

Renowned International Arbitrator Speaks at 17th Annual Goff Arbitration Lecture

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-Dr Avnita Lakhani, Scarlette Cheung



(from left) Prof Anton Cooray, Mr Hwang SC, Neil Kaplan J, Prof Philip Yang

On 7 December 2010, City University of Hong Kong School of Law hosted the 17th Annual Goff Arbitration Lecture at the Hong Kong International Arbitration Centre (HKIAC). The guest of honour was **Mr Michael Hwang, S.C.**, a renowned international arbitrator, who was appointed as the Chief Justice of the Dubai International Financial Centre Courts in June 2010.

Mr Hwang, S.C. delivered a timely and relevant lecture at the HKIAC on the importance of addressing confidentiality in arbitration. The lecture was titled 'A Model Form of Procedural Order Relating to

Confidentiality in Arbitration'. After a brief analysis of how some jurisdictions, such as Singapore, Australia, New Zealand, and the UK, have handled the general obligation of confidentiality in arbitration, he presented a detailed proposal on a model procedural order relating to confidentiality in arbitration.

According to Mr Hwang, the best time to deal with confidentiality issues is not in the arbitration agreement itself, considering that such clauses are drafted as "midnight clauses" without sufficient time to work out what kind of rules governing confidentiality might be put in place. Accordingly, the best time to address the structure of a confidentiality regime is after the dispute has arisen, by agreement between the parties with the assistance and guidance of the tribunal. The goal of the model procedural order for confidentiality in arbitration is to provide a starting template which can be adopted in full or amended as needed so as to address the most pressing issues related to confidentiality of information from public disclosure.

The lecture was an impressive, comprehensive and well-structured analysis of a series of model clauses that incorporate a definition of confidential information, reasons for disclosing confidential information, exceptions to disclosure of confidential information, a pre-condition to disclosure, and a procedural mechanism that addresses due process concerns for parties who intend to disclose certain confidential information. The evening lecture concluded with remarks on how such a model procedural order relating to confidentiality in arbitration may be enforced. Following the lecture, Mr Michael Hwang, S.C., graciously answered questions posed by participants and attended a thank-you dinner sponsored by the School of Law.

Prior to his presentation at the Goff Arbitration Lecture, Mr Hwang, S.C. spent the afternoon at the School of Law. On 6 December 2010, Mr Hwang, S.C. led a staff seminar attended by postgraduate students and members of the School of Law faculty on several important topics related to conflict of laws issues in international arbitrations. These topics included whether limitations laws are considered a procedural or substantive matter, which laws govern issues of privilege and interest, and the applicable law when granting interim injunctions. These topics were presented and discussed in light of recent cases before the Singapore courts, namely *Shanghai Electric Group Co Ltd v Pt Merak Energi Indonesia and another* [2010] 2 SGHC 2. In discussing these issues, Mr Hwang, S.C. also provided an international law perspective by pointing out ways in which the Singapore courts appear to have departed from both the UK and Hong Kong's approach to dealing with various conflicts of law issues.



In addition to the three main topics, Mr Hwang, S.C. also provided insight into several 'live' issues in the international law arena, including the viability of the tort of champerty in various common law jurisdictions (see for example, *Otech Pakistan Pvt Ltd v Clough Engineering Ltd and Another* [2006] SGCA 46) and the trend towards parties utilising third-party funding groups to support meritorious causes of action and whether this trend is in line with the public policy goal of providing access to justice. The staff seminar concluded with a stimulating discussion by faculty and students in attendance related to the topics of the staff seminar.

The School of Law would like to thank Chief Justice Michael Hwang, S.C. for his time and generosity in sharing his extensive experience in international law and international arbitration with those who attended both the Staff Seminar and the 17th Annual Goff Arbitration Lecture.



About Mr Michael Hwang, S.C.

Mr Hwang was educated at undergraduate and postgraduate levels at Oxford University. Mr Hwang has over 40 years of experience in the legal arena. From 1972 to 1991 and again from 1993 to 2002, he was a partner in Allen & Gledhill and served as the Head of its Litigation and Arbitration Department for 10 years. In 1991, he was appointed a Judicial Commissioner of the Supreme Court of Singapore (a full time post equivalent to the office of an acting High Court Judge) for a fixed term contract which expired at the end of 1992). During his term, he dealt with a full caseload of civil litigation. Fifteen of his reasoned Judgments are reported in the Singapore Law Reports. In 1997, he was appointed as one of the first 12 Senior Counsel (SC) of the Supreme Court of Singapore. In 1999, he was elected a Member of the American Law Institute and also served as a Visiting Professor to the National University of Singapore teaching advocacy and commercial arbitration. Between 2000 and 2003, he served as a Commissioner of the United Nations Compensation Commission based in Geneva, a body set up under the Security Council to assess claims against Iraq arising from the first Gulf War.