Page 2
Addresses and Lunchtime Chats
by Leong Hoi Seng Victor

Page 5
Sessions on Emergency Arbitration
by Daniel Gaw

Page 7
Sessions on Expedited Procedure
by Alcina Chew

Page 9
Sessions on Early Dismissal of Claims and Defences
by Allister Tan
The inaugural SIAC Academy held on 6 and 7 November 2017, featured sessions on Emergency Arbitration, Expedited Procedure, and the innovative Early Dismissal procedure introduced in the SIAC Rules 2016. The teaching faculty was chaired by Mr Gary Born (President, SIAC Court of Arbitration; Chair, International Arbitration Practice Group, Wilmer Cutler Pickering Hale and Dorr LLP), and included members of the SIAC Board and Court, and other leading international arbitration practitioners and arbitrators.

Welcome Address by Mr Davinder Singh, SC

Mr Davinder Singh, SC (Chairman, SIAC; Executive Chairman, Drew & Napier LLC) kicked off the programme, by highlighting in his Welcome Address that the SIAC Academy was one of the newest ways in which Singapore’s international arbitration community could interact closely with SIAC, and that the SIAC Academy would be the first in a series of learning academies.

Opening Address by Mr Gary Born

The stage then turned to Mr Gary Born, who wasted no time in turning to two well-known television dramas to illustrate from whence the international arbitration community had come from and where we should head next.

Using a quote from the popular television series Game of Thrones, Mr Born warned that “winter is coming”. Like in the show, international arbitration had enjoyed a long and productive golden summer as the preferred means of dispute resolution both in international commercial arbitration and international investment arbitration. However, there were now worries that an everlasting winter is coming. According to Mr Born, this winter originated from the disquiet that had steadily grown louder in the investment arbitration community concerned about the lack of transparency, consistency, and democratic legitimacy surrounding the investment arbitration process.

To prevent this winter from coming, Mr Born turned to another popular television show, the House of Cards, and its reference to two groups of people – the hunters and the hunted. The disquieting voices had hunted the arbitration community and had forced it to defend itself from external attacks. Mr Born exhorted participants to turn from being the “hunted” to the “hunter”. Mr Born also asserted that arbitration is fundamental to the rule of law. Just as one has the freedom to choose who to marry, and who to contract with, one should also have the freedom to choose who and how to mend those relationships.

Lunchtime Fireside Chat with Mr Toby Landau QC and Professor Lucy Reed, moderated by Ms Koh Swee Yen

The Lunchtime Fireside Chat involved two of the biggest names in the field – Mr Toby Landau QC (Member, SIAC Court of Arbitration; Barrister and Arbitrator, Essex Court Chambers) and Professor Lucy Reed (Member, SIAC Court of Arbitration; Director, Centre for International Law (Singapore); Professor, Faculty of Law, National University of Singapore), who shared their insights on written and oral advocacy.

On written advocacy, Mr Landau lamented that at times written advocacy in arbitration appeared to have suffered from the worst of both the common and civil law systems. Without pleadings in arbitration (unlike litigation), this left written advocacy without ‘disciplined’ limits, which had in turn lead to written submissions getting lengthier. Against this backdrop, both Mr Landau and Professor Reed noted that the basics of good written advocacy was to have a tight...
and clear structure (using headings and tables of contents where necessary), and clear writing. Both panellists cautioned against using excessively emotive language or using too many adjectives, preferring to simply make the point.

Apart from these basic guidelines, the panellists also shared some personalised tips. Professor Reed advised senior lawyers to be more involved in the drafting process from the start and to have different teams of lawyers write the submissions, “clean” the submissions, and even another senior lawyer to make the submissions “sing”. Mr Landau chimed in by noting that in applications with short timelines like in the Emergency Arbitrator process, it may be beneficial to use a skeletal format – not just shortened prose, but arguments in bullet form with only the key propositions and authorities.

Turning to oral advocacy, both panellists agreed that the cardinal sin of oral advocacy was simply reading from the written submissions. Instead, lawyers should engage with their audience – the tribunal – and because of that, there would be no “set play” applicable in every case. Similar to written advocacy, one should craft oral submissions in a way that was brief and precise, relevant to the specific issues at hand, and present a clear and compelling structure to the tribunal.

Professor Reed concluded the session by emphasising that for both forms of advocacy, one could only get better with practice.

Lunchtime Conversation with Ms Indranee Rajah, SC (Interviewer: Mr Gary Born)

The Lunchtime Conversation featured Ms Indranee Rajah, SC, Senior Minister of State, Ministry of Law and Ministry of Finance, who shared her views on a range of hot topics in international arbitration as quizzed by Mr Born.

Ms Rajah first shared some thoughts about what international arbitration female practitioners needed
to do to succeed in this field. Drawing from her previous experience in private practice, Ms Rajah stated it was clear that the women were no less impressive substantively, but had to focus slightly more on putting themselves out there through networking.

Ms Rajah also shared her views on the future of SIAC and what SIAC needed to do to continue to succeed, emphasising that what would be most important for SIAC moving forward were three qualities: speed, quality (of the arbitral process), and costs.

The conversation then turned to other topics such as third-party funding and artificial intelligence. Ms Rajah noted that a prime ground to test third-party funding in Singapore was in international arbitration, given the nature and scale of the claims. As for artificial intelligence (AI), Ms Rajah noted that many foreign firms had embraced AI to handle more menial and time-consuming tasks. Ms Rajah also noted that there were data analytics which could assess the performance of arbitrators and lawyers. All

these meant that the nature of legal practice had changed and that lawyers’ time were freed up to focus on higher value and analytical legal work.

The conversation concluded by Mr Born asking Ms Rajah whether she thought winter was coming for international arbitration. Ms Rajah noted that while events around the world, like Brexit, might have increased uncertainty in traditional powerhouses of international arbitration, arbitration in Asia might present the most potential for growth in the immediate future. SIAC – and Singapore – could leverage on this wave of growth by becoming a global hub, providing not only legal services but also financial, advisory, or even engineering infrastructure.
The ins and outs of the innovative Emergency Arbitrator (EA) procedure, which was first introduced by the SIAC in its 2010 Rules, was explored during the first day of the SIAC Academy 2017 on 6 November 2017.

In the first two panel discussions moderated by Professor Lawrence Boo (Member, SIAC Court of Arbitration; Independent Arbitrator, The Arbitration Chambers), the panellists, comprising Mr Kent Phillips (Partner, Hogan Lovells Lee & Lee), Mr Richard Tan (Independent Arbitrator), Mr Thio Shen Yi, SC (Joint Managing Partner, TSMP Law Corporation) and Mr Andrew Yeo (Partner, Allen & Gledhill LLP), considered the theory and practice of emergency arbitration from both the practitioner’s as well as the tribunal’s perspective.

One of the key issues considered by the panellists was the applicable test for emergency interim relief. Mr Tan opined that the three main factors were: (a) urgency; (b) whether damages are an adequate remedy; and (c) a reasonable possibility of success on the merits. Mr Yeo considered the following factors relevant: (a) urgency and necessity; (b) serious and irreparable harm; (c) prima facie case on the merits; (d) balance of convenience; and (e) preservation of the status quo ante breach. Mr Thio pointed out that while there was general agreement on the test for granting emergency interim relief, the underlying concepts were ambiguous and might be understood differently by different tribunals. For example, whilst common lawyers view damages as generally an adequate remedy for a breach, civil lawyers might disagree.

The panellists also discussed the limitations of the EA procedure. Mr Tan noted that, unlike in court proceedings, in EA procedures, ex parte applications for emergency interim relief were not available, thereby losing the element of surprise. Further, the EA’s order would not be binding on third parties. On the latter point, an interesting issue discussed by the panellists was how third parties such as banks should respond to an EA’s order prohibiting a party from dissipating funds in a bank account. Mr Phillips opined that a bank was still contractually obligated to pay out the funds in accordance with its customer’s instructions, regardless of the EA’s order. However, Mr Thio observed that in practice, simply sending a lawyer’s letter to a bank, informing it of the EA’s order, might be sufficient to persuade a bank to delay paying out the funds until the EA order is enforced as a judgment.

The third panel session gave participants an inside look into the administration of EA proceedings from the SIAC’s perspective. The panel was moderated by Professor Boo and comprised Mr Gary Born (President, SIAC Court of Arbitration; Chair, International Arbitration Practice Group, Wilmer Cutler Pickering Hale and Dorr LLP), Ms Delphine Ho (Registrar, SIAC), Ms Adriana Uson (Counsel, SIAC) and Mr Christopher Bloch (Associate Counsel, SIAC).

During the panel discussion, Ms Ho explained that the Registrar would consider the following factors in deciding whether to allow an application for the appointment of an EA: (a) whether the requirements in Schedule 1 of the SIAC Rules were satisfied; (b) whether the requisite fees have been paid; and (c) whether there was truly an emergency. Parties should not simply assert that there was an emergency without setting out the context. Ms Uson also helpfully shared a practical tip that some law firms would give the SIAC a call in advance to
filing the EA application to let it know that an EA application was on its way.

Following the panel discussions, participants of the SIAC Academy were divided into groups for workshops on how to draft and handle EA applications. The workshops were facilitated by both up-and-coming and experienced practitioners, such as Mr Samuel Leong (Associate, Norton Rose Fulbright), Ms Jelita Pandjaitan (Partner, Linklaters Singapore Pte. Ltd.), Mr Mahesh Rai (Director, Dispute Resolution, Drew & Napier LLC) and Mr Tay Yu-Jin (Partner, Mayer Brown JSM). The workshops afforded participants an opportunity to share and exchange their views and personal experiences of dealing with EA applications in a small group setting, as well as clarify any queries that they might have had with their assigned facilitators and faculty members.

The day concluded with a series of mock emergency arbitration hearings in which several participants made submissions before mock tribunals chaired by Professor Lucy Reed (Member, SIAC Court of Arbitration; Director, Centre for International Law (Singapore); Professor, Faculty of Law, National University of Singapore) and Mr Gary Born. The mock hearings afforded participants an invaluable opportunity to put into practice what they had learnt in the course of the day, and receive feedback from the tribunal members on their oral advocacy.
The sessions on Expedited Procedure commenced with a panel discussion on “Managing a Case under the Expedited Procedure – from Tribunal’s Perspective”. The panel was moderated by Mr Chan Leng Sun, SC (Deputy Chairman, SIAC Board of Directors; Global Head of International Arbitration, Baker McKenzie), and the panellists comprised Mr Chou Sean Yu (Partner, WongPartnership LLP), Mr Elliott Geisinger (Global Chair, International Arbitration Group, Schellenberg Wittmer Ltd), Mr Paul Sandosham (Partner, Clifford Chance) and Mr Alan Thambiayah (Member, SIAC Court of Arbitration; Professional Arbitrator, The Arbitration Chambers).

Mr Sandosham kicked off the session, with an entertaining and informative presentation on Expedited Procedure. As the final award in arbitral proceedings conducted in accordance with the Expedited Procedure had to be made within 6 months from the date the tribunal was constituted, Mr Sandosham stressed that good time management was critical.

To ensure that the 6-month timeline is adhered to, Mr Thambiayah shared that one approach was to work backwards, i.e. determine the time that the tribunal needed to write the award (including the time which the SIAC needed to scrutinise the award) and have the parties work out and agree between themselves the timelines for the various stages of the proceedings within the remaining time. This not only helped to chart the roadmap for the proceedings, ensure that the 6-month deadline could be met, but also made it more difficult for parties to later dispute that they were not given sufficient time to present their cases.

Having a documents-only arbitration, conducted entirely on the basis of documentary evidence and written submissions without a hearing, could also help to ease time pressures. For example, if the issue in dispute only related to differences in contractual interpretation, then a documents-only hearing might be appropriate. However, Mr Chan cautioned that the tribunal should be careful not to order a documents-only hearing, even if both parties desired it, in inappropriate cases. For instance, if the central issue related to oral agreements, then adducing oral testimony and cross-examination would probably be necessary.

Mr Geisinger offered the practical suggestion that parties and the tribunal should make use of telephone conferences as much as possible – issues can often be resolved much more quickly through the telephone conferences than through the exchange of written correspondence.

Ultimately, the importance of the tribunal taking a robust (but not overzealous) approach to monitoring the progress of the case and ensuring that parties adhere to timelines should not be understated.

If the issues turned out to be more complex than originally contemplated, or if the issues required expert evidence and/or cross-examination to be fully ventilated, parties and/or the tribunal might be unable to adhere to the 6-month deadline. Mr Chou explained that there were two possibilities open to the parties in such a scenario: they could either (a) convert the Expedited Procedure proceedings into the normal process; or (b) seek an extension of time from the SIAC.

The second panel discussion was on “An Inside Look at Applications for Expedited Procedures and the Secretariat’s Role in Managing Abbreviated Timelines – from SIAC Secretariat’s Perspective”. The panellists comprised Mr Kevin Nash (Deputy Registrar & Centre
Director, SIAC), Ms Khyati Raniwala (Associate Counsel, SIAC) and Ms Qian Wu (Associate Counsel, SIAC), and the discussions were moderated by Mr Chan Leng Sun, SC.

During this panel, it was explained that the monetary limit of S$6 million for Expedited Procedure was determined after consultations with SIAC’s Users Council, and represented the quantum of claims that parties were generally comfortable resolving through the “fast-track” Expedited Procedure. However, this did not necessarily mean that cases involving a sum in dispute exceeding S$6 million could not benefit from this procedure. Where the excess was insignificant, the claimant (for the claim or counterclaim, as the case may be) could choose to forego the excess so that the sum in dispute would be capped at S$6 million. Alternatively, parties could also agree to the application of the Expedited Procedure.

Of the 3 grounds under which the Expedited Procedure could apply (sums in dispute do not exceed S$6 million, parties so agree, cases of exceptional urgency), Ms Raniwala shared that “exceptional urgency” was not often used as a standalone basis for an application for Expedited Procedure. This was unsurprising as it would generally be difficult for parties to establish that they had urgent need for an award within 6 months. In cases of exceptional urgency, the more appropriate mechanism would usually be an application for the appointment of an emergency arbitrator to grant emergency interim relief.

The panellists also shared what typically happened when an extension of time under the Expedited Procedure was sought. In such cases, even if an extension of time was granted, it would typically be limited so that the purpose of Expedited Procedure would not be undermined. Mr Nash also drew an important distinction between cases where the arbitrator needed more time to draft the award, and cases where parties needed more time e.g. if more hearing dates are required. SIAC would usually give more latitude in the latter situation.

Participants of the SIAC Academy then had the opportunity to apply the rules and principles discussed during the panel discussions at the Expedited Procedure workshops. The participants were split into five groups, with participants in each group acting as Claimant or Respondent in a mock application for Expedited Procedure. Mr Daryl Chew (Partner, Shearman & Sterling LLP), Mr Edmund Kronenburg (Managing Partner, Braddell Brothers), Mr Chanaka Kumarasinghe (Partner, Holman Fenwick Willan LLP), Ms Dharshini Prasad (Associate, Wilmer Cutler Pickering Hale and Dorr LLP) and Ms Melissa Thng (Member, YSIAC Committee; Partner, Dentons Rodyk & Davidson LLP) were the facilitators for the workshops, and shared not only their personal experiences in dealing with Expedited Procedure, but also strategies and learning points in relation to the same.
Sessions on Early Dismissal of Claims and Defences

by Allister Tan, Senior Associate, RPC Premier Law

The newly introduced Rule 29 of the SIAC Rules 2016, which expressly allows tribunals to summarily dismiss claims or defences, were discussed extensively on the afternoon of 7 November 2017 at the SIAC Academy.

**Mr Gary Born’s Introduction to Early Dismissal**

During the introduction to Early Dismissal by Mr Gary Born (President, SIAC Court of Arbitration; Chair, International Arbitration Practice Group, Wilmer Cutler Pickering Hale and Dorr LLP), Mr Born explained to the participants that Rule 29 was a new feature of the SIAC Rules 2016 with no equivalent provision(s) in the earlier versions of the rules, and that it was modelled after Rule 41(5) of the ICSID Arbitration Rules.

Mr Born highlighted that the phrase "manifestly without legal merit" adopted in Rule 29.1(a) suggested an extremely high threshold to be satisfied on the part of the applicant and that this was likely intended purely for issues of law, and gave the example of an application to dismiss a claim which was time barred.

Further, he also explained that the thought behind the inclusion of Rule 29.3 was for the Tribunal to act as a gatekeeper to ascertain whether such an application should be allowed to proceed at the outset, and that a potential factor for consideration was whether such an application, if allowed, would in fact save time and cost.

In addition, he also posed the question on whether the requirement in Rule 29.3, which mandated the Tribunal to give the parties the opportunity to be heard, required a live hearing to be convened and the calling/examination of witnesses.

**Workshops on Drafting and Handling an Application for Early Dismissal**

The workshops on drafting and handling an application for Early Dismissal provided valuable input to the participants on the issues to expect in an Application for Early Dismissal.

The workshops were facilitated by Mr Simon Dunbar (Member, YSIAC Committee; Partner, King & Spalding), Mr Ankit Goyal (Co-Chair, YSIAC Committee; Partner (Foreign Law), Allen & Gledhill LLP), Mr Jonathan Lim (Member, YSIAC Committee; Senior Associate, Wilmer Cutler Pickering Hale and Dorr LLP) and Mr Nicholas Lingard (Member, YSIAC Committee; Partner, Freshfields Bruckhaus Deringer LLP).

One key issue which was discussed at the workshops was the circumstances under which a party would elect to challenge the jurisdiction of the Tribunal to hear the matter under Rule 29.1(b) instead of relying on Rule 28 of the SIAC Rules, particularly given that the former appears to impose a higher threshold (i.e. manifestly outside the jurisdiction of the Tribunal).

The majority of the participants and facilitators agreed that in such a scenario, an application under Rule 28 would be preferred. However, one might make such an application under Rule 29.1(b) if...
the time limit as prescribed in Rule 28 had already expired.

### Panel Sessions on the Theory and Practice of Early Dismissal and Guidelines on Hearing an Application for the Early Dismissal of a Claim, Counterclaim or Defence

The panel sessions on the “Theory and Practice of Early Dismissal” and “Guidelines on Hearing an Application for the Early Dismissal of a Claim, Counterclaim or Defence”, were moderated by Mr Born, and the panellists comprised Dr Michael Hwang, SC (Chartered Arbitrator, Michael Hwang Chambers LLC), Mr Andre Yeap, SC (Senior Partner, Rajah & Tann LLP) and Mr Alastair Henderson (Managing Partner (Southeast Asia), Herbert Smith Freehills LLP).

Dr Hwang explained to the participants that Rule 29 and the power of the Tribunal to summarily dismiss claims or defences was not new. In particular, he explained that every court or tribunal would have the inherent case management powers to dispose of the whole or part of a case, and that this included the power to set out a process to determine a claim or defence summarily.

In support of this, Dr Hwang made reference to section 12(5) of the International Arbitration Act (IAA) which conferred upon arbitral tribunals the power to award any remedy or relief that could have been ordered by the High Court if the dispute had been the subject of civil proceedings in that Court, as well as Article 19(2) of the UNCITRAL Model Law which empowered arbitral tribunals to conduct the proceedings as it considered appropriate. Ultimately, Dr Hwang opined that Rule 29 merely crafted a process for parties to pursue the early dismissal of claims and/or defences in compliance with the IAA and the Model Law.

Mr Yeap then discussed the specific requirements of Rule 29 and in particular, asked the attendees to consider the definition of "manifest" in the context of Rule 29. On this note, he explained that cases decided under the ICSID Rules had defined "manifest" as "clearly and obviously with relative ease and despatch". Regardless of the definition, it was clear that the inclusion of the phrase had imposed an extremely high threshold to be met.

Mr Henderson then wrapped up the discussion by pointing out that they were typically not using such powers and that the introduction of Rule 29 was to encourage tribunals to exercise such powers without fear of criticism.

### Mock Application for Early Dismissal and Tribunal Feedback

The input given by the facilitators in the workshops ensured that the participants in the mock applications performed excellently.

One useful advice mentioned during the Tribunal Feedback segment by the mock tribunal, which was chaired by Mr Born, was that given the high threshold set out in Rule 29, in order for an applicant to have some prospect of succeeding in an application for Early Dismissal, it would be crucial for the applicant to be able to summarise in two or three headlines why the application should be allowed.

### Conclusion

Overall, the SIAC Academy was a huge success and all the participants would agree that valuable insights were given on various issues, especially on the newly minted Rules on Early Dismissal.

### Closing Address by Mr Chan Leng Sun, SC

Mr Chan Leng Sun, SC (Deputy Chairman, SIAC Board of Directors; Global Head of International Arbitration, Baker McKenzie) closed the SIAC Academy by reiterating Mr Born’s comments in the opening address of the SIAC Academy – that winter is coming and so the arbitration community should assert themselves as the hunters – and noted that the SIAC Academy had provided participants with various tools to do so.
SIAC would like to thank all guest speakers, faculty members, and facilitators of the SIAC Academy 2017:

**FACULTY**
Gary Born (Chair)
Prof Lawrence Boo (Chair - Emergency Arbitration)
Chan Leng Sun, SC (Chair - Expedited Procedure)
Toby Landau QC (Chair - Early Dismissal)
Alan Thambiayah (Chair - Facilitators and Mock Arbitrations)
Dr Michael Hwang, SC
Thio Shen Yi, SC
Andre Yeap, SC
Chou Sean Yu
Elliott Geisinger
Alastair Henderson
Kent Phillips
Paul Sandosham
Richard Tan
Andrew Yeo

**FACILITATORS**
Daryl Chew
Simon Dunbar
Ankit Goyal
Edmund Kronenburg
Chanaka Kumaranasinghe
Samuel Leong
Jonathan Lim
Nicholas Lingard
Jelita Pandjaitan
Dharshini Prasad
Mahesh Rai
Tay Yu-Jin
Melissa Thng

**LUNCHTIME FIRESIDE CHAT**
Toby Landau QC & Prof Lucy Reed
Koh Swee Yen (Moderator)

**LUNCHTIME CONVERSATION**
Ms Indranee Rajah, SC
Senior Minister of State,
Ministry of Law and Ministry of Finance
Gary Born (Interviewer)

**SIAC SECRETARIAT**
Delphine Ho, Registrar
Kevin Nash, Deputy Registrar & Centre Director
Adriana Uson, Counsel
Christopher Bloch, Associate Counsel
Khyati Raniwala, Associate Counsel
Qian Wu, Associate Counsel

The SIAC Academy will be held in India, Japan and South Korea in 2018.
Please mark your calendars:

**SEOUL**
15 - 16 Jun 2018

**TOKYO**
7 - 8 Sept 2018

**MUMBAI**
6 - 7 Oct 2018