# Scholar's Report on the completion of The Worshipful Company of Arbitrators' Travelling Scholarship to Dubai, 2018

## Aims of The Worshipful Company of Arbitrators' Travelling Scholarship

In January 2018, I was awarded the wonderful opportunity of a Worshipful Company of Arbitrators' Travelling Scholarship to gain first hand experience with Alternative Dispute Resolution (ADR) processes in Dubai. I proposed to examine these ADR processes with a focus on Dubai with some additional references to the wider United Arab Emirates (UAE) and Gulf Cooperation Council (GCC) region. I used the funding award to travel twice to Dubai, the first trip taking place in May 2018 and a second trip in November 2018. These dates were chosen to accommodate three different focal points' events that would provide the greatest insights into the field. The first trip was centred on my observing a full hearing in an international construction arbitration. The second trip was focused on Dubai Arbitration Week 2018 and attendance on the inaugural RICS evaluative mediation training. The combination of these core experiences supplemented with additional interviews and events, ensured that I gained first hand experience and knowledge of diverse aspects of both arbitration and mediation practice as well as an acquaintance with both the onshore and offshore UAE jurisdictions.

Originally, as part of this research inquiry, I had planned to visit Qatar in addition to Dubai; however, recent travel restrictions made that side trip additionally challenging and it was decided to stay in the UAE, given that a month is only a short time in the region. By the conclusion of my second visit to the UAE, I was able to visit 6 of the 7 emirates, including Ajman, Dubai, Fujairah, Ras Al Khaimah, Sharjah and Umm Al Quwain.

## Experiencing Arbitration in the UAE

In the UAE there are currently three concurrent, yet separate arbitration laws and distinct legal regimes. The first is the law application to the entire country or commonly, local arbitration law. The second is the offshore law that applies to the Dubai International Financial Centre, DIFC. The third is the offshore law of the Abu Dhabi Global Market, ADGM System. During my research visits to the UAE I had the opportunity to visit Dubai and learn more about the operation of the former two arbitration laws.

With respect to national arbitration law, 2018 was a particularly exciting time to visit Dubai. The UAE President signed the new Federal Law No. 6 of 2018 on Arbitration on May 3, 2018. The Arbitration Law will come into force one month and one day from its publication in the Official Gazette and repeals Articles 203 to 218 of the UAE Civil Procedure Code (Federal Law No. 11 of 1992) applicable to arbitration. This new law is roughly framed around the 2006 Revised UNCITRAL Model Law with some exceptions. The offshore jurisdiction DIFC Law was already based on the UNCITRAL Model Law.

Resultantly, it is expected that the new law will help provide a better and more predictable structure for UAE seated arbitrations and also better harmonizes the local arbitration law with that of the DIFC.

On the practical side, I was very fortunate to have the opportunity to shadow Alec Emmerson, a former Partner of Clyde and Co. in Dubai and Liveryman of the Worshipful Company of Arbitrators. Mr. Emmerson has recently established a successful practice as an international arbitrator with Emmerson Arbitrator[1] and is currently sitting on several international arbitrations. I had the chance to speak with Mr. Emmerson extensively about the operation of his arbitration business in Dubai and observe some of his extensive preparatory work for an upcoming site visit and arbitration hearing. Observing Mr. Emmerson and his arbitration practice provided an excellent working example of the duties and role of an arbitrator working in the region, as well as some of the challenges of running a business entity in the field of arbitration. My visit to the Gateley's office of Dr. Mark Hoyle also provided valuable additional context in understanding the parameters of marketing an international arbitration practice in the GCC. It was particularly interesting to become acquainted with the wide variety of commercial fields and countries in which Dr. Hoyle has been instructed to work from his base in Dubai.

During my first visit to Dubai, in May 2018, I observed the entirety of a construction arbitration site visit and hearing. The parties had graciously granted permission for me to observe Mr. Emmerson in his role of chair in their international construction arbitration. I was given the rare opportunity to experience the site visit of the arbitrators and experts. I had never previously had the chance to observe a working site visit and it was fascinating to watch the interaction of the parties, experts, and arbitrators, as they sought to establish reference points and a first hand understanding of key facts. Obviously, due to the confidential nature of these proceedings, these insights cannot be shared in this report.

During this first trip, I was also able to visit and speak with the staff of DIFC-LCIA Arbitration Centre and visit the DIFC Courts. The staff DIFC-LCIA provided me with insight into their growing caseload and vision for the future. It seems that there has been a noticeable shift in favour of the number of cases administered by the DIFC-LCIA in comparison to trends at DIAC. Resultantly, DIFC-LCIA has had to grow its capacity to handle cases and increase its staffing arrangements. Without question, the DIFC-LCIA is offering state of the art arbitration services to parties. Although the DIFC-LCIA has also propagated mediation rules, they have not yet had any extensive use.

I was also able to attend events organised in conjunction with Arbitral Women, which brings together female arbitration practitioners. At these events I spoke with some emergent leadership in this movement. There is a real push to have more diverse arbitrators available in the GCC region. It is encouraging that several women based in the UAE have taken on prominent roles in the

[1] http://emmersonarbitrator.com/

arbitration field and are rapidly becoming experienced international arbitrators. I also observed that The Alliance, which seeks to promote greater diversity in arbitration, has recently become active in the region and is gaining interest amongst some practitioners. It was inspiring that these diversity events were so well attended by both men and women and there was so much momentum behind them, particularly during Dubai Arbitration Week. It was also very encouraging to see that diversity is being given a wide interpretation at these events and discussions were had about how to ensure diversity in the arbitrator's role - well beyond gender.

I also completed the Academy of Law program in DIFC contract law during my first trip in Dubai. In addition to learning about development of a separate common law based contract law in the DIFC jurisdiction, I made the acquaintance of several legal educators at the Academy. I was able to interview the course director as well as one of the directors of programming about the development of dispute resolution oriented education in Dubai. During these interviews I learned that RICS has been actively seeking to establish its mediation training in the region. Many of the staff of the Academy of Law and DIFC courts had already been trained in the RICS' mediation methodology. I was also informed about a new partnership between the Academy of Law and the RICS that is seeking to innovate mediation teaching and training in the region. It is on the basis of this new information that I planned my return to Dubai in November to coincide with the launch of RICS's pilot course on mediation and mediator roster for the region.

**Mediation Research in the UAE and the GCC Region**

The primary focus of my research interest in the Dubai region was to investigate the use or rather "non-use" of "modern" mediation practice in legal disputes. I also sought to discern the nature and extent of the historical usage of mediation practices in the GCC region. I desired to understand the juxtaposition of the historical usage with the relative absence of mediation use on the current legal scene. Lastly, I desired to come to an understanding of the efforts to create, establish, and teach mediation in Dubai with a view to how usage may change and develop in the region.

In contrast to the development of arbitration in Dubai, neither of the offshore jurisdictions nor the Dubai or UAE Federal Law have any form of comprehensive mediation law.[2] There is no single statute in the UAE covering mediation and the DIFC has not developed extensive case law in this area, largely because the comparatively low volume of mediations occurring in the

[2] See, https://www.imimediation.org/2018/09/27/mediation-and-conciliation-in-uae/. UAE Federal Law Number 17 of 2016 (the Mediation Centre Law) Article 3 makes mediation available in certain civil disputes, UAE Federal Law Number 26 of 1999 (the Conciliation Committee Law) provides for the establishment of conciliation and reconciliation committees at the Federal Court, UAE Federal Law Number 8 of 1980 (the UAE Labour Law) provides provisions to resolve labour dispute amicably, UAE Federal Law Number 28 of 2005 (the Personal Status Law) allows for referral to a type of conciliation.

UAE is unlikely to give rise to the sorts of questions that have come before the courts of other jurisdictions.[3] It is therefore entirely speculative what effects core mediation concepts such as confidentiality and mediator neutrality might have in relation to arbitration and litigation, besides being contractually binding. The lack of a mediation law also precludes the possibility for directly enforceable homologated settlement agreements as is available in many European civil law jurisdictions with a developed mediation law.[4] It is therefore more challenging for mediation to be marketed as a viable alternative process with distinct advantages over arbitration, when some of the key typical incentives to mediate remain ambiguous and unregulated.

It is true that the local mediation landscape is still comparatively underdeveloped in an institutional and legal sense when compared to Europe, North America and Australasia. However, as noted above,[5] while there is no comprehensive mediation law, there are parts of existing UAE and Dubai laws that allow for and encourage mediation. Additionally, Part 27 of the Rules of the DIFC court makes provision for mediation in "encouraging parties to consider the use of alternative dispute resolution (such as but not confined to mediation and conciliation) as an alternative means of resolving disputes or particular issues." Part 27 has even been invoked in several cases before the court where mediation has been ordered.[6] The DIFC Small Claims Tribunal also has a process known as "Consultation" which in practical terms functions similar to a "mediation type" event with a tribunal judge who has been trained in mediation methods.[7] In fact, many cases can be settled at the consultation stage of proceedings. Additionally the DIFC-LCIA Arbitration Centre has the capacity for mediation and has propagated mediation rules[8] and DIAC's rules include conciliation provisions,[9] even though they are not yet widely known or utilised. Both the Chartered Institute of Arbitrators Dubai and RICS have rosters of mediators for the GCC region and have actively trained and certified new mediators in both Dubai and Qatar.

Many scholarly works have been published which affirm and highlight the longstanding and deep cultural affiliation between the Arab world and mediation related practices.[10] These works often refer to sulha practices that have been used in Arabia for centuries. Even if critics might not classify these

---

[3] *See Supra*, note 2.

[4] Dubai Law Number 16 of 2009 (the Amicable Centre Law) provides for a centre with the power to mediate certain disputes, which if mediated by the centre, can be homologated to have the same force as a judgment. This possibility is limited to those disputes within the jurisdiction of and handled by this one centre.

[5] See, Supra note 2.

[6] See, Dr Aziz Kurtha v. Bin Shabib & Associates (BSA) LLP & ORS (CFI 004/2008) and BGC Brokers L.P. v. Mourad Abourahim (CFI 027/2013). See also, http://brickcourtmediators.co.uk/the-role-of-mediation-in-the-difc-courts/

[7] *See*, https://www.difccourts.ae/small-claims-tribunal/, NB: The CV documents for the individual justices indicate their respective mediation experience and prior training. *See also*, https://sct.difccourts.ae/whats-on/top-tips-for-preparing-for-a-sct-consultation/

[8] http://www.difc-lcia.org/mediation.aspx

[9] http://diac.ae/idias/rules/1994/

[10] *See e.g.,* Pery, Dora, Muslim/Arab Mediation and Conflict Resolution: Understanding Sulha, (Israeli History, Politics and Society Book 59) 1st Edition. *See also,* Abedi, Pashtana, Mediation and Islam, Amazon Digital Services, 2017.

historical ADR processes as mediation *strictu sensu,* they are still *alternative, informal* processes that rely upon voluntary participation in dialogue facilitation with the goal of settlement. The mere existence of this historical usage provides a valuable reference point for helping clients recognize the value of facilitated or mediated alternative processes for settlement. Certainly, sulha practices provide a stronger cultural selling point and building block when contrasted to any historical precedents available in Western Europe.

During my first trip to Dubai in May 2018, I sought to interview numerous practitioners about their experiences with mediation in Dubai and the wider GCC region. I was able to speak to several partners and associates in the dispute resolution and corporate areas within leading international commercial law firms with a presence in Dubai. Most of these practitioners had their focus on matters within the DIFC jurisdiction. I was also fortunate to be invited to several Chambers events in Dubai and was able to expand my research exercise to include the opinions of several barristers from England and Wales. Although mine was a qualitative and not a quantitative study, almost without exception these practitioners had never recommended mediation as a possible alternative means to resolve contentious matters in the region.

Most international practitioners referred to a presumed sentiment that local clientele were supposedly not familiar with mediation products and would neither recognize nor appreciate the potential benefits of mediation. Amongst some attorneys, there was also a concern as to how to initiate the process when it is neither institutionalised nor regulated by law and/or where there is no stepped or progressive dispute resolution clause present in the contract that requires mediation as a step in a dispute's progression. Agreeing and appointing a mediator and navigating the process would also be unfamiliar territory in Dubai. It was felt mediation would be unworkable without a prerequisite client familiarity with its potential as a "credible" dispute solving process. That being said, most practitioners I spoke with stated that they had not actually brought up the subject of mediation with any of their regional clients.

A few international practitioners felt that the problem with mediation as a discipline taking hold in the region, particularly the facilitative model, is that it is perceived to lack the "authority" needed to resolve disputes. They cited the belief that the culture of the region required some "authority" to be present to opine on and direct the outcome of disputes. It was felt by a few persons that what scholars perceive as a history of mediation in the region was not "really" mediation in the modern sense but rather a form of dispute settlement more analogous to a settlement conference with a judge, where an authority exerts a lot of pressure on parties to settle the dispute; in essence, where the parties feel coerced into agreeing to a settlement because of the authority of this figurehead whether an elder, judge, or tribal superior. It did not seem to be widely appreciated, perhaps because of the highly facilitative home jurisdictions of most international practitioners, that more directive or evaluative forms of mediation could be used to fulfil a similar function or that conciliation or non-binding early neutral evaluation might offer other viable

alternatives which, if the cultural paradigm presented were true, could provide better pathways to resolution.

In order to discern a wider market perspective, however to a comparatively smaller extent, I was also able to consult with some attorneys in firms that are of local origin. Some of these local firms have an international orientation while others have a strictly local law focus. Many of these local firms work alongside the large international firms to handle local matters that arise in relation to both international arbitration and litigation. Interestingly, some practitioners in these firms offered a different perspective as to why mediation was not being widely used in legal disputes in the Emirates. For the most part these practitioners were of the opinion that mediation in the modern sense had not yet become sufficiently developed and established in an institutional and legal sense to offer a saleable alternative. Some individuals thought that there was both a lack of developed mediation providers and a lack of locally qualified mediators offering specialist knowledge mediation services in the region. Most local practitioners with whom I spoke, viewed the future possibility of mediation taking hold as a viable product on the regional ADR marketplace with great optimism. In particular, some practitioners intimated that local legal community would welcome a more evaluative style mediation that would offer “added value” to the resolution of disputes within a particular subject area, such as oil and gas law or construction matters.

One thing common to all of the lawyers interviewed was that almost none of them had any direct experience using mediation with their clients in Dubai. A few practitioners had experience using mediation in contexts where it was mandated by the dispute resolution clause, but none had recommended it as an alternative for clients to contemplate, where it was not otherwise legally, procedurally, or contractually required. While the institutional and legal framework may, as of now, be less developed, it is certainly far from absent and the regional history weighs highly in favour of a mediation product being well received.

The opinions I canvassed led me to the conclusion that the main detriment to the progress of mediation is in fact the unwillingness of international counsel to place mediation front and centre as a viable and valuable option for the benefit of their local clients. However, the proximate cause of this marked lack of promotion of mediation options may be debated. Firstly, it may be because of lack of experience and knowledge of counsel operating in the region. Secondly, there is generally a lack of consequential ethical guidelines and norms for many international lawyers in the Emirates. Some attorneys have no ethical guidelines back home and even those international practitioners who are bound by ethical codes of conduct are bound to varying degrees - often with widely varied standards. Resultantly, the ethical obligation to, when appropriate and potentially in their best interests, present mediation to clients - may be ignored or simply does not form part of the ethical norms applicable to that attorney in their home jurisdiction. The lack of a coherent legal ethical structure applicable to all international attorneys operating in Dubai that references ADR, might lead some to speculate that the old lawyers’ adage that ADR stands for “astounding decline in revenue” may be at the forefront of

reasons why mediation is consistently neglected. Thirdly, there may be a sincere belief amongst some lawyers that the lack of local rosters and familiar mediators coupled with the fear of local antipathy are good reasons for staying away from mediation.

Whatever the motivation, the fact remains that most international counsel do not appear to be marketing mediation products as a part of their legal repertoire. Without international counsel placing the requisite importance on the value of mediation as an alternative process, there is no taper down effect that might eventually normalize it as a standard disputes product for use across the UAE and the GCC region. If attitudes among international counsel were to change, to not only view mediation favourably in a general sense, but also to actively introduce and recommend it - even when mediation runs counter to interests of legal business - than emulation of these best practices by local firms and increased uptake by regional clients will almost be certain to follow.

After hearing about RICS' commitment to mediation in the region, I was eager to learn more about RICS's efforts to promote high-level mediation training and bring their roster management and quality assured mediation standards to mediations. Prior to RICS' regional commitment, only the CIArb, Dubai Branch had offered any quality commercial mediation training in the region. Most of the staff members of the Academy of Law as well as the Small Claims Branch of the DIFC Courts have become RICS certified as a result of these previous RICS' training initiatives. After continued contact with the Academy of Law, I learned that after extensive market research, RICS had decided to change its regional teaching program to certify competence in "evaluative mediation." I was graciously invited to attend and provide feedback on the pilot regional evaluative mediation training held in Dubai in November 2018.

The November 2018 pilot course[11] was predicated on RICS's belief in the fundamental compatibility of mediation with the regional culture of the GCC combined with the recognition of the need for more specialist mediators who could take an evaluative stance that would "add value" to parties' ability to resolve disputes in the built environment.[12] The training delivered exactly on these stated goals. It was expertly led by RICS Dispute Resolution Service Director John Fletcher, who provided practical guidance on RICS' pioneering evaluative mediation model. Participants came from the entire GCC region. RICS provided assessment opportunities for all participants. The assessments were conducted at a very high level as the first part of the essential quality control RICS performs in maintaining its mediation rosters. Only mediators who are successful in these assessments will be invited onto a new President's Panel roster for the Middle East and North Africa, (MENA) region. This panel is already available for international practitioners to make appointments from and may begin to remedy the lack of readily available

[11] https://www.rics.org/globalassets/rics-website/media/training--events/training-courses/mena/mediation-programme-brochure.pdf

[12] Given the that origin of many, if not most, international disputes taking place in the MENA region concern some aspect of the built environment, RICS is uniquely poised to train mediator's in what is there established area of expertise.

quality controlled mediator choice, a fact that up to now might be partially responsible for the stymied growth of mediation in the GCC. On January 24, 2019, I was informed that I succeeded in these assessments and will be eligible for inclusion on this roster. Hopefully, this success will enable me to continue to work towards the growth of mediation practice in the region.

Besides both the RICS and CIArb. training initiatives for the built environment and commercial mediation, Middlesex University Dubai recently introduced a family mediation course for the region that launched in January 2019 and was delivered by the Eriksson Mediation Training Institute.[13] There was much excitement leading up to this course and I am led to understand it was a great success. Assuredly, Middlesex's initiative will help to bring much needed local expertise to family law mediation. Hopefully, these newly trained persons will incentivize the creation of rosters in social law fields and lead to an increasing use of the provisions in the pre-existing Dubai and UAE Federal laws that permit mediation as an alternative form of settlement.

## Conclusion

The Travelling Scholarship of the Worshipful Company of Arbitrators allowed me to make two visits to Dubai in which I gained a rich and varied understanding of alternative dispute resolution practice in the GCC region. The site visit and full hearing provided me with a very comprehensive introduction to arbitration practice in the region in the most practical sense. My conversations with practitioners were most elucidating and really helped me to understand the root causes of the slow growth of mediation in the region. These interviews have provided a vast set of data points that I will be able to incorporate in future research work and planned comparative articles. Lastly, the training opportunities with both Academy of Law and RICS allowed me to build my knowledge of regional practice and to gain an accreditation that may allow me to have a continuing relationship with the region as a MENA roster mediator for disputes in the built environment. I remain most grateful to The Worshipful Company of Arbitrators and its Education Committee, Master, Wardens, Liverymen and Freemen for affording me this incredible, experiential opportunity to travel to Dubai in connection with my work and research in alternative dispute resolution.

Most sincerely yours,

*David Lewis*

David Lewis, January 29, 2019

[13] https://www.mdx.ac.ae/familymediationtraining

**The Worshipful Company of Arbitrators' Travelling Scholarship in Private Dispute Resolution – Singapore (April 2022)**

In April 2020, I was awarded the Travelling Scholarship in Private Dispute Resolution by The Worshipful Company of Arbitrators to spend one month in Singapore. Due to the onset of the Covid-19 pandemic, I did not take up the scholarship until two years later in April 2022.

This was my first visit to Singapore and indeed, my first international travel outside of the UK since the start of the pandemic. From the moment I landed, I was struck by the diversity and innovation of the 'Garden City', and the importance of law and order in this city-state.

Singapore has 4 official languages, namely English, Chinese, Malay and Tamil. These different languages can be seen on signs and heard on broadcasts on the Mass Rapid Transit (MRT) which is Singapore's equivalent of the London Tube. The co-existence of different cultures can be seen in the wide variety of cuisines available at the Food Courts and Hawker Centres, of which a visit to Lau Pa Sat is a must. Simple hearty meals can be had for as little as £3 to £4. For those seeking a gastronomic experience, a 15-course tasting menu featuring Peranakan cuisine at Candlenut, Como Dempsey is highly recommended. I was very fortunate to be treated to this phenomenal experience by a partner at one of the local law firms.

The sheer diversity of this geographically small nation is also reflected in its architecture and its multitude of flora and fauna. From shophouses in the historic district of Chinatown, to the sprawling blocks of public housing (Housing Development Board), to the tallest indoor waterfall and terraced forest setting that is Jewel Changi Airport, Singapore is a masterpiece in urban planning and development. The efficiency of public transport makes for very easy navigation. One can get from the splendours of floating down a gondola in the glitzy shopping mall at Marina Bay Sands, to the glistening white sands lined with palm trees on Sentosa Island in the blink of an eye. For avid bird watchers and nature enthusiasts, Gardens by the Bay and Changi Cove are home to kingfishers, hornbills and many other two-legged flying friends. Outlying islands such as Pulau Ubin are home to monkeys, wild boars and monitor lizards.

The law-abiding nature of the people in Singapore is not surprising in light of the many rules and signs put up in the country, serving as a constant reminder that certain behaviour and actions are prohibited. For example, bringing durians into a hotel or not clearing a table may lead to the imposition of a fine, and certain offences may even be punished by caning. Cardboard cut outs of a policeman are placed outside certain shops reminding passersby of the number of shoplifters that have already been arrested and that they would not wish to be another

statistic in this tally. Positive acts are strongly encouraged, with other signs and broadcasts on the MRT reminding commuters to offer their seats to those in need and even a Singapore Kindness Movement set up to encourage Singaporeans to make a real commitment to gracious living through simple acts of kindness in their daily activities. I felt this kindness and generosity of spirit strongly as the bus driver offered to help me with my suitcase and did not start driving until I had sat down, office workers went out of their way to walk me to my destination, and other day trippers to Lazarus Island very generously shared their mangoes with me.

Against the backdrop of this ecoysystem, it is not surprising to learn that Singapore has quickly risen up the ranks to share the number one spot with London as the top arbitration seat globally[1]. With the choice of arbitration at the Singapore International Arbitration Centre (SIAC); mediation at the Singapore International Mediation Centre (SIMC); or litigation at the Singapore International Commercial Court (SICC) amongst other possibilities for dispute resolution, parties are provided with an entire suite of options for the resolution of their commercial disputes. Within the last decade, International Commercial Courts have sprung up in various jurisdictions across the globe and the SICC appears to be a successful example. In addition to local judges, those on the Bench hail from both civil and common law jurisdictions including England and Wales, Hong Kong, Canada, USA, India, Australia, Japan and France. Parties may be represented by counsel of their choice, including foreign counsel in certain cases, and the use of technology has quickly gathered pace especially in the wake of the Covid-19 pandemic, with many hearings now taking place by Zoom.

The diversity and generous spirit observed in Singapore society is filtered through to the legal community. In addition to observing various SICC hearings and an SIAC arbitration hearing which was held in hybrid format at Maxwell Chambers, I was kindly hosted by Allen & Gledhill and met with legal practitioners from other law firms and chambers in the country including WongPartnership, Rajah & Tann, Three Crowns, PDLegal, Aquinas and many others. I also met with Kevin Nash (Registrar at the SIAC), Professor Steve Ngo (President of the Beihai Asia International Arbitration Centre), and George Lim SC (Chairman of the SIMC).

The easing of Covid-19 restrictions during my time there also meant that in-person events could again be held. I attended the SIAC Annual Appreciation Event; an event organised by the International Law Association featuring Lucy Reed in the Hot Seat; a book launch organised by the Singapore Academy of Law featuring a book on the Law and Theory of International

[1] 2021 study conducted by Queen Mary and White & Case.

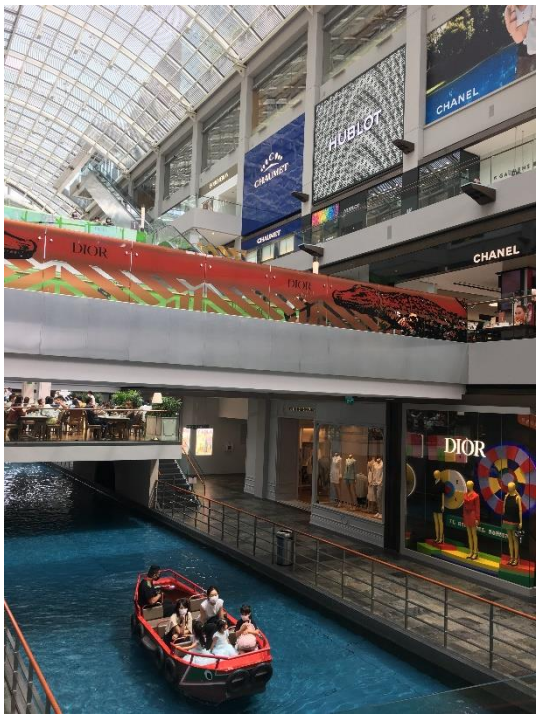
Commercial Arbitration in Singapore; and an event hosted by CIArb with a keynote address by the Honourable Minister Indranee Rajah SC. I was pleasantly surprised to see many familiar faces at the various events that I attended, with the Singapore legal community eager to ensure that I was made to feel welcome and in the company of friends.

I also visited the National University of Singapore (NUS) and the Singapore Management University (SMU). The NUS Law School is situated within the beautiful Botanic Gardens which features a huge array of different fragrant flowers, shrubs and plants. Simon Chesterman who is the Dean of the Law Faculty had kindly put me in touch with Professor Jean Ho and Professor Gary Bell and I was invited to attend an informative seminar on International Investment Law and Arbitration.

Although this was my first trip to Singapore, I felt strangely at home the moment I arrived. The sheer diversity in terms of languages, food and landscape meant that there was something for everyone and something that reminded us all of home. It is also extremely safe and the country is making strident efforts to become ever more green, embracing new technologies and new ways to ensure sustainable living. This was my first trip to Singapore but will surely not be my last and I very much look forward to being back in the Garden City again very soon.

Grace Cheng

23 May 2022



**To: The Worshipful Company of Arbitrators**

**Re: Report on trip to Singapore (November 2022)**

---

## Introduction/Overview

I was awarded the Travelling Scholarship by the Worshipful Company of Arbitrators in April 2020 but, owing to the effects of the COVID-19 pandemic, I was unable to travel until 2022. I arrived in Singapore for my month-long visit in November, and stayed in the River Valley neighbourhood. During that time, I met with practitioners from numerous international and local firms (including Drew Napier, Gibson Dunn, Joseph Lopez LLP, Ronnie Tan Chambers, Sidley Austin, White & Case LLP and the Wong Partnership) as well as arbitrators, those in legal consultancy roles, and academics from the National University of Singapore and Singapore Management University. [1] Despite busy practices and professional lives, they were all incredibly generous with their time and gave me a fantastic insight into the disputes market in Singapore, in particular the vibrant health of international arbitration in the region. I also visited Maxwell Chambers[2], attended a hearing at the Singapore Supreme Court, and participated in the International Chamber of Commerce (ICC) townhall event.

## Scope

As a commercial disputes lawyer whose practice includes international arbitration and the enforcement of arbitration awards, I was particularly interested to learn more about how those aspects of legal practice are conducted in Singapore. I was also interested to learn more about the rise in popularity of Singapore as an arbitral seat which, in 2021, had for the first time been ranked first (along with London) as 'most preferred seat' in the Queen Mary University of London's international arbitration survey.[3]

Summarised below is what I found out about the principal arbitral institutions in Singapore, the role of the Singapore International Commercial Court (SICC), the factors which had supported the growth of Singapore arbitration in recent years, and what the future might hold for arbitration in Singapore.[4]

## Legal and Institutional Frameworks

The two key arbitration statutes in Singapore law are the Arbitration Act 2001 and the International Arbitration Act 1994.[5] The latter incorporates the UNCITRAL Model Law (see s.3).

---

[1] I shall refer to them in this report, collectively and therefore anonymously, as my 'correspondents'.

[2] Not a chambers in the English legal sense; rather, a dispute resolution complex of hearing and meeting rooms, as well as the offices of various dispute resolution institutions, including the ICC, INSOL international, PCA, SIAC, the Singapore International Mediation Centre, and others.

[3] See Chart 2/p.6 of the QMUL/White & Case 2021 International Arbitration Survey.

[4] For a description of the 'Garden City', I refer readers to the report prepared by Grace Cheng, the other recipient of the Travelling Scholarship in 2020.

[5] See also the Arbitration (International Investment Disputes) Act 1968.

The principal arbitral institutions are the Singapore International Arbitration Centre (SIAC), the ICC, and the Permanent Court of Arbitration (PCA).[6] These institutions produce reports replete with data about case volumes, value of disputes and geographical reach (although not, at the time of writing, for 2022).[7] For example, SIAC, which celebrated its 30th anniversary in 2021, enjoyed significant case volumes in that year: 469 new cases (86% of which were international cases), with US$6.54 billion in dispute. Parties from India, China, Hong Kong (which received increased prominence in 2021) and the USA were the top 4 foreign users.[8]

My correspondents noted that the ICC attracted substantial-value disputes, and that the opening of an ICC office in Singapore in 2018 underlined the importance which the ICC attaches to the region.

**Role of the Singapore International Commercial Court (SICC) in supporting Singapore's popularity as an arbitral seat**

A key development has been the creation, in 2015, of the Singapore International Commercial Court.

The SICC is a division of the High Court which can exercise jurisdiction over international and commercial disputes referred to it through party choice or by court order. Appeals lie with the Court of Appeal of Singapore (the highest court in Singapore). The SICC's Judges are drawn both from the High Court and from other common and civil law jurisdictions (including certain eminent English Judges).[9] There is a degree of party autonomy – for example, the parties can agree upon the applicable rules of evidence.[10] Unlike the High Court, foreign advocates may obtain limited or general admission to appear before the SICC in certain circumstances.

Of the numerous international commercial courts that have cropped up internationally in the past few years, the SICC is one of the biggest success stories,[11] and it plays an important role in supporting Singapore's reputation as a pro-arbitration jurisdiction. Three aspects are worth noting:

First, my correspondents explained that they have not seen many transactional documents in which the parties had expressly selected the SICC (as opposed to the Singapore High Court) but that from time to time they had received requests from clients and/or transaction department colleagues for advice on using such clauses. Thus, a majority of the cases being heard by the SICC have been allocated to it - and allocation was particularly likely in the case of enforcement of international arbitral awards.

Secondly, as a consequence of the first point, much of the SICC's case load was interlocutory applications rather than trials. Notwithstanding the lack of published trial judgments, my

[6] For shipping disputes, there is the Singapore Chamber of Maritime Arbitration (SCMA).

[7] For example (accessed in December 2022): https://siac.org.sg/wp-content/uploads/2022/06/SIAC-AR2021-FinalFA.pdf (SIAC); https://iccwbo.org/media-wall/news-speeches/icc-unveils-preliminary-dispute-resolution-figures-for-2021/ (ICC); https://docs.pca-cpa.org/2022/04/439c82a8-pca-annual-report-2021-11.04.2022.pdf (PCA)

[8] SIAC Annual Report 2021.

[9] See: https://www.sicc.gov.sg/about-the-sicc/judges

[10] See the SICC Rules 2021, the SICC Procedural Guide and the SICC User Guide.

[11] For example, by 31 December 2020, the SICC had published 65 first instance decisions and 14 appeals. In the same period, the Netherlands Commercial Court had published 8 first instance decisions: https://www.rechtspraak.nl/English/NCC/Pages/judgments.aspx.

correspondents did not consider that parties would be deterred from using the SICC for resolution of substantive disputes on account of a lack of predictability of outcome, given (a) the high quality and experience of the Judges, and (b) the developed and stable nature of Singaporean procedural and substantive law.

Thirdly, my correspondents explained that there are differences in the costs regimes in the SICC and the High Court, in particular that costs schedules (a form of costs budgeting) were not mandatory in the SICC. One practical consequence is that, while proportionality and reasonableness were still the guiding principles when it comes to assessment of costs, a successful party could expect to be awarded a greater percentage of its legal costs in the SICC.

**Global Change/Other Factors**

My correspondents identified numerous other factors – some recent, others longstanding – which had impacted on the growing popularity of Singapore as an arbitral seat, and on the disputes market in Singapore in general. Four of them are set out below, along with one countervailing factor.

First, the changing political climate in Hong Kong – including the response to the COVID-19 pandemic – had encouraged capital flows (in particular private wealth) into Singapore, as well as the relocation of legal and other professionals. Hong Kong's loss, in this respect, is likely to be Singapore's gain.

Secondly, in addition to the devastating humanitarian impact of Russia's invasion of Ukraine, there have been a myriad of knock-on effects on global economies. From the perspective of legal services, difficulties faced by English law firms in servicing non-sanctioned Russian clients have apparently led to Russian clients seeking to retain firms from other Commonwealth jurisdictions, including Singapore and India, to advise them on issues arising in their English law governed contracts.

Thirdly, the increasing use by Indian companies and those doing business with Indian companies of Singaporean rather than Mauritian investment vehicles has coincided with an increased willingness to adopt Singaporean-seated rather than London-seated arbitration clauses in the transaction documents underlying those investments.

Fourthly, Singapore's geography and highly-developed infrastructure continue to play a role in its popularity as an arbitral seat both in the region and internationally. As to the former, there are self-evident advantages for clients to have their legal advisors in the same (or nearly the same) time zone. As to the latter, the time taken between arrival at Changi airport and getting to the city centre is impressively short and there is plenty of high-quality accommodation, restaurants and other amenities. Taxi apps like 'Grab' and the MRT (Mass Rapid Transit) metro system make getting around Singapore very easy.

On the other side of the coin, my correspondents noted the high cost of resolving disputes in Singapore, both in terms of legal fees and hearing costs (which, in the case of substantial arbitrations, were often very high indeed once one considers the institutional and tribunal fees). Some of my correspondents saw the possibility of nearby jurisdictions, including Malaysia, taking some of Singapore's market share by offering high quality but lower cost alternatives for (for example) hearing venues.

**Conclusions**

Singapore has consolidated its position as the key Asian dispute resolution centre and one of the top arbitration seats globally. The factors listed above strongly suggest that it will maintain and further improve its position as a jurisdiction of choice in the coming years.

On a personal note, while I have visited Singapore before, it was only for a few days on each occasion. This visit gave me a much better opportunity to explore the city and all it has to offer.

Finally, I acknowledge with grateful thanks the financial support provided by the Worshipful Company of Arbitrators which made my trip possible, and the time given up by my correspondents which made it such a success. I feel lucky to have benefited from such a wonderful opportunity to observe one of the world's most important dispute resolution hubs in action. I intend to apply to the SICC for registration as a foreign lawyer, and hope to return – whether on business or vacation – before too long.

James Woolrich

Three Stone Chambers, Lincoln's Inn, London.

New Years' Day 2023

**The Worshipful Company of Arbitrators' Travelling Scholarship**

**Singapore (August 2024)**

In August 2024 I had an incredible experience of travelling to and living in Singapore for a month, due to a generous Travelling Grant awarded to me by the Worshipful Company of Arbitrators in December 2023.

For a practising solicitor and early-career researcher like me, Singapore has always been a real focus of interest given its leading academic credentials as well an established leading regional international dispute resolution hub. Singapore has a strong pro-arbitration stance, supporting arbitration through its International Arbitration Act 1994, which aligns with the UNCITRAL Model Law, ensuring the enforceability of arbitral awards. Singapore courts are also recognised for their expertise in international commercial law, providing strong support for arbitration proceedings. Its strong legal infrastructure, strategic geographic location in Southeast Asia, and a reputation for political stability and a robust judicial system make Singapore a neutral and attractive venue for resolving cross-border disputes between businesses from diverse jurisdictions. The Singapore International Arbitration Centre (SIAC) is a key reputable and well-established institution administering international arbitrations, offering efficient case management and access to highly qualified arbitrators.

Singapore is also at the forefront of the arbitration reforms facilitating a favourable environment for arbitration and other alternative dispute resolution mechanisms such as mediation. One of the most recent examples of this are Singapore's recent legislative amendments to the third-party funding framework and the enactment of a framework for conditional fee arrangements allowing these types of arrangements in international arbitration proceedings and related court and mediation proceedings. Alternative fee arrangements (AFA) are often praised for increasing attractiveness of AFA-friendly jurisdictions for disputes and as global arbitration seats. Therefore, this new legislation introduces additional financial and risk-management tools for businesses and allows parties under financial constraints to pursue their claims.

In addition, Singapore has played a pivotal role being the driving force behind the Singapore Mediation Convention which provides a uniform and efficient framework for international settlement agreements resulting from mediation. It applies to international settlement agreements resulting from mediation, concluded by parties to resolve a commercial dispute. The Singapore Convention aims to facilitate international trade and commerce by enabling disputing parties to easily enforce and invoke settlement agreements across borders. Singapore houses institutions like the Singapore International Mediation Centre which facilitates international commercial mediations, further strengthening its position as a hub for dispute resolution.

Nevertheless, there still remain certain challenges that can affect Singapore's attractiveness as a forum for international arbitration. For example, the strict time limit for setting aside arbitral awards, which applies even in cases involving fraud or corruption, can be a limiting factor,

potentially allowing parties to benefit from their misconduct if illegal conduct is discovered after this time limit. Furthermore, Singapore, e.g. unlike England, does not permit appeals on issues of law if otherwise those questions are referable to arbitration, which, in some stakeholders' views, deprives the parties of an additional layer of guarantee against the tribunal's misinterpretation of the applicable law. Another example is that Singapore's International Arbitration Act 1994 (IAA) does not contain an express provision empowering the tribunal to issue an award on a summary basis, even though the major institutional arbitral rules provide the tribunal with summary disposal powers in some form.

It is therefore unsurprising that in March 2025, the Singapore Ministry of Law initiated a public consultation seeking public feedback on Singapore's international arbitration regime and the IAA on eight issues, including the courts' powers to make cost orders for arbitral proceedings following a successful setting aside of an award, time limits to file a setting aside application, appeal on questions of law, summary disposal powers of arbitral tribunals etc. It is expected that the feedback received from the public consultation will be considered in the formulation of any future bill to amend the IAAHence Singapore's legislative reform has the potential to reinforce its current position as an attractive arbitration hub.

During my visit, I was able to spend a month at the National University of Singapore (NUS) as a visiting researcher where I continued my research on corruption in international arbitration. I was able to discuss the topic with a number of leading practitioners in the field including Prof. Michael Hwang who not only published on the topic but also in many ways took the transformative role in raising the profile of Singapore as one of the major centres of international arbitration. One of the most recent visionary initiatives of Prof. Hwang was the foundation of the new international arbitration professorship at NUS as one of the steps that will further strengthen and promote Singapore's arbitration research footing globally. I was lucky to closely collaborate during my visit with Professor Stavros Brekoulakis, who has been appointed the inaugural Michael and Laura Hwang Professor in International Arbitration at the NUS Faculty of Law. I also attended various classes, lectures and events at NUS, and also got an exposure to and was introduced to NUS's growing and diverse legal research community.

My visit also coincided with the Singapore Convention Week which is a flagship annual conference convening legal practitioners, arbitrators, mediators, corporate counsels, business professionals, academics and government officials from more than 100 countries, who attended both in-person in Singapore and virtually, and shared their perspectives and vision for the evolving landscape of global dispute resolution. The theme of the 2024 Convention was Separating Disruptions from Distractions in an Evolving World, and it involved a rich and exciting line-up of keynotes, panel discussions, debate, workshops, and networking events providing insights into harnessing emerging technologies and exercising strategic foresight to thrive amidst continuous change.

The headline events for the Singapore Convention Week 2024, co-organised by the Ministry of Law and the United Nations Commission on International Trade Law (UNCITRAL) were the UNCITRAL Academy Conference and two UNCITRAL Academy Capacity-Building

Workshops, showcasing the strength and growing potential of Singapore as a seat for international arbitration disputes, but also international mediation. I was able to attend various events and workshops organised during the Convention Week, some of the highlights of which are below.

The seminar co-organised by 39 Essex Chambers at King & Wood Mallesons' office in Singapore was held on Fraud and Illegality in Arbitration, and hence was closely aligned with my topic of interest. Corruption and its various forms are a real endemic in international arbitration which affects all actors: parties to commercial and investment disputes, tribunals, legal counsel, and various other stakeholders. The topic has been on the rise for several recent years, and yet has not lost its pertinence, especially in light of the recent Court of Appeal judgment in *Federal Republic of Nigeria v Process & Industrial Developments Ltd.* [2024] EWCA 790 which dismissed the appeal to the earlier unprecedented decision of the High Court setting aside the arbitral award finding it had been obtained through fraud and was contrary to public policy. The panellists (Amanda Lees from King & Wood Mallesons, Edwin Glasgow CBE KC, Marion Smith KC, and Ben Olbourne - all from 39 Essex Chambers) shared their practical views as counsel and/or arbitrators on how the procedural aspects of illegality can be more efficiently treated in arbitral proceedings, and what are the key challenges that the parties and the tribunal are faced with on a regular basis. The discussion, including the interventions from the audience, sided in many ways with the judicial findings in the P&ID saga, namely in raising awareness among the arbitrators about their duties to investigate and stay alert to corruption, both when analysing the substance of the dispute, but also in the conduct of the proceedings. However, it has also sparked debate about the not always clearly delineated balance between party autonomy and the tribunal's responsibility to ensure a fair and just outcome.

I contributed to the Very Young Arbitration Practitioners (VYAP) Collaboration Event which was held at Twenty Essex in Singapore on 29 August 2024 as part of the official agenda of Singapore Convention Week 2024. The event comprised the screening of the documentary "The Tribunal" followed by a panel discussion on Inter-State Dispute Settlement between exceptional panellists Luke Sobota (Founding Partner, Three Crowns LLP, Washington, D.C.), Sarah Grimmer (Arbitrator, Twenty Essex, Singapore) and Hanna Azkiya, FCIArb (Associate, King & Spalding, Singapore). The documentary “The Tribunal”, directed by Dr Malcolm Rogge and produced in partnership with the Columbia Center on Sustainable Investment, illustrates the human impact on community members in the Intag Valley, Ecuador of an investor-state dispute between a Canadian mining company and Ecuador. A recording of the event is available on YouTube.

An expert panel event organised by Y-ICCA, which is a leading arbitration knowledge network for young practitioners, offered an insightful discussion for young and aspiring arbitrators on how to get and navigate their first appointment. Amidst an ever-growing mushrooming in the aspirations of young arbitration practitioners to become arbitrators, there are many hidden obstacles and considerations that need to be carefully considered in order to navigate that journey. The insights by Jennifer Lim (Fuxton Hill Chambers), Saemee Kim (Lee & Ko), Rohit Bhat (Freshfields Bruckhaus Deringer), and Akit Goyal (Allen & Gledhill) offered not only

various helpful pointers, but also a comparative perspective on registering with and applying to be on panels of regional arbitral institutions to increase the prospects of the first appointment.

Last but not least, during my visit I also got an opportunity to have a tour of Matrix Chambers and had a number of meeting and interviews with Singapore-based arbitrators and tribunal secretaries. All of my interlocutors noted the transformational role of Singapore in promoting alternative dispute resolution in the region, and the focus on the innovation as a priority in its current development cycle.

Overall, this was a very enriching experience which has highlighted the ever-strengthening role of Singapore as a leading centre of international dispute resolution. This opportunity would not have been possible without the Worshipful Company of Arbitrators' financial support, which has been transformative for my exposure to Singapore as a key arbitration jurisdiction.

The versatile nature and terms of the Travelling Grant provide freedom and flexibility for the scholarship recipients to shape their experiences, as my example demonstrates above, and enrich their career prospects as they see fit. Extensive networking, attendance of scholastic and practitioner-oriented conferences, including the flagship Singapore Convention Week, collaboration with local practitioners, exposure to the industry players in the jurisdiction – all of this is greatly facilitated by the opportunity to spend some time in-person on the ground. At the same time, future applicants should be cognisant of the fact that the scope of the benefits they derive from the program directly correlates with their own proactivity. Therefore, it is advisable for any potential applicants to have a clear idea of their career goals in the longer term and how a short-term visit to Singapore can assist those, and what steps they will require to undertake in order to ensure that they make the most of their experience and time in Singapore. It’s worth it!

Lilit Nagapetyan

August 2025