SIAC North East Asia Academy 2020: The Making of an Advocate and an Arbitrator (Virtual Edition) Day 1: Advocacy Training

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SIAC held the SIAC North East Asia Academy virtually on September 10 and 11, 2020. This intensive two-day workshop brought together a diverse group of practitioners from different parts of the world.

Day 1 focused on building advocacy skills while Day 2 was designed to train aspiring arbitrators and help them build their careers. SIAC's Head of North East Asia, Ms Michele Park Sonen, guided everyone seamlessly throughout the course.

I. The Art of Advocacy in Virtual Hearings

The program opened with an opening address by the eminent Mr Gary Born (President, SIAC Court of Arbitration; Chair, International Arbitration Practice Group, Wilmer Cutler Pickering Hale and Dorr LLP) titled *The Art of Advocacy in Virtual Hearings*. Mr Born spoke of how the pandemic has changed international arbitration and advocacy. He noted how the basic lessons of advocacy in in-person hearings have translated into virtual hearings, but with new considerations at play. He highlighted today's accelerated use of technology in arbitration, including online filings, hyperlinked documents, and remote testimony.

According to Mr Born, the SIAC North East Asia Academy aimed to look at the best way to conduct virtual hearings given its challenges, e.g., risk of witness coaching, technical glitches, presenting documents effectively, ensuring that the Tribunal is following the thrust of your questions, and observing the impact of a testimony on the Tribunal.

The challenge now for advocates is to embrace, manage and thrive in the new arbitration environment. We must retain and improve upon the useful tools we acquire in these unprecedented times to make arbitration faster, more accessible and cost-efficient.

II. Advocacy as a Lifelong Journey

The next segment made it clear that finding one's own voice and advocacy style is a lifelong journey.

In the panel, *Elements of Persuasive Advocacy and Effective Cross-Examination for International Arbitration*, which was moderated by Mr Hiroyuki Tezuka (Member, SIAC Court of Arbitration; Partner, Nishimura & Asahi), the panelists shared the following tips for effective advocacy, including for virtual hearings:

- **Written Advocacy.** The point of writing is to persuade the Tribunal of your case, stressed Mr John P. Bang (Member, SIAC Court of Arbitration; Head, International Arbitration, Bae Kim & Lee). After getting the basics right, each advocate will develop a unique writing style, while learning from others along the way. Hence, he considers written advocacy a "lifelong project."

  He emphasised that advocates need not try to get everything right in the first draft. After making an outline with the best arguments in bullet points, structure can be added and the draft further refined.

  Written advocacy is essential. Mr Nicholas Lingard (Partner, Freshfields Bruckhaus Deringer) added that he considers it the core of what we do and what Tribunals' decisions are based on.

Darius Chan

Nicholas Lingard

- **Oral advocacy.** The adage "less is more" sums up the lesson here. Mr Darius Chan (Associate Professor of Law (Practice), SMU; Advocate & Arbitrator, Fountain Court Chambers) stressed the need to be selective in showing documents to the Tribunal or witnesses, especially in a remote setting. A cross-examination bundle can be useful. The less the Tribunal is distracted, including by visual aids, the more it can focus on what matters.

- **Case Theory.** Ms Sae Youn Kim (Partner, Kim & Chang) espoused using the "rule of three" to develop a simple case theory that will explain your case. She recommended writing three short and memorable sentences that tell your story to the Tribunal. There must also be a theme to help arbitrators organise and process information, e.g., that your client was "*caught in the middle.*" Mr Chan added that a case theory should include a party's motives for breaching a contract.

- **Online Advocacy.** Mr Lingard acknowledged the unique challenges of online advocacy (such as multiple time zones, team members in different locations), but noted that its

objective is the same, to make the Tribunal see the case your client's way. Advocates must thus use the virtual hearing wisely, which may be the longest single time block the Tribunal has to focus on your case.

Mr Lingard's tips were: (a) be politely skeptical of the virtual environment, e.g., invite the witness to move the camera around the room so counsel can inspect the room to prevent any witness coaching, (b) be conscious of speed and slow down to ensure that the witness and the Tribunal are following your arguments, (c) know the documents thoroughly, and slowly identify parts that you want the witness and the Tribunal to focus on, and (d) always check if the Tribunal and witnesses are following your advocacy and questioning.

Timing is crucial in a virtual setting. Ms Joy Tan (Joint Head of the Commercial & Corporate Disputes Practice, Corporate Governance & Compliance Practice and the Financial Services Regulatory Practice, Wong Partnership LLP) suggested, in addition to going slow, having regular breaks and making sure that teams are prepared to flash the documents quickly.

Mr Bang acknowledged the need to adapt to the different dynamics of a virtual hearing, but noted how it may not be effective for cross-examination under certain circumstances. He explained, for instance, that a witness cannot be cross-examined on a document-by-document basis for two hours in a virtual hearing, or momentum may not be achieved when using a series of documents to impeach a testimony in the way it might be achieved in an in-person hearing.

- **Building Oral Advocacy Skills.** Ms Tan noted the challenges faced by young practitioners in building these skills due to insufficient opportunities or clients' reluctance to entrust hearings to them. However, she stressed that "there is no substitute for actual practice." So, they should practice whenever they can by litigating smaller cases, cross-examining minor witnesses, handling procedural hearings, and participating in mooting competitions and advocacy trainings when possible. She also recommended watching lead counsels advocate, and building a group of mentors and peers from whom to receive honest feedback.

  Ms Kim echoed the need for "practice, practice, practice!" Oral advocacy is about delivery, and delivery skills can be practiced in many speaking opportunities, including when explaining cases to partners or clients. Mr Tezuka added that young lawyers should always be ready to step in should the lead counsel in your case suddenly become unavailable.

- **Cross-examination.** "The harder I practice, the luckier I get," quoted Mr Bang to stress that effective cross-examination skills are honed over time. Thorough knowledge of the case is also the "bedrock of good advocacy." Advocates must be prepared, ready, confident and in control.

He also noted that the goal of cross-examination is to elicit an admission, to impeach a witness's credibility, or show the Tribunal that the witness did not provide all the information he or she had. There are different ways to achieve this, such as listing all the questions, including follow-up questions. A harder way is to list all the admissions you want and documents you will use. The last method is a hybrid approach where key questions are listed, with the key admissions needed, and notes on the documents. Space should also be allotted on a page's left side for comments.

Mr Lingard noted the commonly heard phrase that cross-examination may be the greatest legal tool ever invented to extract the truth, but observed that it also has more modest purposes. It disciplines what witnesses put in their statements, which stand as their direct testimony. In addition, to achieve fairness, the Tribunal must hear a party, and the vehicle through which they are heard is generally through cross-examination, and witnesses should be heard before their evidence is accepted or rejected. Thus, apart from seeking the truth, advocates have "modest goals", such as finding inconsistencies in the witness statements and the contemporaneous documents, and challenging the other party's story and possibly its witnesses' credibility.

Mr Tezuka added that cross-examination questions should have some focus instead of chronologically going through the issues in a witness statement.

For leading questions, Mr Chan suggested establishing one fact per question, and avoiding questions that start with how, why, what or where.

If translation is involved, Ms Kim suggested: (a) asking short, closed questions (eight words or less) to avoid translation issues, (b) using the best translator available, (c) agreeing on correction rules, (d) having someone else make objections to the interpretation while you focus on asking the questions, and (e) avoiding questions phrased in the negative to avoid mistranslation.

- **Witness Preparation.** Ms Tan discussed the dos and don'ts of witness preparation in light of its objective of developing a witness's confidence to testify. She suggested familiarising witnesses with the process and the venue or virtual setting, which may be unfamiliar to them. Witnesses should not coached as to what to say.

  Ms Tan also noted that lawyers may be bound by different ethical rules, which could affect the level playing field of the parties. In some jurisdictions, such as the UK, witnesses cannot be prepared in advance, while in others, such as the US, extensive witness preparation and full-scale rehearsals with mock cross-examination are common. Singapore adopts the middle ground. A witness's testimony must be his or her own independent evidence. Scripts are not allowed. Rehearsals with some questions and answer are permissible if not too lengthy or repetitive, and they should not be done in groups to prevent cross-contamination. Mr Lingard also cautioned against too much

preparation, which might produce inauthentic witnesses. Ms Tan also referred to the IBA guidelines on Party Representation.

If translation is involved, Ms Kim suggested instructing witnesses to speak in short sentences and to wait for the translator to finish before continuing.

- **Virtual Hearings.** As to its benefits, Ms Kim noted how virtual hearings can reduce delay, especially if obtaining an award faster outweighs the importance of having an in-person hearing.

  Ms Tan added that witnesses may have a better experience in a virtual hearing because normal hearings can be stressful and confrontational. Witnesses may be less nervous giving evidence virtually, thereby potentially allowing the Tribunal to better assess their credibility. Mr Bang noted, though, that a skilled cross-examiner would have less opportunity to intimidate a vulnerable witness.

In sum, there are many aspects of advocacy, online or otherwise, that need to be considered, practiced and polished over time.

III. Mock Evidentiary Hearings

Armed with plenty of sage advice from the panel discussion, the participants were then divided into six groups for two rounds of mock evidentiary hearings to give opening and closing submissions, and conduct cross-examination and re-examination of the factual and expert witnesses.

The faculty put on their sole arbitrator hats while the following facilitators cleverly role-played as factual or expert witnesses: Ms Hyojung (Kelly) Shin (Associate, Shin & Kim LLC), Ms Alcina Lynn Chew (Partner, Tan Kok Quan Partnership), Ms Yoko Maeda (Partner, City-Yuwa Partners), Ms Jill Ann Koh (Partner, Wong Partnership LLP), Mr Jordan Tan (Co-Managing Partner, Audent Chambers LLC), Ms Eriko Kadota (Associate, Linklaters Tokyo), Mr Yutaro Kawabata (Member, YSIAC Committee; Partner, Nishimura & Asahi), Ms Margaret Joan Ling (Partner, Allen & Gledhill LLP), Ms Ong Pei Ching (Partner, TSMP Law Corporation), Mr Calvin Liang (Advocate, Essex Court Chambers Duxton, Singapore Practice Group), Ms Wonyoung (Karyn) Yoo (Member, YSIAC Committee; Attorney, Kim & Chang), and Mr Sam Kim (Senior Foreign Attorney, Yoon & Yang).

The faculty member and facilitators in my group were Mr John P. Bang, Ms Yoko Maeda, and Ms Jill Ann Koh. Below is a summary of their comments during our mock evidentiary hearings:

- **Witness Preparation.** Without it, it can be difficult to elicit what you want from your own witness, as noted by Ms Maeda. Ms Koh added that preparation helps the witness to

be familiar with his or her own witness statement and to know what you are alluding to in re-examination.

- **Opening Submissions.** In addition to structure, Ms Maeda suggested including key details in an opening statement. Mr Bang added that an opening statement's purpose is to tell the Tribunal what you are going to do at the hearing, while a closing statement should focus on what you proved and why you should win.

- **Cross-examination.** Mr Bang suggested putting the "big money question" at the end of a topic. Questions can be asked through favorable documents. Arguments can also be made through your questions. He added that follow-up confirmatory questions suit problematic witnesses, but generally, one should move on after getting the desired answer because a smart witness might realize he or she had made an admission and use a repetitive question to "correct" him or herself or say something else.

  For the tough task of cross-examining experts, Mr Bang suggested using your expert's opinions in your questions.

  Ms Maeda also observed that if a witness states that there are various reasons for an action or decision, but only mentions one, then it may be worth exploring the other reasons.

  Ms Koh added that a witness can be cornered into giving the desired answer by the use of follow up questions or reference to other evidence. No open-ended questions should be asked during cross-examination to avoid losing the tempo and impact of the questions, which help put pressure on a witness. Mr Bang added that open-ended questions may give witnesses a chance to say something that could hurt your case.

  Both Mr Bang and Ms Koh stressed that questions should be phrased carefully, and their potential impact on the Tribunal should be considered.

- **Re-examination.** Mr Bang cautioned against asking leading questions and questions on matters that did not arise during cross-examination, and noted that answers to leading questions will not be given credence anyway.

  To help the witness understand the answer that you are trying to elicit, Mr Bang suggested first providing the context and refreshing the witness's memory by stating the question asked during cross-examination and the witness's answer, and then informing the witness that a few questions will be asked to clarify the witness's answer. Open questions can then be asked. Another way is to use the document used in the cross-examination to ask a question that may be relevant to a previous question.

- **Closing Submissions.** In explaining to the Tribunal why you should win, Mr Bang suggested going through the key provisions and your best evidence. Written closing submissions help the Tribunal write the award in your favor.

He noted that in practice, there may be several days of witness testimony, and if oral closings are scheduled, then they must: (a) cover all key admissions, (b) address any questions of the Tribunal asked during the hearing, (c) make use of opening submissions, (d) rebut the other side's arguments, and (e) capture things that took place in the hearing, including what the witnesses or the other counsel said. Ms Koh added that, in putting together everything that happened in the hearing, inconsistencies should be pointed out.

IV. The Experts in Action

For the finale, we were treated to an excellent virtual hearing demonstration by the teaching faculty, which featured an interesting "hot-tubbing" session of the expert witnesses.

The hearing was chaired by Mr Hiroyuki Tezuka acting as Presiding Arbitrator, with Mr John P. Bang and Ms Joy Tan as his Co-Arbitrators. Mr Gary Born and Ms Yoko Maeda role-played as the Counsel for the Claimant, and Ms Kim Sae Youn and Ms Margaret Joan Ling role-played as Counsel for the Respondent. Ms Hyojung (Kelly) Shin, Mr Jordan Tan, Ms Eriko Kadota and Ms Alcina Lynn Chew role-played as factual and expert witnesses.

Left to right: Hiroyuki Tezuka, Gary Born, Joy Tan, John P. Bang, Yoko Maeda, Alcina Lynn Chew, Hyojung (Kelly) Shin, Margaret Joan Ling, Sae Youn Kim, Jordan Tan and Eriko Kadota

It was amazing to watch these seasoned practitioners in action. I was especially impressed by Mr Born's short and pointed redirect questions. It was like watching a surgeon working with precision. The opening and closing submissions were substantive, well-structured and outstanding. Mr Born's closing also brought the program to a memorable end. He cleverly used opposing counsel's earlier statement against them.

A fun and lively virtual networking event followed where the faculty, facilitators, and participants were randomly shuffled into different breakout groups to meet other people and

enjoy being part of the diverse and borderless SIAC community. Kudos to all the organizers for bringing us together, and arranging an enriching and unforgettable event!

SIAC North East Asia Academy 2020: The Making of an Advocate and an Arbitrator (Virtual Edition)

Day 2: Arbitrator Training

By Dean Park, Associate, Kim & Chang

I. Introduction

The SIAC North East Asia Academy, held on 10 and 11 September 2020, featured panel discussions and workshops on advocacy and the role of an arbitrator. Day 2 focused on arbitrator training. The first group of panelists discussed pre-appointment checks and disclosures, accepting an appointment as an arbitrator, running an efficient arbitration, managing parties and counsel, and working effectively with fellow arbitrators. Following the lunchtime chat, which covered the topic of building one's career as an arbitrator, the second group of panelists discussed issues involved in tribunal deliberations and drafting an enforceable award.

II. Panel Discussion 1: Pre-Appointment Checks and Disclosures; Accepting an Appointment as an Arbitrator; Running an Efficient Arbitration; Managing Parties and Counsel; Working Effectively with Fellow Arbitrators

The first panel was moderated by Dr. Eun Young Park (Member, SIAC Court of Arbitration; Co-Chair, International Arbitration & Cross Border Litigation Practice, Kim & Chang), and the panelists comprised of Mr. Chong Yee Leong (Member, SIAC Board of Directors; Partner, Allen & Gledhill LLP), Mr. Kap-You (Kevin) Kim (Senior Partner, Peter & Kim), Mr. Toby Landau QC, (Member, SIAC Court of Arbitration; Barrister and Arbitrator, Essex Court Chambers Duxton (Singapore Group Practice) and Essex Court Chambers (London)), Ms. Yoshimi Ohara (Partner, Nagashima Ohno & Tsunematsu), and Mr. Mohan Pillay (Partner & Head of Office, Pinsent Masons MPillay LLP, Singapore). The speakers discussed how to become an effective arbitrator in arbitration proceedings.

A. Pre-Appointment Checks and Disclosures

One of the key issues considered by the panelists was the importance of conducting appropriate pre-appointment interviews. Dr. Park noted that arbitrators must ensure that they maintain independence and impartiality. Mr. Kim explained that arbitrators must first be contacted by parties' counsel, not the parties themselves. An arbitrator should disclose the fact that he or she was interviewed and the contents of such interview. Mr. Kim also pointed out that no confidential information should be given during pre-appointment interviews. The interview should be focused on an arbitrator's linguistic abilities or areas of expertise, not the actual case. Ms. Ohara added that counsel should not ask about the merits of case because it could increase the possibility of a challenge against the arbitrator and

ruin the arbitration proceedings. She explained that counsel should never share specific facts or the circumstances giving rise to a dispute, the arguments of either party, the merits of the case, or the prospective arbitrators' view on the merits.

B. Accepting an Appointment as an Arbitrator

The panelists then discussed what a potential arbitrator should be aware of in accepting an appointment as an arbitrator. Dr. Park started off by mentioning that the conflict check is a crucial element in the process. Mr. Pillay introduced three considerations to avoid conflicts of interest when accepting an appointment. A potential arbitrator needs to (1) investigate any connection with the parties of the dispute, including affiliates of the parties, either upstream or downstream, (2) consider the appointment history of the counsel or legal representatives of the parties, and any professional relationships with the individual counsel appearing, and (3) consider any relationship that he or she might have with the other members of the tribunal. Moreover, any doubt should be resolved in favor of disclosure because it is appropriate to let the parties know about any potential conflict of interest issues.

C. Running an Efficient Arbitration

One of the key elements in running an efficient arbitration is to have an effective preliminary meeting. The panelists discussed what should be discussed and considered during this meeting. Mr. Kim discussed five key issues to be discussed in a preliminary meeting: (1) any jurisdictional or procedural challenges made against an arbitrator or arising from any issues with the arbitration agreement; (2) the identities of the parties involved and their related parties; (3) the procedural timetable identifying the number of submissions to be made and whether and when discovery will be conducted; (4) how the parties will number and organize the documents and exhibits; and (5) the expected number of witnesses and experts, and the issues the experts will address.

Mr. Pillay also added that the efficiency in preliminary meetings with parties, especially in the beginning, is impacted significantly by the preparation that is done for the meeting. He suggested that the tribunal get together in the early stages, work out the kind of information that it would like the parties to address at the preliminary meeting, and send it in advance to the parties so that they can have the opportunity to think about the issues beforehand.

The panelists also discussed whether virtual hearings could become a new standard, and how efficient they would be. Mr. Landau suggested that we need to look at the advantages and disadvantages of virtual hearings to predict whether they will become the new normal post-COVID. The advantages of virtual hearings include: (1) efficiency and economy to the arbitration process; (2) adding great discipline to hearings by forcing the advocacy to become shorter and more focused and putting more emphasis on written submissions; (3) adapting to electronic bundles, which are very efficient; (4) producing leveling effects including opening up access to hearings to all relevant parties, regardless of their financial

capability to attend in-person hearings; and (5) impact on witness availability because the idea of a witness not being available is a more difficult argument to make in virtual hearings. The disadvantages include (1) the difficulty of advocacy through a virtual medium due to certain limitations such as missing eye contact, and body language; (2) the difficulty of conducting witness examination and expert testimony during remote proceedings; (3) logistical problems such as time zone differences and discrepancies in technologies among participants; and (4) the intensity of remote hearings, making it difficult to conduct them for a long time. He concluded that, in the end, whether a remote hearing will be the new standard post-COVID depends on the nature of the hearing. For example, virtual hearings would be ideal for short hearings such as procedural hearings and for hearings that discuss uncontroversial or interlocutory matters. They would be less ideal for heavy witness examination hearings. Also, there might be a new system of hybrid where some participants meet in-person while others participate remotely.

Left to Right: Kap-You (Kevin) Kim, Dr Eun Young Park, Mohan Pillay, Toby Landau QC, Chong Yee Leong and Yoshimi Ohara

D. Managing counsel and proceedings

Next, the panelists discussed how to handle potentially tricky scenarios as an arbitrator such as when a party makes multiple requests for a time extension, raises constant frivolous objections, or tenders new evidence late in the proceedings. Mr. Leong explained that the tribunal will have to start to consider whether it should allow such requests. If the requests force the opposing party to incur additional costs, then the tribunal could deal with it as a cost matter, or at the merits hearing. If the requests inflict other injuries not related to costs, an adverse inference may be drawn depending on the reason for the requests. He concluded that arbitrators must be able to weigh different factors and use the arsenal of tools available to deal with the situation.

E. Working effectively with fellow arbitrators

The panelists then discussed how to effectively work with other arbitrators, especially when a fellow arbitrator appears to be partial or biased. Mr. Landau categorized predisposition into two types. First, predisposition can occur during a hearing. It would be incumbent on the other arbitrators to balance out the predisposition to preserve the integrity of arbitration. They can achieve the balance by speaking to the arbitrator directly or asking hostile questions in the other direction. Second, predisposition can occur during deliberations. An arbitrator must make sure that the third arbitrator knows about the predisposition. Mr. Landau then concluded that predisposition rarely influences the proceedings because the other two arbitrators become aware of it and take action to balance out the predisposition.

Moreover, the panelists discussed potential issues in working with arbitrators from different countries, arising out of the differences between the civil law legal system and the common law legal system. Ms. Ohara and Mr. Leong both explained that what matters in the end is the nature of a case and how each party presents the case to the tribunal, not cultural differences. Also, tribunals nowadays are very practical and pragmatic in terms of dealing with potential issues arising out of the differences between civil law and common law arbitrators.

III. Workshop: How to Handle Potentially Tricky Scenarios as an Arbitrator

Following the panel discussion, we proceeded with workshops where we broke up into small groups to discuss potentially tricky scenarios that might arise when acting as an arbitrator. Various topics were addressed, including situations during the arbitrator appointment process when the parties seek the arbitrator's views on certain subjects or otherwise seek to discuss substantive matters in relation to the dispute. Each participant was given an opportunity to present his or her views, and the faculty provided immediate and insightful feedback in response.

IV. Lunchtime Chat: Building your Career as an Arbitrator

The first panel discussion and workshop were followed by a Lunchtime Chat moderated by Ms. Elaine Wong (Partner, Herbert Smith Freehills LLP). The panelists comprised of Ms. Christine Artero (Independent Arbitrator, The Arbitration Chambers), Professor Joongi Kim (Professor of Law, Yonsei Law School), Mr. Christopher Lau, SC (Chartered Arbitrator, 3 Verulam Buildings), Ms. Yoshimi Ohara, and Dr. Eun Young Park discussed how to build one's career as an arbitrator.

Mainly, the panelists discussed how they became arbitrators, what motivated them, how they received their first appointments, and how an arbitrator could set himself or herself apart. The panelists agreed that producing great quality work, maintaining a good reputation, and developing professional relationships with other professionals and institutions are the most important aspects of building a career in arbitration.

V. Panel Discussion 2: Tribunal Deliberations and Drafting an Enforceable Award

The second panel discussion considered issues in tribunal deliberations and drafting an enforceable award. The discussion was moderated by Mr. Alan Thambiayah (Member, SIAC Court of Arbitration; Council Member, ICC Institute of World Business Law; Independent Arbitrator, The Arbitration Chambers), and the panelists comprised of Ms. Christine Artero, Professor Joongi Kim, Mr. Christopher Lau, SC, Mr. Steven Y.H. Lim (Arbitrator & Barrister, 39 Essex Chambers Singapore), and Mr. Yoshihiro Takatori (Partner, Kasumigaseki International Law Office, International Arbitration Chambers, F.C.I.Arb).

A. The definition of an arbitration award

Professor Kim started off the discussion, pointing out that neither the New York Convention nor the Model Law contain any definition of an award. He gave his rough definition of an award: a written decision by a tribunal duly appointed based on an arbitration agreement that determines something substantive. He explained that an award receives the benefits of the New York Convention. Through the Convention, an award may be recognized and enforced, and an award usually has a res judicata effect. Once an award is granted, the tribunal is out of the picture. Also, the distinction between interim and partial awards is very murky, and most statutes do not distinguish between the two, but generally, interim and partial awards are final awards that decide substantive issues.

Mr. Lim added that the Singapore International Arbitration Act defines an award as something that decides a substantive issue and it includes interlocutory, interim and partial awards, which suggests there is distinction between the three. But he agreed with Professor

Kim that it is extremely difficult to draw a distinction between interlocutory, interim and partial awards. He also mentioned that once a final award is given, the tribunal cannot go back and review it. The moderator, Mr. Thambiayah, summarized the discussion, concluding that nomenclature is not so important, but what matters is the substance of an award.

Left to Right: Prof Joongi Kim, Christopher Lau, SC, Alan Thambiayah, Steven Y.H. Lim, Christine Artero and Yoshihiro Takatori

B. Formal and procedural requirements of a valid award

Ms. Artero discussed the formal requirements of a valid award first. Among other things, an award must be in writing, dated, and signed by all the members of the tribunal or the majority. An award must specify what type of award it is. An award must contain

reasoning, explaining to the parties why their arguments were successful or unsuccessful. Also, the reasoning must be based on arguments put forth by the parties.

She then discussed the procedural requirements. A tribunal must confirm that the parties have a proper arbitration agreement, and that the subject matter of the dispute can be arbitrated. Due process issues and how the tribunal was appointed must also be considered. She also mentioned that the tribunal should not go beyond what has been submitted for it to decide.

Mr. Lim added that, while a tribunal should not decide on what the parties did not put forward, if there is an important issue that is relevant in rendering a final award but that was not adequately addressed by the parties, the tribunal could and should discuss it with the parties and give them the opportunity to address the issue.

C. Enforcement of an order

The panelists then discussed the enforcement of an order, as opposed to a final award. Mr. Lim explained that what is important is the subject matter of an order. If an order is focused on substantive matters, then it might be considered as an award. For example, many say that interim measures can qualify as an award and should be enforced as an award. Even though there is a disagreement as to whether an interim measure is an award, there is general agreement that an interim measure should be enforced. Jurisdictions such as Hong Kong and Singapore enacted legislation to enforce these interim measures. Moreover, there is the 2006 amendment to the Model Law, which deals with interim measures as well as the enforcement of interim measures. It sets up a parallel regime of enforcing an interim measure similar to the New York Convention and the grounds of the Convention. But he pointed out that only about 30 countries have applied the 2006 amendments so far.

D. Purpose of deliberation

Ms. Artero explained that the purpose of a deliberation is to carefully consider and discuss the reasons for and against the parties when coming to a decision. It is not limited to the matters that are in dispute such as the merits of the case or procedural matters, but it can also include matters that are within a tribunal's prerogative. She added that it is extremely important to protect the integrity and fairness of the tribunal by keeping deliberations confidential. For example, if a party knows in advance what the tribunal has been discussing as well as the views that have been exchanged amongst the tribunal members, that party would be in a far better position than the uninformed party.

E. What is necessary for there to be an effective deliberation?

Mr. Takatori discussed the elements of an effective deliberation including understanding the goal of deliberation, efficient communication, organizing key issues and facts, and summarizing the agreed points and disagreed points.

VI. Workshop: Reviewing a Draft Award

Following the panel discussion, we participated in a second workshop on reviewing a draft award. We were again divided into small groups, and we discussed a sample draft award that had been provided to the participants in advance. Many flaws, some obvious and others subtle, were intentionally written into the draft for the participants to discuss during the session. Each participant had numerous opportunities to express their views, and the faculty responded with comments and their own reactions when reviewing the draft.

VII. Closing Remarks by Dr. Eun Young Park

Dr. Park started his closing remarks by first noting that this was the first year in which the SIAC Academy was held for the broader North East Asia region, and he appreciated that leading practitioners, faculty and facilitators from various nations such as Korea, China, Japan, and Singapore gathered together. He also commented that it was fortunate for the arbitration community to have adjusted relatively well to the new reality posed by COVID-19, and commended SIAC for being one of the prime examples of nimble adjustment to the changes that have been happening at an incredibly fast pace. He thought that, despite the difficulties created, it was encouraging that the arbitration community has used this as an opportunity to further blur the borders between locales, nations and regions, and has given people from around the world an opportunity to converse and open dialogues with their counterparts across these borders.

He also recalled Chief Justice Menon's keynote speech in the recent SIAC Congress 2020, and that the advocacy training and skillsets acquired in this Academy would ultimately help further solidify the rule of law.

Dr. Park concluded by thanking Gary Born, the President of the SIAC Court of Arbitration; Seok Hui Lim, the CEO of SIAC; Michele Sonen, Head (North East Asia) at SIAC, and the countless others that helped the SIAC Academy of 2020 come into being.