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Q&A With Akin Gump's Hamish Lal

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Hamish Lal

Hamish Lal is a partner in Akin Gump Strauss Hauer & Feld LLP's litigation practice in London, where he represents clients in a range of high-value, highly technical international construction and engineering disputes and arbitrations. He acts under many applicable laws (common law and civil codes) including United Arab Emirates Law, Law of Iraq, Law of Nigeria, Qatar Civil Code, Law of Denmark and English Law, and has acted under the rules of the ICC, LCIA, DIAC, DIFC-LCIA and the Stockholm Chamber of Commerce, as well as in contractual mediations, expert determinations and ad-hoc arbitrations under the UNCITRAL Rules.

Lal's matters often address prospective and retrospective delay analysis, disruption, cumulative impact claims, FEED errors, nonconformance reports, design codes (such as DNV-OS-J101), pipeline weld defects, bad-weather windows, vessel-standby, unforeseen ground conditions, professional negligence, taking over/completion, liquidated damages, incentive payments, variations and termination under various forms of contract including FIDIC, LOGIC/CRINE and NEC3.

Q: What attracted you to international arbitration work?

A: Put simply, three specific things attracted me to international arbitration and, in particular, to international construction arbitration. Firstly, major construction, infrastructure, oil, gas and power projects typically take place in emerging markets, developing and geographically diverse countries, and thus the subject matter and the parties tend naturally towards using international dispute resolution methods — where international arbitration is the primary method.

For example, in my projects under construction in countries like Iraq, Qatar, United Arab Emirates, Kazakhstan, Nigeria, Egypt, Sierra Leone, Denmark and South Africa the parties (of their funders) elect to have disputes resolved through arbitration rather than go to the national courts — speed; freedom to select the tribunal and the procedure; confidentiality; and relative enforceability of awards are all reasons cited in support of international arbitration.

Secondly, the opportunity to travel to various seats and to see at first-hand major complex construction projects was compelling on many levels. Thirdly, international arbitration provided the opportunity for advocacy and the opportunity to work with differing tribunals in a range of different seats and under a

variety of applicable laws. The combination of procedural law, applicable law (including the interplay between civil codes and the common law) and highly technical disputes was attractive from intellectual, academic and cultural interest perspectives.

Q: What are two trends you see that are affecting the practice of international arbitration?

A: Neutrality of the tribunal: A growing skepticism and thus a move away from having counsel and party-nominated arbitrators from the same entity (whether that be the same law firm or an English chambers of barristers) is an obvious and tangible procedural trend. This is especially so where the parties originate from the Middle East, South Africa or North Africa. This point is different to the debate between leading arbitrators (Charles N. Brower and Charles B. Rosenberg and Jan Paulsson and Albert Jan van den Berg) concerning the impartiality of party-appointed arbitrators — put simply, Jan Paulsson's Paper "Moral Hazard in International Dispute Resolution," advanced that, in lieu of any arbitrators being appointed by parties, they should all be appointed by the administering institution whereas Brower and Rosenberg concluded that "the well-established right of the parties to choose the arbitrators and the ability of a member of the tribunal to express differing views in a dissenting opinion are significant elements of perceived legitimacy.

The second tangible trend is the increase in use of the relatively newer arbitration centers such as the Singapore International Arbitration Centre (SIAC) and the Abu Dhabi Commercial Conciliation and Arbitration Centre (ADCCAC) (the rules of which were effective from October 20, 2013). Contracts that included these rules in the arbitration agreements are now giving rise to disputes and so one can see the number of requests in these centers increasing significantly and quickly.

For example, the SIAC has seen a noticeable increase in the number of filings of international disputes since the mid-2000s — 29 new filings in 2005, rising to 223 in 2013 — (this increase in filings appears, in part, to be the result of the SIAC's efforts to actively promote Singapore as an international venue for international arbitration along with revisions to the 2010 rules. A similar trend can be seen at the Korean Commercial Arbitration Board (KCAB) in South Korea.

Q: What is the most challenging case you've worked on and why?

A: The opponent failed to follow the procedural timetable or any of the procedural orders relating to document production or expert evidence. The real challenge here was to best assist the tribunal and to also ensure that any potential enforcement problems were apprehended and mitigated. The tribunal's frustrations had to be tempered by the need to comply with due process and the opponent's rights to natural justice — which meant that the timetable became entirely unpredictable. It was also a challenge for our client who began to query the tribunal's powers and whether the award would ultimately be enforceable in Libya.

Whilst the opponent succeeded in causing significant procedural delay, failed to produce documents commensurate with the Redfern Schedule, and failed to properly understand and apply the procedural law, our client ultimately succeeded and obtained an (enforceable) award. The award was carefully reasoned on all procedural and substantive levels and thus addressed my biggest challenge or concern about follow-on enforcement. On reflection, this was a tough case primarily because we were less concerned with the substantive law but were consistently seeking to construe and apply the procedural law such that enforceability of the award would not be compromised.

Q: What advice would you give to an attorney considering a career in international arbitration?

A: Embrace the travel opportunities, open your mind fully to the various applicable laws, and enjoy the access to, and working with, the world's best (subject matter) experts. I also think it is always better to seek to assist the tribunal rather than 'fight' the opponent. The client's interests are the most important thing and thus it is better to focus on how one can best assist the tribunal to resolve the substantive dispute.

It is also a pleasure and highly rewarding to work with leading local counsel and so one ought to keep one's mind open to appreciate the subtle differences and overlaps between the common law and civil code legal systems. Finally, and it goes without saying, but ethics and an ethical approach at all times makes this career much more rewarding. Whether one is dealing is with the tribunal, administrative counsel or the opponents, it is always better to be ethical. International arbitration is a fascinating practice area, but it requires hard work and intellectual rigor.

Q: Outside of your firm, name an attorney who has impressed you and tell us why.

A: Philip Capper, head of international arbitration at White & Case, is the attorney who has impressed. He is a good ambassador for international arbitration and has blended very well the procedural aspects of arbitration with the substantive issues. He thus enjoys an excellent reputation with experts, peers and tribunals. He is in good sociable form when one meets him, and I look forward to acting against him on many more international arbitration matters.

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