

PCA Case No. 2012-12

**IN THE MATTER OF AN ARBITRATION  
BEFORE A TRIBUNAL CONSTITUTED IN ACCORDANCE WITH THE AGREEMENT  
BETWEEN THE GOVERNMENT OF HONG KONG AND THE GOVERNMENT OF  
AUSTRALIA FOR THE PROMOTION AND PROTECTION OF INVESTMENTS,  
SIGNED 15 SEPTEMBER 1993 (THE “TREATY”)**

**- and-**

**THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW RULES  
OF ARBITRATION 2010 (“UNCITRAL RULES”)**

**-between-**

**PHILIP MORRIS ASIA LIMITED**

**(“Claimant”)**

**-and-**

**THE COMMONWEALTH OF AUSTRALIA**

**(“Respondent”, and together with the Claimant, the “Parties”)**

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**PROCEDURAL ORDER NO. 3  
Regarding the Place of Arbitration**

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**Date: 26 October 2012**

**Arbitral Tribunal**

Professor Karl-Heinz Böckstiegel (President)

Professor Gabrielle Kaufmann-Kohler

Professor Donald M. McRae

**Registry**

Permanent Court of Arbitration

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## I. THE PARTIES' REQUESTS

1. The Claimant requests the Tribunal to order that Singapore be the place of arbitration.<sup>1</sup>
2. The Respondent requests the Tribunal to order that London, United Kingdom be the place of arbitration.<sup>2</sup>

## II. BACKGROUND OF THE DISPUTE

3. According to the Notice of Arbitration, the dispute arises from the enactment and enforcement by the Respondent of the *Tobacco Plain Packaging Act 2011* and the effect it has on investments in Australia owned or controlled by the Claimant. The Claimant alleges, *inter alia*, that “[t]he plain packaging legislation bars the use of intellectual property on tobacco products and packaging, transforming [the Claimant’s wholly owned subsidiary] from a manufacturer of branded products to a manufacturer of commoditized products with the consequential effect of substantially diminishing the value of [the Claimant’s] investments in Australia.”<sup>3</sup>
4. The Claimant seeks declaratory and compensatory relief. In particular, the Claimant seeks an order that the Respondent “(i) take appropriate steps to suspend enforcement of plain packaging legislation and to compensate [the Claimant] for loss suffered through compliance with plain packaging legislation; or (ii) compensate [the Claimant] for loss suffered as a result of the enactment and continued application of plain packaging legislation.”<sup>4</sup> The amount in dispute is described in the Notice of Arbitration as “an amount to be quantified but of the order of billions of Australian dollars.”<sup>5</sup>

## III. PROCEDURAL HISTORY

5. In the Notice of Claim dated 22 June 2011 and the Notice of Arbitration, the Claimant proposed Singapore as the place of arbitration.<sup>6</sup>

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<sup>1</sup> Claimant’s Notice of Claim, ¶ 3; Claimant’s Notice of Arbitration, ¶ 9.2; Claimant’s Submission as to: A. Procedure to be Adopted to Determine Bifurcation and B. Seat of Arbitration dated 30 July 2012 (“Claimant’s Submission dated 30 July 2012”), ¶ 39; Claimant’s Reply Submissions as to Seat of the Arbitration dated 27 August 2012 (“Claimant’s Submission dated 27 August 2012”), ¶ 2.

<sup>2</sup> Respondent’s letter to the Tribunal dated 26 July 2012, ¶ 1; Respondent’s Submission on the Place of Arbitration dated 17 August 2012 (“Respondent’s Submission dated 17 August 2012”), ¶14; Respondent’s letter to the Tribunal dated 3 September 2012, ¶ 3.

<sup>3</sup> Claimant’s Notice of Arbitration, ¶ 1.5.

<sup>4</sup> Claimant’s Notice of Arbitration, ¶ 1.7.

<sup>5</sup> Claimant’s Notice of Arbitration, ¶ 8.3.

<sup>6</sup> Claimant’s Notice of Claim, ¶ 3; Claimant’s Notice of Arbitration, ¶ 9.2.

6. By letter dated 7 June 2012, the Tribunal enclosed a draft annotated agenda and invited the Parties to submit any comments on the Agenda – including an agenda item concerning the place of arbitration – by 25 June 2012.
7. By letter dated 25 June 2012, the Claimant informed the Tribunal that “[d]iscussions between the Parties are ongoing, and each of the Parties anticipates being in a position to inform the Tribunal on 27 June 2012 of the areas in relation to which they have reached agreement and those areas of difference that may require resolution by the Tribunal”.
8. By their respective letters dated 27 June 2012, the Respondent informed the Tribunal that it was still considering its position regarding the place of arbitration, and the Claimant notified the Tribunal that it had requested the Respondent to clarify its position in this respect by 16 July 2012.
9. By letter dated 26 July 2012, the Respondent informed the Tribunal that it had proposed to the Claimant that London be the place of the arbitration, but that the Claimant had indicated that it maintained its position that Singapore be the place of the arbitration.
10. On 30 July 2012, the Tribunal held a First Procedural Meeting in Singapore. Present at the Meeting were:

**The Tribunal:**

Professor Karl-Heinz Böckstiegel  
Professor Gabrielle Kaufmann-Kohler  
Professor Donald M. McRae

**For the Claimant:**

Mr. Joe Smouha QC  
Mr. David Williams QC  
Mr. Simon Foote  
Mr. Peter O'Donahoo  
Mr. Ricardo E. Ugarte  
Mr. Marc Firestone  
Mr. John Fraser

**For the Respondent:**

Mr. Stephen Gageler SC  
Mr. Anthony Payne SC  
Dr. Chester Brown  
Mr. Mark Jennings  
Mr. Simon Daley  
Mr. Nathan Smyth  
Mr. Will Story  
Ms. Rosemary Morris-Castico

**For the PCA:**

Mr. Dirk Pulkowski

11. At the First Procedural Meeting, the Parties reiterated their respective proposals for the place of arbitration and presented oral arguments in support of their proposals.
12. On 3 August 2012, the Tribunal issued Procedural Order No. 2 inviting the Parties to make further written submissions on, *inter alia*, the place of arbitration, and setting out a timetable for such submissions.
13. In accordance with the timetable set out in Procedural Order No. 2, on 13 August 2012 the Claimant filed its submission on the place of arbitration, on 17 August 2012 the Respondent submitted its reply on the place of arbitration, on 27 August 2012 the Claimant submitted its comments on the Respondent's reply submission on the place of arbitration, and on 3 September 2012, the Respondent filed its reply on the Claimant's submission of 27 August 2012.

#### **IV. SUMMARY OF THE CONTENTIONS OF THE PARTIES REGARDING THE PLACE OF ARBITRATION**

##### **1. *The Claimant's Position***

14. The Claimant proposes that Singapore be designated as the place of arbitration. The Claimant points to Article 18(1) of the UNCITRAL Rules, which states that if the parties have not agreed on the place of arbitration, the Tribunal will determine the place of arbitration "having regard to the circumstances of the case", submitting that the phrase "'circumstances of the case' is of the widest import."<sup>7</sup> The Claimant relies on the 1996 UNCITRAL Notes on Organising Arbitral Proceedings as well as *Ethyl Corporation v. Canada* to set out five relevant factors in deciding on the seat of arbitration and examines how Singapore satisfies each of these factors.<sup>8</sup> The five factors are: (a) the suitability of the law on arbitration of the place of arbitration, (b) whether there is a multilateral or bilateral treaty on enforcement of arbitral awards between the State where the arbitration takes place and the State where the award may have to be enforced, (c) convenience of the parties and the arbitrators, including the travel distances, (d) availability and the cost of support services needed, and (e) location of the subject matter in dispute and proximity of the evidence.<sup>9</sup>
15. Regarding the suitability of the arbitration law of the place of arbitration, the Claimant submits that the International Arbitration Act 1994 as revised in 2010 ("**IAA**"), which governs

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<sup>7</sup> Claimant's Submission dated 30 July 2012, ¶ 36.

<sup>8</sup> Claimant's Submission dated 30 July 2012, ¶ 37; First Procedural Meeting Transcript, 30 July 2012 ("Transcript") p. 9:3-12, citing *Ethyl Corporation v. Canada*, Decision on the Place of Arbitration, 28 November 1997, 7 ICSID Reports ("*Ethyl*").

<sup>9</sup> Claimant's Submission dated 30 July 2012, ¶ 37.

international arbitration in Singapore, is based on the UNCITRAL Model Law on International Commercial Arbitration 1985 (“**UNCITRAL Model Law**”) with certain useful modifications.<sup>10</sup> The Claimant notes that, since the establishment of Maxwell Chambers, Singapore has hosted investment treaty cases, citing the ICSID arbitration *Deutsche Bank AG v. Democratic Socialist Republic of Sri Lanka*.<sup>11</sup>

16. The Claimant counters the Respondent’s submission that “London is a well-established seat of investor-State arbitration with a judicial system experienced in such matters” arguing that, while London is a leading seat for international commercial arbitrations, London is not more prominent than Paris, The Hague, or Stockholm when it comes to investment treaty arbitrations under the UNCITRAL Rules.<sup>12</sup> The Claimant notes that it is only aware of three investment treaty cases that have come before the courts of England; there is thus no body of jurisprudence that would make English courts superior to Singapore courts in terms of experience.<sup>13</sup> The Claimant takes issue with the impression that the historical experience of English courts in commercial matters makes them qualified to oversee the present proceedings.<sup>14</sup> The Claimant notes that in the *Ethyl* case, when looking at the suitability of places in the United States or Canada as a seat for the arbitration, the tribunal held that the fact that New York arbitral law has been in place longer than Canada’s Commercial Arbitration Act and was therefore more judicially elaborated did not affect the comparative suitability of both laws.<sup>15</sup>
17. In any event, the Claimant submits that, to the extent that English case law on investment treaty arbitrations is relevant, the Singapore courts can use that jurisprudence, and that the Singapore courts treat English cases as highly persuasive authority.<sup>16</sup> According to the Claimant, “in the field of arbitration there is an underlying unity between English arbitration law and Singapore arbitration law.”<sup>17</sup> The Claimant cites the Singapore Court of Appeal which stated that since the IAA incorporates provisions from the English Arbitration Act and since both acts are based on

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<sup>10</sup> Claimant’s Submission dated 30 July 2012, ¶ 40.

<sup>11</sup> Claimant’s Submission dated 30 July 2012, ¶ 40, citing *Deutsche Bank AG v. Democratic Socialist Republic of Sri Lanka* (ICSID Case No. ARB/09/02), Hearing on Jurisdiction and Merits, Singapore, 25 August 2011 to 5 September 2011 (“*Deutsche Bank*”).

<sup>12</sup> Claimant’s Submission dated 30 July 2012, at ¶ 41; Transcript, p.10:14-23.

<sup>13</sup> Claimant’s Submission dated 30 July 2012, ¶ 41; Transcript, pp. 11:1-12:7.

<sup>14</sup> Transcript, pp. 12:14-13:20.

<sup>15</sup> Transcript, p. 13:3-20; Claimant’s Supplementary Submissions as to Seat of Arbitration dated 13 August 2012 (“Claimant’s Submission dated 13 August 2012”), ¶ 5, citing *Ethyl*, p. 5.

<sup>16</sup> Claimant’s Submission dated 30 July 2012, ¶ 42; Claimant’s Submission dated 13 August 2012, ¶ 6.

<sup>17</sup> Claimant’s Submission dated 30 July 2012, ¶ 42, citing Merkin & Hjalmarsson, *Singapore Arbitration Legislation Annotated* (2009) pp. 2-3.

the UNCITRAL Model Law, the legislative background to the English Act is “of some relevance” to understand the taxonomy of the IAA.<sup>18</sup>

18. The Claimant further alleges that the Singapore judiciary is highly regarded and has demonstrated minimal intervention and a supportive attitude towards arbitration, citing a passage from the Singapore Court of Appeal in *Tjong Very Sumito v. Antig Investments*.<sup>19</sup> The Claimant notes that, since 2004, arbitration judges have been specifically designated in the Singapore High Court to deal with any applications under the IAA, and that “the quality of the jurisprudence which emanates from those three judges is of the highest order”.<sup>20</sup>
19. As to the second relevant factor in deciding on the place of arbitration, the Claimant notes that the IAA gives effect to the 1958 New York Convention.<sup>21</sup>
20. Regarding the third factor, the Claimant submits that Singapore is more convenient than London for the parties to travel to since PM Asia is based in Hong Kong, its wholly owned subsidiary Philip Morris Limited (“PML”) and its executives are in Australia, and most of counsel from both sides are based in either Australia or New Zealand (with some counsel holding offices within Maxwell Chambers in Singapore).<sup>22</sup> The Claimant concedes that London is closer for the arbitrators but argues that “Singapore is hardly remote in terms of international flights”.<sup>23</sup>
21. In relation to the fourth factor, the Claimant contends that Singapore has established itself as a modern and cost-efficient arbitration centre, with the costs of hotel accommodation and other facilities lower than in London.<sup>24</sup> The Claimant further notes that there is a Host Country Agreement between the PCA and Singapore, which allows the Parties to secure a hearing venue at no charge, which is not the case with London.<sup>25</sup>
22. Regarding the fifth and last factor, the Claimant submits that the subject matter of the dispute is in Australia and that a number of the Claimant’s witnesses are in the Asia-Pacific Region which militates in favour of Singapore.<sup>26</sup> The Claimant notes that a further factor discussed in leading

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<sup>18</sup> Claimant’s Submission dated 30 July 2012, ¶ 42, citing *Ng Chin Siau and others v. How Kim Chuan* [2007] SGCA 46, p. 38; Transcript, pp.13:21-14:20.

<sup>19</sup> Claimant’s Submission dated 30 July 2012, ¶ 43; Transcript, pp.15:8-16:10.

<sup>20</sup> Transcript, p. 16:11-24.

<sup>21</sup> Claimant’s Submission dated 30 July 2012, ¶¶ 40, 44; Transcript, p.10:4-6.

<sup>22</sup> Claimant’s Submission dated 30 July 2012, ¶¶ 45-46.

<sup>23</sup> Claimant’s Submission dated 30 July 2012, ¶ 48.

<sup>24</sup> Claimant’s Submission dated 30 July 2012, ¶¶ 49-50.

<sup>25</sup> Claimant’s Submission dated 30 July 2012, ¶ 51.

<sup>26</sup> Claimant’s Submission dated 30 July 2012, ¶¶ 52-53.

text books on international arbitration is the neutrality of the venue, and submits that Singapore is a neutral venue as between the Parties.<sup>27</sup>

23. Moreover, the Claimant contends that the amendment to Singapore's Legal Profession Act of 1 April 2012 has relaxed the criteria for *ad hoc* admission of Queen's Counsel and equivalent ranks from other jurisdictions before the Singapore courts, and that counsel must demonstrate only "special qualifications or experience for the purpose of the case" to be admitted.<sup>28</sup> The Claimant submits that "it is highly likely, if not certain, that Queen's Counsel or Senior Counsel for the Respondent (and the Claimant) in this arbitration will meet this criterion and be granted *ad hoc* admission if necessary."<sup>29</sup> The Claimant concedes that junior counsel cannot be admitted to Singapore courts but argues that "it would be surprising and inappropriate for the choice of seat to be informed or determined by the Respondent's decision as to whom it retains as junior counsel", noting that it "cannot be the primary consideration, let alone the key consideration."<sup>30</sup>
24. Furthermore, the Claimant points out that two of the Respondent's senior counsel and two of the Respondent's three junior counsel are not admitted to practice in England and Wales and therefore choosing London would not allay the concern regarding professional admission for all counsel at the place of arbitration.<sup>31</sup> In any event, the Claimant alleges that counsel for a party may change for a number of reasons.<sup>32</sup>
25. The Claimant further submits that possible recourse to Singapore courts under the IAA is limited and therefore the issue of the Parties' representation and the experience of the courts may not arise at all.<sup>33</sup> In addition, the Claimant contends that the Respondent can be ably represented in Singapore courts by its senior counsel and that it would not be an unreasonable burden in an arbitration of this importance for the Respondent to retain further counsel experienced in investment arbitration who can appear in Singapore court.<sup>34</sup> Finally, the Claimant notes that there is nothing that prevents the Respondent's junior counsel from being physically present in Singapore courts, since court hearings conducted "not in open court" would exclude the general public but not the party's representatives such as solicitors and

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<sup>27</sup> Claimant's Submission dated 30 July 2012, ¶ 54.

<sup>28</sup> Claimant's Submission dated 13 August 2012, ¶ 9; Transcript, p. 17:1-17

<sup>29</sup> Claimant's Submission dated 13 August 2012, ¶ 9.

<sup>30</sup> Claimant's Submission dated 13 August 2012, ¶ 10; Claimant's Submission dated 27 August 2012, ¶ 4.

<sup>31</sup> Claimant's Submission dated 27 August 2012, ¶¶ 5-6.

<sup>32</sup> Claimant's Submission dated 27 August 2012, ¶ 8.

<sup>33</sup> Claimant's Submission dated 13 August 2012, ¶ 10.

<sup>34</sup> Claimant's Submission dated 13 August 2012, ¶ 10.

junior counsel.<sup>35</sup> In any event, the Claimant contends that the ability of junior counsel to appear in proceedings in the Singapore courts is a matter of little comparative weight when assessing the other “factors weighing in favour of Singapore as otherwise the obvious choice as seat for an Asia-Pacific arbitration”.<sup>36</sup>

## **2. The Respondent’s Position**

26. The Respondent proposes London as the place of arbitration.<sup>37</sup>
27. The Respondent alleges that there is no material difference between the applicable law in Singapore and in London and that its preference for London is “a marginal preference and is based on two overlapping considerations.”<sup>38</sup> According to the Respondent, the first consideration is that English courts have some experience in dealing with investment treaty arbitration and that the Singapore courts have none.<sup>39</sup> The Respondent notes that it is only aware of one investment treaty arbitration seated in Singapore, that of *White Industries Australia Ltd v. The Republic of India*, and that there was no involvement of the Singapore courts in that case.<sup>40</sup> The Respondent further notes that *Deutsche Bank*, the case cited by the Claimant as an example of an arbitration taking place in Singapore, was an ICSID case and therefore the Singapore courts had no possibility of entertaining an application in respect of any claim arising from that arbitration.<sup>41</sup>
28. The Respondent submits that the Claimant’s list of cases related to investment treaty arbitrations before English courts is incomplete, asserting that applications related to a further two investment treaty arbitrations have come before the English courts, bringing the total number of cases to five.<sup>42</sup> The Respondent claims that only the Swedish courts have been seized of more matters in connection with investment treaty arbitrations, with six applications.<sup>43</sup> The Respondent disputes the relevance of the Claimant’s reliance on *Ethyl*, submitting that in that case the tribunal was considering the suitability of the arbitral procedure at the place of arbitration rather than the experience of courts with investment treaty arbitration.<sup>44</sup>

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<sup>35</sup> Claimant’s Submission dated 13 August 2012, ¶ 10; Claimant’s Submission dated 27 August 2012, ¶ 8.

<sup>36</sup> Claimant’s Submission dated 13 August 2012, ¶ 10.

<sup>37</sup> Respondent’s letter to the Tribunal dated 26 July 2012, ¶ 1.

<sup>38</sup> Transcript, p. 20:1-7.

<sup>39</sup> Transcript, p. 20:9-20.

<sup>40</sup> Respondent’s Submission dated 17 August 2012, ¶ 3, citing *White Industries Australia Ltd v. The Republic of India* (Award of 30 November 2011).

<sup>41</sup> Respondent’s Submission dated 17 August 2012, ¶ 3.

<sup>42</sup> Respondent’s Submission dated 17 August 2012, ¶ 4.

<sup>43</sup> Respondent’s Submission dated 17 August 2012, ¶ 4.

<sup>44</sup> Respondent’s Submission dated 17 August 2012, ¶ 5.

29. The Respondent contends that the second consideration pointing to London as the place of arbitration is stronger than the first, which is that counsel retained by the Respondent are admitted to practice in England and are not admitted to practice in Singapore.<sup>45</sup> The Respondent argues that “[t]here is a distinct efficiency in terms of cost and continuity of representation in having the seat of arbitration in a place where counsel retained in the arbitration have a right to practise and have familiarity with the system of practice.”<sup>46</sup> The Respondent points out that according to its understanding only senior counsel can be admitted to practice in Singapore on an *ad hoc* basis and that two members of its team are junior counsel admitted to practice in England.<sup>47</sup>
30. The Respondent counters the Claimant’s points on the issue of the Respondent’s counsel being able to appear in Singapore courts, finding them unconvincing.<sup>48</sup> First, the Respondent alleges that if there are no hearings in Singapore courts then there are likely not to be any in English courts either, meaning that the factor is neutral in deciding the seat of arbitration.<sup>49</sup> Secondly, for the Respondent to hire additional counsel would be a further expense that would not be necessary if London were selected as the seat of arbitration. To appear in Singapore, the Respondent would have to apply for *ad hoc* admission for its senior counsel and engage a law firm in Singapore to instruct counsel, which is not efficient or cost-effective.<sup>50</sup> The Respondent further casts doubt as to whether junior counsel can be physically present in proceedings in Singapore court, pointing to section 22 of the IAA, which provides that proceedings under the IAA are to be heard otherwise than in open court.<sup>51</sup> The Respondent also submits that the alleged combined effect of Order 69A, Rule 3(2) and Order 28, Rules 1-2 of the Singapore Rules of Court is that any application under sections 12A or 22 of the IAA would be heard in Chambers.<sup>52</sup>
31. As to the submissions made by the Claimant on the relative convenience, cost and availability of first-class facilities in Singapore, the Respondent contends that these are only relevant to the issue of where the hearing will be held, which both Parties accept may be Singapore.<sup>53</sup> As for

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<sup>45</sup> Transcript, p. 20:21-25.

<sup>46</sup> Transcript, p. 21:1-6; Respondent’s Submission dated 17 August 2012, ¶ 6.

<sup>47</sup> Transcript, p. 21:7-19.

<sup>48</sup> Respondent’s Submission dated 17 August 2012, ¶¶ 7-9.

<sup>49</sup> Respondent’s Submission dated 17 August 2012, ¶ 9.

<sup>50</sup> Respondent’s Submission dated 17 August 2012, ¶¶ 9-10.

<sup>51</sup> Respondent’s Submission dated 17 August 2012, ¶ 9.

<sup>52</sup> Respondent’s Submission dated 17 August 2012, ¶ 9.

<sup>53</sup> Respondent’s Submission dated 17 August 2012, ¶ 12.

the factors of neutrality and the relative connection to a dispute centred in Australia, the Respondent argues that these “militate equally in favour of either London or Singapore.”<sup>54</sup>

32. Finally, the Respondent notes that the Claimant has not advanced any reason why London would not be a suitable place of arbitration.<sup>55</sup>

## V. THE TRIBUNAL’S CONSIDERATIONS

33. The Parties’ extensive submissions regarding the place of arbitration have been very helpful. All of them have been taken into account by the Tribunal. In view of the above summaries of the Parties’ contentions, the Tribunal hereafter will only focus on those arguments and considerations which it considers as determinative for its decision on the place of arbitration.
34. In view of the geographical location of both Parties, it was discussed and agreed at the Procedural Meeting in Singapore that, for convenience, hearings and other meetings with the Parties should normally be held in Singapore. But, as is undisputed, this does not exclude that the legal place or seat of arbitration can be elsewhere.
35. Art. 18(1) UNCITRAL Rules provides that, without the respective agreement of the Parties, the Arbitral Tribunal shall determine the place of arbitration “*having regard to the circumstances of the case*”.
36. The Parties have indeed listed all circumstances which could be considered relevant in the present case and the Tribunal need not repeat all of them. The Tribunal agrees with Respondent that the preferences expressed for either Singapore or London are marginal and overlapping.
37. While the Tribunal is aware of the criteria taken into account regarding the place of arbitration in the *Ethyl* decision, it is also aware that this was a NAFTA arbitration where a place had to be chosen in one of the NAFTA States, and also that some of the five factors considered relevant in that decision could be accommodated for this case as long as the factual site of hearings and meetings with the Parties is Singapore, as has already been agreed.
38. Regarding the suitability of the law, both Singapore and London fulfil the requirements of a place for a BIT arbitration. The arbitration law as well as the judiciary, should it become involved, are well equipped in both States to deal with the present dispute. The considerations discussed by the Parties regarding the possibility of counsel to appear before the respective courts do not, in the view of the Tribunal, reveal relevant differences between the two places.

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<sup>54</sup> Respondent’s Submission dated 17 August 2012, ¶ 12.

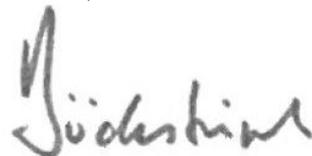
<sup>55</sup> Respondent’s Submission dated 17 August 2012, ¶ 13.

39. Therefore, the question is whether some other considerations speak in favour of one of the two places. While the Tribunal agrees with Respondent that factors of neutrality “militate equally in favour of either London or Singapore”, the second factor mentioned by Respondent in that context, i.e. “the relative connection to a dispute centred in Australia” does not do so in the view of the Tribunal, at least if the other Party to the dispute is from Asia. Indeed, if the Parties cannot agree, the choice of a place of arbitration in Europe for a dispute between two Parties in Asia and Australia could be seen as implying that no suitable place is available in that region of the world. Both Parties agree that Singapore is such a suitable place, though the Respondent expresses “a marginal preference” for London. In such circumstances (Art. 18(1) UNCITRAL Rules), the Tribunal feels that the choice of Singapore is the more natural and logical one.
40. Some further considerations would seem to confirm this preference. Of the factors listed in the *Ethyl* decision, the location of the subject matter in dispute and proximity of evidence, as well as convenience and travel distances of the parties and costs of support services needed would seem to speak in favour of Singapore over London, as they may not only be relevant for hearings of this Tribunal, but also for subsequent disputes before the domestic courts at the place of arbitration should such disputes arise. Finally, the PCA, which is administering the present arbitration, has concluded a Host Country Agreement with Singapore, but not with the UK or an institution in London.
41. For all of the above considerations, the Tribunal concludes that Singapore, rather than London, shall be the place of arbitration.

## VI. DECISION

**In accordance with Art. 18(1) of the UNCITRAL Rules, the Tribunal decides that Singapore is the place of arbitration for the present proceedings.**

**Dated, 26 October 2012**



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**On behalf of the Tribunal**

**Karl-Heinz Böckstiegel  
President of the Tribunal**