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The rise of Asian arbitration institutions

Hong Kong takes the lead to “one system” for arbitration as Singapore continues to operate a dual system



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Arbitral institutions such as the Hong Kong International Arbitration Centre (“HKIAC”) and the Singapore International Arbitration Centre (“SIAC”) are now highly regarded as leading centres for international commercial arbitrations in Asia. They are even preferred by international businessmen over European and North American arbitration institutions. These developments have been systematically encouraged by progressive measures put in place by countries like Hong Kong and Singapore, and there are new rules that have come into force in Hong Kong that warrant attention.

The New Ordinance

On 1 June 2011 a new arbitration Ordinance (Cap. 609) (“the new Ordinance”) based on the UNICITRAL Model Law of International Commercial Arbitration was passed by the Hong Kong Legislative Council.

The most significant change introduced by this new Ordinance was the abolition of the dual system for international and domestic arbitration. It created a unitary system which now applies to all arbitrations, whether domestic or international, which have the seat of arbitration in Hong Kong. Parties to international arbitrations have discretion to choose some of the provisions (opt-in provisions) which under the old Ordinance were only applicable to domestic arbitrations. Examples are the provisions regarding a default number of arbitrators, and provisions regarding the

“Under the new Ordinance there will be minimal court interference.”

determination of preliminary questions of law. Under the new Ordinance, there will be minimal court interference. Tribunals will have additional powers to grant interim injunctions and to make both preliminary and interlocutory orders. Significantly, under the new Ordinance, the Hong Kong Courts also have powers to grant interim injunctions even where the seat of arbitration is not Hong Kong, so long as the arbitration proceedings relate to an arbitration whose arbitral award is likely to be enforced in Hong Kong. Further, parties are prohibited from disclosing any information in relation to the arbitration proceedings to any third party. This is the standard of confidentiality that parties want in international arbitration. For this same purpose, the new arbitration Ordinance provides that any court proceedings commenced under an arbitration agreement are to be conducted in closed court. There is also another important provision in the new Ordinance which, while

being of a somewhat unusual nature, will appear to be common sense to the contesting parties. The appointed arbitrator can act as a mediator during the course of the arbitration proceedings, and if the matter does not settle by mediation, no objections may be raised if the same person continues to act as an arbitrator.

Arbitration in Singapore

Commercial arbitration in Singapore is divided into domestic and international regimes. The international regime is governed by the International Arbitration Act, while domestic arbitration is governed by the Arbitration Act 1953. Singapore International Arbitration Centre (“SIAC”) commenced operation in 1991, and its rules are based on UNICITRAL Model law and the rules of the London Court of International Arbitration (LCIA). On 1 July 2010, SIAC published its 4th Edition Rules, making some significant changes to the previous rules. The new expedited procedure requires the Tribunal to make an award within six months of the date of its constitution (if parties so agree) for any reference the value of which is below SGD 5,000,000 (US\$4,049,445). SIAC can appoint an emergency arbitrator to assist any party which requires any emergency/interim relief.

Conclusion

Today, both HKIAC and SIAC are regarded as highly professional and reputable arbitration institutions. In terms of cost, HKIAC is the first choice for many commercial business houses. HKIAC offers an unmanaged option (where the role of the institute is limited) which is cheaper than the managed option. HKIAC aims to keep interference of the institution to the minimum. HKIAC does not charge a separate fee relating to counterclaims and under its unmanaged option, parties are free to negotiate the fees of an arbitrator. This is not possible under SIAC, which only offers a managed option.

The changes introduced by the new Ordinance in Hong Kong are not intended to revolutionise arbitrations but rather to reinforce the concepts on which arbitration is based i.e. to make it a more user friendly and adaptive process, and to allow maximum liberty to the parties to mould practices and procedures to suit them, within the given framework of the institution. Especially now that a unified code has been introduced in Hong Kong, doing away with the dual system, it will become easier and more practical for foreign lawyers and arbitrators to understand and apply the rules.

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