Kluwer Arbitration Blog

Interviews with our Editors: Crossing the Pacific with Kevin Nash and Adriana Uson of Singapore International Arbitration Centre

Benson Lim (Simmons & Simmons) and Kiran Nasir Gore (Associate Editor) (The George Washington University Law School) · Friday, May 14th, 2021

In December 2020, Singapore International Arbitration Centre ("SIAC") launched its representative office in New York. In April 2021, SIAC announced in its Annual Report 2020 that United States ("US") parties accounted for 545 of the approximately total 1,000 new cases filed in 2020. We, as Associate Editors for Southeast Asia and North America, are pleased to jointly interview Kevin Nash and Adriana Uson. Kevin is SIAC's Deputy Registrar and Centre Director, and he assists with the administration of all cases filed with SIAC and the supervision of SIAC's multinational Secretariat. Adriana is SIAC's Head (Americas), and she oversees SIAC's activities in North and South Americas.

KG: Thank you Kevin and Adriana for joining us, and hello from Washington D.C.! Please give us a few sentences introducing yourselves to our readers around the world.

KN: Thanks to you both. As a long-time reader of the Blog, it is really fun to get together for this discussion.

By way of background, I am a Canadian who has been based in Singapore and working with SIAC for nearly a decade. During that time, SIAC's caseload has grown from 188 cases in 2011 to 1,080 cases in 2021. Looking back, I arrived at the most fortuitous time when SIAC's caseload was ready to launch from the great work of all the founders. It has been an exciting journey for me and the time has passed very quickly.

AU: Thanks for inviting us. Prior to my current role as SIAC's Head (Americas), I was a disputes lawyer at an international firm in Singapore where I advised and represented clients in international arbitrations and took sole arbitrator appointments. I was also a Case Counsel at the SIAC Secretariat where I administered cases and was involved in the drafting of the SIAC Rules and Practice Notes.

BL: What would you say to the observation that institutional rules, SIAC's included,

increasingly look alike? Can you give us any sneak peek at what SIAC is thinking of for its new rules? (*winks*)

AU: In my view, institutional rules are '*same same, but different*'. Institutional rules would inevitably have similarities because of the scope of services offered. There is also, without question, a great deal of institutional sharing and emulation. A good example of this is SIAC's provisions on early dismissal, which were initially drawn from Rule 41(5) of the ICSID Rules and have thereafter become a standard feature across many sets of commercial rules. The same process occurred with the introduction of the modern emergency arbitrator provisions at ICDR (2006), SCC (2010), SIAC (2010), ICC (2012), HKIAC (2013), and LCIA (2014). That said, there are some differences among these rules depending on an institution's philosophy on the best way to manage cases. Some institutions have a '*light touch*' approach while others, such as SIAC, offer more structured administration with full oversight of the process from commencement to the scrutiny of the award. When we dive down into the details, there are also some appreciable differences under each set of rules. For instance, monetary threshold, time for rendering an award, and number of default arbitrator(s) for expedited procedure vary across institutions. Threshold requirements and timelines for appointment and issuance of an order or award also vary for emergency arbitrator provisions.

For any institution, there is always some risk with the promulgation of an entirely new provision but SIAC does have a history of being bold. As to the sneak peek into the future of SIAC Rules, Kevin is leading the SIAC Rules Revision Committee, and might be feeling daring.

KN: I have made this same observation when canvassing other sets of institutional rules and speaking with colleagues at other institutions. Convergence or divergence? Harmonisation or competitive advantage? These are important questions.

From my vantage point, there is an increasing amount of agreed best practice which is codified and given effect in institutional rules. This is a good thing. Of course, when we dive down into the details, as Adriana mentioned, there are some important differences under each set of rules which may be relevant depending on the colour and complexity of any transaction. For instance, Benson, if you are advising on a major infrastructure project, you might suggest SIAC on account of its consolidation provisions which do not require '*identity of the parties*' across a suite of contracts. You might also propose SIAC and a three-member tribunal to preserve the option to apply for the expedited procedure before a sole arbitrator. No doubt, our friends at other institutions could make similar arguments with equal force.

SIAC's charge is to strike a balance with these competing considerations in the 7th Edition of the SIAC Rules. We will, of course, find guidance and inspiration in the provisions that have been introduced by other institutions, particularly in view of the challenges brought on by the COVID-19 pandemic and the shift to the virtual space. But, because it's SIAC, and with apologies for reading down to your question below, you can be sure that SIAC will have that iconic moment of '*one more thing*' when introducing the 7th Edition of the Rules.

BL: SIAC regularly updates its Rules but businesses naturally like long-term certainty and predictability. Do you feel you are like Apple with its first iPhone insofar as you are making rule changes to create a need that users do not know exists or does not exist at all? Or are you

addressing needs that don't exist but are likely to surface in the near future?

AU: As a starting point, I should mention that I am typing this answer on a new iPhone which I firmly believe is both a want and a need. The SIAC Rules 2016 are enormously popular and have been used in the conduct of many thousands of arbitrations. We understand the value of stability and predictability for our users. The 7th Edition of the Rules will bring back many of the familiar features with amendments and tweaks to cater to increasingly complex disputes and the ever-changing commercial environment. Additionally, given the level of interest from the Americas, we are actively soliciting feedback from US, Canadian, and Latin American parties on the features to be included in the Rules (i.e., '*must have*' and '*nice to have*'). Put differently, the Rules will '*feel*' the same but will, hopefully, work even better.

KN: This is my fourth rules revision and my third time working with Adriana on the Rules. From this experience, and having reviewed thousands of comments along the way, the best way to draft rules is to listen and really hear what users want from an institution. It is really that simple. For instance, and without tipping our hand to any new provision, the preponderance of user feedback might show that parties would like the ability to commence a single arbitration under multiple contracts. Our job, when we take out our drafting pens, is to come up with a construction that gets to this outcome in a way that is resilient, workable across a range of applicable laws and '*future proof*'.

At a more philosophical, blog-worthy level, when addressing the distinction between wants and needs, and needs that have not yet been realised, many institutional innovations are ultimately designed to preserve and remain faithful to the core tenets of arbitration in an increasingly complex and competitive dispute resolution marketplace. Speedy. Flexible. Cost effective. Choose your deciders. Confidential. Limited avenues for appeal. International enforceability. We are drafting with these first principles in mind (but perhaps with an innovative '*flourish*').

KG: Let's cross the Pacific and talk about SIAC Americas. Wow! The increase in US parties in new SIAC cases has been particularly sharp! US parties started ranking amongst the top 5 users in 2018. Do you have any insights into the types of disputes or industry sectors where parties in the Americas are increasingly using SIAC Rules? What do you think are the reasons for the success in the past years?

AU: Indeed last year's numbers were incredible: 1,080 new cases, 1,063 administered cases, 545 US parties. US parties ranked second in SIAC's top foreign users.

As a global institution, SIAC administers a wide band of disputes including, among many others, international trade, corporate and commercial, construction and engineering, energy, maritime/shipping, banking and financial services, IP/IT, and treaty interpretation. In 2020, for American parties, many of whom operate through subsidiaries in Singapore, we received a high number of cases involving international trade, corporate, and commercial disputes with a range of counterparties from Asia-Pacific and beyond. Additionally, given Singapore's status as an IP hub, we are receiving more tech cases and disputes arising out of cryptocurrency and fintech.

The reason for this success with American parties really starts and ends with the unique '*Singapore recipe*' as one of the best and easiest places to resolve disputes.

KN: My first thought is the midnight clause in a conference room. While the institution does not have sight of the negotiation of the dispute resolution clause, it is easy to see how a transaction between an American party and an Asian party would gravitate towards Singapore and SIAC. Many of the US' top trading partners are jurisdictions which are already frequent users of SIAC such as India, China, Japan and the ASEAN. Singapore is a pro-arbitration, common law jurisdiction with a nearly unrivalled reputation for neutrality and applying the rule of law without fear or favour. And, once we are all travelling again, it is 30 degrees in Singapore every day and there is a gorgeous hearing facility at Maxwell Chambers. Surely, these surroundings would result in at least a few settlements.

KG: It is a competitive space amongst arbitral institutions in Asia and North America. What will SIAC do to keep from complacency?

KN: Institutions are judged by the quality of their case management and complacency is a path to Article 34 (UNCITRAL Model Arbitration Law) or Article V (New York Convention). From the standpoint of the SIAC Secretariat, and at the risk of sounding cliché, we are 16 disputes lawyers who love arbitration and work every day to ensure the procedural propriety of SIAC arbitrations.

Many times the Secretariat's work will be unseen and the takeaway from users is that SIAC arbitrations '*just work*' and are '*really efficient*'. Other times, in high-value cases of consequence with complex interlocutory applications or novel case management issues, the skill and experience of the Secretariat will be front and centre as we work to keep the arbitration on track. In the fast-moving SIAC Secretariat, we've been too busy to think about being complacent and compete against ourselves and timelines.

AU: We don't really see ourselves in competition with other institutions. For SIAC Americas, we want to be part of the arbitration community in the Americas and work with arbitration stakeholders on capacity building and training, developing best practices, new reforms and policy initiatives, and fine-tuning case management. This is with a view to '*growing the pie*' for international arbitration and making a bigger tent for diverse participants. We are cognisant that, while the global business community has overwhelmingly selected international arbitration as the preferred mechanism to resolve cross-border disputes, as we move through the COVID-19 pandemic, the competition may come from other forms of dispute resolution such as litigation, mediation, adjudication, expert determination as well as various tiered mechanisms.

BL: Finally, finish the joke: "an arbitrator, SIAC counsel, and arbitration counsel walk into an American diner …"

AU: They order, eat, and split the bill 15/2/83.

KN*:* As part of SIAC's robust determination of cost process, I confirm that the Tribunal's share and SIAC's share would account for 17 percent of the tab (not including the tip which may be categorised as reasonable out-of-pocket expenses for the Tribunal).

Thank you Kevin and Adriana for your time!

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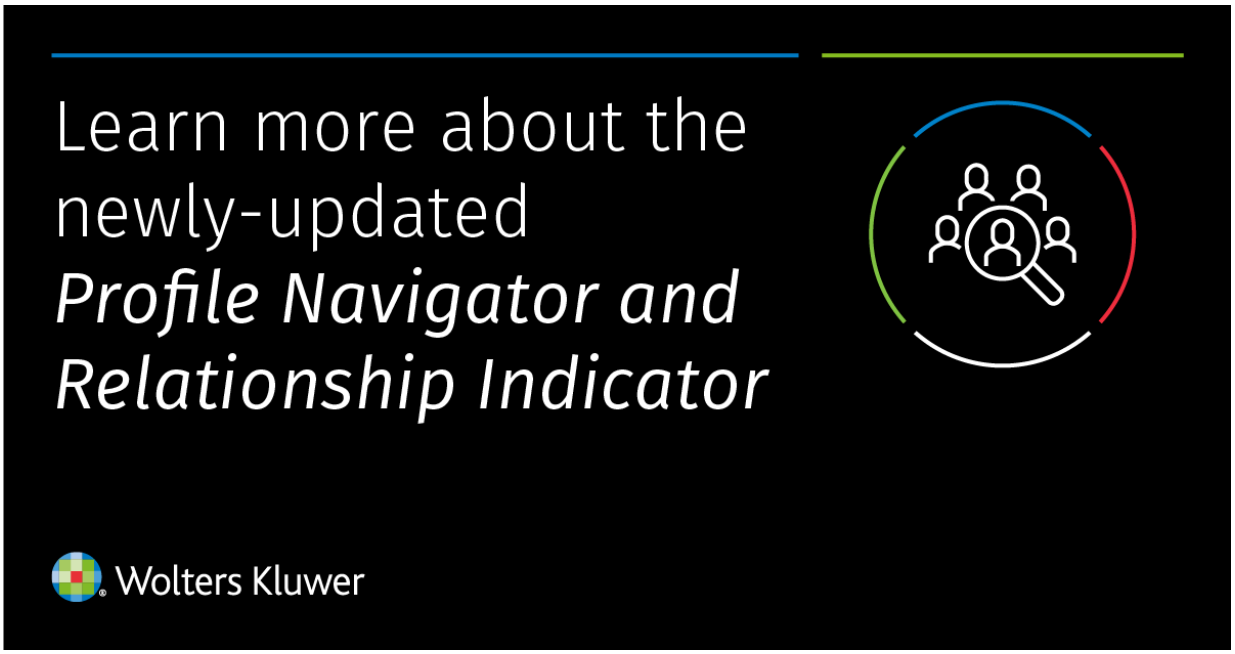

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