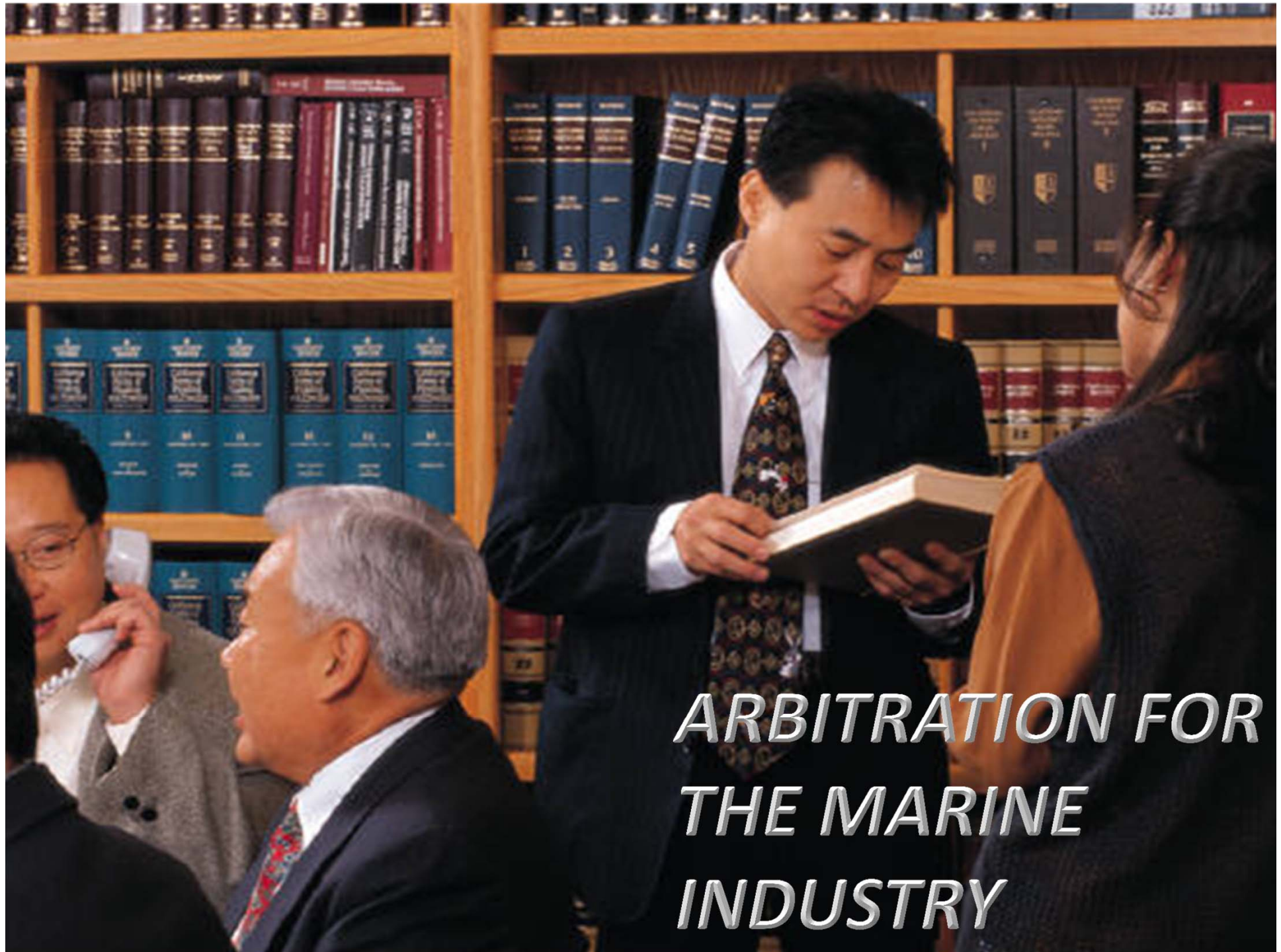


SCMA Briefing



*ARBITRATION FOR
THE MARINE
INDUSTRY*



Dispute: Who is the Undisputed Champion?

DISPUTE RESOLUTION METHODS

Negotiations

Mediation

Arbitration

***Court
Proceedings***

- ✓ ***ADR***
- ✓ ***Intuitive***
- ✓ ***P+C***
- ✓ ***Informal***
- ✓ ***Party to Party + Counsel***
- ✓ ***Mix of law and relationship***
- ✓ ***Least Confrontational***
- ✓ ***Less Time & Expense***
- ✓ ***Outcome – May not have one***
- ✓ ***Enforcement – Problems overseas***

DISPUTE RESOLUTION METHODS

Negotiations

Mediation

Arbitration

***Court
Proceedings***

- ✓ ***ADR***
- ✓ ***P+C***
- ✓ ***More formal than negotiations***
- ✓ ***Party to Party + Counsel + Mediator (Party Autonomy)***
- ✓ ***Less Confrontational***
- ✓ ***More Time & Expense***
- ✓ ***Outcome – May not be one***
- ✓ ***Enforcement – Problems overseas***

DISPUTE RESOLUTION METHODS

Negotiations

Mediation

Arbitration

***Court
Proceedings***

- ✓ ***ADR***
- ✓ ***Very P+C***
- ✓ ***Formal proceedings***
- ✓ ***Party to Party + Counsel + Arbitrator (Party Autonomy)***
- ✓ ***More Confrontational***
- ✓ ***More Time & Expense***
- ✓ ***Outcome – Award***
- ✓ ***Enforcement - Best option in international cases***

DISPUTE RESOLUTION METHODS

Negotiations

Mediation

Arbitration

***Court
Proceedings***

- ✓ ***Not ADR***
- ✓ ***Public Trial, little P+C***
- ✓ ***Very Formal & Confrontational***
- ✓ ***Party to Party + Counsel + Judge (No party autonomy)***
- ✓ ***Rules of Discovery Apply Strictly***
- ✓ ***Time Consuming & Expensive***
- ✓ ***Outcome - Judgment***
- ✓ ***Enforcement – Possible problems overseas***

ARBITRATION – What is it?

Consensual agreement between contracting parties to the hearing, determination & resolution of contractual disputes

Conducted by one or more independent & impartial referee/s selected or agreed upon by parties concerned



RESULT??

- ***An effective means of putting an end to disputes between parties***

- ***Does away with court proceedings***



When to use arbitration & why

- ✓ ***Disputes involving Int'l Parties &/or Interests***
- ✓ ***Party autonomy – on law, seat, tribunal, counsel & procedure***
- ✓ ***Ease of Enforcement - backed by NY Convention 1958 (Signed >140 countries – Most successful treaty in private international law)***
- ✓ ***Awards - Final and Binding (IAA)***
- ✓ ***No Right of Appeal (IAA)***

When to use arbitration & why

- ✓ ***Speed – Using arbitrators with known commercial knowledge / option for fast track / freedom to set time frames***
- ✓ ***Rules – Choice of Institutionalised (eg SCMA) or Ad Hoc***
- ✓ ***Nature of Proceedings - Private and Confidential***
- ✓ ***Separability from contract***

Cautionary Remarks about arbitration

- ✓ **May be unsuitable for resolving disputes involving multiple parties / interlinked contracts unless parties agree to consolidate hearings**
- ✓ **Awards not binding on third parties**
- ✓ **Advance and Interim Fees for Tribunal needed - Often claimant has to pay first if respondent defaults.**
- ✓ **No default awards**



Model Clause

Recommended short form for negotiations

***Arbitration in Spore , Spore / English*
Law.***

SCMA Rules to apply.

(* Delete Either One)

Model Clause

***Full clause for Ship Building Contract usage
(seek legal advice for yr exact circumstances)***

Any dispute arising out of or in connection with this Contract, including any question regarding its existence, validity or termination, shall be determined by arbitration in Singapore in accordance with the Arbitration Rules of the Singapore Chamber of Maritime Arbitration in force at the commencement of the arbitration.

This Contract is governed by [Singapore / English*] law.”

ANATOMY OF AN ARBITRATION

- ✓ ***Agreement, including Seat of Arbitration***
- ✓ ***Dispute definition***
- ✓ ***Service of Arbitration***
- ✓ ***Appointment of Counsel & Tribunal***
- ✓ ***Presentation of Statements and Evidence***
- ✓ ***Hearing***
- ✓ ***Award***
- ✓ ***Enforcement***





Service of Arbitration

Sample

IN THE MATTER OF AN ARBITRATION
BEFORE THE SINGAPORE CHAMBER OF MARITIME ARBITRATION

Name of Claimant

v.

Name of Respondents

NOTICE OF ARBITRATION

1. Request

The Claimants, XXXX, hereby request to commence arbitration proceedings under the Singapore Chamber of Maritime Arbitration Rules (“SCMA Rules”) against the Respondents, XXXX. The following details are submitted in accordance with Rule 4 of the SCMA Rules.

2 Full Style of Claimants / Respondents and their legal representatives

3 The contracts out of, or in relation to, which the disputes between the Claimants and Respondents arise, are

XX

4 Brief statement describing nature and circumstances of the disputes

5 Arbitration Agreement – Sample of Clause Agreed to in Contracts

6 Arbitrators – Numbers agreed to (3) and appointment of Claimant’s arbitrator

7 Service of Notice – How it is being served (Eg, via email and post)

8 Date of Service

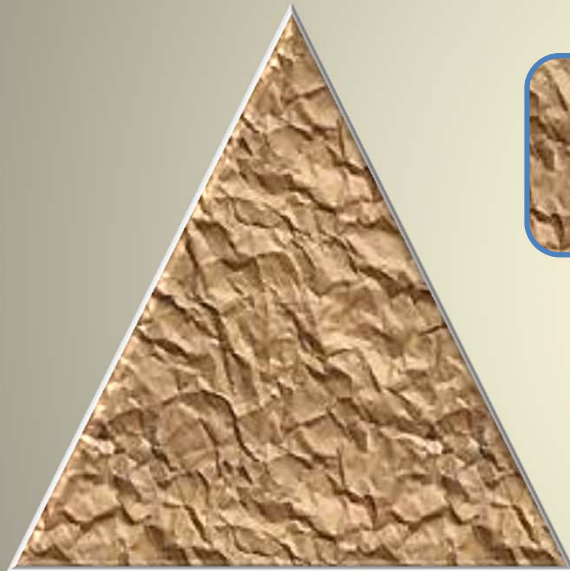


BACKGROUND

- ✓ *Established in 2004, re-organized in 2009*
- ✓ *Company limited by guarantee (Founders MPA & SMF)*
- ✓ *Advance and encourage maritime arbitration in Singapore*
- ✓ *Advance professional knowledge of maritime arbitrators*
- ✓ *Based on un-administered model of arbitration*
- ✓ *No scale fees for administration / appointment, etc..*
- ✓ *Minimal interference*
- ✓ *Authentication of ad-hoc awards available*



Membership Types



Individual (S\$300)

Corporate (S\$1,200)

➤ *Drawn from Singapore & Global Maritime Community*



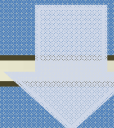
Membership Types

- Arbitrators***
- Lawyers***
- Ship Owners***
- Ship Managers***
- Ship Charterers /
Operators***
- Ship Agents***
- Bunker Suppliers***
- Equipment &
Service Suppliers***
- Shipyards & Repairers***
- Cargo owners***
- Ship Brokers***
- P&I Clubs***
- Class Societies***
- Hull & Cargo insurers***
- Insurance Brokers***
- Academics***
- Banks***

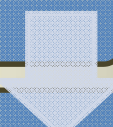


Membership Benefits

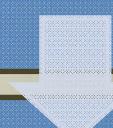
Direct industry participation & influence



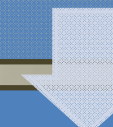
Updating of latest industrial developments



Election to General Committee



Election to Executive Committee, Procedure Committee, Promotion Committee



Participation in SCMA events as members



Conference 2011

Unraveling Multiple Maritime Casualties

Guest of Honour: Assoc Prof Ho Peng Kee, Senior Minister of State for Law and Home Affairs

Date: 25th March 2011 Venue: The Auditorium , Supreme Court, Singapore



Venue : The Auditorium

Supreme Court of Singapore

Fact Scenario

Vessel A

A handy sized dry bulker (Vessel A) is partly loaded with steel cargo from S Korea. She is operated under a 8 year head tc (NYPE form), relet onto a 6 month sub tc (NYPE form) and then finally relet onto 1 tct (NYPE Form) to an operator performing the voyage under a contract of affreightment.

She stops in Singapore anchorage for fuel before proceeding to Jakarta to complete loading. Discharge ports are in India. Fuel is supplied at the anchorage via a bunker barge of 6,000 dwt (Vessel B)

Vessel X

Whilst bunkering, a panamax sized product tanker in ballast (Vessel X) navigating in the same anchorage suffers steering gear failure and rams into Vessel A. The bow section of Vessel X is crumbled and steel damage is extensive. Fire breaks out in Vessel X but is extinguished by the crew with assistance of harbour tugs called onto the scene. 3 of them suffer injuries through burns and smoke and need to be evacuated by speed boat and hospitalized.

As Vessel X tries to pull itself away, her anchor gets caught in Vessel A shell plating and rips a big gash on her side shell. With her anchors unusable, extra tugs are needed to hold her position to prevent her from drifting and damaging other ships.

Vessel A

Vessel A's hold #3 and steel cargo is flooded extensively. Tugs are summoned to tow her from the anchorage to a berth to effect temporary repairs and stem the flooding.

Vessel B

Bunker barge (Vessel B) stops the bunkering process and tries to disengage the hose connection in a hurry. Her hose ruptures, spilling 30 mt of fuel oil into the harbor. Crew and harbor assistance mobilized to contain pollution damage.

Topics under deliberation:

- Cargo Damage and transshipment to a substitute carrier
- Examination of rights & obligations of parties engaged in international trade
- Hull and Machinery damage: Expectations of underwriters and class for handling of repairs and restoration of seaworthiness
- General average
- Charter party: Dealing with liabilities, cancellation options & impact on short term / long term underlying charters
- B/L – Re-issue of fresh B/L's, examination of implications and indemnities
- Collision – Determination of jurisdiction and examination of liabilities
- Salvage
- Pollution – Oil spill clean up and liabilities, port state exception and indemnities needed
- Evidence and witness preservation
- Arbitration
- Ship Arrest
- Management of crew injuries

Conference would consist of 2 morning and 2 afternoon sessions. Each expert presenter has 15 minutes to identify/examine key issues involved in their areas of specialty, illustrate any linkages to other presentations and suggest sample remedies.

Entire conference proceedings will be recorded on DVD's saving participants from having to take notes

Who should attend?

- Ship Owners
- Charterers/Operators
- Ship Brokers
- Ship Managers
- In-house Counsel
- Ship Agents
- Lawyers
- Arbitrators
- Average Adjusters
- Insurance Underwriters/Brokers
- Shipyards
- Stakeholders in the shipping industry



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Event Manager



3 Phillip St # 12-02, Commerce Point, Singapore 048693

Tel : + 65 62261502 Fax : + 65 62344556

Email: info@maritimeresource.com



Anything else apart from conferences?



SS 600: 2008

Singapore Bunker Claims Procedure (SBC TERMS)

Provisions for expedited arbitration under SCMA



Singapore as a Seat of Arbitration

- *Shipping's centre of gravity continues to shift towards Asia Pacific as a general trend*
- *Increasing number of principals, eg Ship Owners and Charterers based in Asia Pacific*
- *Geographical position of Singapore makes it the ideal initial seat of arbitration for claimants and respondents based in Asia Pacific*

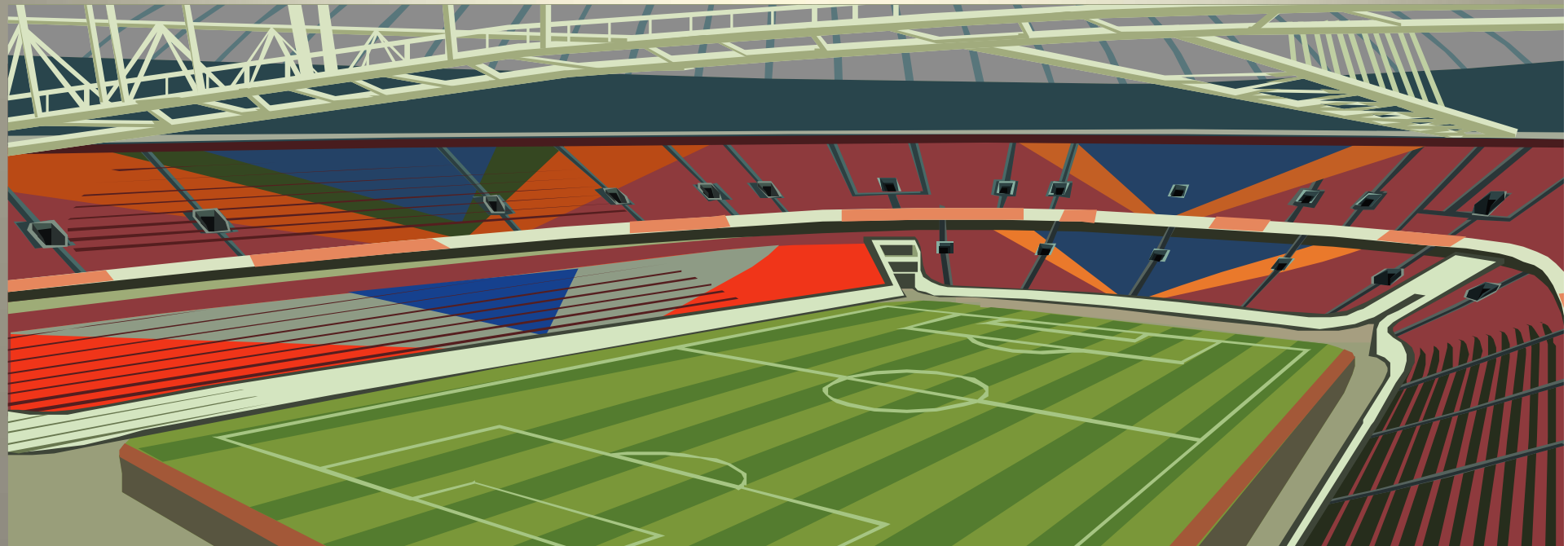


Singapore as a Seat of Arbitration

- ✓ *Spore law is rooted in English law. Both laws are readily accepted here*
- ✓ *Wide choice : Institutionalized or Ad hoc Rules, Administered or Un-administered Arbitration*
- ✓ *Government and Courts strongly behind efforts to make Singapore an arbitration centre*
- ✓ *Excellent infrastructure backup, transparent entry requirements & many air links*
- ✓ *High standard of local / foreign arbitrators available together with big pool of service providers*
- ✓ *No restriction for foreign arbitrators/counsel.*
- ✓ *No work permits needed & no withholding tax*
- ✓ *Written and spoken English widely used*

Singapore Arbitration in Soccer Analogy

- ***Stadium facilities – World class, international standards.***
- ***Accessibility – Excellent air links, hotels, local transport***
- ***Rules – Either FIFA type or ad hoc***
- ***Neutrality – Total. NO Supporters Allowed into Stadium***



Singapore Arbitration in Soccer Analogy

- ***Players/Referees/Linesmen – Easy entry. NO VISA needed for ASEAN nationals***
- ***Referees/Linesmen – Freedom of choice to use SCMA or your own***
- ***Referees / Linesmen – NO work permits/income tax needed***
- ***Referees Decision – Final and binding. No appeal***



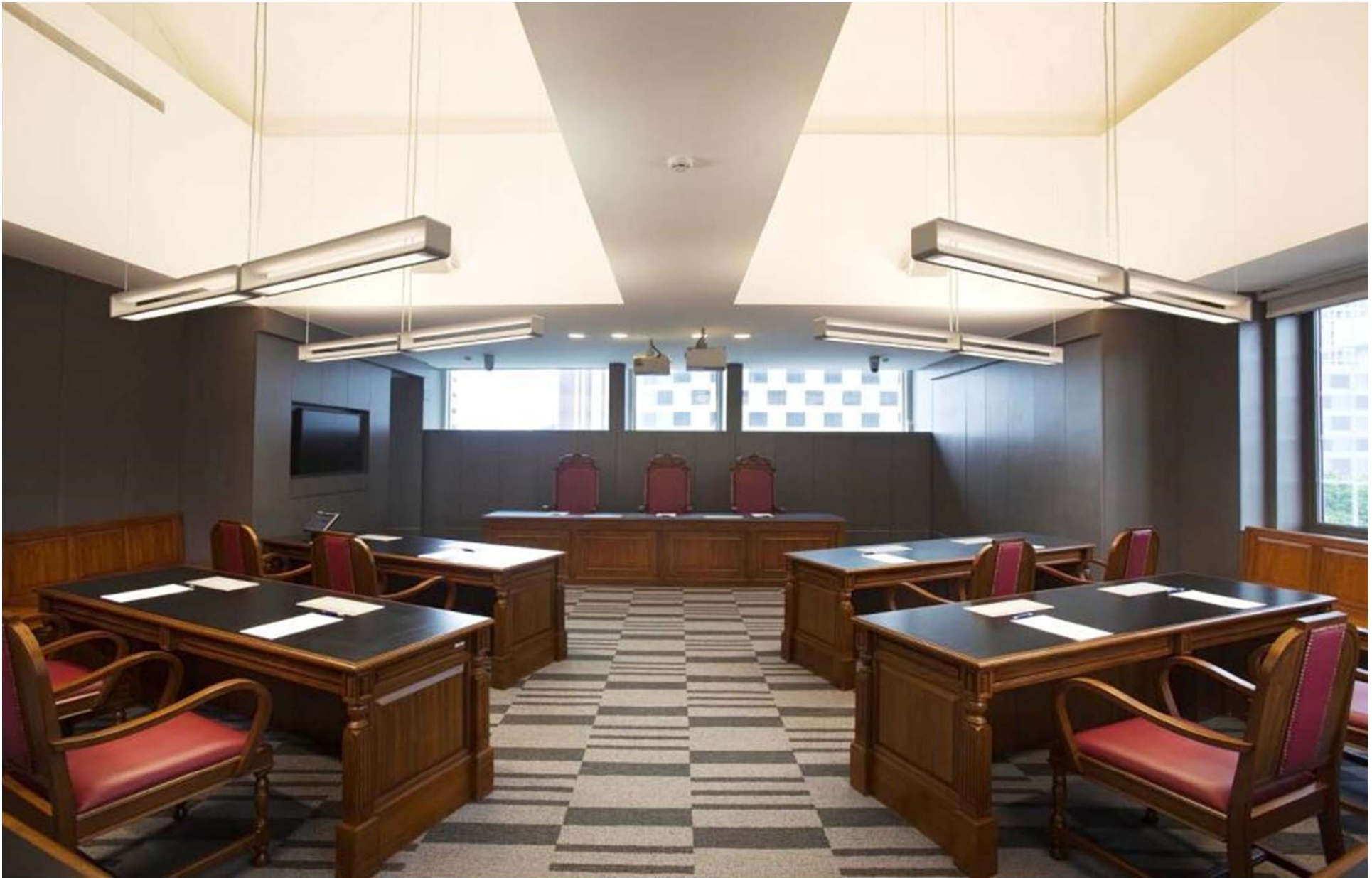


Dedicated and full facilities for hearings

- ✓ ***14 custom-designed hearing rooms***
- ✓ ***12 preparation rooms***
- ✓ ***Translation services***
- ✓ ***Audio recording***
- ✓ ***Video conferencing***
- ✓ ***24/7 Availability***



**MAXWELL
CHAMBERS**



**MAXWELL
CHAMBERS**

Coleman Room



**MAXWELL
CHAMBERS**

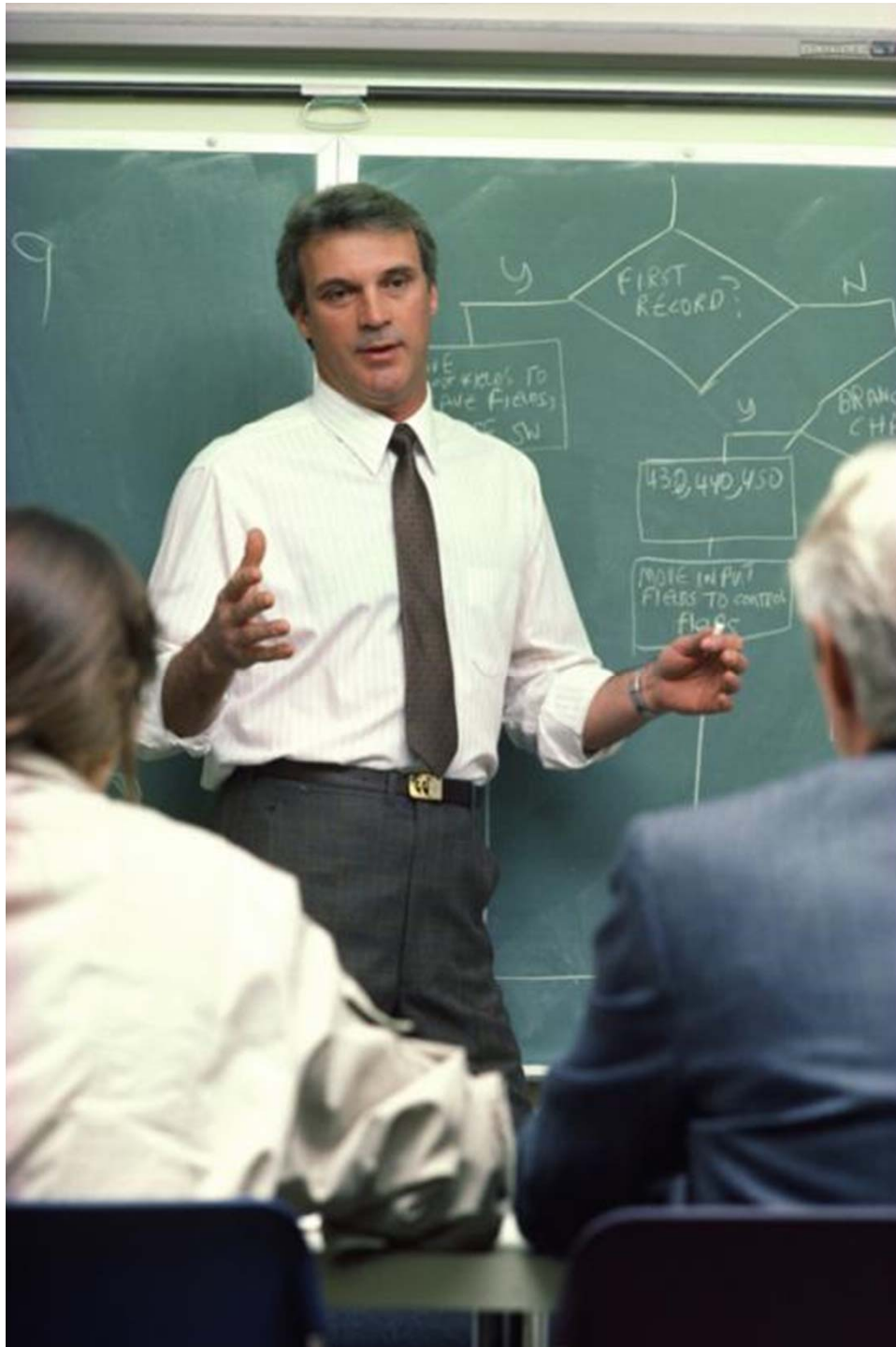
**Cavenaugh
Room**



Sheares Room



**Clemenceau
Room**



***So what has
Arbitration got
to do with my
work?***

Even though
some marriages
are made
in heaven



Souring of Relations ii



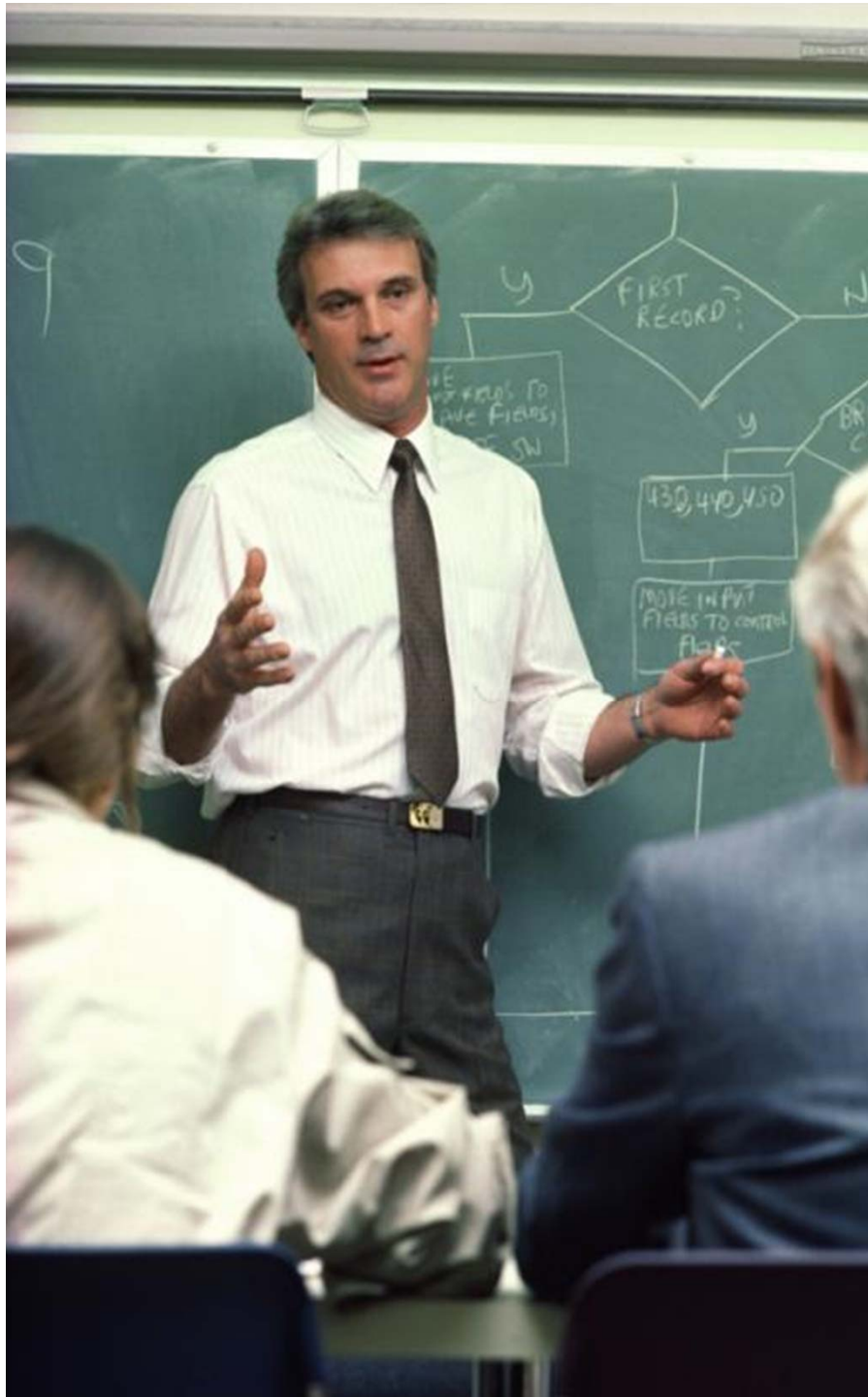
Disputes may still arise from

Accidents



Market Fluctuations





- ***Best to be prepared***
- ***Consider Dispute Management to:***
- ***Prepare for an uncertain economic future***
- ***Lay the foundation for equitable & speedy resolution of disputes***
- ***Have Good housekeeping***

Thank You

Questions and Answers