

Arbitration ambitions

As Asian maritime rises, Singapore is eroding London's arbitration dominance, reports **Crystal Chan**

> **More parties are choosing Singapore** over London to resolve disputes arising from shipping and ship building contracts.

Since 2009, when the Singapore Chamber of Maritime Arbitration was reconstituted, case loads have been rising. In 2012, 20 cases were registered, up from 16 in 2011. This year SCMA expects 30 cases to be registered, with 10 registered since January, said executive director Lee Wai Pong.

Durai Shunmugam, a partner in UK law firm Stephenson Harwood's Singapore office, told *Fairplay* that where London had 90% of the pie in 2009, it is more evenly divided between London and Singapore today.

"Overall, in terms of growth in disputes, the number of arbitrations we are doing is growing but not in a big way. What we are seeing is roughly a dramatic shift in the proportion of arbitration cases being done in London and Singapore. Today, it's 50-50, so Singapore is clearly eating away at London's pie," Shunmugam said.

As shipping grows in Asia, it has become more convenient to have arbitrations in Singapore, said Shunmugam and other lawyers interviewed.

Shunmugam explained: "Out of every 10 contracts we see for clients based in this part of the world [Asia], probably half already come to us with pre-drafted clauses, making Singapore the venue of arbitration so we do not have to push for Singapore. This shows that clients have seen the value proposition that Singapore provides.

"Of the balance, another three to four contracts end up with Singapore selected as the dispute resolution centre, as we advise those clients that keeping the venue of

any dispute resolution in this region, rather than having to travel to London or Dubai, for example, has significant advantages. For instance, travelling between time zones makes a big difference to parties and their lawyers. Say the venue is London – there's a big shift in your body clock when you get to London from this part of the world. If you are giving evidence or arguing cases at the time you are used to having dinner or sleeping, that obviously has a significant impact on your mental sharpness."

Singapore is especially popular with Indian and Korean parties and several Japanese clients have recently expressed interest, said Ince & Co Singapore LLP veteran mediator Denys Hickey.

"Singapore now has critical mass so far as qualified shipping lawyers are concerned, including lawyers in Singapore as well as international law firms," explained Hickey.

Watson, Farley & Williams Asia Practice told *Fairplay* it had seen significant increased disputes activity in the oil and gas industries. Marcus Gordon, a partner in the firm's arbitration team, said the biggest maritime arbitration that the Singapore office is currently handling is a multi-million-dollar SCMA case relating to the conversion of an FPSO.

Recently, the firm handled a maritime arbitration relating to the sale and seizure of a ship in what is believed to be the fastest full-blown arbitration to have taken place in Singapore. The entire process, from pleadings to award, took four months.

Gordon's colleague Dan Thompson said that being a FPSO conversion hub, there were good synergies with the legal infrastructure. "In the near future, London will probably remain the international hub. Singapore will certainly increase its market share and remain the leading regional hub. In the long term, I can see Singapore becoming a much greater rival to London."

Barry Stimpson, who heads Reed Smith's maritime practice in Singapore, agrees. "It's certainly easier to convince western counterparties to agree to Singapore arbitration now than it was 10 years ago. More shipping companies are also moving their regional headquarters to Singapore," said Stimpson. "The SCMA's reputation is probably as high as it has ever been and companies appear confident of a fair and efficient arbitration. Today, when you talk about shipping, the place that is being discussed is Singapore and not so much London."

As Asian maritime grows, even London Maritime Arbitrators Association members are getting themselves onto the SCMA panel.

Shunmugam said: "In the past, the mountain used to go to Muhammad. Previously, many arbitration cases ended up in London as the real experts were based there and did not see the need to travel. These days, many



'Singapore is eating away at London's pie'

Durai Shunmugam

people in the arbitration field see the value in being involved in what is going on out here and are happy to travel, sometimes for no extra charge.”

That is not to say everything is perfect in Singapore. “If you go into areas of technical disputes, such as how a delay in the submission of a drawing affects the timeframes for a shipbuilding project, you need someone who can sit down and understand how such things can affect the project,” explained Shunmugam. “So we are then left to shop around the world to seek out such people. The good news is that these arbitrators/experts are willing to travel to Singapore if the need arises.”

Last year BIMCO adopted Singapore as an arbitration venue in all new and updated contracts. While it was a sign of how far Singapore has come, the SCMA and lawyers



Barry Stimpson: companies are confident of a fair arbitration

say it will take time before the development translates into a surge in caseloads.

Lee told *Fairplay*: “For maritime arbitration to grow in Singapore, the next step is for the number of disputes requiring arbitration to resolve to rise. It is only under such circumstances that dispute resolution work will increase.

“The reality of the matter is that many contracts do not result in disputes, and when they do arise we actively encourage parties (when asked) to settle them amicably through negotiations. For the time being, we just hope more parties will adopt Singapore as a dispute resolution venue in their contracts but caseloads will depend on whether disputes will actually rise.”

While the China Maritime Arbitration Commission is equally busy, competition with SCMA is limited. Shunmugam pointed



out that while arbitration in Singapore involves international parties, “arbitration in China is usually done when both parties are Chinese. But many Chinese cities have their own arbitration administration centres. Although arbitration in China is purportedly administered by CIETAC [the China International Economic and Trade Arbitration Commission], there have been breakaways by a couple of these administration centres. That sort of internal strife worries parties in terms of what they put in arbitration clauses,” Shunmugam explained.

Hickey said Hong Kong was more likely to

vie with Singapore as an option for contracts involving international parties.

“In my view, Singapore is likely to become the primary alternative to London for companies doing business in South and East Asia, including India. Chinese companies are increasingly prepared to choose Singapore as a compromise when the counterparty suggests London or they suggest Hong Kong. However, their first choice is currently Hong Kong, which is likely to retain its position as a popular venue for local owners and charterers,” explained Hickey.

“Chinese parties tend to arbitrate shipping

disputes in Hong Kong or London under LMAA rules, although some shipping disputes with Chinese parties are now being arbitrated in Singapore.”

The Singapore Maritime Foundation, a founding member of SCMA, said this only reflects the growth of Asian maritime might.

SMF chairman Michael Chia said: “With the Asian shipowners owning/operating more than 50% of the world’s fleet and the sphere of shipping influence shifting from the west to the east, it is natural that more than one maritime arbitration hub would develop to facilitate this growth. Rather than competing with one another to get the same cases, SCMA and CMAC play complementary roles in steering increased caseloads towards Asian seats, which is a very positive development.”

Lee said maritime arbitration in Singapore could grow with the increasing presence of P&I clubs. Skuld P&I Club has returned to Singapore, while Japan Ship Owners’ Mutual P&I Association is opening an office in Singapore.

The P&I clubs generate a lot of instructions to counsel and exert a strong influence on how and where disputes are resolved.

Lee said: “Locally-based lawyers currently undertake considerable front end work for them but it is not uncommon for the higher value-added work that follows in their wake to flow out of Singapore for completion. There is a school of thought that with more claims-handling staff being located here, it will be beneficial to the growth of that segment in Singapore, and that in turn will be beneficial to the holistic development and growth of the local maritime/legal ecosystem.”

Stimpson, however, cautioned that the strengthening Singapore dollar could challenge cost competitiveness.

“About five years ago it was S\$3 to £1. Then it slid to S\$2 to £1, and today it’s about S\$1.86. That could have an impact when comparing the cost of arbitration in Singapore and London. If the pound continues to slide, then Singapore could become just as expensive,” observed Stimpson. ■

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