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Reflections from the International Arbitration Group

Welcome to Reflections

In this publication Clifford Chance international arbitration practitioners from across our global network – in the UK, Europe, Middle East, Asia Pacific and the Americas – comment on the trends and developments significant to the field of international arbitration.

Their thoughts and views are wide ranging and varied, reflecting the broad range of issues that organisations involved in international arbitration face today.

International arbitration has become the established norm for the resolution of disputes in cross-border business and investment, with new sector users, such as banking and finance, emerging and establishing their own institutions to cater to their sector specific needs. The industries where international arbitration has long been "standard" are seeing sector-wide issues arising from political instability, market volatility and increased protectionism that inevitably give rise to disputes referred to arbitration.

With an increasingly connected global economy, competition is growing between the arbitral institutions, as well as between places of arbitration, with new regional institutions emerging and challenging the more established players. In an attempt to remain competitive, institutions are developing their rules and procedures, with efforts to streamline processes in order to provide users with greater certainty and control over costs, as well as moves towards transparency in what has traditionally been an "opaque" arena. The development of the 'industry' has also spurred the growth of legal directories, publications, hearing centres and other complementing businesses such as third party funders.

Issues of ethics are also being considered, with questions being asked over the deliberate use of certain arbitral processes with the intention of derailing or delaying an arbitration. One of the most interesting late developments relates to regulation of arbitration counsel, with guidelines from the IBA on what is expected and guidelines prescribed by the LCIA.

Our practitioners around the world have also seen an increase in the use of investment treaty arbitration, in the aftermath of political change and unrest, as well as economic uncertainty. This increased activity brings with it some "growing pain", which is still being played out.

Finally, across the world, attitudes towards the use of international arbitration are changing, with more countries eager to be seen as arbitration and enforcement "friendly" jurisdictions and becoming party to the New York Convention. Attitudes to investment treaty arbitration however, are more varied, with some countries taking a more jaundiced stance towards these disputes and even denouncing the ICSID convention.

In the face of these changes and challenges, international arbitration remains the preferred choice of dispute resolution for many organisations, which need to remain alert to these regional, sectoral and institutional differences. Clifford Chance helps guide its clients through the varied landscape around the world and provides unrivalled insight into the major arbitral institutions.

Jason Fry

Audley Sheppard

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1. Trends and Sector Focus

Developments in the Oil and Gas Sector

We have seen a number of developments in the oil and gas sector that are likely to be of interest to arbitration practitioners given the causal connection between changes to market fundamentals and the volume/type of disputes. In the immediate term, political instability in the Middle East and ongoing disputes in Ukraine will continue to inform political risk evaluations with consequential effects on investment decisions and the allocation of capital more generally. Over the longer term, the potential growth of the Liquefied Natural Gas (LNG) market is of interest, with both the US and Canada positioning themselves to become mass exporters within the next 5 years. This will affect, in particular, long-term gas supply agreements concluded against a very different political and economic backdrop. Africa has witnessed very significant changes as new frontiers and opportunities continue to open up, whilst legislative changes in Nigeria are favouring a class of new local players alongside the international oil companies and the increasingly internationalist national oil companies. The expected cooling of the People's Republic of China (PRC) economy will affect markets in Asia and globally, though the PRC's demand for natural resources remains very high and we will likely see further significant investments by PRC oil companies across the globe.

There are therefore a number of developments that can be perceived both as opportunities and risks. Clifford Chance has again partnered with The Economist Intelligence Unit to survey directors of major corporations around the world for a report that looks at the challenges and risks facing global companies, ranging from evolving sanctions regimes to the risk of cyber-attacks and reputational issues. The report looks at how risk is perceived and managed at board level and is based on a survey of 320 board members of companies – including oil and gas organisations – each with over half a billion US dollars in annual revenue.

The report's findings show that oil and gas sector boards are primarily concerned with high probability financial, legal and regulatory risks that they know will affect the bottom line and future of the company. Environmental risks and other social issues are important – but principally because of the reputational and, in turn, value impact that they can have (for example, on share price).

While reputational and environmental risks are important in their own right, access to capital and using it to develop assets is of central importance to any oil and gas company as it underpins the company's very existence and continued success. Financial risk is therefore inescapable for oil and gas company boards, with 77% of oil and gas respondents citing it as one of their top three current concerns and 83% predicting it will become even more important over the next two years.

The current difficulties in raising finance in the equity capital markets has in turn meant that mid-caps who would previously have been interested in purchasing the assets divested by super-majors have not been in a position to do so. The result of this has been two-fold: a diversification of market participants with cash-rich commodities trading houses or smaller, indigenous players stepping in to fill the void; and an increase in the frequency of joint-venturing – often with national oil companies or existing holders of undeveloped assets who are able to offer interests in potentially significant assets in return for development funding. The after-shocks of the global financial crisis and geopolitical events continue to reshape global markets in this and many other ways: "May you live in interesting times" is often, but wrongly, thought of as a curse. Whatever its provenance, it is certainly apt.

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Energy Disputes: Gas Supply and Infrastructure Disputes

The increase in energy supply contract disputes has resulted mainly from long-term supply contracts for power, gas or oil which typically include pricing clauses and payment terms linked to market indexes for gas and oil. Hence, with the (increased) volatility of gas and oil prices, these ups and downs are not reflected in the price calculation of the long-term supply contract, usually placing a significant burden on the customer/buyer. Prices on the spot market have become much more favourable than those under long-term contracts, even though the long-term contracts were meant to ensure stability of supply and reasonable price terms.

In Germany, in response to this development, there has recently been a trend of these long-term contracts being voided on grounds of antitrust infringements. A recent Federal High Court decision found that price calculation clauses in long-term supply contracts constitute general terms and conditions and thus are subject to scrutiny by the courts. If such clauses do not allow for reasonable adjustments in the event of significant changes to the respective gas/oil indexes, they are rendered void, which will clearly be a concerning development for energy companies.

The last two years have seen a significant increase in energy-related arbitration disputes. Whilst in the past arbitrations in this sector were mainly *ad hoc*, increasingly clients are using institutional arbitrations, for example, through the International Chamber of Commerce (ICC) or The German Institution of Arbitration (DIS). There are also a growing number of large international construction and engineering disputes that are giving rise to ICC arbitrations.

Michael Kremer
Clifford Chance, Dusseldorf

"Being at the heart of the Rhine-Ruhr area, Düsseldorf is a hub for energy and infrastructure clients. Several of Germany's energy providers, as well as major construction and engineering companies, are located in Düsseldorf, Essen and the immediate vicinity. Disputes in these industry sectors have historically been a focus point of our Düsseldorf office."

Michael Kremer
Clifford Chance, Dusseldorf

"The rise in gas supply pricing disputes is tied to the shale revolution that is turning the US from a mass importer into a mass exporter of gas. This development has impacted on the price of gas coming from Qatar and in turn has impacted the European and Russian gas markets. Asia has remained largely insulated from this development thus far, but the question is – what happens when this hits Asia?

For Australia this is interesting as developments in oil and gas in Western Australia are, in practice, linked to Asian prices. If Asian prices become negatively affected, since many agreements/prices are underpinned by long-term contracts (as opposed to more short-term spot prices), there may be concern for those who have invested in the Western Australian oil and gas sector."

Ben Luscombe
Clifford Chance, Perth

Arbitration for Financial Institutions

Banks and financial institutions increasingly use international arbitration as a dispute resolution option. The traditional reluctance that in part stemmed from the idea that arbitration was not suited for simple "one shot money disputes" is now long behind us in a financial world that is far more complex than ever before. In the UK, it is especially the case following the shift in banking litigation post the 2008 financial crisis, which has led to an increase in claims by individual investors and corporate bodies against financial institutions for the mis-selling of investments and financial products.

It is also the case in Germany, where a post-global financial crisis decision by Germany's Federal Supreme Court attracted rather negative comments such as: "the floodgates are open". In that case, one of Germany's major banks was ordered to pay damages to its customer, a medium-sized company, in a case about a CMS spread ladder swap. This triggered similar litigation against other sellers of swaps and derivatives world-wide. The court found that the bank had not adequately disclosed the risks of the highly complex financial instrument. The German Federal Supreme Court went as far as requesting banks selling such products "to ensure that the customer has basically the same understanding and knowledge about the transaction as the advising bank".

"Given the popularity of arbitration these days, it is easier to look at sectors that have not yet fully embraced arbitration rather than at sectors that have, as most have. The primary hold out until recently has been the financial services sector. However, even that has changed in the last few years, with more banks and financial institutions using arbitration provisions for their cross-border deals and the introduction of arbitration provisions in their standard form agreements."

Nish Shetty
Clifford Chance, Singapore

More financial institutions are now opting for arbitration in the hope that tribunals will enforce explicit contractual provisions more rigorously than state courts. Whilst arbitral tribunals are required to apply the relevant law, they are not bound to follow state courts' judicial and statutory interpretations.

Since 2012, the Panel of Recognised International Market Experts in Finance

"We are seeing an increasing interest in financial institution arbitration in the German market. If setting precedents was previously considered an advantage of litigation, this is no longer as crucial."

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(PRIME), which is based in The Hague, offers institutional arbitration services under its own set of rules and provides a forum specifically tailored for the resolution of complex financial disputes involving instruments such as swaps and derivatives. Other developments, such as the introduction of a set of arbitration clauses for use with the 1992 and the 2002 master agreements of the International Swaps and Derivatives Association (ISDA) show the increased importance of arbitration to the sector and reflect ISDA's own observation that there has been a surge in the inclusion of arbitration clauses in specialist financial contracts in recent years.

This is a very topical issue. A new task force has been mandated by the ICC to publish a report on "Financial Institutions and International Arbitration". Three Clifford Chance partners: Marie Berard, Cameron Hassall and Fabian von Schlabrendorff have been selected to take part in this task force.

Financial institutions are increasingly aware that arbitration can be the most effective way to resolve disputes – indeed, when it comes to the enforcement of an award, it can be preferable to litigation.

Existing arbitration rules are sufficiently flexible to accommodate the needs of banks and financial institutions. Many rules now have emergency arbitrators provisions, allowing a bank to obtain urgent interim relief to prevent the dissipation of a borrower's assets for example. Financial institutions are regular users of "unilateral option clauses", giving them (but not their counterparty) the option to select between arbitration or litigation after the dispute has arisen. These clauses are very popular but their validity remains questionable in certain jurisdictions such as Russia, Poland, Romania, Bulgaria, Turkey and Thailand. Clifford Chance has compiled a survey of the validity of those clauses in over 40 jurisdictions.

Marie Berard and **Tim Schreiber**
Clifford Chance, London and Munich

"The traditional reluctance that in part stemmed from the idea that arbitration was not suited for simple "one shot money disputes" is now long behind us in a financial world that is far more complex than ever before. In the UK, it is especially the case following the shift in banking litigation post the 2008 financial crisis which has led to an increase in claims by individual investors and corporate bodies against financial institutions for the mis-selling of investments and financial products."

Marie Berard
Clifford Chance, London

Investor-State Dispute Resolution

Statistics issued by the United Nations Conference on Trade and Development (UNCTAD) reveal that in 2013, 56 known new cases were filed by investors against states pursuant to international investment treaties. Of those cases, a greater proportion than ever have been filed against developed countries. Over 50% of the respondents hail from the EU.

There are also a number of significant multilateral investment agreements, or so-called "megaregional" agreements being negotiated. The Trans-Pacific Partnership Agreement (TPP), the Canada–EU Comprehensive Economic and Trade Agreement (CETA) and the EU–United States Transatlantic Trade and Investment Partnership (TTIP) are all likely to have a significant impact on trade flows once they are concluded. The provision for Investor-State Dispute Settlement (ISDS) mechanisms within those agreements has been hotly negotiated in each case – putting the topic of arbitration in mainstream news.

Australia's free trade and investment treaty program seems to have revived somewhat since the change in government in 2013. Most importantly, the Korea-Australia Free Trade Agreement (KAFTA) was signed late last year, and now includes an investor-state arbitration clause and Australia has had renewed engagement in negotiations for the TPP.

The TPP is currently being negotiated between 12 countries: Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, the United States and Vietnam. It will include major Australian trading partners such as Japan and the US, represent a total trade volume of more than USD 28 trillion and is likely to include an investor-state arbitration clause. It appears likely that the TPP will be signed sometime this year or early next. This will open up nationality planning (e.g. structuring the investment to acquire treaty protection) and investor-state arbitration options to a whole range of businesses that are not traditionally heavy users of the treaty system, especially companies in the services sector and manufacturing businesses with trans-Pacific supply chains.

In the longer-term, the TPP is likely to have a significant effect on arbitration practice in the region. Other recently signed investment agreements such as the Association of Southeast Asian Nations (ASEAN) Comprehensive Investment Agreement which took effect on 29 March 2012 and the ASEAN Free Trade Agreements (FTAs) are likely to have a similar effect.

"There is a seamless connection between the different Clifford Chance offices around the world working on investment arbitration. The TPP is likely to give rise to a significant amount of investment arbitration work in Hong Kong and allow us to capitalise on the strength of these connections. At the front end, where banks make investments in certain countries, they will need to use an investment vehicle that is in line with the TPP. At the back end, if an investment is subject to government interference then an investor will rely on the TPP's dispute resolution provisions. Already financial institutions in the region have developed a sophisticated understanding of investment treaty protections."

Romesh Weeramantry
Clifford Chance, Hong Kong

"One of the most significant recent developments for Spanish arbitration is Spain's growth as a market for investment arbitration. Because of the GFC, the Spanish Government has amended much of the regulation concerning subsidies for renewable energy tariffs. This has led foreign investors to bring claims against the Government under the Energy Charter Treaty. Our work in this area demonstrates the strength of our global arbitration team in cross-office collaboration."

Jose Antonio Caínzos
Clifford Chance, Madrid

"In the medium term, another important issue will be whether the emerging markets of Africa remain sufficiently stable to continue their growth, and reach their full potential. If they do, there is likely to be a significant increase in demand for investment protection advice from Australian and Asian investors, and not just in the energy and resources sectors."

Sam Luttrell
Clifford Chance, Perth

"In the aftermath of the Arab Spring, in the Middle East we have seen a growing trend in investment treaty arbitration, particularly involving Egypt and Libya. Disputes have arisen largely as a result of expropriation of assets by governments in transition. This has increased awareness amongst regional clients of alternative avenues of redress on what are often high value "trophy" projects."

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2. Rules and Institutions

There have recently been a number of important developments in rules, guidance and institutional procedure. The arbitration community is using rule-making to address significant questions such as: Should the conduct of legal representatives be regulated? Should investment treaty arbitration be more transparent?

Many institutions have updated their procedural rules, most with an aim to increase efficiency and useability for modern arbitration users. We look closely at four of those institutions – the Hong Kong International Arbitration Centre (HKIAC), the Abu Dhabi Commercial Conciliation and Arbitration Centre (ADCCAC), the London Court of International Arbitration (LCIA) and the Korean Commercial Arbitration Board (KCAB). Along with new rules, new arbitration institutions have emerged. One of the youngest is the Jerusalem Arbitration Centre (JAC), which opened its doors on 18 November 2013.

Ethics

Arbitration should be a fair process – parties and their representatives should behave in a way which promotes this principle. In international arbitration, where lawyers qualify before national bars, and practise in the international arena, there are no clear common rules governing their conduct. This potentially raises two issues of concern.

The first is that lawyers are free to deliberately and strategically use procedural mechanisms that were intended to safeguard the arbitral process as a way to derail or delay proceedings. Such behaviour might not be prohibited by codes of conduct, but it may be unethical. A second issue is that lawyers qualified in different (and sometimes multiple) jurisdictions, applying different codes of conduct risk, creating an unlevel playing field for users of arbitration. Whether or not the coaching of witnesses is permissible is a well-known example. Currently, unless the tribunal sets out certain ground rules of fair play at the start of the arbitration, self-regulation is the primary method of ensuring that integrity and fairness are not jeopardised. In other words, we expect lawyers to "do the right thing".

This year we have seen two notable developments in this regard.

Firstly, the IBA's Guidelines on Party Representation in International Arbitration introduced in May 2013 provide guidance on issues such as *ex parte* communications with the arbitral tribunal, the scope of document production and include express powers for the tribunal to remedy misconduct by party representatives. These guidelines are essentially voluntary since parties must opt-in to the regime and they have been met with a mixed response from the arbitration community. Some anticipate that these will follow the trajectory of the IBA Rules on the Taking of Evidence in International Arbitration – which are now widely adopted by parties for dealing with evidence gathering in arbitrations. Some would have liked these guidelines to go further in managing the behaviour of counsel. Others still are strongly critical of the content of these guidelines and would not encourage parties to use them. By contrast, the LCIA's revised rules of arbitration (effective 1 October 2014) include guidelines for parties' legal representatives. All legal representatives appearing by name in LCIA arbitrations must comply. The standard of conduct to meet should not be particularly contentious in most cases – no lying to the tribunal, no fabricating of evidence, no concealment of documents and no undisclosed unilateral communications with the tribunal – and do not override lawyers' existing mandatory duties or applicable codes of conduct. In an innovative step, the rules expressly empower the tribunal to enforce breaches of the guidelines through specified sanctions. The jury is out – can and should good behaviour be more formally regulated – or can users trust the tribunal to use their inherent powers to manage counsel conduct? Debate is likely to continue.

Audley Sheppard
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Transparency

The "UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration" (the Rules) promulgated by the United Nations Commission on International Trade Law (UNCITRAL) came into effect on 1 April 2014 and are intended to address long-voiced concerns (principally by Non-Governmental Organisations) regarding the lack of transparency in treaty-based arbitration proceedings involving states.

On their face, the calls for greater transparency and public access inherently conflict with the notion of confidentiality in arbitral proceedings. The Rules attempt, therefore, to strike a balance between these two competing considerations. Whilst they allow members of the public access to documents and hearings in UNCITRAL arbitrations, this is subject to exceptions designed to protect confidential information and the integrity of the arbitral process.

In the absence of specific agreement (either of the parties to any treaty dispute or of the parties to a treaty concluded before 1 April 2014), the Rules will for now, apply only to treaties concluded on or after 1 April 2014 (unless parties agree to exclude the Rules).

However, in July 2014, a draft 'Convention on Transparency' was approved by UNCITRAL. The Convention provides for the application of the Rules to existing treaties entered into by any signatory states, not just those entered into after the effective date. The Convention is expected to be ready for signature in March 2015. If the Convention does come into force, public pressure will likely lead to a number of states agreeing to its terms. Similarly, it is hard to imagine many states agreeing to opt out of the Rules in treaties entered into after 1 April 2014.

It remains to be seen to what extent states adopt the Rules voluntarily – not least because the application of these rules is likely to generate additional costs. As far as investor parties are concerned, they may wish to use the Rules as this gives them a tactical benefit (for example, the ability to use any publicity to apply pressure on the relevant state). Otherwise, if the treaty allows the investor to choose between multiple types of arbitration, there may be good reasons for electing different rules such as those of the ICC or another international institution.

Jason Fry
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HKIAC Rules

HKIAC is one of the foremost venues for arbitration. In 2013, the number of dispute resolution matters totalled 463. The total amount in dispute in 2013 was US$2 billion.

The Centre's new rules came into force on 1 November 2013. Like the rules of the ICC, Singapore International Arbitration Centre (SIAC), Stockholm Chamber of Commerce (SCC) and LCIA, these rules also contain an emergency arbitrator mechanism which allows for the appointment of a temporary arbitrator before a tribunal is constituted. HKIAC will appoint an emergency arbitrator within two days of one of the parties making an application. The emergency arbitrator is expected to make any order, award or decision within 15 days of the HKIAC receiving the file.

By appointing an emergency arbitrator, the parties agree to recognise the validity of any decision reached by such arbitrator. Whilst there is yet to be a test case on a decision of an HKIAC emergency arbitrator, this development is widely regarded as positive.

The HKIAC Rules also streamline the processes for joinder of third parties and give the HKIAC the power to consolidate proceedings, even where the parties and arbitrators may be different in the separate proceedings. More recently, the HKIAC model clause has been updated to ensure certainty as to the law that will apply to the arbitration agreement. Traditionally, this has not been specified in model clauses.

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ADCCAC Rules

For the first time in 20 years, ADCCAC has updated its arbitration rules, bringing them into line with accepted international practice. The ADCCAC Rules draw on a number of sources, including the UNCITRAL Rules, and bear considerably more resemblance to the rules of other international arbitral institutions than their predecessors. This should serve to increase the appeal of ADCCAC as an arbitral institution. The ADCCAC Rules took effect on 20 October 2013 and apply to all ADCCAC arbitrations from that date – regardless of when proceedings were commenced – replacing the provisions contained in the Procedural Regulation on Commercial Conciliation and Arbitration.

The new ADCCAC Rules contain a number of significant new provisions, including express confidentiality obligations, rules for determining the seat of arbitration and applicable law and rules on the granting of interim relief.

James Abbott
Clifford Chance, UAE

LCIA Rules

The LCIA remains one of the busiest international arbitration institutions globally. In 2013, 301 disputes were referred to for consideration under the LCIA Rules (as compared to 767 for the ICC, 259 for SIAC and 203 for the SCC in the same year). Across the world, international arbitration institutions have implemented changes that tackle key issues facing arbitral procedure including efficiency and integrity – for example, many now include mechanisms for dealing with multiparty arbitration.

The newest LCIA Rules (2014 Rules) have also addressed these issues. The LCIA Rules already allowed for the formation of the tribunal on an expedited basis, and now include other mechanisms aimed at increasing procedural efficiency. These include electronic filing of the request and response and cost sanctions for uncooperative behaviour of the parties which causes delay. As for multiparty issues, the tribunal may order consolidation without all parties' consent in certain cases (at a party's request and with the LCIA Court's approval). In limited circumstances, before any tribunal has been appointed, the LCIA Court has similar (albeit slightly narrower) powers.

Along with the guidelines for parties' legal representatives, the 2014 Rules include an emergency arbitrator mechanism which is designed to provide relief to parties on a temporary basis before the tribunal is appointed. Whilst a number of other rules now contain this mechanism, it is relatively untested and it remains to be seen how much it will be used.

The LCIA Rules date back to 1998 and therefore there is a myriad of amendments that seek to modernise the rules and to clarify points that have arisen from years of LCIA practice. The resulting 2014 Rules provide a comprehensive and modern basis for users of LCIA arbitration in the 21st century.

Robert Lambert
Clifford Chance, London

KCAB Rules

In 2011, the KCAB updated its International Rules to better cater for international users. Until this update, most arbitrations – domestic and international – were conducted under KCAB's Domestic Rules, which were ill-suited to international arbitration as they reflected Korean court procedure.

Most importantly, the new International Rules provide that they are the default rules if one of the parties to the arbitration agreement is non-Korean. Further, they incorporate expedited procedures and allow for higher fees for arbitrators to attract a wider pool of international tribunal members.

However, the International Rules now look somewhat dated as other institutions such as HKIAC, SIAC, and Japan Commercial Arbitration Association (JCAA) have revamped their rules to better cater for emergency arbitrators, interim relief, expedited proceedings and multi-party arbitration. The KCAB currently has a working group looking at how best to

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update the International Rules and considering whether Korea should also adopt similar provisions.

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New Regional Arbitration Institutions

The JAC was established to provide arbitration services for disputes related to Israel, The West Bank, Gaza and East Jerusalem.

A joint venture of ICC Israel and ICC Palestine, the JAC will be recognised by judicial authorities, and its awards enforceable, in both Israel and Palestine. The JAC Rules are an adapted version of the ICC Rules and the JAC management team has been trained by the ICC.

The JAC seeks in the long term to provide a forum for neutral, effective and efficient dispute resolution.

The JAC Court is comprised of nine members, two of which will be appointed by Israel and two by Palestine. Simon Greenberg is a member of the JAC Court.

Simon Greenberg
Clifford Chance, Paris

3. Regional Attitudes towards International Arbitration

In general, states' attitudes to international commercial arbitration remain favourable. The enforcement benefits of arbitration remain an overriding reason for states to promote themselves as arbitration-friendly and, therefore, enforcement-friendly jurisdictions. This is reflected in recent reforms to arbitration laws in a number of jurisdictions including Australia, the Netherlands and Dubai whilst discussion of reform is taking place in other countries including India, Brazil, and Myanmar. On 26 June 2014, the President of the Democratic Republic of the Congo authorised the accession of the DRC to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention). A number of other states have also recently acceded to the New York Convention, with Burundi becoming the 150th signatory to the Convention, and Bhutan and Guyana the 151st and 152nd. Attitudes towards investment treaty arbitration are more varied. Key developments from several jurisdictions are discussed in this section.

The Americas

Across Central and Latin America, most countries are developing an environment conducive to international commercial arbitration. This drive has now been consolidated and countries in this region, as with many others, now use the UNCITRAL Model Law as a template. Enforcement of awards has become easier in recent years, notably in Peru, Colombia, Chile and Mexico. Colombia and Paraguay have recently passed legislation to provide for arbitration as a means of fostering investment in infrastructure.

In Central and Latin America, there are interesting trends relating to investment treaty arbitration. On the one hand you have a group of countries signing trade treaties and looking at legal mechanisms aimed at promoting investment. To some extent certain countries including Colombia, Mexico, Peru and Chile appear to be open to using investment arbitration as a meaningful way to address and manage political risk – with these last three countries all engaging in the TPP talks through the Pacific Alliance formed in 2012.

On the other hand, countries such as Ecuador, Bolivia and Venezuela take a very different stance, perhaps best illustrated by the fact that each of these countries has denounced the Convention on the Settlement of Investment Disputes between states and nationals of Other states (ICSID Convention), which provides a robust regime for the enforcement of arbitral awards concerning investment protection issued under the ICSID Convention. Interestingly, Argentina has recently voluntarily complied with and settled some five treaty awards made against it. Whilst it is no longer entering into new bilateral investment treaties, Argentina is not a recalcitrant nation and, unlike some of its South American neighbours, remains a signatory to the ICSID Convention. Brazil's position in this debate has remained fairly static. Brazil did not start off with an investment treaty model, since it was able to attract Foreign Direct Investment without the need for treaties promoting investment; there do not appear to be any signs of that position changing.

"To some extent certain countries including Colombia, Mexico, Peru, and Chile appear to be open to using investment arbitration as a meaningful way to address and manage political risk…"

"DRC will soon become a party to the New York Convention"

Ignacio Suarez Anzorena
Clifford Chance, Washington DC

North America

On 5 March 2014 the US Supreme Court decided its first investment treaty case: *BG Group PLC v. Republic of Argentina*. The case related to the enforcement of an UNCITRAL award rendered under the Argentina-UK bilateral investment treaty (BIT), pursuant to which investors were supposed to litigate before local courts for 18 months before resorting to

international arbitration. Although the claimant did not comply with the domestic litigation requirement, the arbitral tribunal found that it had jurisdiction to entertain the dispute. The Supreme Court decided that an enforcing court should defer to the arbitrator's decision regarding said domestic litigation requirements. In a split decision, the court applied commercial arbitration principles that procedural preconditions should be decided by the arbitrators, and therefore could not be reviewed by an enforcing court. The dissent on the other hand, considered that according to international law principles, consent should be determined on the basis of the treaty. Nevertheless, the Supreme Court overturned the lower court's decision and gave leave for the award to be enforced.

Ignacio Suarez Anzorena
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Europe

London

London continues to operate as a safe jurisdiction for international arbitration. There has been little by way of legislative developments in the country for some time. As such, the arbitration climate is best tested by the response of the court. The courts continue to support arbitral proceedings by intervening in arbitration proceedings only where necessary to assist those proceedings and maintain the integrity of arbitration. This year, we have seen a number of enforcement decisions in the courts. A good example of a pro-enforcement case was the recent case of *Lombard Knight v. Rainstorm Pictures*[2] where the Court of Appeal made clear that the English courts will enforce foreign arbitral awards unless there are serious grounds affecting the validity of the award. Mere formalities are not enough to thwart an otherwise enforceable award. In this case, the Court of Appeal granted an application to enforce an award even though the copies of the arbitration agreement submitted with the claim form were not certified (as required by the New York Convention and the English Arbitration Act 1996).

Alex Panayides
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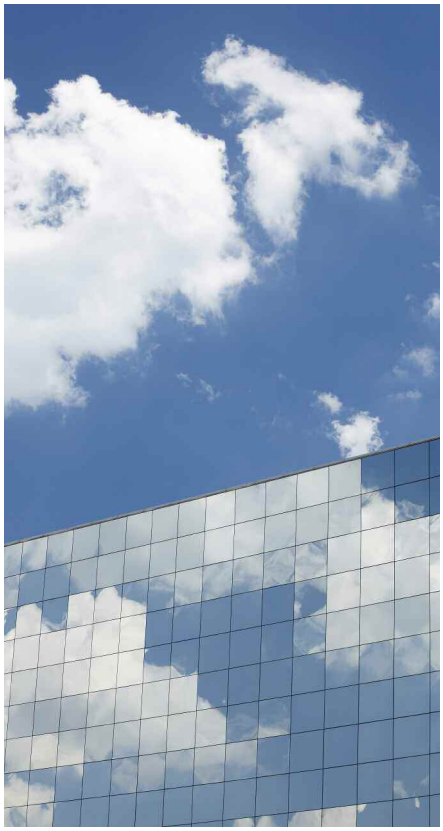
The Netherlands

In May 2014, the Dutch Parliament approved new arbitration legislation. The new Act brings Dutch arbitration law in line with the UNCITRAL Model Law 2006 and affords both tribunals and parties greater flexibility in determining arbitral procedure. The legislation includes provisions on the consolidation of arbitrations, new processes regarding interim measures and the shortening of the process to set aside awards. Setting aside applications will no longer be made through the District Court but will go straight to the Court of Appeal. There are also proposals to limit the length of enforcement proceedings for foreign arbitral awards and for the Dutch state



court to assist in foreign arbitration proceedings. In addition, the legislation seeks to limit the ability of a state or state entity to invoke national law to avoid an arbitration agreement. The legislation is expected to come into force on 1 January 2015, with Dutch arbitral institutions expected to update their rules in order to reflect these developments.

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[2] [2014] EWCA Civ 356 (Tomlinson L.J., Ryder L.J. ,Christopher Clarke L.J.)

Germany

Arbitration proceedings seated in Germany are mirroring international standards and developments, with rising complexity and cost. This has resulted in a real focus within the German arbitration community on proposals for cost saving. Professional bodies like the The German Institution of Arbitration (DIS) are offering rules for expedited proceedings and are increasingly promoting means for alternative dispute resolution like mediation and expert determination. The "front-loading" of arbitration proceedings with early questions and directions on behalf of the arbitral tribunal is a common habit of German arbitrators, and it helps to enhance efficiency by identifying the relevant issues before large submissions and lengthy hearings cause avoidable delays. The tendency to limit document production, for which German practitioners are known as well, is another example.

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France

What distinguishes Paris from any other seat in the world is not only the unparalleled pro-arbitration stance of the law and courts but also the international experience of firms located there. Updates made to French arbitration legislation in 2011 have only served to confirm the pre-eminence of Paris as a seat. The French courts remain sensitive to the independence of arbitrators, including their right to decide on their own jurisdiction. Similarly, the courts will only rarely intervene in arbitral proceedings, in order to support the arbitral process where internationally recognised standards of due process are contravened. The reliability of French support for arbitration means that the large number of cases seated in Paris each year often have absolutely no connection to France and apply a wide variety of laws. Perhaps more importantly, practitioners in Paris regularly act in arbitrations seated outside Paris and indeed all over the world.

"The reliability of French support for arbitration means that the large number of cases seated in Paris each year often have absolutely no connection to France and apply a wide variety of laws."

This year, the much publicised Tapie Affair has seen the head of the IMF, Christine Lagarde, face further questioning in the French courts over the decision to refer a fraud claim by a French politician against Crédit Lyonnais, a previously state-owned French bank, to an arbitral tribunal rather than to the courts. However, whilst the Tapie Affair has undoubtedly raised awareness in the French public's mind as to the nature of arbitration, this does not seem to have dented the popularity of France as an arbitration venue internationally. The ICC, based in Paris, has historically been the most popular institution in the world for international arbitration and this trend has continued in recent years. The 767 Requests for Arbitration filed with the ICC Court in 2013 concerned 2,120 parties from 138 countries and independent territories.

In June 2014, the *Cour de Cassation* quashed a controversial decision that had set aside an ICC award on liability as a result of doubt about the independence of the chairman, Sigvard Jarvin. The court confirmed that parties to an ICC dispute are bound by the institution's rules in their entirety and not selectively. Specifically, the party wishing to challenge Jarvin's role as tribunal chairman had failed to bring a challenge within the period prescribed by the ICC Rules. The case will now return to the lower courts to be heard by different judges, so this will not be the last we hear of this saga.

There remains a strong appetite for alternative dispute resolution within French corporate clients (especially in times of economic crisis and restricted litigation and arbitration budgets). This includes both arbitration and commercial mediation. Mediation, however, has been slower to take off than in some jurisdictions because of a feeling among French corporate clients that if they are not able to negotiate a solution, then a mediator will not be able to help. There may be an apprehension that mediators

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are insufficiently trained to steer commercial disputes of an international reach to a satisfactory outcome.

Nevertheless, France has made a great leap forward in promoting commercial mediation.

Recent highlights include:

- The implementation, in 2012, of the EU Directive on contractual mediation (Directive 2008/52/EC on Certain Aspects of Mediation in Civil and Commercial Matters, dated May 2008)
- The Paris Bar's decision to mark 2013 as "the year of mediation", with the aim of developing accredited training for lawyers as mediators
- Favourable case law by the French Supreme Court (*Cour de Cassation*), which bolstered the efficiency of mediation clauses

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Poland

Draft consultation on the inapplicability of arbitration clauses triggered by insolvency

By virtue of Articles 142 and 147 of the Polish Bankruptcy and Reorganisation Law, Polish law at present dictates that arbitration agreements become invalid when a party declares insolvency. This was relied on in the much-publicised *Elektrim* case, in which the Swiss Supreme Court declared an arbitration agreement to be invalid as a consequence of Article 142 (disagreeing with the UK Supreme Court). The Polish Government is currently undertaking a draft consultation on whether to delete or change this provision. We hope for an outcome that will be less onerous than the current state of play.

ICC arbitration clauses struck out of Polish law FIDIC contracts

A development that is of some concern in Poland is the Government's decision to strike out ICC arbitration clauses from Federation of Consulting Engineers (FIDIC) contracts made under Polish Law.

Dealing with complex construction disputes puts considerable pressure on the courts, owing to the volume of documents typically involved and the depth of expertise required.

By international standards, FIDIC contracts go hand in hand with arbitration clauses (as a means of dispute resolution). The fact that this is no longer the case in Poland is bad for the economy. Any bottleneck in the resolution of FIDIC contract disputes will delay cash flows between developers, contractors and subcontractors. It is exactly this kind of delay that gives rise to insolvency, which we have recently seen more of and, as discussed above, carries its own issues for arbitration agreements. Given the amount of potential that Poland has for further investment in infrastructure, it is important that we also have a legal framework that supports such growth. In my capacity as Chairman of the Arbitration Committee of the ICC in Poland, there have been efforts to engage the Government in a dialogue on this but so far to no avail. The second half of this year is seeing a second wave of efforts.

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Romania

In Romania, new Arbitration Rules were approved recently by the Court of International Commercial Arbitration (together with new arbitration rules of the Romanian Chamber of Commerce and Industry). In the last few years, important legislative changes have taken place, such as the adoption of a new Civil Procedure Code in February 2013. This sets out the general framework for arbitration procedures in Romania. The new Arbitration Rules of the Court of International Commercial Arbitration therefore mark an important stage in the development and recognition of Romanian arbitration at an international level.

Such changes have been made with a view to strengthening the practice of arbitration in Romania, which had been neglected in recent years. Such attractive new regulations should help to develop the use of arbitration in Romania. Nevertheless, there remain a significant number of arbitration proceedings involving Romanian counterparties, filed with the ICC, LCIA or other more established international courts of arbitration.

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Russia

It is widely accepted that the standing of arbitration in Russia is currently far from ideal. In the last decade we have seen many Russia-related disputes being resolved by arbitration outside the Russian Federation. This has included 'purely Russian' disputes, where both parties are directly or indirectly Russian. There are two main reasons for this. The first relates to the rule of law in the Russian Federation; the second has its roots in the sophistication of international arbitration at a global level and, in general, increased demand for this form of dispute resolution amongst Russian clients. Recent sanctions against specially designated entities in the Russian Federation will only contribute to the development of international arbitration in the country.

That said, steps are being taken to improve the arbitration climate, with the newly created Russian Arbitration Association (RAA) leading the way. RAA-assisted arbitration proceedings should be similar to arbitration under any of the leading international arbitral institutions. Assuming that the RAA manages to streamline its institutional costs, it should be able to attract the best foreign and Russian arbitrators, whom the parties believe to be best placed for a particular case. A tribunal with prior exposure to the best practices of the leading international institutions is likely, together with the parties, to conform to such practices and norms. In addition, the RAA allows for flexibility in terms of the seat of arbitration: parties are free to agree on a venue outside the Russian Federation, should they prefer.

"…steps are being taken to improve the arbitration climate, with the newly created Russian Arbitration Association (RAA) leading the way."

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The Middle East: United Arab Emirates

Across the Middle East, the increase in the use of arbitration (both domestic and international) as a method of resolving disputes can be tied to the emergence of new arbitral institutions, and new legislation in the Gulf over the last ten years. Since 2006, all the Gulf countries are party to the New York Convention and across the region we have seen the emergence of new arbitral institutions, the introduction of "arbitration friendly" common law courts and – depending on the jurisdiction – either new or amended arbitration legislation. Leading the way have been:

- **the UAE** – Dubai International Arbitration Centre, Dubai International Financial Centre – LCIA (DIFC-LCIA), and the new ADCCAC Rules.
- **Qatar** – the Qatar Financial Centre (QFC) Arbitration Regulations.
- **Bahrain** – the Bahrain Chamber for Dispute Resolution (BCDRAAA).

The practical impact of these initiatives on our clients has been substantial. For example, clients are increasingly selecting the QFC in Doha and the DIFC in Dubai as a seat of arbitration in commercial contracts. The Dubai International Financial Centre recently enacted the Arbitration Amendment Law, No. 6 of 2013 which brings DIFC law in line with the New York Convention. Historically the Middle East and Gulf region has attracted arbitrations in the construction and oil and gas sectors. This remains the case but the volumes of these disputes have decreased from the high levels of 2008-2010. Such instructions have been replaced by joint venture disputes and, as with our other offices, the increased use of arbitration by financial institutions.

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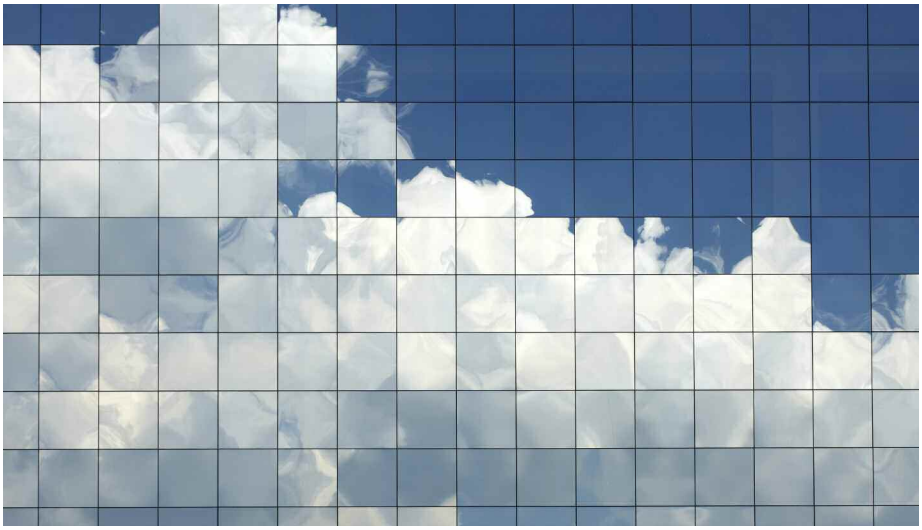

Africa

In 2009, Justice O'Regan, formerly a judge of the Constitutional Court of South Africa, called for an increase in support of arbitration in Africa saying that: *"we need to bear in mind that litigation before ordinary courts can be a rigid, costly and time consuming process and that it is not inconsistent with our constitutional values to permit parties to seek a quicker and cheaper mechanism for the resolution of disputes*."[3] While it is difficult to make generalisations about the Continent, Africa is responding to that call. The New York Convention came into force in Burundi on September 2014 and will likely enter into force in the Democratic Republic of Congo soon. African markets, traditionally perceived by foreign investors as problematic, are now looking increasingly attractive.

The Cairo Regional Centre for International Commercial Arbitration goes from strength to strength – by the end of 2012, 862 cases had been filed with the institution (with a huge burst of activity in late 2011). Mauritius has also been developing itself as an arbitration-friendly jurisdiction. Set up in 2011, LCIA-MIAC (a joint venture between the LCIA and the Government of Mauritius) aims to be the go-to place for Africa-related arbitration. Most recently, in May 2014, the Kigali Arbitration Centre in Rwanda held its second arbitration conference which drew over 150 professionals from over 18 countries to discuss the way in which Kigali can be developed as a regional seat for arbitration.

"Mauritius has also been developing itself as an arbitration-friendly jurisdiction. Set up in 2011, LCIA-MIAC (a joint venture between the LCIA and the Government Mauritius) aims to be the go-to place for Africa-related arbitration."

Although pro-arbitration decisions of the courts cannot be taken for granted, we have seen increasingly encouraging enforcement decisions coming from the Nigerian courts[4] and Mauritius recently issued its first pro-arbitration decision under the New York Convention.[5]

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Asia-Pacific

Australia

Australia is now a Model Law federation. This development together with UNCITRAL is particularly important when we consider that Asia has the highest concentration of Model Law states of any region in the world. As a result of these harmonisation efforts, we are seeing State and Federal courts in Australia take not just a pro-arbitration approach, but an increasingly internationalist approach to arbitration cases. For example, where reference to foreign jurisprudence used to be largely limited to English cases, we now see references to the decisions of courts from a range of Model Law states (e.g. Singapore). This internationalist trend is especially visible in relation to judicial assistance for arbitral proceedings and the enforcement and recognition of arbitral awards.

While we are yet to see the full impact of the introduction of the Model Law in Australia, the harmonisation across the region makes it easier for our lawyers to work on arbitrations seated in Hong Kong and Singapore, where the Model Law is also in force. Our Australian arbitration team is highly mobile, and cross-jurisdiction teams are now the norm for our arbitration practice.

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[3] Lufuno Mphaphuili & Associates v Nigel Athol Andrews and Bopanang Construction, Case CCT 97/07 [2009] ZACC 6, para. 197.
[4] Nigerian Agip Exploration v. Nigerian National Petroleum Corp [2014].
[5] Cruz City 1 Mauritius Holdings v Unitech Ltd and others [2014] SCJ 100.

A particular area of growth for Australian lawyers is gas price arbitration work, where Australian lawyers have relevant and exportable oil and gas expertise and are used to working closely with energy specialists on pricing formulae.

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Mainland China

The new leadership in Beijing has launched a strong campaign against judicial corruption, with reforms focusing on the independence of local courts from local government. The court system is therefore expected to become more efficient, transparent and impartial in the near future, which may further increase the ease of enforcement of foreign awards.

The huge overseas investment made by Chinese companies in the last few years has brought with it an increasing number of offshore disputes. Transactions in emerging markets continue to face challenges caused by political instability and national protectionism in those jurisdictions. However, since Chinese companies are increasingly aware of arbitration as a means of supporting and protecting their overseas investments, we expect to see arbitration used more and more in the coming years. In particular, the court's recognition of international arbitral awards under the New York Convention has steadily improved over the last two decades. The Chinese courts refuse enforcement only in exceptional circumstances and refusals on public policy grounds have become increasingly uncommon. According to a senior judge, parties sought to enforce possibly hundreds of foreign awards in China between 2010 and 2012. Of these awards, the courts refused to recognise and enforce just seven. These seven were among twenty-seven foreign awards referred to the Supreme People's Court by lower courts that had initially refused enforcement. Nevertheless, the speed with which a foreign award can be enforced in China (if at all) can still prove frustrating in practice.

Also, Amendments to the Civil Procedural Law in 2012 (the Amended CPL) expanded the scope of interim injunctions from IP litigation to all types of civil litigation and commercial arbitration. Interim relief is now available prior to the commencement of arbitration proceedings. However the actual application and enforceability of interim injunctions are yet to be tested in practice.

In addition, whilst the Amended CPL is not clear-cut on this point, it is likely that such pre-arbitration interim measures remain available only to support onshore as opposed to offshore arbitrations.

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Hong Kong

In 2011, Hong Kong completely overhauled its Arbitration Ordinance, which is now based on the UNCITRAL Model Law. The Arbitration Ordinance abolishes the distinction between domestic and international arbitration, limits the ability of the courts to intervene in arbitral proceedings and allows tribunals to order interim measures. It also makes express provision for "arb-med" (where an arbitrator sits as a mediator once arbitral proceedings on the same dispute have been commenced). Features of the old regime for domestic arbitration remain in place through a series of 'opt-in' provisions, however these must be expressly adopted in an arbitration agreement. These changes to the Arbitration Ordinance reflect Hong Kong's pro-arbitration and internationalist approach to arbitration.

Romesh Weeramantry
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Singapore

The primary positive trend in Singapore is its development as a hub for dispute resolution. We are seeing an increase in not only the volume of arbitrations coming out of Singapore but also the value of those arbitrations, with a S$3.5 billion claim in 2013 being the highest value claim ever filed at the SIAC. There is a very strong international flavour to the cases coming out of Singapore, with SIAC becoming the centre of choice for South East Asian arbitrations (of the 239 cases filed at SIAC in 2013, 59% involved parties from South and South East Asia). As the region develops and attracts more international trade, and users of arbitration in Singapore become more international, the capabilities of our global arbitration team and the ability to work seamlessly across our network will become all the more relevant.

As far as local institutions are concerned, SIAC is now ranked among the world's leading arbitral bodies, with over 20 years of experience. SIAC is known for being a very proactive institution. For example, it has administered more emergency arbitration applications than any other institution. SIAC's expedited arbitration process is also proving to be very popular with clients primarily concerned with resolving their disputes as quickly and efficiently as possible. Its impressive international panel of arbitrators offers expertise across all sectors. SIAC's new governing structure, announced in 2013, and streamlined court structure will also bring benefits to users.

Singapore's success as a jurisdiction for arbitration is in large part due to the openly pro-arbitration stance taken by the judiciary and, indeed, the Government. Singaporean legislators are quick to respond to any need for change and as such, amendments are made on a fairly regular basis. The latest change came last year when the International Arbitration Act was amended further to bring it in line with the latest

developments in the international arbitration world. The speed and efficiency with which any deficiencies in arbitration-related legislation are addressed is, in our opinion, unmatched.

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Korea

Korean parties have, for quite some time now, embraced international arbitration as a method of resolving international disputes. In part this can be traced back to the international investors who acquired South Korean assets in the Asian financial crisis of 1997 to 1999, insisting that arbitration clauses be included in their purchase agreements. However, it also reflects the outbound nature of the economy and its focus on sectors such as shipbuilding, international construction and electronics which typically rely on arbitration to resolve disputes.

More recently, and with an eye on the success of Hong Kong and Singapore as hubs for international arbitration, Korea has sought to position itself as a competitor to those jurisdictions as a seat for international arbitrations. This has been linked to and helped by the Korean Government entering into a number of bilateral and multilateral free trade treaties, with the most important being the Korea-United States Free Trade Agreement and the Korea-European Union Free Trade Agreement in 2011 which have also enabled the liberalisation of the legal market with over twenty international law firms opening offices in Seoul since 2012.

"More recently, and with an eye on the success of Hong Kong and Singapore as hubs for international arbitration, Korea has sought to position itself as a competitor to those jurisdictions as a seat for international arbitrations. This has been linked to and helped by the Korean Government entering into a number of bilateral and multilateral free trade treaties…"

To this end, in 2013, the KCAB, in conjunction with the Ministry of Justice, the Korean Bar Association and the Seoul Metropolitan Government, opened the Seoul International Dispute Resolution Center (Seoul IDRC) in Seoul's central business district. The Seoul IDRC seeks to emulate the success of Maxwell Chambers in Singapore and the ICC, HKIAC, SIAC and The American Arbitration Association (AAA), The International Centre for Dispute Resolution (ICDR) have all set up liaison offices there. There are also a number of working parties discussing revisions to both the Korean Arbitration Act (1999) and the KCAB's International Rules. In respect of the Korean Arbitration Act, the focus is on updating it from the Model Law 1985 in accordance with the amendments introduced by the Model Law 2006. In relation to the KCAB's International Rules, as well as a number of stylistic and linguistic changes, there is an ongoing debate on whether to include equivalent emergency arbitrator, joinder and consolidation provisions that are found in more cutting-edge rules such as those published by HKIAC or SIAC.

Nonetheless, there are a number of challenges to Korea becoming a favoured seat for international arbitration. These include the fact that the Korean courts have recently refused to enforce several arbitral awards on grounds that have been criticised as being 'anti-arbitration'. Further, there is no official translation of the Korean Arbitration Act or the relevant civil procedures and Korean courts proceedings are generally opaque to non-Korean parties as they are conducted solely in Korean. This contrasts with the more accessible courts in Hong Kong and Singapore and their avowedly pro-arbitration stance.

However, irrespective of whether parties start choosing Seoul as a seat, it is clear

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India – "A string of pro-arbitration cases recognise the need for respect of, and the independence of the arbitral process. This trend is significant to our Singapore practice since Indian clients are already the biggest users of Singapore as a seat of arbitration."

that we will see an increasing number of Korean users of international arbitration. In particular, due to the rise of demand for infrastructure and energy projects and the involvement of Korean construction companies in the respective projects, the demand for arbitration work involving these companies is likely to increase.

Korean construction companies are involved in projects all over the world, as demand for infrastructure and energy projects grows from emerging economies. This is likely to trigger a greater demand for arbitration work. A concern for clients in emerging economies is cash flow and the regulation of payments. Cash flow is the lifeblood of the construction industry and clients are increasingly conscious of this from the outset of a dispute. Clients are no longer focussed on the merits of a case alone. The question often raised is, what are the chances of obtaining a favourable award and, if so, can we enforce the award in an appropriate jurisdiction?

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India

A string of pro-arbitration cases recognise the need for respect and the independence of the arbitral process. This trend is significant to our Singapore practice since Indian clients are already the biggest users of Singapore as a seat of arbitration.

Underpinning this trend are the decision of the Supreme Court of India in *Bharat Aluminium Co v. Kaiser Aluminium Technical Services*, various decisions of the Mumbai High Court, including that in *HSBC PI Holdings (Mauritius) Ltd v Avitel Post Studioz Ltd*,* and the decision of the Supreme Court of India in *World Sport Group (Mauritius) Ltd v MSM Satellite (Singapore) Ltd*. In the latter cases, the courts held that issues of fraud should properly be dealt with by the arbitral tribunal in accordance with the arbitration agreement entered into between the parties, and not by the courts. This departed from an earlier controversial line of authority in India which had held otherwise.

It remains too early for us to say that this trend has percolated across the entire Indian sub-continent but the early indications are extremely positive.

The Law Commission of India has recently proposed significant amendments to the Arbitration & Conciliation Act 1996. The proposals seek to encourage institutional arbitration in India (including the use of emergency arbitrators), reduce delays before the Indian courts, tighten the provisions regarding the setting aside of awards, and bring Indian law in line with the UNCITRAL Model Law. The proposals are currently under consideration by the Ministry of Law and Justice.

Indonesia

Indonesia has announced that it will not renew its bilateral investment treaty with the Netherlands as of 1 July 2015. It is reported that Indonesia plans to not renew all of its bilateral investment treaties. Investors should consider structuring their investments to acquire the protection of multilateral investment treaties to which Indonesia is a party, such as the ASEAN Comprehensive Investment Agreement.

"Indonesia has announced that it will terminate its bilateral investment treaty with the Netherlands as of 1 July 2015."

* Clifford Chance acted for HSBC PI (Mauritius) Holdings and instructed local counsel to appear on its behalf before the Mumbai High Court in *HSBC PI Holdings (Mauritius) Ltd v Avitel Post Studioz Ltd*.)

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