and institutions keen to expand their activities in the Korean market.

The recent changes also signal a shift in the government’s perspective to arbitration. Previously, the government took the view that the best thing it could do was not to interfere with arbitration. Now, arbitration is considered as an industry that can thrive and create positive effects on the economy, if properly supported and cultivated by the government. Currently, there are high expectations that the law will serve as a catalyst to encourage new and different efforts to promote arbitration in Korea, and there is a keen interest in exactly what form and scale government support will take.3

These recent legislative proposals may just be the first steps towards making Korea the next arbitration hub, and its effects are yet to be seen. However, as the old adage goes, you cannot hit a homerun without swinging first.

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3 Even before the passage of the Arbitration Industry Act, the government has announced that it has earmarked KRW 1.9 Billion in its 2016 budget for the purpose of promoting arbitration. (http://www.segye.com/content/html/2015/12/09/20151209003427.html?OutUrl=naver)
SIAC Annual Appreciation Event 2016

By
Deya Dubey
WongPartnership LLP

The SIAC Annual Appreciation Event 2016 was held at the South Beach, a venue that was remarkable not only for its exquisite class, but also for the memories it invoked for Mr Lucien Wong (Chairman and Senior Partner of Allen & Gledhill LLP), the Chairman of the SIAC Board of Directors.

Mr Wong, who delivered the opening address, shared memories of his national service days, when he used to report to the Singapore military’s Non-Commissioned Officers’ Club, which was once housed in the same building that is now the South Beach.

It is perhaps apt that this beautiful venue was chosen to usher in news of the tremendous success experienced by the SIAC in 2015.
Mr Wong announced that 2015 had seen a number of SIAC records being broken. Of great pride was the fact that the SIAC received 271 new cases from parties from 55 jurisdictions, with 244 of those cases to be administered by the SIAC. This represented growth by more than 300% within the past decade.

In addition, the total claim amounts for actions instituted under the aegis of SIAC rose to a record S$6.23 billion, which represents an increase of 24% from the year 2014. In addition, the stellar reputation of SIAC globally was apparent from Mr Wong’s announcement that out of the cases commenced, over 80% involved at least one non-Singapore party, and 50% of those had no connection to Singapore at all.

These growth figures, as remarked by Mr Wong, are a sure sign that SIAC is growing strongly, coupled with the various steps taken by SIAC in 2015 to promote this growth, including revamping the SIAC Rules and obtaining feedback on the draft Rules. For example, in view of the ever increasing growth of investor-state arbitration, the SIAC has also prepared a new set of rules for investment arbitration which will be launched at the SIAC Congress on 27 May 2016. This will herald SIAC’s versatility and ability to cater to and administer an even broader scope of arbitrations.

However, it should always be remembered that at the heart of all these achievements and initiatives are the people in and behind SIAC, and the next person to deliver her address, Chief Executive Officer of SIAC, Ms Lim Seok Hui, a key figure in SIAC. During her speech, Ms Lim focused on the initiatives taken by SIAC, and singled out, as one of its important aspects, the YSIAC, which is co-chaired by Koh Swee Yen of WongPartnership LLP and Ankit Goyal of Allen & Gledhill LLP.
Ms Lim highlighted the success of the inaugural YSIAC Conference held in Singapore, the YSIAC Essay Competition, and the advocacy workshops conducted in various cities, including Delhi, Mumbai, Jakarta, Beijing, Seoul and Tokyo.

After providing this much-appreciated view of the inner workings and initiatives by SIAC and YSIAC, Ms Lim called upon the President of the SIAC Court of Arbitration, Mr Gary Born to deliver his remarks.

The distinguished and eminent arbitration specialist took the opportunity to thank the industrious personnel at SIAC for keeping up its consistent growth over the years. Whilst speaking about the record-breaking year of 2015 for the SIAC, Mr Born also thanked his predecessor, Dr Michael Pryles, for laying the groundwork and building up SIAC in past years.

As was apparent from the buoyant and celebratory mood, SIAC has experienced its best year to date in 2015. From experiencing a bumper crop of cases, to having India, China, and South Korea as the biggest sources of cases, it is clear that SIAC has built itself into a reputable and trusted institution for arbitration around the globe.
YSIAC Essay Competition 2016

YSIAC is pleased to invite you to participate in the YSIAC Essay Competition 2016.

The deadline for submission is **11 April 2016**.

Winners will be chosen by a distinguished panel of judges which includes a member of the SIAC Court of Arbitration.

Winners will be entitled to a Congress pass for the SIAC Congress 2016 on 27 May 2016 at the St Regis, Singapore and will be awarded cash prizes as follows:

<table>
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<tr>
<th>Position</th>
<th>Prize</th>
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<tbody>
<tr>
<td>Winner</td>
<td>SGD 3,000</td>
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<tr>
<td>1st Runner-Up</td>
<td>SGD 2,000</td>
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<tr>
<td>2nd Runner-Up</td>
<td>SGD 1,000</td>
</tr>
</tbody>
</table>

Participants are invited to submit original essays on any of the following topics:

1. Conflicts of interest often restrict the ability of lawyers in law firms to take on arbitrator appointments. Is this a problem for diversity in arbitration and, if so, what solutions can be proffered to improve the situation?

2. To what extent can arbitral rules from arbitral institutions such as SIAC provide a credible alternative to investor state arbitration under ICSID or UNCITRAL Rules? Participants may refer to the draft SIAC Investment Arbitration Rules.

### Competition Guidelines

#### 1. Eligibility

The Competition is open to any person who, on the deadline for submission, is:

a) under 40 years old; and  
b) a member of the YSIAC.

#### 2. Format

2.1 The participant may choose any one of the above topics.

2.2 Every essay must:

  a) be in English;  
  b) be under 2,500 words in length (including appendices, footnotes, references, tables, etc.);  
  c) be submitted in Word document format;
d) be typed using Times New Roman font of a font size of at least 12 for the text and at least 10 for footnotes; and e) be double spaced.

2.3 The essay must be the original work of the participant, and must not have been previously published in any form. Joint entries are not permitted.

2.4 Only one entry per person is allowed.

2.5 Each essay must be submitted with a separate cover sheet containing the following information:

a) Name;
b) E-mail address;
c) Mobile telephone number;
d) Educational institution, organisation or employer of the participant; and
e) Total word count (including appendices, footnotes, references, tables, etc.)

2.6 The essay and cover sheet must be submitted as separate documents in the same e-mail. The essay will be assigned a unique identification number, and the cover sheet will be removed before submission to the judging panel.

2.7 Essays must not contain any information which may identify the author.

3 Submission

3.1 All essays should be submitted via e-mail to ysiac@siac.org.sg.

3.2 The deadline for submission is 11.59pm, 11 April 2016 (Singapore time). The deadline may be extended at the discretion of the YSIAC Committee. No entry will be accepted after the deadline.

4 Judging

4.1 The entries will be reviewed and shortlisted by the YSIAC Committee. The winners will be chosen by a panel of judges including, among others, a member of the SIAC Court of Arbitration.

4.2 All decisions of the YSIAC Committee and judging panel are final, and no appeal or other correspondence will be entertained.

5 Evaluation criteria

5.1 Competition entries will be judged on the following criteria (in no particular order):

a) originality;
b) critical analysis;
c) clarity;
d) pragmatism;
e) persuasiveness; and
f) succinctness.

6 Prizes

6.1 The overall winner will be awarded the following:

a) cash prize of SGD 3,000; and
b) complimentary Congress pass to the SIAC Congress 2016.

6.2 The 1st and 2nd Runners-up will be awarded:

a) The 1st Runner-up: cash prize of SGD 2,000 and complimentary Congress pass to the SIAC Congress 2016;
b) The 2nd Runner-up: cash prize of SGD 1,000 and complimentary Congress pass to the SIAC Congress 2016.

6.3 All winners will be acknowledged at the SIAC Congress 2016 in a prize presentation ceremony.

6.4 All winners of the competition will be selected in advance of the SIAC Congress 2016 and a notification will be sent to them accordingly.

7 Disqualification

7.1 The award of all or any of the prizes lies solely within the discretion of the judging panel, including the right to refuse to award any prize if the panel concludes that no essay of sufficiently high academic quality has been submitted.

7.2 Entries may be disqualified if they do not satisfy any of the requirements set out herein.

8 Intellectual property

8.1 By participating in this competition, participants agree to assign exclusive copyright in the work to SIAC. SIAC shall be entitled to, without limitation, publish the essay (or part(s) thereof) on the SIAC or YSIAC website, the YSIAC Newsletter, the Kluwer Arbitration Blog or any other publication (with due acknowledgement to the author), edit the entries for publication and make use of the essay or extracts thereof in its promotional materials (among others), without permission from or further notice to the participant.

Please direct any queries or requests for clarification on the above to ysiac@siac.org.sg. 
The draft SIAC Investment Arbitration Rules may be downloaded here.