

Fordham International Law Journal

Volume 40, Issue 3

2017

Article 13

Singapore And Hong Kong: International Arbitration Meets Third Party Funding

Oliver Gayner*

Susanna Khouri†

*

†

Copyright ©2017 by the authors. *Fordham International Law Journal* is produced by The Berkeley Electronic Press (bepress). <http://ir.lawnet.fordham.edu/ilj>

SINGAPORE AND HONG KONG: INTERNATIONAL ARBITRATION MEETS THIRD PARTY FUNDING

Oliver Gayner & Susanna Khouri***

INTRODUCTION—NEW ASIAN FRAMEWORKS FOR THIRD PARTY FUNDING.....	1033
A MODERN APPROACH.....	1034
THE BIRTH OF COMMERCIAL LITIGATION FUNDING IN AUSTRALIA	1035
ENGLAND & WALES: SELF-REGULATION.....	1038
SINGAPORE AND HONG KONG APPROVE FUNDING FOR ARBITRATIONS.....	1040
Statutory or Self Regulation?	1041
Abolition of Maintenance and Champerty as a Tort	1042
Disclosure Requirements.....	1043
Control by the Funder.....	1044
Adverse Costs.....	1045
CONCLUSION.....	1046

INTRODUCTION—NEW ASIAN FRAMEWORKS FOR THIRD PARTY FUNDING

On January 10, 2017, the Civil Law (Amendment) Bill (38/2016) passed its second reading before the Parliament of Singapore. The Bill abolishes the torts of maintenance and champerty, and for the first time makes it expressly lawful for a third party to fund dispute resolution proceedings in Singapore. For now, the changes apply to international arbitration proceedings (and court proceedings in support of arbitration) only, but comments by Minister of Law, Indranee Rajah, make it clear that if the arbitration pilot is successful further expansion will follow. On March 1, 2017, the Bill

*Oliver Gayner is an Investment Manager at IMF Bentham Limited (*IMF Bentham*).

**Susanna Khouri is a Senior Investment Manager at IMF Bentham.

received the approval of the President and was published in the Government Gazette.

In October 2016, the Law Reform Commission of Hong Kong (“HKLRC”) published its final report on third party funding for international arbitration, following a two-year consultation process. The Commission recommended that Hong Kong should legislate to permit the funding of international arbitration, subject to “clear ethical and financial safeguards.” Enabling legislation has been submitted to the Hong Kong Legislative Council for consideration during the current legislative session.

A MODERN APPROACH

These are significant developments. The common law was historically antipathetic towards any intrusion by financiers into the civil justice system—the doctrines of maintenance and champerty restricted the use of external finance to fund litigation for fear that this would “sully the purity of justice.” Over the years, the underlying public policy considerations have turned on their head. The fears in medieval England about weak courts needing protection from unscrupulous barons have been transformed into an altogether more modern concern, which is that the civil justice system has simply become too expensive for many. Third party funding has been found to enable access to civil justice, and funding prohibitions make little sense today.

Policymakers in Singapore and Hong Kong are now looking to the future. Their review of third party funding comes as part of a drive to ensure their legal systems are internally effective as well as internationally competitive. In this regard, both jurisdictions are fortunate to have the experience of other jurisdictions to guide them. The litigation funding industry is around twenty years old in Australia, and around half that in England and Wales. These jurisdictions offer salient lessons for a maturing industry, as we seek to elucidate below.

In this Article, we begin by examining how funding evolved first in Australia, and then in England and Wales. We focus on the impact of this development on litigation practice generally, and how the courts and regulatory authorities have responded. We then turn to the proposed legislation in Singapore and Hong Kong, and identify key issues that arise for arbitration funding in those countries.

Whilst certain issues are unique to arbitration—such as the need to prevent arbitrators' conflicts—our central argument is that funding standards that have evolved in national litigation can be readily adapted and applied to the arbitral process without the need for wholesale changes. In short, the arbitral community should be able to avoid repeating hard-fought battles over long-decided issues in relevant, trusted jurisdictions.

THE BIRTH OF COMMERCIAL LITIGATION FUNDING IN AUSTRALIA

Litigation funding was pioneered in the last years of the twentieth century in Australia by the founders of IMF Bentham. It began as a solution for insolvency practitioners faced with insufficient funds in the creditors' estate to pursue claims for recovery. During the 2000s, funding spread to other practice areas such as commercial litigation and class actions. However, the growth of the industry in those early days was beset by obstacles, not least by a spate of satellite litigation brought by defendant lawyers seeking to knock out claims on the basis that their funding was an abuse of process and contrary to public policy. Even after the doctrines of maintenance and champerty were abolished as crimes and torts in a number of states by statute in 1993, funders still faced significant challenges. The first challenge was to prove to the satisfaction of the courts that the public policy of promoting access to justice required allowing private finance into the market for litigation services. The second challenge was to show funders had an important role to play in supporting the justice system, namely by promoting only meritorious claims, paying adverse costs orders when due, and assisting with the management of litigation so that cases ran quickly, efficiently, and economically.

The turning point in Australia was the decision of the High Court of Australia (Australia's most senior appellate court, equivalent to the Supreme Court in the United States) in *Campbells Cash and Carry Pty Limited v. Fostif Pty Limited*.¹ *Fostif* involved a class action to recover amounts paid by retailers of tobacco products to wholesalers, representing license fees that the wholesalers did not pass onto the tax commissioner because the license fees were held to be unconstitutional. A third party agreed to fund representative proceedings against the wholesalers, taking de facto control over the

1. (2006) 229 CLR 386.

litigation for 33.3% of the proceeds. The joint majority judgment of Justices Gummow, Hayne, and Crennan confirmed that access to justice was indeed a consideration of public policy that should be given paramount importance, that little to no evidence existed of abuse of process by funders, and that the courts already possessed sufficient means in which to punish funders who went astray (such as third party costs orders and contempt of court orders):

89. As Mason P rightly pointed out in the Court of Appeal, many people seek profit from assisting the processes of litigation. That a person who hazards funds in litigation wishes to control the litigation is hardly surprising. That someone seeks out those who may have a claim and excites litigation where otherwise there would be none could be condemned as contrary to public policy only if a general rule against the maintenance of actions were to be adopted. But that approach has long since been abandoned and the qualification of that rule (by reference to criteria of common interest) proved unsuccessful. And if the conduct is neither criminal nor tortious, what would be the ultimate foundation for a conclusion not only that maintaining an action (or maintaining an action in return for a share of the proceeds) should be considered as contrary to public policy, but also that the claim that is maintained should not be determined by the court whose jurisdiction otherwise is regularly invoked?

90. Two kinds of consideration are proffered as founding a rule of public policy—fears about adverse effects on the processes of litigation and fears about the “fairness” of the bargain struck between funder and intended litigant. In *Giles v Thompson*, Lord Mustill said that the law of maintenance and champerty could best “be kept in forward motion” by looking to its origins; these his Lordship saw as reflecting “a principle of public policy designed to protect the purity of justice and the interests of vulnerable litigants.”

91. Neither of these considerations, whatever may be their specific application in a particular case, warrants formulation of an overarching rule of public policy that either would, in effect, bar the prosecution of an action where any agreement has been made to provide money to a party to institute or prosecute the litigation in return for a share of the proceeds of the litigation, or would bar the prosecution of some actions according to whether the funding agreement met some standards fixing the nature or degree of control or reward the funder may have under the agreement. To meet these fears by adopting a rule in either form

would take too broad an axe to the problems that may be seen to lie behind the fears.

92. It is necessary to bear steadily in mind that questions of illegality and public policy may arise when considering whether a funding agreement is enforceable. So much follows from s 6 of the Abolition Act. Further, to ask whether the bargain struck between a funder and intended litigant is “fair” assumes that there is some ascertainable objective standard against which fairness is to be measured and that the courts should exercise some (unidentified) power to relieve persons of full age and capacity from bargains otherwise untainted by infirmity. Neither assumption is well founded.

93. As for fears that “the funder’s intervention will be inimical to the due administration of justice”, whether because “[t]he greater the share of the spoils . . . the greater the temptation to stray from the path of rectitude” or for some other reason, it is necessary first to identify what exactly is feared. In particular, what exactly is the corruption of the processes of the Court that is feared? It was said, in *In re Trepca Mines Ltd (No 2)*, that “[t]he common law fears that the champertous maintainer might be tempted, for his own personal gain, to inflame the damages, to suppress evidence, or even to suborn witnesses.” Why is that fear not sufficiently addressed by existing doctrines of abuse of process and other procedural and substantive elements of the court’s processes? And if lawyers undertake obligations that may give rise to conflicting duties there is no reason proffered for concluding that present rules regulating lawyers’ duties to the court and to clients are insufficient to meet the difficulties that are suggested might arise.²

In recent years Australia has adopted a “light touch” approach to the regulation of litigation funding, and funding has become a mainstream feature of the legal market. The activity of funding is not regulated—provided that funders maintain an adequate policy to manage conflicts of interest—in essence, clarifying that while funders may take day-to-day management of funded litigation, a lawyer’s fiduciary duties are only owed to the client who can override the funder’s instructions at any point.

Further, large commercial funders who are listed and highly capitalized, such as IMF Bentham, will routinely disclose their involvement in a matter, and (since Australia is a jurisdiction with

2. *Id.* at 434-35.

cost shifting) will typically agree to pay adverse costs orders as well as funding the claimant's costs and disbursements. As a consequence, tactical applications around the involvement of funders are rare, as are requests for security for costs on funded matters—which in turn allows the parties to focus on what is important: resolving the substance of their dispute.

In short, over twenty years, an efficient and effective funding market has evolved which provides a valuable service to litigants and which requires minimum intervention by statutory regulators or by the courts. The emphasis is on commercial freedoms, so that parties are free to choose how to finance and manage their disputes, just as they are free to choose with whom to contract and where to resolve their differences.

ENGLAND AND WALES: SELF-REGULATION

The traditional position of the English courts was that any agreement which purported to share the spoils of litigation would be champertous (or “wanton and officious intermeddling in the disputes of others”) and void on the basis of public policy. As cited in *Fostif* above, Lord Denning described the kind of “intermeddling” that was feared as follows: “*to inflame the damages, to suppress evidence, or even to suborn witnesses . . .*”³

In 1967, the crimes of maintenance and champerty were abolished by statute. However, whilst certain types of funding were permitted (for example, by trade unions and—following the Access to Justice Act 1999—by solicitors under Conditional Fee Agreements), commercial funding of disputes did not begin to take off until the mid-2000s, following a series of decisions by the Court of Appeal then led by Lord Phillips MR.⁴ In *Arkin v. Borchard Lines*, the court devised a principle that funders' liability for adverse costs should be limited to the amount of funding they were providing in the case—a principle known as the “Arkin Cap”:

If a professional funder, who is contemplating funding a discrete part of an impecunious claimant's expenses, such as the cost of expert evidence, is to be potentially liable for the entirety of the

3. *In re Trepcia Mines Ltd. (No. 2)* [1963] 1 Ch. 199.

4. *Hamilton v. Al Fayed* [2002] 2 W.L.R. 128; *Regina (Factortame) Ltd. v. Secretary of State for Transport, Local Government and the Region (No. 8)* [2002] 3 W.L.R. 1104; *Arkin v. Borchard Lines* [2005] EWCA Civ. 655.

defendant's costs should the claim fail, no professional funder will be likely to be prepared to provide the necessary funding. The exposure will be too great to render funding on a contingency basis of recovery a viable commercial transaction. Access to justice will be denied. We consider, however, that there is a solution that is practicable, just and that caters for some of the policy considerations that we have considered above.

40. We consider that a professional funder, who finances part of a claimant's costs of litigation, should be potentially liable for the costs of the opposing party to the extent of the funding provided Our approach is designed to cater for the commercial funder who is financing part of the costs of the litigation in a manner which facilitates access to justice and which is not otherwise objectionable. Such funding will leave the claimant as the party primarily interested in the result of the litigation and the party in control of the conduct of the litigation.⁵

Following the decision in *Arkin*, which was decided around the same time as *Fostif*, a similarly light touch approach was taken to the regulation of funding in England and Wales as in Australia. Following the Reforms to Civil Litigation headed by Lord Justice Jackson in 2010, a voluntary Code of Conduct was created to regulate the use of funding. The Association of Litigation Funders ("ALF") Code sets voluntary guidelines for funders to follow, in particular, around capital adequacy, conflicts of interest, confidentiality, and the key terms to be included in litigation funding agreements.

One key point of difference emerged: whereas in Australia it was accepted that clients could, if they wished, ask a funder to manage the litigation on their behalf, the ALF Code provided that funders "will not seek to influence the Litigant's solicitor or barrister to cede control or conduct of the dispute to the funder." However, recently it seems that the gap between English and Australian law on this issue may be narrowing. In *Excalibur Ventures LLC v. Texas Keystone & Ors*,⁶ the Court of Appeal granted indemnity costs against a series of funders who backed Excalibur's failed claim to a share of some valuable oil fields in Kurdistan. The ALF intervened as an interested party, and submitted that funders under English law were in a difficult position because though they could provide funds to a claimant, they

5. *Arkin*, *supra* note 4, at [39] - [40].

6. [2016] EWCA Civ. 1144.

had little control over the conduct of the litigation in the claimant's hands. Lord Justice Tomlinson stated as follows:

31. I should also comment on the suggestion of the ALF that “to avoid being fixed with the conduct of the funded party, the funder would have to exercise greater control over the conduct of the litigation throughout and that this runs the risk that the funding agreement would be champertous”. I understand why this concern is raised but I consider that it is unrealistic. As the judge pointed out, champerty involves behaviour likely to interfere with the due administration of justice. Litigation funding is an accepted and judicially sanctioned activity perceived to be in the public interest. What the judge characterised as “rigorous analysis of law, facts and witnesses, consideration of proportionality and review at appropriate intervals” is what is to be expected of a responsible funder – as the ALF to some extent acknowledges and as did some of the funders in this case in their evidence presented to the judge – and cannot of itself be champertous. I agree that, rather than interfering with the due administration of justice, if anything such activities promote the due administration of justice. For the avoidance of doubt I should mention that on-going review of the progress of litigation through the medium of lawyers independent of those conducting the litigation, a fortiori those conducting it on a conditional fee agreement, seems to me not just prudent but often essential in order to reduce the risk of orders for indemnity costs being made against the unsuccessful funded party. When conducted responsibly, as by the members of the ALF I am sure it would be, there is no danger of such review being characterised as champertous.⁷

SINGAPORE AND HONG KONG APPROVE FUNDING FOR ARBITRATIONS

In Hong Kong, it is still a criminal offense to maintain litigation: as recently as 2011, solicitors have been convicted for acting on contingency, for example in *Winnie Lo v. HKSAR*.⁸ However, since the mid-2000s, attitudes towards funding have started to soften. There have been several decisions, in particular by Justices Harris and Ribeiro, in which the courts have recognized the lawfulness of funding in certain defined categories, for example where the funds are

7. *Id.* at [31].

8. [2011] FACC 2/2011.

necessary to provide access to justice for impecunious claimants and insolvency practitioners.⁹ IMF Bentham has funded three cases brought by company liquidators in Hong Kong since 2013.

In Singapore, meanwhile, the leading case is *Re Vanguard Energy*.¹⁰ The High Court held that an assignment of part of the proceeds of litigation to the shareholders of an insolvent company, who had agreed to fund the company to pursue its claims, was not champertous. However, funding of arbitration has remained restricted. In *Otech Pakistan Pvt Ltd. v. Clough Engineering Ltd. and Anor*, the Singapore Court of Appeal held that there was no reason to treat arbitration differently to court litigation and if it was champertous to fund one, it would be champertous to fund the other.¹¹ Interestingly, in Hong Kong, Justice Kaplan had reached the opposite conclusion in *Cannonway Consultants*, finding that the sophisticated parties who typically used arbitration had less need of protection by public policy.¹²

These decisions have left the law in both jurisdictions in a confused and patchwork state—a clear deterrent for sophisticated users of arbitration, who have the choice of many high-class jurisdictions in which to resolve their disputes such as London, New York, Paris, or Geneva. In turn, this has prompted the legislative changes described above. We address below the key issues that the policymakers in Singapore and Hong Kong have had to consider.

Statutory or Self-Regulation?

Both Hong Kong and Singapore have, after extensive consultation, adopted to follow the “light touch” approach to regulation favored in Australia and England and Wales. For example, Singapore’s Ministry of Law (“MinLaw”) has described its aim as giving “precedence to party autonomy and flexibility, with disclosure as the central tenet,” taking into account the “‘light touch’ approach to

9. See e.g., *Unruh v. Seeberger* [2007] 10 HKCFAR 31; *Re Cyberworks* [2010] HKCU 974; *Re Po Yuen Machine Factory* [2012] HKCU 816.

10. [2015] SGHC 156.

11. [2007] 1 SLR 989.

12. [1997] ADRLJ 95.

regulation that has generally been adopted in jurisdictions where third party funding is permitted.”¹³

In our view, this is the correct approach, at least to begin with. It is axiomatic that in order to be successful, regulation must be principled and proportionate to the actual risks in question. Whereas insufficient regulation of a high-risk industry can lead to market misconduct, excessive regulation of a low-risk industry inhibits growth. Since funding is non-recourse, it is inherently self-regulating: funders will lose their investments if they finance unmeritorious claims. Further, in our experience, as detailed above, the evidence shows the risks relating to third party funding are minimal, and as the High Court of Australia found in *Fostif*, if risks do materialize, they can be addressed by existing court and tribunal powers.

Abolition of Maintenance and Champerty as a Tort

Both jurisdictions propose to carve out arbitral proceedings (including court proceedings in support of arbitration) from the torts (and in Hong Kong, the crimes) of maintenance and champerty. In Singapore, this has taken the form of an outright statutory abolition, similar to the Australian and English legislation cited above. These are welcome developments. As experiences elsewhere have shown, the reality is that medieval prohibitions against maintenance and champerty have become obsolete.

However, it will still be possible for funding arrangements to be held unenforceable if they constitute an abuse of public policy. In Singapore, arbitration funding agreements will be presumed to be enforceable, provided that the requirements prescribed by the Regulations are met (essentially, that the funder meets a defined capital adequacy requirement). If not, the funder will cease to be “qualifying” and its rights “under or arising out of the third-party funding contract affected by or connected with the disqualification or non-compliance are not enforceable.”¹⁴ The implication is that this will include accrued rights, which critically for a funder will include the right to the return of its investment and fee upon the successful outcome of a case.

13. Public Consultation on the Draft Civil Law (Amendment) Bill 2016 (“Amendment Bill”); Civil Law (Third Party Funding) Regulation 2016, Government of Singapore, 30 June 2016 at [12] (“Consultation Paper”).

14. Amendment Bill, *supra* note 13, at § 5B(4).

It remains to be seen whether this wording may lead to satellite disputes around whether or not a funder is “qualifying,” which could in turn act as a deterrent to investment. In the meantime, parties seeking funding would be well advised to do careful due diligence on their choice of funders and only choose funding partners with strong balance sheets.

Disclosure Requirements

MinLaw’s consultation paper states that,

. . . related amendments to the Legal Profession (Professional Conduct Rules) are envisaged [that] draw reference from best practices and international standards reflected in the revised International Bar Association Guidelines on Conflicts of Interest. In brief, (i) Legal practitioners will be under a duty to disclose the existence of a third party funding contract and the identity of the third party funder to the Court or tribunal and to every other party to the proceedings, as soon as is practicable.¹⁵

The HKLRC reached a similar conclusion, but the disclosure obligation will lie with funded parties and not their lawyers:

[i]f a Funding Agreement is made, the Funded Party must give written notice of the fact and the identity of the Third Party Funder on the commencement of the arbitration . . . or within 15 days after the Funding Agreement is made.¹⁶

Due to the particular nature of international arbitration proceedings (such as arbitrators’ conflicts), these disclosure requirements reflect a sensible position. However, this is subject to an important qualification. The disclosure to the Tribunal and opposing party should be of two discrete points only: first, the existence of funding (including the name and address of the funder), and second, whether the funding agreement contains an agreement to pay any adverse costs.

Opposing parties should not, as a matter of course, have access to the confidential financing arrangements of their opponents, which are irrelevant to the substance of a dispute. If, contrary to that submission, a Tribunal is minded to grant such disclosure, the

15. Consultation Paper, *supra* note 13, at [11].

16. THE LAW REFORM COMMISSION OF HONG KONG, REPORT—THIRD PARTY FUNDING FOR ARBITRATION 18 (October 2016).

relevant procedural award should provide for redaction of all commercially sensitive and case sensitive details (such as the litigation budget, the terms of funding, or the funder's risk assessment) which might confer a tactical advantage on an opposing party.

Control by the Funder

There are two important issues which have been thus far left open by both legislatures. The first is the degree of "control" to be permitted to a third-party funder. Arbitration is a process founded on the consent of parties, as expressed in their contractual terms. Consistent with the principle of freedom of contract is the principle that parties should be free to choose where and how their disputes are resolved, and similarly free to determine how their disputes be managed on their behalf. The fact is that litigation, for many, is a very unwelcome drain on time and resources particularly for those that are inexperienced in the process. For such clients, litigation management services from a professional provider like IMF Bentham removes a significant burden and distraction from their shoulders.

Accordingly, in our view claimants should have the right to freely choose the level of involvement in the dispute they cede to a funder, provided there is no prejudice to the court or Tribunal's process. Any proposed fetter to this right is contrary to the parties' freedom of contract and contrary to the consensual nature of arbitration. Further, this approach appears to sit oddly with the fact that, in modern societies such as Singapore and Hong Kong, competent adults may give control over their affairs to others through a power of attorney, and yet could not give control over their litigation to a professional, fulltime, expert litigation manager such as a funder if they wished to do so.

The experience in Australia, post-*Fostif* shows clearly that initial concerns that funders would subvert the civil justice system if they were allowed to manage proceedings were unfounded. In fact, given the provisions in IMF Bentham's Australian funding agreements—such as the provisions that enable funded parties to override any instructions given by IMF Bentham to the lawyers, and the provisions that deal with how to resolve disputes in relation to settlement—there is no such thing as "total control" or "absolute control."

It is important that the lawyer's ethical and fiduciary duties owed to the funded party must not be restricted or impeded by the funder and, in the event of a conflict arising between the funder and the funded party, the lawyer must be free to act in the best interests of the funded party, even if this is detrimental to the funder. These protections can be expressly included in litigation funding agreements and policies on conflicts of interest.

Adverse Costs

The second unresolved issue is whether arbitral tribunals should be granted jurisdiction to award adverse costs against funders who are not party to the arbitration agreement. This is an issue unique to arbitration, since as explained above Australian and English courts already possess the powers to make costs orders against funders. In our view, it is appropriate for arbitral tribunals to have the power to award costs against a funder, *provided*:

- the funding agreement for that arbitration contains an obligation to pay any adverse costs award (noting that not all funded clients will choose to contract for such an obligation; for example, the client may wish to bear the risk itself, or obtain an ATE insurance policy from another provider); and
- the adverse costs order arises in relation to costs incurred in a period in which the arbitration was funded by the third-party funder in question (noting that not all proceedings are funded from the outset; it is inequitable for costs to be ordered in respect of matters arising prior or after the period of funding).

This position is consistent with International Bar Association (“IBA”) Guideline 6(b), which requires the presence of a

direct economic interest in . . . the arbitration: If one of the parties is a legal entity, any legal or physical person having a controlling influence on the legal entity, or a direct economic interest in, or a duty to indemnify a party for, the award to be rendered in the arbitration, may be considered to bear the identity of such party.¹⁷

17. IBA Guidelines on Conflicts of Interest in International Arbitration, General Standard 6(b).

Since the IBA has deemed that funders may be identified with the funded claimant, it is arguable that they may be deemed to have agreed to arbitration also. However, many, if not most, arbitration decisions we are aware of have found that the funder did *not* agree to be bound to the arbitration agreement. The funder therefore cannot necessarily be required to pay any adverse costs award. There is considerable potential for uncertainty in this regard, and for unnecessary applications seeking security for costs.

We suggest a simple solution to this issue. In most funded litigation in Australia, IMF Bentham agrees to pay any adverse costs ordered in the event that the funded claim fails, and lodges a simple Deed Poll with the court to this effect. In most cases, this avoids the need for applications for security for costs, saving the parties time and money and allowing them to focus on the substance of their dispute.

CONCLUSION

The new legislation in Singapore and proposed legislation in Hong Kong represent a watershed moment in the evolution of third-party funding for commercial disputes. They are the first legislatures to try and codify statutory rules in this area. Whilst some points of detail remain to be resolved, the proposed rules draw heavily and sensibly on the experience of funded court litigation in other common law jurisdictions. Those practices and standards are now being molded to fit the arbitral process, without the need for wholesale changes. This demonstrates the flexibility of both the funding business model and of arbitration as a powerful mode of dispute resolution.

We expect these innovations to bring increasing commercial and investment arbitration to Singapore and Hong Kong over time. And these sensible approaches will more generally promote the use of arbitration in dispute resolution in and around Asia. Should the results be successful—as in Australia, England, and Wales—other jurisdictions, arbitral institutions, and industry sectors can be expected to follow.