

SAL-SCMA Mock Arbitration 2021**Opening Address**

18 March 2021, Thursday

The Honourable Justice Pang Khang Chau

Supreme Court of Singapore

1. Good afternoon ladies and gentlemen.
2. First, I would like to thank the organisers, the Singapore Chamber of Maritime Arbitration and the Singapore Academy of Law for inviting me to speak to you this afternoon.
3. In the next few minutes, I would like to speak about the impact of the COVID-19 pandemic on maritime arbitration.

The COVID-19 pandemic and acceleration of change

4. It is by now well-appreciated, and almost a cliché, that the COVID-19 pandemic has caused serious disruptions to the way we conduct business, perform our work and live our lives. In its *Review of Maritime Transport 2020*, the United Nations Conference on Trade and Development (“UNCTAD”) estimated that the unprecedented disruptions caused by COVID-19 has resulted in a 4.1% decline in global maritime trade in 2020.¹
5. However, not all which the pandemic has brought upon us is gloom and doom. The COVID-19 pandemic has also catalysed changes in work and business practices which, in the long term, are likely to be for the better. For example, businesses compelled to allow or require employees to work remotely had to adapt and figure out how this could be done without significant drop in productivity or quality.²
6. The COVID-19 pandemic has also accelerated changes in the legal industry. One instance is the rapid and mass adoption of virtual hearings. This shift began at the height of the pandemic, where the Singapore judiciary turned to video-conferencing tools during the “Circuit Breaker” to ensure the machinery of justice remains available in cases which were urgent and

¹ UNCTAD, “COVID-19 cuts global maritime trade, transforms industry” (12 November 2020) <<https://unctad.org/news/covid-19-cuts-global-maritime-trade-transforms-industry>>.

² BBC, “Coronavirus: How the world of work may change forever” <<https://www.bbc.com/worklife/article/20201023-coronavirus-how-will-the-pandemic-change-the-way-we-work>>.

essential.³ Reception of virtual hearings has been more than positive – Court users have found them convenient as well as cost and time-efficient. Indeed, even as Singapore has moved into Phase 3 reopening since December 2020, the Courts continue to retain the use of virtual hearings.⁴

7. Outside the Courts, the pandemic has also accelerated the adoption of virtual hearings for arbitration proceedings. At the height of the pandemic, the SCMA, supported by technologies offered by Maxwell Chambers, was quick to roll out virtual hearing support. This ensured that parties were able to proceed with their arbitration as usual despite the disruptions posed by the pandemic.⁵ Going forward, as the world emerges from the pandemic, it appears that the practice of virtual hearings is likely to stay, even after the resumption and normalisation of quarantine-free international travel. As Mr Punit Oza, executive director and registrar of the SCMA said in an interview last year, the adoption of virtual hearings presents an opportunity to change the way arbitration is carried out – as parties are not constrained by the need to fly in arbitrators and counsel from different parts of the world to gather at single location, it becomes feasible to break arbitration proceedings down into sections to be resolved over a different series of hearings, offering parties flexibility in cost and time management.⁶

8. What is critical to the continued success of virtual hearings is a robust procedural framework to ensure that virtual hearings provide a fair and efficient means of resolving legal disputes. On this front the SCMA published the *Specimen Directions for Virtual Hearings* in October 2020 to provide guidance to tribunals and users of SCMA maritime arbitrations.⁷ The Specimen Directions seek to provide a user-friendly and adaptable way of securing a fair and efficient virtual hearing, by laying down common standards between parties on how the hearing

³ Lydia Lam, “Some Singapore court hearings to take place via videoconference as judiciary rolls out COVID-19 measures” (26 March 2020) <<https://www.channelnewsasia.com/news/singapore/court-hearings-video-conference-covid19-12578730>> accessed 1 March 2021.

⁴ State Courts, “Message from the Chief Justice: The Judiciary’s response to the exit of the ‘Circuit Breaker’ period” (29 May 2020) <https://www.statecourts.gov.sg/cws/Resources/Documents/CJ_Message_Judiciary%27s%20ResponseToExitoftheCircuitBreakerPeriod.pdf> accessed 1 March 2021.

⁵ Marcus Hand, “Virtual hearings and a blended future for maritime arbitration: SCMA” (21 May 2020) <<https://www.seatrade-maritime.com/finance-insurance/virtual-hearings-and-blended-future-maritime-arbitration-scma>>.

⁶ Ibid.

⁷ SCMA, *Specimen Directions for Virtual Hearings* <<https://scma.org.sg/SiteFolders/scma/387/Virtual%20Hearings/Specimen%20Directions%20for%20Virtual%20Hearings%20Final.pdf>>.

is to be conducted and also by ensuring that technical hiccups are kept to a minimum. The Specimen Directions replicate the procedural safeguards for evidence-taking available in a physical hearing and counters risks of cheating and witness coaching⁸ by ensuring that all participants before a camera are properly identified to the tribunal, and also, by requiring participants to display through their camera the whole of the remote room in which they are located. It also ensures that virtual hearings proceed efficiently by laying down rules on how typically voluminous hearing bundles might be organised. The adoption of these Specimen Directions would help assure parties of the efficacy and fairness of virtual hearings and will contribute towards the normalisation virtual hearings for maritime arbitration in the future – even after the pandemic recedes.

9. Turning elsewhere, the COVID-19 pandemic has also accelerated the adoption of digital solutions in the shipping industry. Risks of viral transmission posed by physical paper-based transactions and human-to-human contact has strengthened the case for digitalisation and elimination of paperwork.

10. As the industry moves digital, so has the SCMA. SCMA has adopted a host of digital solutions to ensure that its resources and services are available to the industry in the most accessible and relevant formats. For instance, SCMA Model Clauses are readily accessible by means of scanning a QR code. The process of notifying the SCMA of arbitrations has been digitalised and simplified by the use of a digital form without the need for extensive paperwork.

Taking advantage of the post-pandemic economic rebound

11. Barring new variants of the coronavirus and unexpected outbreaks, the roll-out of vaccination programmes and falling case counts around the world bring hope of economic recovery in 2021. The UNCTAD predicts that recovering world economic output will lead to a 4.8% growth in global maritime trade.⁹ This more than makes up for the estimated decline of 4.1% in 2020. Asia is likely to continue to dominate the global maritime trade. For instance, even in 2020, Asia remained the leading global player in container port cargo handling, with a

⁸ Andrew Mohan, “Explanatory Note to the Specimen Procedural Order and Directions for Conduct of a Virtual Hearing in SCMA Arbitrations” < <https://scma.org.sg/SiteFolders/scma/387/Virtual%20Hearings/Explanatory%20Note%20to%20Specimen%20Directions%20Final.pdf>>.

⁹ UNCTAD, “COVID-19 cuts global maritime trade, transforms industry”, *supra* note 1.

share of nearly 65% of global container traffic.¹⁰ Maritime business in Asia are therefore well-poised to benefit from the anticipated post-pandemic economic rebound.

12. The economic rebound is certain to lead to a pickup in maritime arbitration. This is where Singapore's efforts to establish herself as a leading maritime arbitration hub will continue to bear fruit. Indeed, these efforts have already been recognised internationally. Since 2012, SCMA Arbitration Rules have been incorporated into the Baltic and International Maritime Council ("BIMCO")'s Standard Dispute Resolution Clause and Singapore has been named as an official seat of arbitration by BIMCO together with London, New York and Hong Kong. Furthermore, in 2015, the New York Produce Exchange form was revised, and its Law and Arbitration clause named Singapore as one of three arbitral seats – in addition to New York and London.

13. These developments recognised the growing role of Singapore as a forum of choice for maritime arbitration. The statistics bear this out. SCMA's case load and total claim quantum has steadily grown since its inception.¹¹ In 2020, despite the disruptions caused by the COVID-19 pandemic, the SCMA saw a 5% rise in its caseload year-on-year and handled cases with a total claim sum of US\$49.37m,¹² with more than half of its disputants coming from outside Singapore.¹³

14. Just as important as Singapore's dispute resolution infrastructure is the development of talent and recognition of specialists in maritime law. One example of such an effort is the Singapore Academy of Law's Accredited Specialist and Senior Accredited Specialist scheme for maritime and shipping lawyers. The SAL Accreditation Scheme recognises the high level of proficiency of legal practitioners in their chosen practice area and provides the industry with a reliable means of identifying legal practitioners who possess the requisite skills and knowledge in a practice area.¹⁴

¹⁰ UNCTAD, "UNCTAD's Review of Maritime Transport 2020: highlights and figures on Asia and the Pacific" (12 November 2020) <<https://unctad.org/press-material/unctads-review-maritime-transport-2020-highlights-and-figures-asia-and-pacific>>.

¹¹ SCMA, "Year in Review: 2018" at p 17.

¹² KC Vijayan, "Maritime arbitration body in Singapore aims to be Asia's go-to venue for shipping users" (8 February 2021) <<https://www.singaporelawwatch.sg/Headlines/maritime-arbitration-body-in-singapore-aims-to-be-asias-go-to-venue-for-shipping-user>>.

¹³ SCMA, "Year in Review: 2020" at p 5.

¹⁴ SAL, "Specialist Accreditation" <<https://www.sal.org.sg/Services/Appointments/Specialist-Accreditation/Overview>>.

15. Accrediting highly skilled maritime lawyers as specialists makes available the valuable human resource to ensure that Singapore retains her status as an international maritime centre, complementing specialist judges and a robust legal system.¹⁵ It also establishes a pool of distinguished stakeholders who can engage with the SCMA in contributing to knowledge sharing in maritime law and Asian commercial dealings, further strengthening our local arbitration ecosystem. Most importantly, accreditation also encourages young legal practitioners and law students alike to pursue a career in maritime law.

Conclusion

16. Despite the disruptions and uncertainties, the COVID-19 pandemic has presented an opportunity to achieve meaningful and positive changes in the way we live and work. As the pandemic gradually recedes, the potential economic rebound also presents numerous opportunities, in particular, for maritime trade and business. Singapore's sustained efforts over the years to establish her status as a leading maritime dispute resolution hub means that she is well-poised to make the most of the exciting times ahead.

17. With that, I hope you enjoy the SCMA-SAL Mock Arbitration proceedings this afternoon.

¹⁵ SAL, "Specialist Accreditation Scheme: Maritime and Shipping Law 2017" <<https://www.sal.org.sg/sites/default/files/SAL-Documents/2020-07/Singapore%20Academy%20of%20Law%20Specialist%20Accreditation%20Scheme%20Maritime%20%20Shipping%20Law%20Final%20%28clean%29.pdf>>.