

IN CONVERSATION WITH OUR PANEL ARBITRATOR

SCMA'S KNOWLEDGE SHARING JANUARY 2023

Mr. Tony Budidjaja

Senior Partner, Budidjaja International Lawyers

<https://www.linkedin.com/in/tony-budidjaja-4ba5756/>

<https://budidjaja.law/en/home/>



1. What can be done to raise the importance of arbitration in the maritime community?

Raising the importance of arbitration can be done by striking a balance between efficient conduct of arbitration and ensuring that due process principles are applied. In line with the rapid development in the Maritime Community, I see that the parties in dispute are constantly seeking ways to reduce costs, reduce delays, as well as increase efficiency. If we are able to implement procedures and infrastructure that could address these concerns, we should be able to increase the attractiveness and importance of arbitration as a dispute resolution mechanism for the Maritime Community.

I am pleased that the Maritime Community in the region has adapted by establishing the SCMA to offer the non-administered model of independent maritime arbitration. SCMA not only offers a "flexible model of arbitration", but has also introduced, amongst others, the Expedited Procedure and other provisions for forming a tribunal or panel quickly. The expedited procedure provides greater efficiency and focuses parties' attention on key issues. However, the Expedited Procedure may not be appropriate in all cases where the total claims (and counterclaims) are US\$300,000 or less. Some may take a long time to resolve due to the sheer number of documents or the involvement of complex factual and/or legal issues. In addition, although the duration of the proceedings is shortened, the costs incurred by the parties may also increase due to the fact that the scope of the work to be performed increases. Thus, periodic reviews and enhancements to the arbitration procedures are needed and this is something that SCMA has been continually doing.

To make these benefits known to all members of the Maritime Community, I propose greater cooperation between SCMA and other like-minded maritime arbitration institutions in raising the public's awareness of alternative forms of dispute resolution (ADR). The benefits of ADR and their respective benefits vis-à-vis litigation could be compared. This would raise the public's awareness of the importance of and build its confidence in arbitration.

2. How many years have you been an arbitrator? What made you choose arbitration and how do your previous experiences help in this regard? What is one of your most memorable or challenging experiences as an arbitrator?

I have been performing my duty as an arbitrator for over 5 years now. Personally, I chose arbitration because I wanted to be able to better serve people seeking justice, and to develop the maritime laws in this region - which I might add, has grown at a truly remarkable pace in the last couple of decades.

With my past over 20 years of experience as an advocate and counsel, my reputation for providing quality advice, and my personal highly ethical standards, I hope that I have made a positive contribution and may continue to do so. Having practised as a counsel, I am committed to delivering individually tailored solutions to specific problems. I do this sometimes by combining data with both ingenuity and integrity. And as part of providing tailored solutions to my clients, I am able to take complex problems and break them into smaller pieces.

My previous experience as a practising lawyer has equipped me with the skills necessary to work as an arbitrator. My proficiency in effective communication comes in handy when presiding over an arbitration where I will need to clarify the arguments and concerns of all parties as well as when I am drafting pleadings, agreements and decisions.

My decision-making skills enable me to make sound judgments as I need to weigh the facts and apply the relevant laws and precedents - both of which might be for jurisdictions I don't practise in. Working as an arbitrator also requires me to be able to think on my feet, which is another skill I developed as a practising counsel.

I always believe that every problem has a solution or, if there isn't one, then there should be.

3. What makes for a successful maritime arbitrator? What advice would you give to someone aspiring to get into the work of maritime arbitration?

I believe that a successful arbitrator must be equipped to provide the parties with the benefits of arbitration as a mechanism, speed, economy, and more importantly justice; as well as ensuring that the parties have confidence in them in terms of integrity, impartiality, and quality of their works as an arbitrator. This means they must not only be well-versed in arbitration as both a "science" and an "art", but also have a calling for justice.

On the one hand, in the science of arbitration, they need to be knowledgeable regarding their role, authority, and responsibilities as an arbitrator, preparing and writing the award, and knowing and understanding the procedural rules in effect. Besides, they must always look out for the much-debated principles of natural justice.

On the other hand, they also need to be schooled in the art of arbitration. This has more to do with the execution of the arbitration. They need the ability to be truly impartial and ethical to ensure that the hearing is carried out efficiently and managed appropriately, to manage panel dynamics and to deal with difficult attorneys during the arbitration.

As with most other professions in the legal industry, there is a rising concern that technology may render our roles obsolete. However, I firmly believe that there is and will always be an appetite for arbitration, and that as long as honest and hard-working arbitrators and legal professionals commit themselves to the smooth working of justice, we have nothing to fear.

I believe that honesty and truthfulness are key factors in winning the respect and confidence of the parties and my fellow arbitrators.

4. What are the key areas in which the Singapore Chamber of Maritime Arbitration adds or can add value to the maritime community?

The SCMA adds value to the maritime community firstly by being an arbitration institution that specifically caters to the needs of this community. While this may seem obvious, SCMA's rules and approaches generally reflect the prevailing practices of the maritime community and therefore positions itself as an institution that is able to adapt to any developments in both practice and regulation in the maritime community.

Secondly, SCMA adds value through a lens of commercial attractiveness. The number one disadvantage of arbitration which may come as a surprise is the cost factor. At SCMA, parties only pay fees to SCMA when they require SCMA to play an active role, for example, when it appoints an arbitrator. Furthermore, in the case of commencing an arbitration, no filing fees are incurred. There are also no administrative fees or deposits required. The fees charged by SCMA for its services, such as fund-holding and appointment of an arbitrator, are very reasonable.

Furthermore, the regulation of small claims procedure which involves an expedited and more simplified arbitration procedure for simpler disputes which involve more modest claims, or simpler points of fact and/or law being argued, provided that the aggregate amount of the claim and counterclaim is less than USD 300,000 excluding interest and costs. However, it is also worth noting that the SCMA also provides the flexibility for the parties to agree to the aforementioned small claims procedure to apply to claims in excess of USD 300,000 or even to exclude the application of the small claims procedure completely.

In addition, to the above, the SCMA panel of arbitrators consists of specialists in one or more maritime disciplines with at least 10 years' experience in the arbitrator's field of specialty which all but guarantees that the arbitrator appointed to preside over a dispute has the requisite experience.

Lastly, the SCMA has shown an express commitment to being industry-friendly as well. This can be seen in the public consultation it held to form the 4th Edition SCMA Rules. This allowed the new rules to be drafted to be more user-friendly and accessible to the maritime community as well as ensuring that the changes are catered to the needs of the maritime community.