

Singapore arbitration primed for bright future

After getting off to a slow start, nine years down the line and the Lion City's star is rising as a venue for maritime arbitration following endorsement by owners' association Bimco

Jonathan Boonzaier **Singapore**
jonathan.boonzaier@tradewindsnews.com

Arbitration in Singapore has taken off in a big way after the Singapore Chamber of Maritime Arbitration (SCMA) revamped its rules several years ago.

And with bulk shipowners' organisation, Bimco, having added the country as an arbitration venue for dispute resolution alongside London and New York on its standard forms, the picture is expected to look even brighter.

Lee Wai Pong, executive director of the SCMA, has much to smile about these days. After getting off to a slow start when first launched in 2004, the revamping of the SCMA's rules in 2009 has sent the number of arbitrations being handled in Singapore soaring.

In its early stages, the SCMA attracted little attention. It was considered too rigid and too expensive, and between 2004 and 2009, handled a mere five cases. Something clearly needed to be done to make the organisation more attractive.

In 2009, the SCMA's rules and procedures were completely remodelled along the lines of the London Maritime Arbitrators Association (LMAA). Since then, business has picked up considerably.

"We have had 70 cases since the rules were changed," said Lee. "Last year we handled 20 cases and so far this year, we have done 17. I expect that we will handle 30 cases by the end of this year."

Last November, Singapore joined London and New York as an arbitration venue on Bimco's standard forms. London used to be the default venue on all Bimco forms, but under the electronic-form system, users are required to specify exactly which venue they choose to use. Bimco deputy secretary-general Soren Larsen says the decision to add Singapore was taken because the organisation realised that Asia had become a shipping powerhouse and, therefore, it was time to add an Asian venue as a third pillar for dispute resolution.

Larsen reveals that Hong Kong, Tokyo and Shanghai were also considered, but Singapore was picked because its judicial system was considered reliable and consistent, and it showed the keenest interest.

"Singapore has a fairly consistent approach to maritime law, one that is largely based on English law, and, therefore, Bimco members are unlikely to have any concerns choosing it as an arbitration venue," he explained.

Legal practitioners in Asia say Bimco adding an Asian venue to its forms was a necessary and much-welcomed move. They point out that given many of the disputes that head for arbitration involve Asian parties, it is increasingly being considered a more attractive venue than London.

"Asia-Pacific is the fastest-growing economic region in the world today. Commercial parties

► **'THIRD PILLAR':** Singapore was chosen over Shanghai, Tokyo and Hong Kong as a venue for Asian disputes as its judicial system was seen as reliable and consistent. Right, Lee Wai Pong of the SCMA.

Photos: BLOOMBERG AND SCMA

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operating here want to resolve their disputes here. There is both a wealth of knowledge and experience available to settle disputes in this region," said Peter McQueen, chair of the Australian Maritime and Transport Arbitration Commission.

"Singapore's value proposition is that it is a trusted Asian venue. It understands the way Asians do business," explained Lawrence Teh, head of shipping at Singaporean legal firm Rodyk & Davidson.

Toh Kian Seng, head of shipping and admiralty practice at Singapore-based law firm Rajah & Tann stresses that the cultural differences between East and West have played a large part in Singapore being selected as an arbitration venue for Asian entities. He points out that currently around 85% of SCMA arbitrations involve at least one Asian party.

"The Asian party involved usually will have at least one Asian arbitrator on the panel. Their belief is that an Asian will be more sympathetic, although this is not really the case in practice," Toh said. Neutrality is still the key, he adds.

Toh points out that, currently, between 40% and 50% of the arbitrators on the SCMA panel are Asian or Asia-based, but he laments that there are no arbitrators from South Korea, Indonesia and Japan, while there is only one from China. He believes it is desirable to have more Asian faces on the panel.

SCMA's Lee points out some other practical factors that makes arbitrating in Singapore popular with Asian clients. Not only are the costs lower, but most major shipping companies have a presence of some sort in the city state. Another important factor is that

the UK's visa requirements make it hard for some Asian nationalities to attend London hearings called at the last minute.

"It is a particularly thorny issue with Chinese nationals. I know of some who have been unable to attend meetings or hearings in London because they were unable to get a visa in time. This issue does not arise in Singapore as it is a far easier place for most Asian nationalities to access," Lee explained.

The SCMA certainly appears to be moving at a rapid pace to become one of the world's leading maritime dispute resolution centres, and with Bimco now in the bag, it can only get busier.

Lee says it is too early to feel the Bimco effect, but he predicts that it should cause the number of arbitrations to increase substantially, starting around the beginning of next year.

SCMA TARGETS SMALL PRANGS WITH

In a trailblazing move, the Singapore Chamber of Maritime Arbitration (SCMA) is setting up the industry's first-ever legal framework to arbitrate cases involving minor collisions between vessels.

Launch is imminent of what is being called the SCMA Expert Determination of Collision Claims Service (SEDOCCS).

While many collision claims are processed through the courts, several classes involving a smaller quantum in damages or not involving multiple-cargo interests are already handled by protection-and-indemnity (P&I) clubs through ad-hoc arbitrations.

"We are trying to put ourselves in the middle by formalising these arbitration proceedings so that clubs no longer need to compete on whose procedures prevail," explained SCMA executive director Lee Wai Pong.

Lee explains that the SEDOCCS idea arose over casual discussions in the Singapore shipping industry.

Andrew Gray, a partner in the Singapore office of law firm Hill Dickinson, who has played a leading role in drafting SEDOCCS, says the aim is to provide a simpler, less costly option than the traditional high court litigation route in which most collision claims are usually settled. It is also

intended to be much quicker.

SEDOCCS will be subject to Singaporean law and jurisdiction, where a pool of experts will give a binding, enforceable award on liability. Gray says this could later be extended to quantum damages.

The proceedings will have a single arbitrator who has legal or practical experience dealing with claims arising from vessel collisions.

The arbitrator will charge their daily commercial rate, while fees and costs will be equally divided between the two parties no matter what the outcome. The process should take around four to five months.

NEW LEGAL FRAMEWORK

Gray cautions that SEDOCCS is not intended to be a panacea to every collision case. He stresses that it is best suited to cases in which the quantum involved is relatively low and the cost of litigation is disproportionate to the amounts at stake.

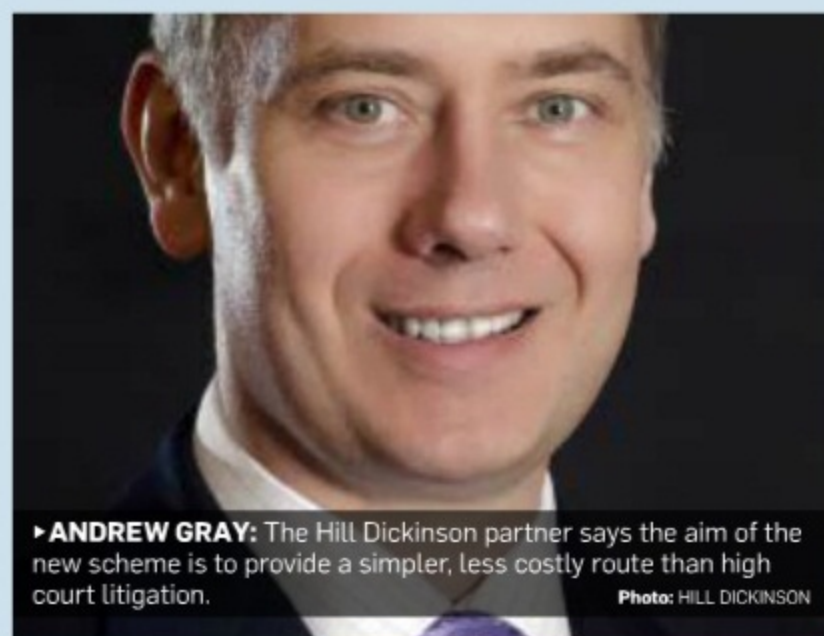
"It is also ideally suited to cases in which both parties are under the same P&I club," said Gray.

Lee adds that the intention is not for SEDOCCS to be an entry point solution for the resolution of the claim.

"SEDOCCS will present itself after the forum shopping has been done and the security has been exchanged, but a deadlock has been reached," he said.

According to Gray, the terms of SEDOCCS have been drafted and consultations have been carried out. "We have received a positive response from P&I clubs and lawyers," he said.

SEDOCCS is particularly appropriate for the SCMA as the busy shipping lanes and anchorages near Singapore see more than their fair share of minor collisions. Both Lee and Gray stress that while the Singapore scenario was the catalyst for the development of SEDOCCS, it will be equally applicable to collisions that occur in crowded anchorages elsewhere in the world.



► **ANDREW GRAY:** The Hill Dickinson partner says the aim of the new scheme is to provide a simpler, less costly route than high court litigation.

Photo: HILL DICKINSON