Introduction

2010 saw many important legal developments in the area of arbitration law both internationally as well as in Singapore. We set out below a summary of the highlights of these developments.

Developments In Case Law

Bringing A Party To Court Without Breaching An Arbitration Agreement

The purpose of arbitration agreements is clear – they bind the parties to bring their disputes to arbitration instead of before the Court. However, the English High Court case of Louis Dreyfus Commodities Kenya Ltd v Bolster Shipping Company Ltd [2010] EWHC 1732 (Comm) provides an example of how a party to an arbitration agreement can bring the other party into court proceedings without breaching the agreement.

Here, the Court held that the joinder of the other party was not in breach of an arbitration agreement because the latter was brought into the proceedings mainly to obtain information and evidence from him for the purposes of defending a separate claim instituted by a third party. Moreover, there was no dispute nor claim asserted against the other party in the joinder.

This holding demonstrates the narrow scope of an arbitration agreement, and may instinctively seem to present a loophole through which a party can be dragged to court. However, it also recognises that litigants should not be easily denied their right to bring disputes before the Court, and that the proceedings in question must be properly examined to assess whether they are truly in breach of an arbitration agreement.

Power To Order Pre-Arbitral Discovery And Pre-Action Discovery / Pre-Action Interrogatories

Pre-Arbitral Discovery

Do Singapore courts have the power to grant an order for pre-arbitral discovery? This was the issue that the Singapore High Court had to resolve in Equinax Offshore Accommodation Ltd v Richshore
Marine Supplies Pte Ltd [2010] SGHC 122. It was held that the power to order pre-arbitral discovery is not within the jurisdiction of Singapore courts. The Court highlighted here that the power to grant pre-action discovery which is contained in Order 24 Rule 6(1) of the Rules of Court was intended to cover only proceedings in court, and does not extend to pre-arbitral discovery. Moreover, the proceedings were governed by the SIAC Rules as well as Order 69A of the Rules of Court, which already contain detailed rules regarding the procedural rights and reliefs connected to international arbitration. Neither source provides for the court to make orders for pre-action discovery.

The Court acknowledged that there might be a perceived "gap" in legislation, which fails to provide for pre-arbitral discovery. However, it was held that there was no need for the Court to intervene as primacy had to be accorded to the contractually chosen nature of arbitration to resolve their disputes. As such, it is now for the parties to make the necessary contractual provisions for any mechanism compelling the disclosure of documents.

**Pre-Action Discovery / Pre-Action Interrogatories**

Equinox Offshore is to be distinguished from a situation where a party to an arbitration agreement indicates its intention to commence action against the other party in court and seeks pre-action discovery. When the other party applies to stay the action, the Singapore Court of Appeal in Navigator Investment Services Ltd v Acclaim Insurance Brokers Pte Ltd [2009] SGCA 45 decided that an application for pre-action discovery / pre-action interrogatories does not fall within the scope of section 6 of the International Arbitration Act ("IAA") (on staying court proceedings in favour of arbitration) and hence, cannot be stayed on that basis. This is because the earliest point in time at which a stay application can be made is when a substantive claim has already been crystallised, which would not be the case where the application is for discovery prior to the bringing of a claim. The word “appearance” in section 6 refers to the process by which a person against whom a suit has been commenced shows his intention to defend the suit. Given this, applications for pre-action discovery and / or pre-action interrogatories are available to a party notwithstanding the relevant provisions of the IAA.

Here, the Court stressed that its decision to make available pre-action discovery and pre-action interrogatories did not militate against the commitment of the courts to facilitate and promote arbitration between commercial parties wherever possible. This was so because the grant of pre-action discovery and / or pre-action interrogatories might even aid arbitration in that it might assist the applicant to ascertain whether it had a viable claim against the respondent. The Court, however, highlighted that the power to grant pre-action discovery and / or pre-action interrogatories must be exercised by the courts sparingly and only where valid reasons can be shown.

**Revoking A Subpoena Issued In Support Of Arbitration Proceedings; Minimal Court Intervention**

Where a subpoena has been issued, the Court will not easily exercise its discretion to set it aside. However, the considerations for revoking a subpoena may operate differently where the subpoena is issued for a witness to attend before an arbitral tribunal rather than before a Court.
In *ALC v ALF* [2010] SGHC 231, the Singapore High Court had to decide whether to revoke a subpoena issued in support of arbitration proceedings. In this case, the defendant applied to the Court for a subpoena although the rules which the parties had agreed to use to govern their arbitration proceedings required the concerned party to write first to the arbitrator to seek a witness' testimony. It was found that the defendant's application for a subpoena was an abuse of process as it sought to bypass the arbitrator’s control of arbitral procedure. Consistent with the policy of the courts to exercise minimal interference in arbitrations, the Court reminds us that parties to arbitration should not seek help of the Court without first exhausting the procedural recourses set out in their arbitration agreement.

**Stay In Favour Of Arbitration**

Singapore legislation allows the courts to stay legal proceedings in favour of arbitration, consistent with the State’s policy of minimal court intervention in the conduct of arbitration. Under what circumstances must the courts stay the proceedings in favour of arbitration? What constitutes “steps” in the proceedings that would disable a party from making an application for a stay of proceedings? The cases the follow are instructive.

**Dispute Resolution Clause In Written Guarantee Distinct From The Arbitration Agreement In Principal Contract**

The English High Court in *Classic Maritime Inc v Lion Diversified Holdings and Another* [2009] EWHC 1142 (Comm) had to determine whether it should stay a claim against one of the parties to an arbitration agreement in favour of arbitration even though that party took part in negotiations leading to a separate and subsequent dispute resolution provision (which allowed the aggrieved party to sue the erring parties in the English High Courts).

Here, Party A brought proceedings against Party B and its guarantor in the English Court for breach of the principal contract which provided that parties to the contract must submit their disputes to arbitration. Party A and the guarantor had signed a separate written guarantee which provided for a dispute resolution clause whereby the parties were to submit their disputes to the non-exclusive jurisdiction of the English Courts.

The English High Court held that the claim against Party B must be stayed in favour of arbitration, the subject controversy having arisen from the principal contract which provided for arbitration. The Court highlighted in this case that just because Party B took part in the negotiations leading to a separate and subsequent dispute resolution provision does not mean that it had agreed for the later provision to replace the earlier one. In the absence of such a clear intention, the parties must comply with the agreement to submit their disputes to arbitration.

**What Constitutes A “Step” In The Proceedings?**

The English High Court in *Bilta (UK) Ltd v Nazir and Others* [2010] EWHC 1086 (Ch) provided helpful guidelines on what constitutes a “step” in the proceedings within the contemplation of
section 9 of the Arbitration Act 1996 that would disable a party from making an application for a stay of proceedings pursuant to the said provision of the Arbitration Act 1996. (Section 6(1) of both the Singapore Arbitration Act and the Singapore International Arbitration Act have the same operative language as that used in section 9 of the Arbitration Act 1996.) These guidelines are as follows:

(i) To deprive a defendant of his recourse to arbitration, a "step in the proceedings" must be one which impliedly affirms the correctness of the proceedings and the willingness of the defendant to go along with a determination by the Courts of law instead of arbitration (Eagle Star Insurance v Yuval Insurance Co Ltd [1978] 1 Lloyd’s Rep 357).

(ii) If a party to legal proceedings gives a clear indication to the other party through correspondence that he is reserving his right to apply for a stay of proceedings, that will be sufficient to prevent his action from disqualifying him of his right to arbitration.

(iii) It is legitimate for a party to ask for more information about the claim before deciding whether to submit to the court proceedings or to seek to rely upon the arbitration agreement. It is thus sensible for that party to seek an extension of time for service of the defence to allow him to receive and consider such further information. In this context, an extension of time for service of the defence could not be objectively construed as indicating an election by that party to waive any right it might have to seek a stay for the dispute to be referred to arbitration.

Whether Questions Should Be Tried By Court As Preliminary Issues Or Left For The Arbitral Tribunal To Determine

It is also in Bilta where the Court was confronted with another important issue. Where parties dispute whether an arbitration agreement forms part of the agreed contractual terms or even if yes, whether the disputes fall within the scope of the arbitration agreement, the question arises as to whether the Court should give directions for these questions to be tried as preliminary issues or whether Court proceedings should be stayed and these questions left for determination by the arbitration tribunal.

Here, A had applied for an order to stay court proceedings on the ground that B is a party to a Framework Agreement which contained an arbitration clause that covered the subject claims. In resisting the application for stay, B argued that it never assented to the terms of the agreement. He argued in the alternative that even if it had, the disputes in question did not fall within the scope of the arbitration agreement.

The Court found that there is a triable issue whether the arbitration clause formed part of the contract between the parties. In that situation the court has a discretion whether to give directions for such an issue to be determined by the court as a preliminary issue or whether to grant a stay and refer the issue to be decided in the arbitration (see Ahmad Al-Naimi v Islamic Press Agency Inc [2000] 1 Lloyd’s Rep 522).
On the facts, the Court held that the appropriate course to adopt is to decide questions relating to the existence of the terms of the arbitration agreement as a preliminary issue.

**Distinguishing Between In Rem And In Personam Actions When Staying In Favour Of Arbitration**

Section 6 of the IAA allows the Court to stay legal proceedings in favour of international arbitration. However, the Singapore High Court in *The “Engedi”* [2010] SGHC 95 clarified that this provision does not give the Court power to stay an action in *rem* where the owner of the *res* is not a party to the arbitration agreement. The case involved an application by the Plaintiff for a stay of proceedings in *rem* in respect of claims against a vessel. However, by the time the vessel was arrested, the Defendant had become insolvent, and ownership of it had been transferred to an intervener in the claim.

The Court held that it had no power under section 6 of the IAA to stay the proceedings in *rem* because the vessel itself was not involved in the arbitration agreement between the Plaintiff and the Defendant, and because staying the action would deny the intervener its right to defend its interests.

Judith Prakash J went on to consider (as obiter) whether the Plaintiff was required by section 299 of the Companies Act to seek leave from the Court before commencing foreign arbitration proceedings against the Defendant. She opined that foreign arbitrations would be unlikely to be caught by this provision as the local Court has no power over the conduct of foreign arbitrations.

**Setting Aside Arbitral Awards**

The Singapore Courts on several occasions made significant rulings on the grounds to set aside arbitral awards. While there are legitimate reasons to set aside an arbitral award, the Courts also stressed that general allegations of “perversity” or “irrationality” are not sufficient grounds to nullify an award.

**Breach Of Natural Justice**

Singapore Courts have often demonstrated that a high threshold must be satisfied before it will set aside an arbitral award. However, in *Front Row Investment Holdings (Singapore) Pte Ltd v Daimler South East Asia Pte Ltd* [2010] SGHC 80, the Plaintiff successfully persuaded the Singapore High Court to set aside an arbitral award on the particularly difficult ground of breach of natural justice. Here, the dispute before the arbitrator involved allegations of misrepresentation. Inexplicably, the arbitrator concluded that the Plaintiff had abandoned its pleaded assertion that there were three misrepresentations made and relied upon; and was now only relying on one instance of misrepresentation.

Andrew Ang J held that, in failing to consider the Plaintiff’s arguments and submissions on the other misrepresentations, the arbitrator had committed a breach of natural justice. Since this breach prejudiced the Plaintiff’s rights, the arbitral award was set aside.
**Contrary To Public Policy**

In *AJT v AJU* [2010] SGHC 201, the Singapore High Court set aside an arbitral award that upheld an agreement directed at stifling a prosecution of a non-compoundable offence. It was observed that while there is a need to preserve the integrity of the arbitration process in ensuring the finality of arbitral awards, the courts must also safeguard the interest of the public in ensuring that its processes are not abused by litigants. The courts must therefore determine whether parties intend to frustrate the ends of justice by concluding an agreement that is contrary to public policy.

The Court found in this case that the subject agreement, which required one party to withdraw his case against the defendant, was contrary to public policy. This was so because through this agreement, the parties intended to take the administration of law out of the hands of the officers of the justice system and put it into the hands of private individuals (see *Windhill Local Board of Health v Vint* (1890) LR 45 CH D 351). This is tantamount to preventing the prosecution of a case which has been instituted from being conducted in the ordinary course.

**Tribunal Rendered An Award In Excess Of Its Power**

The recent decision of the Singapore High Court in *PT Perusahaan Gas Negara (Persero) TBK v CRW Joint Operation* [2010] SGHC 202 illustrates the importance of appreciating that not all arbitration agreements operate in the same manner and that in some, there might be conditions to be satisfied before a dispute becomes referable to arbitration.

Here, B tried to enforce a binding but not final disputes adjudication board (“DAB”) decision by way of arbitration, referring to arbitration the question of whether A was obliged to comply with the DAB decision. This issue was never referred to DAB for decision. Notwithstanding, the tribunal issued an award favourable to the applicant (ie ordering A to make immediate payment to the respondent).

The Court set aside the tribunal award and held that the tribunal exceeded its power by rendering a final award pertaining to a dispute that was not referred first to the DAB pursuant to the Conditions of Contract for Construction which the parties had agreed to govern their contract. What the respondent could have done was to challenge the underlying disputes and not frame the dispute as one pertaining to respondent’s obligations to make immediate payment (which was never referred to the DAB).

The Court highlighted that the adjudication of the “immediate payment” issue without confirming the correctness of the DAB Decision would be tantamount to converting the binding but not final DAB decision into a final arbitration award and ignoring the dispute resolution provisions of the Conditions of Contract.
**Court Will Not Set Aside An Arbitral Award On General Allegations Of “Perversity” Or “Irrationality”**

In *Sui Southern Gas Co Ltd v Habibullah Coastal Power Co (Pte) Ltd* [2010] SGHC 62, the Singapore High Court had to decide whether to set aside an arbitral award on the grounds that the decision was “perverse and irrational”.

In choosing not to set aside the award, the Court demonstrated that it is inclined to show deference towards the decision of the arbitral tribunal. Errors of law and fact are themselves not enough: it must be shown that there was an error in the award such that enforcement would “shock the conscience”, be “clearly injurious to the public good” or would “contravene fundamental notions of and principles of justice”.

This decision highlights the fact that the Court will not easily set aside an arbitral award, and that a very high threshold had to be crossed in order to show that the award went against public policy.

**Issuance Of Arbitral Awards – Court Has Discretion To Grant Extension Of Time**

Arbitration agreements often contain limitation periods for the issuance of an award by the arbitrator. This notwithstanding, the Court has the discretion to grant an extension of time. In *Ting Kang Chung John v Teo Hee Lai Building Constructions Pte Ltd* [2010] SGHC 20, the Singapore High Court had occasion to consider the circumstances under which such discretion would be exercised.

Here, one of the parties to the arbitral proceedings was especially uncooperative, resisting the arbitrator's orders and bringing numerous applications before the Court. The Court also found that the arbitrator himself was inexperienced and inadequately trained. This resulted in the award being issued more than one year and two months after the prescribed time limit had expired. The Court refused to grant an extension of time, holding that such an extension would only be granted to prevent substantial injustice, and only where there is no prejudice to the other party.

This case demonstrates the Court's commitment towards party autonomy, insisting on minimal intervention in arbitration proceedings. Parties to arbitration should thus ensure that competent and qualified arbitrators are appointed to avoid a situation where they are left with an ineffective arbitral award.

**Enforcement Of Arbitral Awards**

Enforcement of arbitral awards is a very contentious matter. The issue becomes more problematic when the basis of the arbitration agreement – the document itself – is not physically signed to prove that the concerned party consented to the terms of the agreement. As will be shown below, physical endorsement is not necessary when there are pieces of evidence to prove acceptance of the agreement.
In another case, it was stressed that recipients of arbitral awards must not sleep on their rights to enforce the awards by commencing proceedings to enforce the same within the limitation period, lest they risk not obtaining the benefits of the favourable ruling of the tribunal.

**Arbitration Agreement Need Not Be Signed Physically**

In *Denmark Skibstekniske Konsulenter A/S v Likvidation (formerly known as Knud E Hansen A/S) v Ultrapolis 3000 Theme Investments Ltd (formerly known as Ultrapolis 300 Theme Park Investments Ltd)* [2010] SGHC 108, the Singapore High Court had to determine whether the party that wanted to enforce an award rendered by a foreign tribunal satisfied the requirement set out in section 30(1)(b) of the IAA (ie production of the subject arbitration agreement).

Although the Standard Conditions which formed part of the agreement between the parties that contained the arbitration clause was not signed by the parties, the Court found that the Standard Conditions were earlier emailed to the other party which in turn referred to the same in its affidavit. The Court held that these related acts constituted acceptance of the arbitration agreement on the part of that other party.

This case would be of particular interest to arbitration practitioners and drafters of arbitration agreements because the Court here stressed that an arbitration agreement need not be signed physically. The intention to refer disputes to arbitration may be inferred from the circumstances surrounding the case. As held by the court in *Proctor v Schellenberg* [2003] 2 WWR 621, cited in *Aloe Vera of America, Inc v Asianic Food (S) Pte Ltd* [2006] 3 SLR(R) 174, what was important is that "there is a record to evidence the agreement of the parties to resolve the dispute by an arbitral process".

**Application To Enforce Arbitration Award Must Be Made Within Six Years Of Award**

In the case of *National Ability SA v Tinna Oils & Chemicals Ltd* [2009] EWCA Civ 1330, the English High Court determined that proceedings to enforce arbitral award, whether by ordinary action or by application to enforce the award in the same manner as a judgment, must be started within the limitation period of six years pursuant to section 26 of the English Arbitration Act 1950. This holding is relevant in Singapore because section 26 of the English Arbitration Act 1950 provides an enforcement mechanism similar to section 19A of Singapore's IAA. Similarly, section 7 of the English Limitation Act 1980 (which provides that an action to enforce an award … shall not be brought after the expiration of six years from the date on which the cause of action accrued) is almost identical to section 6(1)(c) of Singapore's Limitation Act, while section 24(1) of the English Limitation Act 1980 and section 6(3) of Singapore's Limitation Act both set the applicable limitation period for actions brought "upon any judgment".

Recipients of arbitration awards must ensure that they do not wait too long before commencing proceedings to enforce the awards, or else risk exceeding the limitation period.
Other Developments

2010 SIAC Arbitration Rules

The Singapore International Arbitration Centre (“SIAC”) recently released the latest edition of the SIAC Arbitration Rules (“2010 SIAC Rules”). This is the fourth edition of the SIAC Rules, which came into operation on 1 July 2010.

The 2010 SIAC Rules retain their foundation in the 2007 SIAC Rules, which have been clarified and updated in keeping with the changing times. There are also some new provisions that were introduced to facilitate even more efficient and effective arbitration at the SIAC.

The key features of the 2010 SIAC Rules are as follows:

(i) Jurisdiction Of The Tribunal

The 2007 SIAC Rules provided that a party may raise the plea that the Tribunal does not have jurisdiction not later than in the Statement of Defence. This has been amended in the 2010 SIAC Rules to confirm that the plea can also be raised not later than in a Statement of Defence to a Counterclaim.

In instances where a party objects to the existence, validity or scope of the arbitration agreement, or to the jurisdiction of the SIAC over a claim before the Tribunal is appointed, a Committee of the Board of Directors of the SIAC (ie a committee consisting of not less than two Board members appointed by the Chairman of the SIAC (which may include the Chairman himself)) shall decide if it is prima facie satisfied that an arbitration agreement under the rules may exist.

(ii) Qualifications Of Arbitrators

In addition to the provision contained in the 2007 SIAC Rules that the qualifications required of the arbitrator by the arbitration agreement must be taken into consideration when appointing an arbitrator, the 2010 SIAC Rules expressly mandates the Chairman to also “consider whether the arbitrator has sufficient availability to determine the case in a prompt and efficient manner appropriate to the nature of the arbitration”. The purpose of this is to not unduly delay the resolution of a case on account of the arbitrator’s other commitments.

(iii) Independence And Impartiality Of Arbitrators

The 2010 SIAC Rules reiterated the need to have independent and impartial arbitrators in arbitration proceedings. While the 2007 SIAC Rules mandated the prospective arbitrators to disclose “to those who approach [them]” any circumstance likely to give rise to justifiable doubts as to their impartiality or independence, rule 10.4 of the 2010 SIAC Rules specifically requires such disclosure to be made to the parties and to the Registrar. It is also expressly stated in rule 10.4 that the disclosure should be made “as soon as reasonably practicable and
in any event before appointment by the Chairman”. During the arbitration, the arbitrator must also disclose any circumstance of a similar nature to the parties, the other arbitrators and the Registrar.

To preserve the independence and impartiality of arbitrators, ex parte communication of one party with any arbitrator or any candidate for appointment as party-nominated arbitrator is prohibited (except in specific circumstances set out therein).

(iv) **Multi-Party Appointment Of Arbitrator(s)**

The 2010 SIAC Rules provide for a clearer method of nominating arbitrators where there are more than two parties in the arbitration. The 2010 SIAC Rules state that where there are more than two parties in the arbitration, and three arbitrators are to be appointed, the Claimants shall jointly nominate one arbitrator and the Respondents shall do the same. If no such joint nominations are made within 28 days of the filing of the Notice of Arbitration or within the period agreed by the parties, the Chairman shall appoint all three arbitrators. He shall also designate one of them to act as the presiding arbitrator.

Where one arbitrator is to be appointed, all parties are to agree on an arbitrator. If no joint nomination is made within 28 days of the filing of the Notice of Arbitration or within the period agreed by the parties, the Chairman shall appoint the arbitrator.

The procedure for joint nominations by the Claimants and the Respondents was not present in the 2007 SIAC Rules, and the period within which appointment of arbitrators may be made was previously limited to 21 days from receipt of the Notice of Arbitration.

(v) **Confidentiality Of Arbitration Proceedings And Award**

Under the 2010 SIAC Rules, the Tribunal is given more teeth to enforce the confidentiality provisions of the 2007 SIAC Rules. While the 2007 SIAC Rules directed the parties to keep the arbitration proceedings and the award confidential, they did not provide for sanctions or consequences when one party breaches the confidentiality rule. The 2010 SIAC Rules now authorise the Tribunal to take appropriate measures, including issuing an order or award for sanctions or costs, if a party contravenes the confidentiality rule.

(vi) **Conduct Of Proceedings**

The provisions governing the conduct of proceedings in the 2007 SIAC Rules have been revised. One useful feature that has been introduced is the power of the Tribunal “[to] in its discretion direct the order of proceedings, bifurcate proceedings, exclude cumulative or irrelevant testimony or other evidence and direct the parties to focus their presentation on issues the decision of which could dispose of all or part of the case”.

This express power on the part of the Tribunal to control how parties structure, present or even argue their cases will be welcomed as very often, valuable arbitration time and resources are wasted on issues which may turn out to be ancillary at best.
(vii) Expedited Procedure

Prior to the full constitution of the Tribunal, a party may apply to the SIAC in writing for the arbitration proceedings to be conducted in accordance with the Expedited Procedure.

Availability Of The Expedited Procedure

The Expedited Procedure is available where any of the following criteria is satisfied:

(a) the amount does not exceed S$5 million, representing the aggregate of the claim, counterclaim, and any setoff defence;

(b) the parties so agree; or

(c) in cases of exceptional urgency.

Abbreviated Manner Of Conducting Arbitration

The following provisions apply to those arbitral proceedings that qualify for Expedited Procedure:

(a) The Registrar may shorten any time limits prescribed under the 2010 SIAC Rules.

(b) The case shall be referred to a sole arbitrator, unless the Chairman determines otherwise.

(c) Unless the parties agree that the dispute shall be decided on the basis of documentary evidence only, the Tribunal shall hold a hearing for the examination of all witnesses, including expert witnesses, as well as for any argument.

(d) As a general rule, the award must be made within six months from the date when the Tribunal is constituted. However, this may be extended by the Registrar in exceptional circumstances.

(e) The award must state the reason upon which it is based in summary form, unless the parties agree that no reasons are to be given.

(viii) Interim Relief And Emergency Arbitrator

A party may request for, and the Tribunal may grant, an interim relief when the circumstances warrant. In this regard, the Tribunal may order the party requesting interim relief to provide appropriate security in connection with the relief sought.
If an emergency interim relief is needed prior to the constitution of the Tribunal, a party may apply for an Emergency Arbitrator pursuant to the procedure set out in Schedule 1 to the 2010 SIAC Rules.

**UNCITRAL Arbitration Rules**


The modification to the Rules are intended to curb the time and cost of arbitration. Article 17 of the Rules, which previously bestowed very general powers on arbitrators to conduct proceedings as they wished provided that were fair, now imposes a requirement on them to "avoid unnecessary delay and expense". Article 6 of the revised Rules also provides a framework for parties to designate an appointing authority as soon as possible during the arbitration.

A new provision is also introduced which effectively waives a party’s right to bring court proceedings against the arbitrators, appointing authority or any person appointed by the arbitral tribunal for any act or omission in connection with the arbitration unless they committed "international wrongdoing". Another key feature of the revised Rules is the inclusion of a model "statement of independence" which arbitrators are encouraged to sign prior to appointment.

**IBA Guidelines For Drafting International Arbitration Clauses**

The IBA Guidelines for Drafting International Arbitration Clauses ("IBA Guidelines") were adopted by a resolution of the International Bar Association Council on 7 October 2010. The purpose of the IBA Guidelines is to provide a succinct and accessible approach to the drafting of international arbitration clauses. The document is also helpful as a checklist setting out the key issues which lawyers should discuss with their clients before a decision is made on the kind of dispute resolution mechanism they wish to adopt. The IBA Guidelines are divided into the following sections:

(i) basic drafting guidelines on what to do and not to do;

(ii) drafting guidelines for optional elements;

(iii) drafting guidelines for multi-tier dispute resolution clauses;

(iv) drafting guidelines for multi-party arbitration clauses; and

(v) drafting guidelines for multi-contract arbitration clauses.

**IBA Rules On The Taking Of Evidence In International Arbitration**

On 29 May 2010, the International Bar Association resolved to accept a new set of the by now familiar "Rules on the Taking of Evidence in International Arbitration". The Rules are widely
accepted by the international arbitration community to represent the "best practices" in setting out evidential rules that might be considered to apply to international arbitrations - particularly where parties or arbitrators in these arbitrations hail from different jurisdictions which embrace differing common law and civil law approaches to evidence. Many regard the Rules as being effective to "harmonise" the different approaches and therefore forming a good working compromise between the two different systems.

**International Arbitration (Appointed Persons Under Section 19C) Order 2010 And Arbitration (Appointed Persons Under Section 59A) Order 2010**

The Ministry of Law issued on 30 November 2010 the International Arbitration (Appointed Persons Under Section 19C) Order 2010 and the Arbitration (Appointed Persons Under Section 59A) Order 2010 appointing the following to authenticate the original award and certify copies thereof, and to certify copies of the original arbitration agreement for the purposes of the enforcement of an award in any Convention country (ie a country other than Singapore that is a Contracting State within the meaning of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards):

(i) Registrar of the Singapore Chamber of Maritime Arbitration; and

(ii) Chairman of the Singapore Chamber of Maritime Arbitration.

An award or arbitration agreement or a copy thereof duly authenticated or certified by the above persons shall be deemed to have been authenticated or certified by a competent authority in Singapore for the purposes of enforcement in any Convention country.

The Orders came into operation on 1 January 2011.
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