

SINGAPORE INTERNATIONAL ARBITRATION ACADEMY 2013

WELCOME ADDRESS BY THE ATTORNEY-GENERAL STEVEN CHONG SC

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Introduction

1. Distinguished guests, ladies and gentlemen, on behalf of the Attorney General's Chambers, the NUS Faculty of Law, and the Centre for International Law, I welcome you to the opening of the Singapore International Arbitration Academy 2013.

2. I am pleased that this will be the second time I am delivering the Welcome Remarks at the Academy. It bodes well for the continuing success of the Academy. The Academy was first conceived by my predecessor, the then Attorney-General and now Chief Justice Sundaresh Menon, as a means of providing an intensive training programme for lawyers both in the private and public sectors in the Asia-Pacific region who may have to deal with complex international arbitral proceedings.

Growth and increasing complexity of arbitration

3. As Attorney-General, I believe the Academy is particularly relevant to the work of my officers. As Chief Justice Menon, then the Attorney-General commented at the 21st International Council for Commercial Arbitration (ICCA) Congress in June 2012, we are in the golden age of arbitration where States and non-State actors alike increasingly seek recourse to arbitration. Indeed, countries around the world have concluded numerous bilateral and multilateral

free trade agreements and international investment agreements which allow investors and States to commence arbitration to resolve a dispute. Nonetheless, it would be a disservice for us to ignore the many problems that now plague arbitration. Much ink has been spilled over these problems – briefly, these relate to the increasing costs of arbitration, the high stakes involved due to the lack of appellate review over arbitral awards and the moral hazards of having a select pool of arbitrators who are invariably perceived as profiteers and having an investor-bias.

4. Despite these problems, the era when arbitration was perceived as the poorer cousin of litigation has long since passed. In my view, it is fair to say that there is now a balance of power between arbitration tribunals and domestic courts worldwide. However, the relationship between an arbitration tribunal and a domestic court is never constant and to me, resembles the ebbs and flows of the tide in response to the moon's gravitational pull. Indeed, while courts have frequently reviewed an arbitral tribunal's jurisdiction, the reverse situation where an arbitral tribunal reviews the domestic court's jurisdiction is also entirely possible, as can be seen from the interim orders issued on 25 January 2012 by the arbitral tribunal in *Chevron Corporation v Republic of Ecuador* which ordered the Republic of Ecuador to halt the enforcement of a court judgment against Chevron.¹

5. This transplantation of an anti-suit injunction to investor-state arbitration, or more succinctly, an arbitral suspension of judicial proceedings is not without its problems.² Indeed, in Ecuador's view, the tribunal overstepped its boundary by ordering it to interfere in a legal dispute between private citizens

¹ *Chevron Corp. v Republic of Ecuador*, UNCITRAL Arb., PCA Case No. 2009-23, First Interim Award on Interim Measures (Jan. 25, 2012), available at <http://www.italaw.com/sites/default/files/case-documents/ita0173.pdf>.

² Michael D. Goldhaber, "The Rise of Arbitral Power Over Domestic Courts", *Stanford Journal of Complex Litigation*, Spring 2013 Vol. 1:2, pages 373 – 416.

and is an assault to the independence and autonomy of the Ecuadorean judiciary.³ It can therefore be observed that there is no strict hierarchy between an arbitral tribunal and the domestic court. While arbitral tribunals may exercise power over domestic courts, their own power is dependent on domestic courts, most critically at the enforcement stage of an arbitral award.⁴ Also, whether the relationship and the balance of power will be equal as between different domestic courts and arbitration tribunals remains to be seen. Indeed, there can be differing levels of judicial support towards arbitration across jurisdictions. On the flipside, arbitration tribunals may also have a different assessment of the judicial independence of different domestic courts. These factors will shape the relationship between arbitration tribunals and domestic courts. However, as Yves Fortier, an esteemed arbitrator, has opined:

“Far from evidencing any tension, [these cases] rather demonstrate the harmony between arbitral tribunals and sovereign courts as long as each adjudicating body remains within its sphere of competence.”⁵

Singapore’s support for arbitration

6. Through the combined efforts of my Chambers, the Ministry of Law, Singapore, the Singapore International Arbitration Centre (SIAC), the

³ Manuel A. Gomez, “The Global Chase: Seeking the Recognition and Enforcement of the Lago Agrio Judgment Outside of Ecuador”, *Stanford Journal of Complex Litigation*, Spring 2013 Vol 1:2, pages 429 – 466, at 447.

⁴ Anthea Roberts, “Chevron and the Rise of Arbitral Power: A Comment by Anthea Roberts – Arbitral Power over Domestic Courts or Arbitral Power Dependent on Domestic Courts?” at opiniojuris.org/2013/10/30/chevron-rise-arbitral-power-comment-anthea-roberts-arbitral-power-domestic-courts-arbitral-power-dependent-domestic-courts/ (last assessed on 13 November 2013).

⁵ Supra, note 2 at page 394. The cases mentioned by Yves Fortier include *Chevron v Ecuador*, *Saipem S.p.A. v The People’s Republic of Bangladesh* (where the ICSID tribunal found that the Bangladeshi courts had committed an abuse of rights under international law, and violated its obligation under the New York Convention Article II(1) to recognize arbitration agreements by revoking the authority of the ICC arbitration while it was pending, and later declared the ICC award a nullity, and *White Industries Australia Limited v Republic of India* (UNCITRAL Arb., Final Award at 104-05 (Nov. 30, 2011) where White successfully argued that there was a breach of the effective means guarantee as a result of the nine years delay it took to set aside the challenge brought by the state-owned Coal India against the ICC arbitral award.

Singapore Academy of Law, the Law Society and the Singapore Courts, Singapore has invested and continues to invest significant efforts to ensure that we will be a hub and the preferred venue for arbitration. First, Singapore's Maxwell Chambers is home to some of the top arbitral institutions in the world, including the American Arbitration Association (AAA), the Permanent Court of Arbitration, the International Chamber of Commerce's International Court of Arbitration (ICC-ICA), the International Centre for Settlement of Investment Disputes (ICSID) and the World Intellectual Property Organisation's Arbitration and Mediation Centre. These institutions complement local institutions such as the SIAC. Second, Singapore is party to the New York Convention, which means that arbitration awards from Singapore are enforceable in over 140 countries around the world. Third, to ensure that our laws on arbitration are up to date and are aligned with international best practices, Singapore amended the International Arbitration Act most recently, in 2012.

7. The decisions of our Singapore courts have also been supportive of arbitration with a history of minimal curial intervention and an emphasis on party autonomy. The Singapore courts have also consistently supported the finality of awards from arbitrations. These factors coupled with first, our neutrality and secondly, our geographical proximity to some of Asia's economic power-houses – China and India, means that we can expect even more arbitration cases to come to Singapore. As international arbitration takes deeper root not just in Asia but around the world, not just between private citizens, but between investors and host States, it is incumbent upon all of us, government officials and private practitioners alike, to educate ourselves as to best practices in international arbitration, issues of ethics and professional conduct, practice and procedure, and to develop an understanding of the developments of legal trends in this field.

The Singapore International Arbitration Academy

8. Consistent with our efforts to ensure that Singapore remains a hub and the preferred venue for arbitration, the Centre of International Law, NUS has set up the Singapore International Arbitration Academy and this is the second year that the Academy is running the programme. The aim of the Singapore International Arbitration Academy is to provide world-class training and support to both private practitioners and in-house counsel, as well as to public sector government officials in the region. The Academy has managed to attract leading arbitration practitioners, arbitrators and senior government officials to share their knowledge and expertise. The Faculty has been hand-picked to teach an innovative – and intensive – programme which focuses both on substantive knowledge as well as on practical approaches to the arbitration process. The purpose of imparting these skills and knowledge is twofold. First, it is to give you, the participants, an edge in your future practice. Secondly, and more importantly, it is to raise the level of arbitration expertise not just in Singapore, but regionally.

9. I am confident that the next eleven days will be an enriching one for all of you. The CIL, NUS has informed me that by the time the Class of 2012 was into its third week, all the participants had either rated the Academy as “excellent” or “good” in their feedback. Further, throughout the three-week programme, the ratings for “excellent” progressively increased from 62% in the first week, to 75% in the second week and finally, to 84% in the third and last week. This is a tough act to follow but I am confident it will be repeated or even surpassed this year.

10. The Academy has also taken into account the feedback given by participants of last year’s inaugural programme. This year’s programme has

been shrunk to an intensive 11-day programme to accommodate the busy schedules typical of the kind of government or private sector lawyers it is meant to serve. It pairs topics in international commercial arbitration and investment arbitration in order to provide participants with perspectives on the interaction between the two fields, and does so in such a way that it follows the sequence these issues naturally arise during the course of an arbitration. Another novel aspect of the programme is that it focuses on the interaction between the court and the arbitral tribunal and on the use of interim/provisional measures and other mechanisms such as calling upon emergency arbitrators in order to obtain urgent interlocutory relief. Due to the intensity of the programme, the Academy deploys practical learning tools such as hypotheticals, simulations and interactive workshops which take into account a participant's learning curve and encourages them to continuously apply what they are learning in the course of the programme.

11. In addition, the organisers of the Academy have introduced into the programme this year a day of in-depth analyses of two important reported cases by practitioners who were involved in these cases. This is a unique opportunity to learn from the best. The programme has also been structured such that it concludes with two major conferences in arbitration in this part of the world; namely, the Singapore International Arbitration Forum and the 4th Annual Singapore International Investment Arbitration Conference on 2nd and 3rd December 2013 respectively. Participants of the Academy are entitled to complimentary access and in this way are given the opportunity to take what they have learned in the Academy, and critique it in a setting in which they do so while interacting with other industry users.

Concluding remarks

12. In short, the Academy wants to convey as much practical knowledge and experience as possible to you. So let me complete my remarks by once again welcoming you to the Academy. I wish you an intellectually engaging and stimulating time in the coming two weeks. I envisage that you will be challenged by the topics and hope that you will engage each other in interesting and productive discussions. Thank you.
