



**An Attempt to Identify the Essential Characteristics of Major Regional
Arbitration Institutions and New Trends in the Asia – Pacific Region.**

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Abbreviations

AAA: American Arbitration Association

ACICA: Australian Centre for International Commercial Arbitration

ADR: Alternative Dispute Resolution

CIArb: Chartered Institute of Arbitrators

CIETAC: China International Economic and Trade Arbitration Commission

DIAC: Dubai International Arbitration Centre

HKIAC: Hong Kong International Arbitration Center

HKIArb: Hong Kong Institute of Arbitrators

ICC: International Chamber of Commerce

ICC Court: International Chamber of Commerce's International Court of Arbitration

ICDR: International Centre for Dispute Resolution

JCAA: Japan Commercial Arbitration Association

KCAB : Korean Commercial Arbitration Board

KLRCA: Kuala Lumpur Regional Arbitration Centre for Arbitration

LCIA: London Court of International Arbitration

PRC: People Republic of China.

SIAC: Singapore International Arbitration Centre

SIArb: Singapore Institute of Arbitrators

UK: United Kingdom

UNCITRAL: United Nations Commission of International Trade Law

Introduction

Together with the strong growth of economies in the Asia – Pacific Region, arbitration as a preferred method of alternative dispute resolution has become more and more popular in the region.¹ However, it is not unusual that users of arbitration services may not have an adequate knowledge about the characteristics of arbitration institutions which they wish to choose or they have chosen for the settlement of their commercial disputes. According to Lew (2003), “*Most frequently, the institution is chosen by default because one of the parties makes a suggestion and the other one knows nothing else!*”² Although there are various books and articles about arbitration institutions in the Asia – Pacific region, almost all of these publications concentrate on the comparison of national arbitration laws of different jurisdictions as well as arbitration rules of respective arbitration institutions in the Asia Pacific Region. In spite of these early observations on successful achievements of some arbitration institutions such as Hong Kong International Arbitration Centre or Singapore International Arbitration Center, the mechanism for its operations, especially the necessary legal infrastructure of such institutions has remained unclear. The question remains that why some arbitration institutions like HKIAC and SIAC have successfully attracted international business community but the others have not. Professor Lew (2003) explains further that “*Alternatively, the choice may be based on the fact that an institution is well known in a particular geographic or industrial*

¹ Mr. Philip J. McConaughay expressed in his book titled “*International Commercial Arbitration in Asia*” 2nd edition published by JurisNet in 2006 that “*today, there no longer in any doubt that Asia and particularly China- has emerged as the world’s leading site for the conduct of international commercial arbitrations, at least in terms of volumes new cases filed each year*”. (p.xxviii). According to Leong in *International Commercial Arbitration in Asia*, it has been estimated that each year, over 3000 new arbitration cases are heard worldwide, with around 40% of these having direct links to Asia.

² Lew and ed “*Comparative International Commercial Arbitration*” published by Kluwer International in 2003 at p.36.

*area*³. Why such institution is well known but the others are not? It suggests that this issue shall require a careful consideration and therefore, additional study of regional arbitration institutions is needed. In light of this guidance, it is of interest to compare major regional arbitration institutions to find out their essential characteristics.

The aim of this paper is to identify the common essential characteristics of major arbitration institutions in the Asia Pacific Region. This enables users of arbitration services offered by arbitration institutions to better understand common essential characteristics of such institutions. The question as to *what is a developed arbitration infrastructure* will also be explained in an attempt to provide practical solutions for Regulators to improve their arbitration system. The paper also clarifies the main role of an arbitration institution as a private service provider in order to help arbitration practitioners to promote their services.

The main method of study is a comprehensive comparison between HKIAC and SIAC as regional arbitration institutions with the world's leading international arbitration institutions such as AAA-ICDR and LCIA as well as with other less developed national arbitration institutions such as CIETAC and JCAA. The operation of regional arbitration institutions will be analysed in a broad sense which is closely connected with its environment and legal infrastructure. The operation of these regional institutions will also be considered as private service providers in the competitive arbitration market in the view of its commercial users.

³ Lew and ed "Comparative International Commercial Arbitration" published by Kluwer International in 2003 at p.36.

Due to the limited scope, this paper will focus on the institutional and structural mechanisms of two leading arbitration institutions in the region are HKIAC and SIAC. Other arbitration institutions will only be mentioned in comparison with HKIAC or SIAC where it is appropriate. This paper is also limited in the conduct of international arbitration but not domestic arbitration.

This paper is structured in the following three main sections:

The first section will give an overview on the establishment and development history of the leading arbitration institutions in the Asia – Pacific region. The next section will analyse functioning operations of such institutions. The last section will compare different rules of these institutions to find out its direct involvement in the settlement of international commercial disputes in the Asia Pacific Region.

Section I.

The establishment and development history of major arbitration institutions in the Asia - Pacific Region.

I. Definition of institutional arbitration

There are two types of arbitration namely ad-hoc and institutional. Ad hoc arbitration is conducted under a specially designed framework to organise and conduct such arbitration. Institutional arbitration is administered by an institution set up specifically to provide an arbitration service.⁴

There are many arbitration institutions, those of which can be differently classified subject to various criteria⁵. In this paper, major notable arbitration institutions which are actively operating in the Asia Pacific Region can be classified on its legal basis and scope of its operation as follows:

a) International arbitration institutions:

- International Chamber of Commerce's International Court of Arbitration;
- Kuala Lumpur Regional Centre for Arbitration;
- American Arbitration Association/International Center of Dispute Resolution;
- London Court of International Arbitration.

b) Regional arbitration institutions:

⁴ Refern and ed further divide an administered arbitration as wholly administered or semi-administered one in "*Law and Practice of International Commercial Arbitration*", 4th edition published by Sweet & Maxwell in London in 2004 at p.55.

⁵ Lew and ed classify arbitration institutions based on its legal basis as private law means or public international law in "*Comparative International Commercial Arbitration*", published by Kluwer Law International in London in 2003 at pp. 38-41. Refern and ed classify arbitration institutions based on main scope of its operation or types of services provided in "*Law and Practice of International Commercial Arbitration*", 4th edition published by Sweet & Maxwell in London in 2004 at p.60. Arbitration institutions can also be classified as international or national and generalist or specialist in Fouchard Gaillard Goldman on International Commercial Arbitration, E. Gaillard and J. Savage (eds.), published by Kluwer Law International (1999) pp. 330-348.

- Hong Kong International Arbitration Centre;
- Singapore International Arbitration Centre;
- c) National arbitration institutions
 - Australian Centre for International Commercial Arbitration;
 - China International Economic and Trade Arbitration Commission;
 - Dubai International Arbitration Centre;
 - Japan Commercial Arbitration Association;

II. An overview on major arbitration institutions in the Asia Pacific Region

As mentioned above, major notable arbitration institutions which are actively operating in the Asia Pacific Region are: ICC Court, KLRCA, AAA, HKIAC, SIAC, ACICA, CIETAC, DIAC and JCAA⁶. Among them, it is widely recognized that ICC, LCIA and AAA/ICDR are the world's leading arbitration institutions⁷ and Hong Kong and

⁶ On 2nd November 2004 representatives of 17 arbitration centres and associations met in Sydney and established the Asia Pacific Regional Arbitration Group ('APRAG'). Membership of APRAG has since grown to 30 members. See further at <http://www.aprag.org/index.html>.

⁷ Survey result in 2006 indicated that *“the top ranking institutions cited by respondents were the International Chamber of Commerce (ICC), the London Court of International Arbitration (LCIA) and the American Arbitration Association/International Centre for Dispute Resolution (AAA/ICDR)”* in *“International arbitration: Corporate attitudes and practices 2006”* p.12 and survey result in 2008 has a similar finding as *“Notwithstanding the reported statistics, 45% of participating corporations said that they preferred to submit their disputes to the ICC, followed by the AAA-ICDR (16%) and the LCIA (11%)”* in *“International arbitration: Corporate attitudes and practices 2008”* both conducted by School of International Arbitration, Queen Mary, University of London and sponsored by PricewaterhouseCoopers LLP.

Singapore are “widely regarded as leading centres for international commercial arbitration in Asia”⁸ and even considered as “the only real competitors in the international arbitration arena in Asia.”⁹

1/ American Arbitration Association /International Center of Dispute Resolution

AAA was founded in 1926 as a non profit public service organization which provides dispute resolution services: mediation, domestic and international arbitration. AAA’s headquarter is located in New York City, New York State of United States of America. AAA headed by a president and vice presidents. AAA policies are drafted by a Board of Directors and an Executive Committee. A Chairperson of the Board and a Chairperson of the Executive Committee are all responsible for consulting and advising the President on policies drafted by its respective bodies. AAA maintains 34 regional offices throughout the USA.

ICDR was established by AAA in 1996 as a separate international division to administer international cases through its centers in New York, USA and Dublin, Ireland and facilities of one of 62 arbitration institutions in 43 countries worldwide which it has co-operative agreements with.¹⁰ The case management is organized into three regionally specialized teams: the European Desk, American Desk and Asian Desk, each with a team leader. AAA/ICDR maintains an international arbitral panel of **535** persons for

⁸ Chong Leong, “*International Commercial Arbitration in Asia*” published by Mondaq Ltd in 2004.

⁹ SCHAEFER, “*Borrowing and Cross-Fertilising Arbitration Laws - A Comparative Overview of the Development of Hong Kong and Singapore Legislation for International Commercial Arbitration*”.

¹⁰ See http://www.adr.org/about_aaa

international cases. ICDR opened a European office in Dublin, Ireland, an office in Mexico City, Mexico through a joint venture with the Mediation and Arbitration Commission of the Mexico City National Chamber of Commerce and an office in Singapore through a joint venture with the Singapore International Arbitration Centre. In 2007, there are 622 new case filings with ICDR.¹¹

2/ London Court of International Arbitration:

LCIA was founded on 23rd November 1892 as a not for profit company limited by guarantee. LCIA Headquarters is located in London, United Kingdom. LCIA comprises three principal administrative elements: the Company, the Court and the Secretariat. The company is governed by the Board of Directors consists of prominent London-based arbitration practitioners. The Board is primarily concerned with business development and compliance issues and has no role in the conduct of arbitration proceedings. The LCIA Court comprises up to 35 members of 5 year term appointed by the LCIA Board of Directors. A maximum 6 members may be from the UK. 23 jurisdictions are represented on the court. LCIA Court is headed by a President, 7 vice presidents and the Registrar. The court is the final authority for the application of the LCIA Rules and its key functions are prescribed by the Rules: selection and appointment of arbitrators, determining challenges to arbitrators and controlling costs. All members of the court are eligible for appointment as arbitrators in LCIA cases. The Secretariat under the active supervision of the Registrar, administer all of arbitrations referred to the LCIA both under its own Rules, other rules or ad hoc. LCIA has formed six Users' Councils: The European Users' Council, The Arab Users' Council, The North American Users' Council, The Latin-

¹¹ Statistic data according to AAA's 2007 Annual Report at p.5.

American and Caribbean Users' Council, The Asia-Pacific Users' Council and The African Users' Council. Each Council has its own officers and devises its own programme of activity appropriate to the needs of the region. Members may elect to which Council they wish to be attached.¹² In 1980s, LCIA became fully independent of its founding and governing bodies (the City of London, the London Chamber of Commerce and the Chartered Institute of Arbitrators). The LCIA does not maintain or publish a list of arbitrators but it operates a database of 800 neutrals from more than 80 jurisdictions. In 2007, LCIA handled 127 international cases.¹³

3/ Hong Kong International Arbitration Center:

The HKIAC is an independent non profit making company limited by guarantee which was established in 1985. According to official announcement declared by HKIAC in its website, HKIAC *“has been generously funded by the business community and by the Hong Kong Government but is independent of both and is financially self-sufficient”*.

HKIAC operates under a Council composed of 22 members who are businessmen and professionals of many nationalities and with a wide diversity of skills and experience. HKIAC Council is headed by a chairperson and vice chairpersons. HKIAC Council is supported by HKIAC Appointment Advisory Board and HKIAC Advisory Council. HKIAC Council elects a Management Committee. HKIAC’s activities are administered by the Secretariat with a Secretary General who also acts as HKIAC’s Chief Executive and Registrar. There are various sub-committees in charge of different tasks such as: Panel Selection, Marketing and Promotion, Domain Name Dispute Resolution, E-

¹² See further in LCIA’s website at <http://www.lcia-arbitration.com/>

¹³ According a survey titled *“International Arbitration: corporate attitude and practice 2008”* at p. 15

Commerce, Mediator Accreditation, Finance, and so on.¹⁴ In 2007, HKIAC received 448 arbitration cases.¹⁵ HKIAC has in total *271* Arbitrators on its Panel.

4/ Singapore International Arbitration Center

SIAC is a non profit organization incorporated as a public company limited by guarantee in March 1990. It commenced operations on 1st July 1991. As declared in the website, SIAC was funded by the Singapore government at its reception but is now entirely financially self-sufficient. SIAC operations are overseen by the Board of Directors composed of 7 members representing for international and local business communities and professionals in Singapore. SIAC is headed by a chairman who also is a Director of the SIAC's Board of Directors. Daily operations of SIAC are directed by a deputy chairman. SIAC is administered by the Secretariat composed of the deputy chairman who acts as secretary general, counsels and assistants. SIAC maintains an International Panel consist of 92 arbitrators from 19 jurisdictions outside Asean region and a Regional Panel of over 130 arbitrators who reside in Singapore or within Asean region. In 2007, SIAC claims to administer 70 international cases.¹⁶

5/ China International Economic and Trade Arbitration Commission

CIETAC was established in 1954 under the auspices of the China Council of the Promotion of International Trade. Due to the increasing number of international companies setting up operation and being engaged in transactions in China, CIETAC has

¹⁴ See organizational chart in HKIAC website at http://www.hkiac.org/HKIAC/HKIAC_English/main.html

¹⁵ See statistic in HKIAC's website at http://www.hkiac.org/HKIAC/HKIAC_English/main.html.

¹⁶ See statistic in SIAC's website at <http://www.siac.org.sg/facts-statistics.htm>.

become one of busiest arbitration institutions in the world.¹⁷ CIETAC Headquarters is located in Beijing, China. CIETAC has two sub-commissions which are located in Shanghai and Shenzhen. CIETAC also maintains 19 liaison offices in different regions and specific business sectors. The CIETAC consists of one chairman and several vice chairmen and a number of members. Headquarters and each sub-commission have their own secretariats to handle daily works under the leadership of their respective secretaries general. There are three specialised committees within the CIETAC. One committee is responsible for research, consultation and training activities. The other committee is responsible for editing arbitral award and publishing yearbooks and the last committee is responsible for the panel of arbitrators. CIETAC maintains 7 different Panels of Arbitrators which consists of total 1025 arbitrators including 270 arbitrators coming from outside China.

6/ Japan Commercial Arbitration Association

JCAA was incorporated as a non-profit institution in 1953 with the authorization and support from both Ministry of Trade and Industry (“MTI”) and Japan Chamber of Commerce and Industry. JCAA Headquarters is located in Tokyo, Japan. JCAA also maintains offices in Osaka, Nagoya, Kobe and Yokohama. JCAA has close relationship with the chambers of commerce and industry because JCAA was established as one of committees within Japan Chamber of Commerce and Industry. Internally, JCAA has six departments: (1) General Affairs, (2) ATA Carnets, (3) ADR Public Relations, (4) Planning and Consulting, (5) Mediation and (6) Arbitration. The JCAA’s Board of

¹⁷ According a survey titled “*International Arbitration: corporate attitude and practice 2008*” at p. 15 CIETAC handled 429 international cases in 2007 and total cases are 2182 just stand after ICC and AAA/ICDR.

Directors consists of 54 members within which three directors are on a full-time basis. Most of directors are the Chairman of Japan or local Chamber of Commerce and Industry or a president of large companies in Japan.¹⁸ In 2007, there were only 12 case fillings with JCAA.¹⁹ 132 candidates are listed in the JCAA's Panel of Arbitrators. 83 candidates are Japanese and 49 candidates are non-Japanese. Non-Japanese candidates represent about 19 countries such as USA, UK, Switzerland, Germany, Netherlands, France, Belgium, Singapore, China, Korea, and Australia. Almost all candidates are lawyers.²⁰

III Arbitration Infrastructure

It is difficult to fully understand the establishment and development of arbitration institutions without an analysis of its sociological factors, economic environment and legal infrastructures such as justice system, legislation and legal profession in the Asia Pacific Region.

1/ Sociological factors

Many countries in the Asia Pacific Region were colonies of Western countries which imposed their legal systems in Southeast Asia.²¹ There a common characteristic between Hong Kong and Singapore is that both territories as former British colonies are members of common law family whereas China and Japan are civil law countries. Due to special political circumstances, Chinese legal system is strongly influenced by legal theory of former socialist countries in Eastern Europe such as former Soviet Union where central planned economies used to exist. Japan is not a colony but its legal system is also

¹⁸ Source: JCAA

¹⁹ According a survey titled "*International Arbitration: corporate attitude and practice 2008*" at p. 15

²⁰ Source: JCAA

²¹ SCHAEFER, "*Leaving the Colonial Arbitration Laws Behind: Southeast Asia's Move into the International Arbitration Arena*" in *Arbitration International*, Vol. 16 No. 3 (2000), pp. 297 - 332

influenced by Dutch law. Schaefer (2000) evaluated that “*Many countries in the region still use colonial arbitration law with regard to domestic arbitration. But the colonial powers left behind not only their statutes but also their legal thinking, which had an even more powerful impact.*”²² Both Hong Kong and Singapore inherited and incorporated the tradition of English law including arbitration law into their legal systems until 1989 and 1994 when Hong Kong and then Singapore respectively adopted the UNCITRAL Model Law on International Commercial Arbitration (Model Law) as the legal regime for international commercial arbitration. The author also viewed that “*legal thinking is especially influential on the general understanding of how civil justice should be administered and on the question of how to construe statutes or the weight of court precedents.*”²³

The other advantage of Hong Kong and Singapore in comparison with other jurisdictions in the region is that as a result of colonial period, English became a common language for international business in these countries. In fact, higher court proceedings in Hong Kong and Singapore are generally in English. This can be considered as a very important factor for the development of international commercial arbitration whereas language is considered as one of barriers for development of international commercial arbitration in both China and Japan.

2/ Economic environment

²² ibid

²³ ibid

There is a market for international arbitration services offered by arbitration institutions like any other legal service.²⁴ In this aspect, the needs for international arbitration services become an important factor. The fact is that both AAA/ICDR and LCIA are located in New York and London as one of the largest financial and commercial centers of the world. HKIAC of Hong Kong and SIAC of Singapore are both located in leading financial and commercial centers of the Asia Pacific Region. Hong Kong is rated as a freest economy in the world. Mr. Latham (2006) of Ince & Co comments that “*Hong Kong as a major commercial and financial centre in the region of many years, is not only a popular forum for arbitration where one of parties is domiciled in Hong Kong but it has also been a very popular neutral choice for arbitration where both parties are domiciled outside of Hong Kong.*”²⁵ Singapore is the location of many regional offices of the world largest multinational corporations. It should be noted that both Hong Kong and Singapore are the largest international sea ports in the region. China is in a different situation. The demands for international arbitration services are only arisen when China has changed its central planned economy under a former Soviet Union’s model to a market oriented economy and attracted a largest foreign investment flow into the country. It is arguable that the demand for international arbitration services does not actually come from local business community but it is arisen from international investors.²⁶ Japan is one

²⁴ Goldsajn considered “it justified to assume that an international arbitration “market” exists and that it will continue to exist even after the Model Law has been accepted” in “*Chapter 2. Choice of International Arbitrators, Arbitral Tribunals and Centers: legal and sociological aspects. By Aleksandar Goldsajn*” in “*Essays on International Commercial Arbitration*” edited by Petar Sarcevic, published by Graham & Trotman/Martinus Nijhoff in 1989.

²⁵ Arbitration World 2006, Jurisdictional comparisons 2nd edition General editor: J William Rowley QC Published by The European Lawyer Ltd. London, UK in January 2006

²⁶ Jingzhou Tao,” Chapter I. Arbitration in China” in International Commercial Arbitration in Asia, edited by McConaughay and published by JurisNet in 2006. According to the US – China Business

of largest trading partners in the international trade and Japan should have a favourable economic environment for the development of international commercial arbitration.

3/ Legal infrastructure

- a) Legislation favouring arbitration activities.

Hong Kong and Singapore are stable and advanced service hubs in Southeast Asia with a reliable common law system. These factors are an essential basis for Hong Kong and Singapore to become the most-favoured venues in Asia.²⁷ Both Hong Kong and Singapore have adopted the UNCITRAL Model Law on International Commercial Arbitration. They have also adapted and supplemented the Model Law. The Model Law was incorporated into the Hong Kong Ordinance (Chapter 341) on 6th April 1990. The Hong Kong Ordinance was subsequently amended on 27th June 1997. In Singapore, the Model Law was adopted in 1994. It is interesting to note that HKIAC and SIAC have established just 5 years ahead of the adoption of the UNCITRAL Model Law in both territories (1990 and 1995 respectively) as a modern legal regime for international arbitration in both Hong Kong and Singapore. Its adoption was regarded as an important contribution to support and promote their respective arbitration centres, the Hong Kong International Arbitration Centre founded in 1985 and the Singapore International Arbitration Centre founded in 1990. It leads to some academic researchers' assumption that *“a state-of-the-art legislative framework is the essential precondition for any international arbitration centre to prosper. This assumption is supported by the fact that arbitration communities in established international arbitration venues do not tire of*

Council, the utilized foreign investment from Jan-Oct 2004 was US\$118.999 billion and total foreign trade has increased from US\$102.8 billion in 1988 to US\$1154.74 billion in 1998.

²⁷ Schaefer, *“Borrowing and Cross-Fertilising Arbitration Laws - A Comparative Overview of the Development of Hong Kong and Singapore Legislation for International Commercial Arbitration”* in Journal of International Arbitration, Vol. 16 No. 4 (1999), pp. 0041 – 0100.

lobbying for legislative improvements to keep pace with international developments, as has been the case in the Netherlands, Switzerland and, most recently, England."²⁸ It may be the cases of both China and Japan. Although CIETAC was established in 1954 but according to Mr. Murray (2006) of Ince & Co., Arbitration Law of China which is based on UNCITRAL Model Law (articles from 65-73) was not promulgated until 1995.²⁹ It is even later in Japan. JCAA was founded in 1953. However, a new Arbitration Law which is based on the 1985 UNCITRAL Model Law for International Commercial Arbitration with a few noteworthy differences was only enacted in 2003 and came into effect from 1st March 2004.³⁰

b) The supportive attitude towards arbitration of the local courts.

In both Hong Kong and Singapore,³¹ courts have played a supportive role of arbitration, refraining from intervention where possible.³² Unfortunately, there is no such attitude in China. Chinese Courts have exclusive powers in various matters related to arbitration including the power (i) to give a final ruling on the validity of arbitration agreement, (ii) to offer measures for the preservation of property and for the interim protection of

²⁸ Schaefer, "*Borrowing and Cross-Fertilising Arbitration Laws - A Comparative Overview of the Development of Hong Kong and Singapore Legislation for International Commercial Arbitration*" in Journal of International Arbitration, Vol. 16 No. 4 (1999), pp. 0041 – 0100.

²⁹ Arbitration World 2006, Jurisdictional comparisons 2nd edition General editor: J William Rowley QC Published by The European Lawyer Ltd. London, UK in January 2006.

³⁰ McAlinn, "*Changing the (JCAA) Rules: Improving International Commercial Arbitration in Japan*" in: JCAA Newsletter 17 (2004), also available at <<http://www.jcaa.or.jp/e/arbitration-e/syuppan-e/newslet/news17.pdf>> p.24.

³¹ Howell (2007) comments that "*Singapore is undoubtedly one of the most well-informed sophisticated and arbitration – friendly jurisdictions in Asia*" in "Developments in International Commercial Arbitration in Asia" April 2007 at p.9.

³² POLKINGHORNE comments that "*The (laudable) policy of the Model Law is to keep judicial intervention to a minimum, and such objective is underscored by one of the governing principles of the Hong Kong Arbitration Ordinance: "the Court should interfere in the arbitration of a dispute only as expressly provided by this Ordinance." Many of the powers formerly exercised only by the Hong Kong and Singapore courts are now primarily exercised by the arbitral tribunal. The main remaining functions of the courts relate to stay of proceedings, interim measures of protection, setting aside and enforcement of arbitral awards. The Hong Kong and Singapore courts have tended to play a supportive role of arbitration, refraining from intervention where possible*" in "Arbitration in Southeast Asia: Hong Kong, Singapore and Thailand Compared" by Kluwer Arbitration.

evidence, (iii) and to grant or reject an application for setting aside the arbitral award. The ability of the PRC Courts to make a final ruling on the validity of arbitration agreement is considered as “*a departure from common principles, reflected in the UNCITRAL Model Law on International Commercial Arbitration.*”³³ Like any less developed legal system, the PRC Courts have also faced problems in the enforcement of arbitral awards in China due to “*lack of cooperation among courts of different localities, administrative intervention from local governments, local protectionism, lack of a legal enforcement of “playing by the rules”, and corruption.*”³⁴

Japan is in a different situation. Japan court system is the developed one. According to Mr. Tezuka (2007) of Nishimura & Partners, *Japanese Courts have so far shown reasonable pro-arbitration tendencies.*³⁵ An example for this attitude is a case in 2005 in which Tokyo District Court conducted witness examination for the person failing to voluntarily appear before the Arbitral Tribunal.³⁶

c) The development of legal profession

A developed legal profession can encourage their clients as businessmen to use arbitration as an alternative resolution of dispute and to provide arbitration specialists as well as arbitrators for the institution. It can be read in a recent publication that: “*Another problem in the Asian region is the lack of knowledge and skills of international commercial arbitration and the relative paucity of experienced international arbitrators.*”

³³ Howell (2007) in “Developments in International Commercial Arbitration in Asia” April 2007 at p.9.

³⁴ *ibid*

³⁵ Tezuka in “Recent trends in international arbitration in Japan” in Asia – Pacific Arbitration Review 2007 at p.46.

³⁶ Nakamura (2008) “The Rules and Practice of the JCAA Arbitration” handout issued in a seminar on arbitration in Japan organized by JCAA and QMUL in London in June 2008.

*However, this is a situation which is rapidly changing.*³⁷ Both HKIAC and SIAC have been established in 1985 and 1990 respectively. If we compare with the long history of AAA/ICDR (founded in 1926) and LCIA (founded in 1892), HKIAC and SIAC can be considered as young arbitration institutions. The arbitration institutions can be considered as private services providers exist in a competitive arbitration market whereas the users of such services, their counsels, lawyers and arbitrators all have different important roles. The quality of arbitration services will mainly depends on the quality of the arbitrators and arbitration counsels, therefore, the human resources are of utmost importance for the development of international arbitration in the region.³⁸

It is easy to realise that the panels of international arbitrators in HKIAC and SIAC consists of large of retired judges, academic professors, senior international professionals and senior lawyers of international and local law firms that have gained a high profile in international business and investment matters. In Singapore and Hong Kong, national institutes of arbitrators train arbitrators under UK standards. The Hong Kong Institute of Arbitrators was founded in September 1996 and there are 759 members as of August 2007.³⁹ The Hong Kong Institute of Arbitrators held a short training course on Arbitration and Mediation in Hong Kong. The Singapore Institute of Arbitrators was established in 1981 and there are more than 600 members. The Singapore Institute of Arbitrators also hold similar courses in Singapore. The East Asia branch of the Chartered Institute of Arbitrators (UK) actively operates in Hong Kong. There are currently over

³⁷ V. Taylor and M. Pryles, 'The Cultures of Dispute Resolution in Asia' in *Dispute Resolution in Asia*, (ed. M. Pryles) (The Hague, Kluwer Law International 1997), pp. 1-24

³⁸ SCHAEFER, "Leaving the Colonial Arbitration Laws Behind: Southeast Asia's Move into the International Arbitration Arena" in *Arbitration International*, Vol. 16 No. 3 (2000), pp. 297 - 332

³⁹ Hong Kong Institute of Arbitrators' President Gary Soo's report of 6 September 2007 at p.3.

9000 members (in which 1900 members in the branch as of January 2008) in the three grades and many of them are well known in the field of international arbitration. CIArb East Asia held an entry training course on arbitration in the Asian region and Part IIA & IIB courses for its members.

International arbitration counsels have also played an important role in thriving any international arbitration venue. The quality and numerical strength of its arbitration counsel proves the growth of the arbitration market. Hong Kong is the prime example of a vibrant international arbitration community because there are plenty of international arbitration counsels available. Hong Kong has the additional advantage that many English and Commonwealth lawyers are also qualified as Hong Kong lawyers. It is therefore not surprising that English law firms are ranked as the best litigation lawyers in Hong Kong. Singapore has specialized local law firms and many international law firms. There is no barrier for foreign lawyers to act in arbitration proceeding in Singapore. The sole area with respect to arbitration where a foreign lawyer may not act is to appear in a Singapore court in a matter relating to arbitration proceedings.⁴⁰ As an author comment that “*the more open a legal market is, the stronger the international expertise.*”⁴¹ It is not surprising that local lawyers often consider foreign competitors as a threat. However, in an open legal market, the involvement of international law firms in advising on local law would challenge the leading local law firms to achieve an equally high standard and professionalism in their services and thereby contribute to the local legal profession as a whole. Foreign lawyers are strongly involved in the successful international arbitration

⁴⁰ Rajah & Tann’s Newsletter “Singapore as a forum for arbitration” published in November 2004 at p.4.

⁴¹ *ibid*

arena of Hong Kong. In Hong Kong, the City University offers specialized postgraduate diploma course in arbitration and dispute resolution. Faculty of Law of National University of Singapore (“NUS”) in cooperation with the Singapore Institute of Arbitrators run Graduate Certificate in International Arbitration course and Diploma in International Commercial Arbitration course.

The situation in China and Japan is completely different. CIETAC only started to accept foreign arbitrators on its panels from 1st September 2000. In Japan, some foreign arbitrators have shown hesitation in assuming its responsibility due to the apparent lack of clear provisions in the Japanese regulations on the activities of non-lawyers as arbitrators⁴² and it still requires a clearer clarification on this issue.⁴³ It differs with China, problems in the development of international arbitration in Japan are viewed differently. An author claims that *“it needs more political and financial support from METI, the Ministry of Justice and others like Japan Chamber of Commerce and Nichibenren.”*⁴⁴ The other author points out that *“Japan won’t emerge as an arbitral centre until local corporations mandate it as a venue and at the moment there are not willing to”*⁴⁵

⁴² Tezuka, “Recent Trends in International Arbitration in Japan” in Asia – Pacific Arbitration Review 2007 pp.46-47.

⁴³ Godwin, “Japan as a center: two possible futures” in Global Arbitration Review Volume 2, Issue 4, at p.33

⁴⁴ Livdahl, “Chapter IV. Arbitration in Japan” in International Commercial Arbitration in Asia, edited by McConaughay and published by JurisNet in 2006.

⁴⁵ Godwin, “Japan as a center: two possible futures” in Global Arbitration Review Volume 2, Issue 4, at p.32

A Japanese arbitration counsel comments that Japan has faced the lack of experienced arbitration lawyers and the wrong attitude on international arbitration from both inside and outside users⁴⁶ but this situation is hoped to be improved in the near future.

d) The active role of the Government and the independence of arbitration institutions. Although there is a common thing between all arbitration institutions listed above that they are all non-profit organisations, however, there are many differences between the world leading institutions such as AAA/ICDR and LCIA in comparison with regional leading arbitration institutions such as HKIAC and SIAC and other national arbitration institutions like CIETAC and JCAA. HKIAC, SIAC, CIETAC and JCAA are all funded by their governments and strongly supported by local business communities. It is clear that in the Asia Pacific region, both Hong Kong and Singapore governments early adopted Uncitral Model Law on international commercial arbitration in 1990 and 1994. These governments are also active in adapting any modification and supplementation of Uncitral Model Law on international commercial arbitration into their arbitration laws. Recently, HKSAR Government sponsors the PSDAS project entitled “Hong Kong – The Place for International Arbitrations” in order to promote benefits of holding International Arbitration hearings in Hong Kong and to maintain and improve Hong Kong’s position as one of the leading arbitration and dispute resolution centres in the Asia-Pacific Region⁴⁷. On 9th April 2008, Singapore declared two new policies in an attempt to add to the attractiveness of Singapore as a venue for international arbitration: (i) A tax incentive for law practices carrying out international arbitration work with hearings in Singapore,

⁴⁶ Speeches rendered by Mr. Hiroyuki Tezuka and Mr. Tatsuya Nakamura in a Seminar on “Arbitration in Japan” co-organised by School of International Arbitration, Queen Mary, University of London and JCAA in London in June 2008.

⁴⁷ HKIAC Press Release on 26 March 2008 “Hong Kong International Arbitration Centre Aims to Promote Hong Kong as the Leading Place in Asia to Conduct Arbitrations”

and (ii) A work pass exemption for those entering Singapore for arbitration and mediation services⁴⁸. China has not significantly modified PRC Arbitration Law of 1994 except the promulgation of Supreme Court's Judicial Interpretation of 8th September 2006 which brings increasing certainty to PRC seated arbitration and takes significant steps to narrow the scope for highly technical challenges to award rendered in the PRC.⁴⁹ Japan lately enacted New Arbitration Law in 2003 which based on the 1985 UNCITRAL Model Law for International Commercial Arbitration. However, both HKIAC and SIAC have now become independent and self- finance while CIETAC and JCAA still maintains close links with their respective Governments and national chambers of commerce and industry. As Leong comments that *"Whilst there are undisputed, obvious advantages of having arbitral institutions sanctioned by the local government, the close proximity of the relationship between the arbitral institution and the government does invoke issues relating to the perception of fairness and impartiality within the arbitral process."*⁵⁰

Conclusion

It appears from the above analysis that a suitable arbitration infrastructure does not only consist of (i) *"a modern and accessible arbitration law"* and (ii) *"the institutional framework"* as an author has suggested⁵¹. It does not only include *"the nurturing of a regional international arbitration community"* together with *"the modernization of the regional leges arbitri"* and *"the establishment of regional arbitration centres"* can

⁴⁸ Ministry of Law Press Release "Information on New Arbitration Initiatives".

⁴⁹ Loftis, "International Commercial Arbitration in the PRC: further steps in the right direction" in Asia-Pacific Arbitration Review 2007, p.18

⁵⁰ Leong *"International Commercial Arbitration in Asia"* published by Mondaq Ltd, in 2004

⁵¹ SCHAEFER, *"Borrowing and Cross-Fertilising Arbitration Laws - A Comparative Overview of the Development of Hong Kong and Singapore Legislation for International Commercial Arbitration"*.

decide on the success of Southeast Asia's efforts to become respected international arbitration venues as such author though⁵². It is more than that. The developed arbitration infrastructure is the combination between sociological factors, a suitable economic environment and a comprehensive legal infrastructure including legislation favouring arbitration activities, the supportive attitude towards arbitration of the local courts, the development of legal profession and the active role of the Government and the independence of arbitration institutions.

It is correct to say that “*a state-of-the-art legislative framework is the essential pre-condition for any international arbitration centre to prosper.*”⁵³ However, it could well be argued that the history of international commercial arbitration in the Asia Pacific Region “*would only start with the substantial growth and internationalization of private businesses in the region.*”⁵⁴ The successful stories of international arbitration in Hong Kong and Singapore also prove that “*the less a state is involved in business and the more businesses are privatized, the stronger the role of international commercial arbitration will grow vis-à-vis international investment arbitration.*”⁵⁵

The lesson from the situation of China does not confirm a suggestion that “*a nation can provide a means of commercial dispute resolution meeting international standards, and thereby promote both domestic and international investment and exchange, long before*

⁵² SCHAEFER, “*Leaving the Colonial Arbitration Laws Behind: Southeast Asia's Move into the International Arbitration Arena*” in *Arbitration International*, Vol. 16 No. 3 (2000), pp. 297 - 332

⁵³ SCHAEFER, “*Borrowing and Cross-Fertilising Arbitration Laws - A Comparative Overview of the Development of Hong Kong and Singapore Legislation for International Commercial Arbitration*”.

⁵⁴ SCHAEFER, “*Leaving the Colonial Arbitration Laws Behind: Southeast Asia's Move into the International Arbitration Arena*” in *Arbitration International*, Vol. 16 No. 3 (2000), pp. 297 - 332

⁵⁵ *ibid*

*it will be able to afford and provide the permanent legal institutions characteristic of highly developed economies.*⁵⁶ It can be concluded that international arbitration can not develop in a country without any component of a developed arbitration infrastructure.

⁵⁶ McConnaughay “Introduction” in *International Commercial Arbitration in Asia*, edited by McConnaughay and published by JurisNet in 2006 at p. xxx

Section II.

The impact of major arbitration institutions in the settlement of international commercial disputes in the Asia Pacific Region.

As SCHAEFER's analysis that *reasons for Hong Kong's and Singapore's Success as International Arbitration Venues are Legal Infrastructure and Arbitration Centre*.⁵⁷ The necessary legal infrastructure for the development of international arbitration in the Asia Pacific Region has been mentioned in section I of this paper. In this second section, it is useful to look into the impact of an arbitration institution in the view of its users. According to Redfern (2004), four considerations which the users should have in mind in choosing an arbitration institution are: (i) a degree of permanency, (ii) modern rules of arbitration, (iii) qualified staff and (iv) reasonable charges⁵⁸. The recent survey shows a similar finding⁵⁹ that "*the most commonly cited reasons for opting for arbitrations conducted under the auspices of an arbitration institution are reputation, familiarity with proceedings, an understanding of costs and fees and the convenience of using an established process.*"⁶⁰ The level of satisfaction of the users' expectations by an

⁵⁷ SCHAEFER, "*Borrowing and Cross-Fertilising Arbitration Laws - A Comparative Overview of the Development of Hong Kong and Singapore Legislation for International Commercial Arbitration*".

⁵⁸ Redfern, "*Law and Practice of International Commercial Arbitration*", 4th edn, published by Sweet & Maxwell in London in 2004 at p.60-61.

⁵⁹ Geoff Nicholas and Briana Young have a different view is that "*the choice of institution will depend on factors such as: the nationality of the parties (private or state); the choice of applicable law and place of arbitration, issues affecting enforceability of award, and perhaps, cost*" in "Global Overview: An introduction to international commercial arbitration – key concepts, trends and features" in *Arbitration World 2006, Jurisdictional comparisons 2nd edn*, edited by J William Rowley QC and published by The European Lawyer Ltd. London, UK in January 2006.

⁶⁰ See a full survey result in "*International arbitration: Corporate attitudes and practices 2006*" p.12 conducted by School of International Arbitration, Queen Mary, University of London and sponsored by PricewaterhouseCoopers LLP.

arbitration institution will be reflected in the organisation, operation *and outreach* of such institutions.⁶¹

1) Organisational structure

It appears from organisational structure of arbitration institutions listed in section I that both HKIAC and SIAC follow organisational patterns of the world leading arbitration institutions such as AAA and LCIA. There is a separation between policy making/business development function and administration function. The policy making and business development function is taken by a Council (HKIAC) or the Board of Directors (SIAC) in equivalent with the Board of Directors (AAA or LCIA) which consist of businessmen, professionals and academic professors of many nationalities and with a wide diversity of skills and experience. This mechanism represent for the wide support from international business and legal communities for the operation of its arbitration institution, the update on the latest arbitration legislation and continuous improvement of arbitration services in order to meet the increasing demands of users. The Council or Board of Director has no role in the conduct of arbitration proceedings. The administration function is assigned to the Secretariat lead by a Secretary General (HKIAC) or deputy chairman (SIAC) who also acts as chief executive and registrar of the arbitration institution. The organisational mechanism is also focused on main areas of market of its arbitration institution such as India Desk and China Desk of SIAC or China

⁶¹ David guided in “*Arbitration in International Trade*”, published by Kluwer Law and Taxation Publishers, Deventer, Netherlands in 1985 at pp. 37-38 that “*the functions assigned to such Centre are manifold*”.

sub-committee of HKIAC like regional case management teams of ICDR and regional users' councils of LCIA.

2) Administration services offered for arbitration cases

Both HKIAC and SIAC offer various administrative services such as: holding security for fees and expenses on behalf of Arbitrators/Mediators and the amount in dispute or security for costs as directed by the Arbitrator, authentication of awards, simultaneous translators and translation of documents, multi-languages interpreters and transcripts, and the hearing rooms with fully equipped with video and teleconferencing facilities, secured storage for files, documents & exhibits, audio & video recording facilities, secretarial services and so on. JCAA Secretariat can organize the arrangements for the arbitral proceedings, including provision of a hearing room and related services such as tape recordings, stenographic transcripts and interpretation. Other services include drafting of any procedural orders issued by the tribunal, sending notifications to parties, and checking the written arbitral award drafted for computation, typographical or other errors.

3) Financial issues

3.1 Service charges⁶²:

Arbitration institutions charge users of their services various fees such as: filing or registration fees, administrative fee, appointment fee, arbitrator fee, taxation fee, facilities charges and so on.

a) Filing or registration fee:

⁶² All foreign currencies are approximately converted into pound sterling at exchange rates published on 19 July 2008.

Except HKIAC does not charge for case filling fee, SIAC, CIETAC and JCAA all charge for case filling or registration fee. SIAC charges S\$1000 (approximately £370) for filling fee which is not refundable. CIETAC charges RMB 10,000 Yuan (approximately £734) for case registration and JCAA charges ¥52,500 Yen (£247) for request fee. These charges are less expensive than the LCIA's registration fee of £1,500.

b) Administrative fee

Administrative fees of LCIA Secretariat are calculated on the hourly rates ranging from £100 to £200 per hour. Administrative fees of HKIAC, SIAC, CIETAC and JCAA vary with the size of the claim.

c) Appointment fee

LCIA charges £1000 for appointment fee. HKIAC charges HK\$4000 (£257) for appointment of arbitrator (s) and another HK\$4000 (£257) separately for determination of number of arbitrators if so required. SIAC charges from S\$2000 (£740) to S\$4000 (£1480) for appointment fee depending on the number of arbitrators. CIETAC and JCAA do not have this type of charge.

d) Arbitrator fee

LCIA Tribunal members' expenses are calculated at hourly rates which may range from £150 to £350 per hour. HKIAC does not fix arbitrator fee although arbitrator fee is normally calculated by involved parties on the time engaged basis. Previously SIAC followed the practice in many common law jurisdictions of paying arbitrators based on

time used. Since 1st July 2007, SIAC has adopted a quantum based scale of fees for arbitration in place of the previous time based fees. This fee calculated in accordance with the schedule is the amount payable to one arbitrator. Like HKIAC & LCIA, JCAA also charges for arbitrator fee on the time engaged basis. Previously, arbitrator's hourly rates ranged from 25,000 Yen (£117) to 30,000 Yen (£140) and 40,000 Yen (£187). Since 1st January 2008, JCAA's arbitrator charge rates have been increased from a minimum of 30,000 yen (£140) to a maximum of 80,000 Yen (£374) per hour.⁶³ However, JCAA also fixes upper limit of the Arbitrator's Remuneration.

e) Taxation fee

Involved parties may ask the Registrar of SIAC to assess the amount of legal costs incurred by the parties and therefore have to pay a fee for such service according to the amount of costs claimed.

None of HKIAC and JCAA or CIETAC has such kind of service and charge.

f) Facilities charges:

All arbitration institutions charge for facilities provided to users at the arbitration proceeding.

⁶³ Nakamura, "The Rules and Practice of the JCAA Arbitration" handout given in a Seminar on Arbitration in Japan co-organised by School of International Arbitration, Queen Mary, University of London and JCAA in London in June 2008 at p.7.

- g) With effect from 3rd May 2002, Singapore became the only jurisdiction where foreign non-resident arbitrators may enjoy a legitimate tax-free status for all fees earned here.⁶⁴

It appears from the above that HKIAC follows ICDR practice to give a maximum freedom for involved parties by not fixing arbitrator fee's scale. SIAC changed from time-based fees system to a quantum based fee structure as one of initiatives to increase SIAC's competitiveness in the international arbitration market.⁶⁵ CIETAC maintains an inflexible fees policy which may cause difficulties in attracting experienced international arbitrators. JCAA is still in a process of improving their services.

3.2 Funding:

There is no information available in relation to financial strengths of arbitration institutions in the Asia Pacific Region such as HKIAC, SIAC, CIETAC and JCAA. It appears that HKIAC can gain income from its membership subscription like LCIA. SIAC is strongly backed up by Singapore Government's project to build a new integrated arbitration complex where SIAC will be the anchor tenant.⁶⁶ CIETAC is funded by PRC government and JCAA maintains its close links with Japanese government agencies such as Ministry of Trade and Industry, Ministry of Justice and Japan Chamber of Commerce and Industry and so on. It seems that the dependence of both CIETAC and JCAA on the

⁶⁴ Chandru, "The Growth and Development of International Arbitration in Singapore" [2003] Int A.L.R. issue.3 at p. 97

⁶⁵ Boo, "Singapore Arbitration – A new Direction", Speech given at the Singapore Institute of Arbitrators AGM/Annual Dinner in 2006 at p.4

⁶⁶ SIAC "Singapore Arbitrator" issue January 2007 at p1.

financial support from its respective governments does not force these institutions to become more competitive in international arbitration market.

4 Informative activities

Informative activities of an arbitration institution have an important role to attract industrialists and commercial businessmen to the arbitration and make them known how and where they will find facilities for arbitration. The informative activities can be taken in many different forms such as publication of newsletter, journal and books, update of information in the website, booklet or brochure, delivery of presentation at seminars and conferences, visit to the users to render speeches and so on.

HKIAC provides a free information service on dispute resolution and through its council of leading local experts and its international network of contacts is able to provide a very wide range of literature and data relating to arbitration and other means of dispute resolution. HKIAC maintains growing information Services Centre of books and publications which are available for reference to interested members of the public. HKIAC publishes Asian Dispute Review Journal. The Secretary-General of HKIAC authored over 20 articles on Arbitration and ADR throughout 2003-2004⁶⁷. SIAC publishes quarterly e-newsletter titled “Singapore Arbitrator” and articles in relation to arbitration in the website. Users are easy to access to websites of HKIAC and SIAC to collect full information on the organisation and operation of these institutions. CIETAC website mainly provides legislation relating to arbitration. JCAA’s website provides very poor information. Both HKIAC and SIAC are very active in advertising their arbitration

⁶⁷ HKIAC, Annual Secretary-General Report for 2003-2004 at p.14 published on 12 September 2004.

services to the users by organising and taking part international seminars and conferences on international arbitration. Through the PSDAS project entitled “Hong Kong – The Place for International Arbitrations” sponsored by HKSAR Government (HK\$100 million), Council members of HKIAC visited a total of 46 major law firms, in-house counsels of Fortune 500 companies, Chambers of Commerce and Trade Associations and delivered 12 presentations in 15 cities across the United States of America between February 2006 and March 2008.⁶⁸ Neither CIETAC nor JCAA did the same. It leads to the result that “*stereo-typical views presented by some commentators outside Japan, linking limited use of arbitration within Japan to cultural preferences*”⁶⁹ are not corrected and users are not updated with significant changes in arbitration law and JCAA Rules in Japan.⁷⁰

5 Research, Education and Training activities

Almost all of arbitration institutions in Asia Pacific Region such as HKIAC and SIAC are young. These institutions are not affordable to provide various specialized training courses on international arbitration like AAA’s University can do. Education programs on international arbitration are provided by national universities in co-operation with their chartered institute of arbitrators like HKIArb and SIArb. Arbitration institutions only provide short entry training courses. However, arbitrators of arbitration institutions are actively involved in the education and training activities. JCAA has an affiliate, the

⁶⁸ HKIAC Press Release on 26 March 2008 “Hong Kong International Arbitration Centre Aims to Promote Hong Kong as the Leading Place in Asia to Conduct Arbitrations”.

⁶⁹ McAllinn and ed, “*Changing the (JCAA) Rules: Improving International Commercial Arbitration in Japan*” in: JCAA Newsletter 17 (2004) at p.35, also available at <<http://www.jcaa.or.jp/e/arbitration-e/syuppan-e/newslet/news17.pdf>

⁷⁰ This misunderstanding is also indicated by Mr. Nakamura in a Seminar on Arbitration in Japan co-organised by School of International Arbitration, Queen Mary, University of London and JCAA in London in June 2008 at “The Rules and Practice of the JCAA Arbitration” handout given at p.7

Commercial Arbitration Research Institute (“CARI”) which was established in 1972 for research and study on arbitration. CARI was founded at the age when a limited number of scholars studied arbitration. However, after Japan adopted UNCITRAL Model Law in 2003, the research entity such as Japan Association of Law of Arbitration and Alternative Dispute Resolution was established and as such CARI’s study and research work is presently suspended⁷¹.

6 Setting up its own Arbitration Rules and Administrative Rules

HKIAC does not have its own set of rules for international arbitration. HKIAC recommends users to apply UNCITRAL Arbitration Rules 1976 in conducting international arbitration. However, HKIAC has “PROCEDURES FOR THE ADMINISTRATION OF INTERNATIONAL ARBITRATION” which is adopted to take effect from 31st March 2005. The HKIAC can also administer arbitrations to parties who have chosen to arbitrate under different institutional or ad hoc arbitration rules.

The SIAC Rules (3rd Edition) are the primary rules of arbitration at the SIAC and is effective on 1st July 2007. They supersede the SIAC Rules (2nd Edition, 22nd October 1997) and repeal the Domestic Arbitration Rules of the Singapore International Arbitration Centre (2nd Edition, 1st September 2002). Where there is a conflict between the chosen arbitration rules and the International Arbitration Act or the Model law, the rules will prevail unless the conflict is with mandatory provision of the International Arbitration Act or the Model Law. Parties can also adopt the UNCITRAL Arbitration Rules 1976 for the conduct of arbitration at SIAC. While these Rules are essentially

⁷¹ Source: JCAA

designed for the ad hoc form of arbitration, parties can, with special provision, enjoy the benefit of institutional administration of the arbitration from SIAC.

CIETAC also introduced its new arbitration rules which are effective on 1st May 2005. There are a number of key changes from October 2000 Rules, in particular the ability of parties to select a seat of arbitration outside China for the first time and the ability to choose arbitrators who are not on CIETAC's Panel of arbitrators, which may open the door to more non-Chinese nationals sitting as arbitrators in CIETAC arbitrations. Under the May 2005 revision, the parties are free to apply other arbitration rules or to agree changes to CIETAC Rules, except where such an agreement is inoperative, or contrary to mandatory rules of law of the place of arbitration. The new rules, which are more in line with accepted international practice, represent a leap forward in CIETAC's efforts to establish itself as a global arbitration institution, and are likely to have a profound influence on the future direction of arbitration in China.

JCAA has a latest supplement to arbitration rules which is effective on 1st January 2008.

The parties can also choose a different set of arbitration rules. If the parties opt to conduct proceedings based on the UNCITRAL Arbitration Rules, the JCAA can apply administrative and procedural rules for this arbitration.

It is very clear that except HKIAC, all SIAC, CIETAC and JCAA were active in attempting to modify their arbitration rules in order to increase its competitiveness in the international arbitration market. CIETAC tried to adapt international practices of

arbitration in the 2005 revision. JCAA made significant changes to their rules in line with new arbitration law 2004. SIAC implemented a more transparent system of appointing arbitrators and so on.

7 Admission of arbitrators

Except China, there are no special qualifications required of an arbitrator in the arbitration laws of Hong Kong, Singapore or Japan. Arbitrators may be of any profession, age or nationality unless, of course, the parties agree otherwise. Contrast to the LCIA which does not maintain or publish a list of arbitrators but operate a database of 800 neutrals from more than 80 jurisdictions, each below arbitration institution has their own criteria for a person to be admitted on their panels of arbitrators.

a) CIETAC

Article 13 of PRC arbitration law provides qualifications requirement for an arbitrator as follows:

- + have eight (8) years of arbitration experiences; or
- + have worked as a lawyer for eight (8) years; or
- + have served as a judge for eight (8) years; or
- + have studied law or engaged in educational work and have a senior professional title; or
- + have legal knowledge, work in the fields of economics or trade, and have a senior professional title or equivalent professional expertise.

There are specific conditions separately applicable for Chinese arbitrators and foreign arbitrators or persons come from Hong Kong and Macao. The arbitrator has a term of three (3) years which is renewable.⁷²

b) HKIAC

An arbitrator who wishes to be considered for inclusion on HKIAC Panel of Arbitrators must demonstrate to HKIAC Panel Selection Committee the following:

- (i) Substantial arbitration experience as arbitrator; and

- (ii) A substantial connection with East Asia; and

- (iii) Not having been found guilty by a Court or disciplinary tribunal of misconduct which in the sole opinion of HKIAC calls into question his or her ability to act as arbitrator; and

- (iv) Be under 75 years of age.

- (v) In exceptional cases eminent persons with substantial relevant experience in arbitration who do not otherwise meet the criteria in 1 and 2 above.

Successful panel listing shall be for a period of three years which is renewable.⁷³

⁷² The Stipulations for Appointment of Arbitrators is effective on 1st September 2000.

⁷³ See further at HKIAC website at http://www.hkiac.org/HKIAC/HKIAC_English/main.html.

HKIAC is in the process of establishing a list of arbitrators who are resident in Hong Kong satisfying certain qualification and are willing to accept appointment as arbitrator while do not possess such experience as to enable them to be on the HKIAC panel. The preliminary criteria for inclusion on the list of arbitrators are as follows:

- Having sufficient experience in arbitration whether as arbitrator, counsel, expert witness, instructing solicitor or otherwise. Without prejudice to the generality of the above, Fellowship of HKI Arb and CI Arb may suffice for the purpose; and
- A resident of Hong Kong; and
- Good character and not having been removed as arbitrator in circumstances where moral probity or incompetence were an issue; and
- Provision of two references in support of the application

Successful listing shall be for a period of three years which is renewable⁷⁴.

c) SIAC:

SIAC maintains two (2) different panels of arbitrators which are international panel for non-Asean residents and regional panel for Asean residents. Two Panels have the similar minimum criteria⁷⁵. The applicant must have:

- A minimum of 15 years post qualification experience;
- Obtained a tertiary education;

⁷⁴ *ibid*

⁷⁵ See further at SIAC website at <http://www.siac.org.sg/ourarb-stdadm.htm>.

- Attained Fellowship at the Singapore Institute of Arbitrators or any equivalent professional arbitration institute;
- Acted as an arbitrator in 5 or more cases;
- Written at least 2 commercial arbitral awards; and
- Be between 35 - 75 years of age.

If the applicant does not attain one of the criteria listed above, the following discretionary criteria may apply:

- The applicant demonstrates that he/she has acted as counsel in 5 or more arbitration proceedings;
- The application is supported by referee statements from internationally known arbitration practitioners or persons otherwise known to the members of the Review Committee;
- The applicant submits published writings in ADR journals or legal periodicals; and
- The applicant is granted an interview by the Deputy Chairman of SIAC.

Above all:

- The applicant must have no criminal conviction to his/her name; and
- A court or other authority must not have removed the applicant while acting as an arbitrator.

SIAC also maintains a Reserve List which may allow developing practitioners to gain the valuable experience needed. The Reserve List is open to residents in Asia only. The minimum standards for this list are the same for International Panel and Regional Panel except a minimum post qualification experience is shorter (10 years).

Follow AAA Qualification Criteria for Admittance to the AAA National Roster of Arbitrators, HKIAC and SIAC both require high standards for any applicant who wishes to act as arbitrator listed on their panels. These institutions focus on applicant's experiences in arbitration and professional reputation. CIETAC also requires applicant to gain necessary experiences whatsoever as an arbitrator, a judge, a lawyer or academic researcher/teacher and businessmen! It is surprised to be advised by JCAA that JCAA's admission criteria for arbitrators are not open to the public!⁷⁶

8 ADR and other services

Like AAA and LCIA, HKIAC also offers adjudication and mediation services to its users. HKIAC established Hong Kong Mediation Council in 1994, Maritime Arbitration Group and E-Commerce Committee.

⁷⁶ Source: JCAA

CIETAC allows combination of conciliation with arbitration⁷⁷ but does not offer a separate mediation service. CIETAC has a separate set of Financial Dispute Arbitration Rules which is effective from 1st May 2005. HKIAC and CIETAC jointly established the Asian Domain Name Dispute Resolution Centre in 2000.

JCAA administers the proceedings of mediation. With respect to mediation, most cases are domestic. JCAA is now on work of drafting International Commercial Mediation Rules.⁷⁸

SIAC has SGX-DT Arbitration Rules which is effective from 1st July 2005 for expedited arbitration of derivatives trading disputes. SIAC does not offer mediation service. In stead of that, mediation service is provided by Singapore Mediation Center which was incorporated on 8th August 1997 in the form of a non-profit organization guaranteed by the Singapore Academy of Law.

Conclusion

Turning back to the four considerations which arbitration users should take into account when selecting an arbitration institution, it seems obvious that both CIETAC and JCAA have a longer history than HKIAC and SIAC which were established in 1990s. However, HKIAC and SIAC are more active in efficiently transmitting their images to the users. HKIAC and SIAC use internationally standardized rules of arbitration which is very familiar to international business community. JCAA was very slow in modifying their arbitration rules due to changes in national arbitration law in 2004. CIETAC tried to

⁷⁷ Article 40 of CIETAC Arbitration Rules 1st May 2005.

⁷⁸ Source: JCAA

adopt international practice of arbitration. HKIAC and SIAC staffs are well qualified and their arbitrators are well-known in the international arbitration profession. Both CIETAC and JCAA wish to attract more international arbitrators on their Panels, however, it may take time for the education and training to achieve any significant change of attitude on arbitration in these countries. In a competitive arbitration market, service charges of any arbitration institution should be reasonable and acceptable to the service users. This is not a key issue for CIETAC and JCAA to promote their arbitration services in the international market. As a private service provider, arbitration institution has to continuously increase its competitiveness in the market by improving its quality of arbitrators, service charges and more importantly is actively reflecting its images to the users.

Section III

Direct involvement of major arbitration institutions in the settlement of international commercial disputes in the Asia Pacific Region.

Parties who agree to select an arbitration institution for settlement of their commercial dispute will normally choose the procedural rules issued by such chosen arbitration institution. Those procedural rules will operate within the arbitration law framework provided by the arbitration legislation in the place of arbitration. *“Institutions administering arbitrations or involved in appointing arbitrators differ in their **degree of intervention** in constituting the Arbitral Tribunal. Some prefer to allow parties to agree and to prevent only when parties are unable to proceed further. Some allow parties to nominate and take on a confirmatory role after such nomination; yet others take over the entire appointing process, appointing the full panel. There are of course variation and combinations of these as well.”*⁷⁹ From the legal aspect, the freedom of the parties in deciding procedural issues of arbitration proceeding should meet the needs of the international business community.

1. Determination of the composition of the arbitral tribunal

Under UNCITRAL Arbitration rules, parties have a freedom to decide on the number of arbitrators (i.e. one or three).⁸⁰ Under SIAC Arbitration Rules, the party autonomy is respected in deciding any number of arbitrators, not only limited to one (1) or three (3).⁸¹ Similarly, JCAA Arbitration Rules also allows parties to freely decide on the number of

⁷⁹ *“Institutional Arbitration in Asia”* a collection of papers presented at ICC-SIAC Symposium published by ICC & SIAC 18-19 February 2005 in Singapore at p.81.

⁸⁰ Article 5 of UNCITRAL Arbitration Rules 1976;

⁸¹ Article 5.1 of SIAC Arbitration Rules, 3rd edition, 1st July 2007.

arbitrator without any limitation.⁸² However, under CIETAC Rules, number of arbitrators shall be fixed as one or three only.⁸³ If there is no agreement on the number of arbitrators, the default number shall be three under UNCITRAL Rules⁸⁴ and CIETAC Rules⁸⁵ without any intervention of arbitration institution. According to SIAC Rules⁸⁶ and JCAA Rules⁸⁷, the default number of arbitrator shall be one. However, the Registrar of SIAC may consider any proposal of any party, “*the complexity, the quantum involved and other relevant circumstances of the dispute*”⁸⁸ to decide the appointment of three arbitrators. JCAA Rules also has a similar provision.⁸⁹ It seems obvious that if there is no agreement by parties, both SIAC and JCAA shall play an important role in deciding the number of arbitrators.

2. Selection of the arbitrators and methods of appointment of arbitrators.

As mentioned in Institutional Arbitration in Asia,⁹⁰ “*one of the most important aspects of arbitration is the choice of arbitrators. The tribunal plays a pivotal role in the arbitral process.*”

a) Panel of Arbitrators

⁸² Rule 6.1 and Rule 23.1 of JCAA Commercial Arbitration Rules is effective on 1st January 2008

⁸³ Article 20.1 of CIETAC Arbitration Rules is effective on 1st May 2005.

⁸⁴ Article 5 of UNCITRAL Arbitration Rules 1976;

⁸⁵ Article 20.2 of CIETAC Arbitration Rules is effective on 1st May 2005.

⁸⁶ Article 5.1 of SIAC Arbitration Rules, 3rd edition, 1st July 2007.

⁸⁷ Rule 24.1 of JCAA Commercial Arbitration Rules is effective on 1st January 2008

⁸⁸ Article 5.1 of SIAC Arbitration Rules, 3rd edition, 1st July 2007.

⁸⁹ Rule 24.2 of JCAA Commercial Arbitration Rules is effective on 1st January 2008

⁹⁰ “*Institutional Arbitration in Asia*” a collection of papers presented at ICC-SIAC Symposium published by ICC & SIAC 18-19 February 2005 in Singapore at p.81.

All arbitration institutions which are mentioned in this paper (CIETAC, HKIAC, JCAA and SIAC) maintain panels of arbitrators. However, use of such panels differs in practice. Some would make their appointment exclusively from such panels (close lists), for example: CIETAC Rules 2000. The SIAC, HKIAC and JCAA maintain open lists system. This means that parties are not limited to choose candidates from Panel of Arbitrators of such arbitration institution. ICC does not maintain a panel of arbitrators.

b) The Appointing Authority:

There a common thing between CIETAC, HKIAC, JCAA and SIAC is that arbitration institutions are all entitled, under respective national arbitration laws and/or rules, to act as the Appointing Authority. Chairman of SIAC acts as agreed appointing authority or default statutory appointing authority for all arbitrations with a seat of arbitration in Singapore in 1994 and extended for domestic arbitration in 2000.⁹¹ Shortly thereafter, Hong Kong amended their law on the same issue.⁹² Chairman of CIETAC has the same function as agreed appointing authority.⁹³ JCAA also follows this trend.⁹⁴

c) Methods of Appointment

SIAC: The SIAC process is a 3 tiered process: (i) Nomination Committee (ii) Confirmation Council (iii) Deputy Chairman. Nomination Committee is constituted by the SIAC Secretariat which is composed of 2 full time counsels and their assistants. Their task is to identify the qualification and disqualification required for a particular case on the basis of agreed arbitration agreement, the nature of the dispute, the specific expertise

⁹¹ Section 8 of the International Arbitration Act (Chapter 143A of the Statutory of Singapore) [“IAA”] and articles 6.2, 6.3 and articles 7.2, 7.3 & 7.4 of SIAC Arbitration Rules, 3rd edition, 1st July 2007.

⁹² Under section .12 & section 34C of Arbitration Ordinance and articles 6 and 7 of HKIAC’s Procedure for the Administration of International Arbitration effective on 31 March 2005.

⁹³ Article 22 of CIETAC Arbitration Rules is effective on 1st May 2005.

⁹⁴ Rules 25.2, 26.2 & 26.4 of JCAA Commercial Arbitration Rules is effective on 1st January 2008

required, the quantum of claim, and the degree of complexity anticipated and the availability of the candidate.⁹⁵ They will submit a ranked list of 3-4 candidates to Confirmation Board. The Confirmation Council is comprised of 4 members, at least 2 are members of SIAC Board of Directors. They will confirm or reject or re-order the ranking. The Deputy Chairman has a final decision on the appointment.⁹⁶ This process takes no longer than 10 days. No SIAC staff, members of the SIAC Board of Directors (including chairman and deputy chairman) and members of Confirmation Committee will be considered for nomination as arbitrators in SIAC appointment process.

HKIAC is using its Panel (by rotation as far as possible), a suggested arbitrator is selected. If all are in order, the suggested arbitrator is presented to 3 members (3 years term) of the Appointment Advisory Board which consist of 10 members.

- The Appointment Advisory Board will focus on 6 core elements:
 - + The nature of the dispute and identity of the parties;
 - + The availability of the arbitrator
 - + The independence and impartiality of the arbitrator
 - + The contents of arbitration agreement and special stipulation
 - + Possible suggestion of arbitrators made by the parties; and
 - + Any additional supporting documentation that can assist members with their nomination.

The duration of the nomination process takes a month to complete. This process came into effect on 27th June 1999.

⁹⁵ Lawrence Boo “Singapore Arbitration – A New Direction” – Speech given at the Singapore Institute of Arbitrator’s AGM/Annual Dinner in 2006.

⁹⁶ Article 6 of SIAC Practice Note PN-01/07 (1 July 2007): Administered Cases on appointment of arbitrators, arbitrators’ fees and financial management.

- Procedure for a decision as to the number of arbitrators:

Secretary General of HKIAC Secretariat will review the form and accompanying documents and suggests the number of arbitrators to hear the case for HKIAC to make a final decision. HKIAC shall take into account of 6 core elements:

- + The amount in dispute;
- + The complexity of the claim and the extent of the relief sought;
- + The nature of the dispute and whether it encompasses any particular customs of a trade, business or profession;
- + The nationality of the parties and their representatives if any;
- + The availability of the appropriate arbitrators and their published fee schedule;
- + Whether the case in question is urgent.

CIETAC: New Rules 2005 allows parties to choose arbitrators beyond the Panels of Arbitrators. However, chosen arbitrators have to meet 3 conditions⁹⁷:

- Both parties have to agree that they can choose arbitrators outside of the Panel
- The chosen person has to be approved by the chairman of arbitration commission.
- Chosen persons have to meet qualifications provided by article 13 of PRC arbitration law.

JCAA: Under the Commercial Arbitration Rules, JCAA shall appoint an arbitrator, considering the complexity of the case and using the information of candidates accumulated internally in JCAA⁹⁸.

3. The designation of the conduct of the procedure

⁹⁷ Article 21.2 of CIETAC Arbitration Rules is effective on 1st May 2005.

⁹⁸ Source: JCAA

Following the due appointment of the Arbitral Tribunal (and subject to any subsequent challenges to members of the Tribunal and periodic adjustments of advanced on costs), the conduct of the arbitration will be in the hands of the Tribunal and the role of the institution will principally be administrative and supportive.

SIAC's case management is limited in *“liaising with arbitrators, parties and their authorized representatives on proper delivery of notices, monitoring schedules and time lines for submissions, arranging hearing facilities and all other matters which facilitate the smooth conduct of arbitration.”*⁹⁹

HKIAC's functions as Administrator are the same. HKIAC focuses on transparent communicating between parties and arbitral tribunal in the course of arbitration proceedings,¹⁰⁰ fixing the time limit for the arbitration, establishing the date, time and place of meetings, hearings, or otherwise, as required by parties.¹⁰¹ *“Upon request by the arbitral tribunal, the HKIAC will advise generally on applicable procedure under the Rules.”*¹⁰²

JCAA's Secretariat is also limited in making tape recordings and arranging for interpreting, making a stenographic transcript and providing a hearing room, at the

⁹⁹ Article 4(c) of SIAC Practice Note PN-01/07 (1 July 2007): Administered Cases on appointment of arbitrators, arbitrators' fees and financial management.

¹⁰⁰ Article 9 of HKIAC's Procedure for the Administration of International Arbitration effective on 31 March 2005.

¹⁰¹ Article 10.1 of HKIAC's Procedure for the Administration of International Arbitration effective on 31 March 2005.

¹⁰² Article 10.2 of HKIAC's Procedure for the Administration of International Arbitration effective on 31 March 2005.

request of the arbitral tribunal or either party, as necessary for conducting arbitration proceedings.¹⁰³

4. The competence to determine jurisdiction

The doctrine of competence – competence is widely recognised by CIETAC, JCAA, HKIAC and SIAC. This principle is clearly provided in respective arbitration rules.¹⁰⁴ The Arbitration Tribunals shall have competence, under respective arbitration rules of JCAA, HKIAC and SIAC, to decide on its own jurisdiction. By contrast, under article 6.1 of CIETAC rules of arbitration, the arbitral tribunal does not have power to determine their own jurisdiction, a departure from the usual international practice of competence - competence. Article 6.1 of the CIETAC rules provides the Commission with power to decide the validity of the arbitration agreement and the jurisdiction of arbitral tribunal (although the final decision as to the validity of the arbitration agreement lies with the People’s Court pursuant to Article 20 of the PRC Arbitration Law 1995).

5. Application of interim measures:

Similar to the above, arbitral tribunals established under respective arbitration rules of JCAA, HKIAC and SIAC have power to take such interim measures as necessary.¹⁰⁵ However, CIETAC’s arbitral tribunal does not have such power. In this circumstance, CIETAC shall forward party’ application for interim measures to the local competent court for a ruling.¹⁰⁶

6. Seat of arbitration

¹⁰³ Rule 8.2 of JCAA Commercial Arbitration Rules is effective on 1st January 2008

¹⁰⁴ Article 21.1 of UNICITRAL Arbitration Rules, Article 25.1 of SIAC Arbitration Rules and Rule 33.1 of JCAA Arbitration Rules.

¹⁰⁵ Rule 48 of JCAA Arbitration Rules, Article 26.1 of UNICITRAL Arbitration Rules and Article 24 of SIAC Arbitration Rules.

¹⁰⁶ Articles 17-18 of CIETAC Arbitration Rules.

Having regard to all the circumstances of the case, Registrar of SIAC determines other appropriate seat of arbitration (the default location being Singapore) in the absence of agreement between the parties.¹⁰⁷ The SIAC arbitral tribunal may, of course, hold hearings and meetings at any location it considers convenient or appropriate.

According to Article 16.1 of the UNCITRAL Arbitration Rules, the HKIAC's arbitral tribunal shall determine the place of arbitration unless otherwise specified in the contract at issue or by the parties to the arbitration. However, Article 5 of HKIAC's Procedure for the Administration of International Arbitration effective on 31 March 2005 ("Procedures") provides that unless otherwise stated, the tribunal will be presumed to choose the offices of the HKIAC in Hong Kong as the place of hearings for all arbitration under the Procedures in light of the administrative services provided by the HKIAC under the Procedures. This presumption notwithstanding, the HKIAC is prepared to administer arbitration in accordance with these Procedures in a location other than Hong Kong and will do so at the request and mutual agreement of the parties.

Unless otherwise agreed by parties, under JCAA's Arbitration Rules, the arbitral tribunal shall determine the place of arbitration it considers appropriate (the default seat is the place of business of JCAA).¹⁰⁸ CIETAC Arbitration Rules has a similar provision but

¹⁰⁷ Article 18.1 of SIAC Arbitration Rules, 3rd edition, 1st July 2007.

¹⁰⁸ Rule 42 of JCAA Commercial Arbitration Rules is effective on 1st January 2008

Arbitral Tribunal can not hold oral hearing at other places without approval of secretary-general of the CIETAC.¹⁰⁹

7. Costs of arbitration

Institutional arbitration rules normally contain provisions empowering the institution to fix its own administrative costs and expenses, to be reflected in the costs of the arbitration awarded in the final award.¹¹⁰ In many arbitration institutions, the institution will also fix the fees of the arbitrators. Both may be fixed according to scales of costs maintained by the institution.¹¹¹ More importantly, arbitration institutions mainly deal with financial matters such as estimation of cost of arbitration, calculation of tribunal's fees and expenses, collection of advances and deposits for such costs and so on. Generally arbitral tribunal does not involve in financial matters during the course of arbitration proceedings. SIAC clearly provides that "*any administrative matter concerning the costs and expenses in arbitration shall be dealt with by the Registrar.*"¹¹²

8. Scrutiny of awards

There is no requirement for scrutiny of arbitral awards under HKIAC and JCAA arbitration rules. HKIAC offers services to assist in the filing or registration of arbitral awards¹¹³ and JCAA will serve the rendered arbitral awards on parties.¹¹⁴ Neither HKIAC nor JCAA has any involvement in the process of making arbitral awards by

¹⁰⁹ Articles 31-32 of CIETAC Arbitration Rules is effective on 1st May 2005.

¹¹⁰ Article 11 of HKIAC's Procedure for the Administration of International Arbitration effective on 31 March 2005.

¹¹¹ See further details at the above section II (3.1. service charges).

¹¹² Article 13 of SIAC Practice Note PN-01/07 (1 July 2007): Administered Cases on appointment of arbitrators, arbitrators' fees and financial management.

¹¹³ Article 16 of HKIAC's Procedure for the Administration of International Arbitration effective on 31 March 2005.

¹¹⁴ Rule 55 of JCAA Commercial Arbitration Rules is effective on 1st January 2008

arbitral tribunal. Surprisingly, both SIAC and CIETAC require the scrutiny of arbitral awards before rendering it.¹¹⁵ Although the Rules states that “*CIETAC may remind the arbitral tribunal of issues in the award on condition that the arbitral tribunal’s independence in rendering the award is not affected*”¹¹⁶ but in fact, there is much doubts about the tribunal’s liberty in rendering an arbitral award it considers appropriate. Registrar of SIAC has a heavy intervention in the issuance of arbitral awards when its Rules require that “*no award shall be issued by the Tribunal until it has been approved by the Registrar as to its form.*”¹¹⁷

Conclusion

It appears from the above that both SIAC and HKIAC have focused on the administrative role of its institution in the process of arbitration proceedings by issuing a separate rules governing their involvement: Procedure for the Administration of International Arbitration (HKIAC) and Practice Note PN-01/07: Administered Cases on appointment of arbitrators, arbitrators’ fees and financial management (SIAC). The purpose of these rules is to make their involvement transparently and to separate procedural role of arbitral tribunal and administrative function of arbitration institution. However, the degree of these arbitration institutions’ intervention in the conduct of international arbitration is different. The Deputy Chairman of SIAC who also acts as Registrar and Chairman of CIETAC have more powers in deciding various procedural issues such as: determination of number of arbitrators and final decision on appointment of arbitrators (SIAC),

¹¹⁵ Article 45 of CIETAC Arbitration Rules is effective on 1st May 2005 and article 27.1 of SIAC Arbitration Rules, 3rd edition, 1st July 2007.

¹¹⁶ Ibid

¹¹⁷ Article 27.1 of SIAC Arbitration Rules, 3rd edition, 1st July 2007.

approval of chosen arbitrators who are not listed on the Panel and place of oral hearing (CIETAC), especially are their decisive roles (both CIETAC and SIAC) in the scrutiny of arbitral awards. The arbitral tribunal's power, under CIETAC Arbitration Rules, is limited in the conduct of international arbitration because they can not give a final ruling on its own jurisdiction or issue any interim measure on the case which belongs to the exclusive jurisdiction of the competent court.

Final Conclusion

1. The common essential characteristics of a successful arbitration institution

According to Lew (2003) “*every institution has its own special characteristics. It is essential that parties are aware and take account of these.*”¹¹⁸ Under the same basic principles, arbitration in different countries remains to be characterized. Therefore, the study of characteristics of arbitration in different countries has become a necessary step for business people before they choose the place of arbitration. The common essential characteristics of arbitration institutions such as HKIAC and SIAC are flexibility in business development, active advertisement of their services to the users and continuous improvement of their rules to meet the international arbitration market. These arbitration institutions have a different degree of intervention in the conduct of international arbitration but their method of selection of arbitrators is at the same high standard. Finally, these arbitration institutions operate in a favourable sociological and economic environment and a developed legal infrastructure.

2. New Trends in the arbitration institutions in the Asia Pacific Region

The current development of arbitration institutions in the Asia Pacific Region proves appraisals made by International Council for Commercial Arbitration in 1982¹¹⁹ on the necessity of the establishment of “*strong and efficient systems of arbitration in developing or underdeveloped countries*” and its “*documentation centers for*

¹¹⁸ Lew and ed “Comparative International Commercial Arbitration” published by Kluwer International in 2003 at p.36.

¹¹⁹ Kalra, Report titled “*New Trends in the development of international commercial arbitration and the role of arbitral and other institutions*” in “New Trends in the development of international commercial arbitration and the role of arbitral and other institutions” in International Council for Commercial Arbitration, ICCA Congress Series no.1 in Hamburg, June 7-11, 1982, edited by Pieter Sanders, president of ICCA and published by Kluwer in 1983

consultation”, the co-operation between arbitration institutions¹²⁰ and its link up to or affiliate to international arbitration associations,¹²¹ necessary requirement for training of arbitrators as well as Mr. William K. Slate II’s suggestion on “Arbitral Capacity to Grant Interim Relief”¹²².

More importantly are the internationalization of arbitrators and the opening of domestic arbitration markets for international collaborations and competitions. Major regional arbitration institutions attracted international arbitrators to list on its Panels of arbitrators together with local arbitrators as a tool to promote international arbitration. Typical examples are CIETAC and JCAA. Example of this trend is the recent establishment of an arbitration joint venture between SIAC and ICDR in Singapore as evaluated by Richard W. Naimark, senior vice president, ICDR that “*This is a major step towards the establishment of Singapore as a leading arbitration center in Asia*” and the growing importance of Asia market in the arbitration world.

The independence of arbitration institutions from its sponsoring organisations incurred parallel with the increase of significant contributions of governments to promote international arbitration.

3. Proposal

a) For Regulators:

¹²⁰ AAA concluded 62 cooperation agreements with other institutions, CIETAC concluded 24 cooperation agreements with other institutions, and JCAA concluded 34 cooperation agreements with other institutions, and so on.

¹²¹ See footnote no.9

¹²² William K. Slate, “*INTERNATIONAL ARBITRATION: DO INSTITUTIONS MAKE A DIFFERENCE?*” 31 Wake Forest Law Review 41 (1996) at pp.59-61.

The above analysis proves that an arbitration institution can not efficiently operate without a developed arbitration infrastructure such as suitable sociological factors and the demands of national economy as well as a comprehensive legal infrastructure. It is advisable for the governments of less developed arbitration markets:

- To adapt and modify international practice of arbitration in the UNCITRAL Model Law for International Commercial Arbitration
- To integrate national economy into the global economic development.
- To create a favourable attitude of local courts to support arbitration
- To invest in the development of human resources for arbitration such as university education and training of knowledge and skills for arbitrators and arbitration counsels.
- To open domestic legal market for international legal profession for its competitiveness.
- To impose sufficient tax and financial policies to promote arbitration market.

b) For Arbitration Institutions:

From successful and unsuccessful lessons of major arbitration institutions in the Asia Pacific Region as well as a recent survey result¹²³, it is recommendable for arbitration institutions:

- To maintain its independence and neutrality.
- To be more active in efficiently advertising its services to the users.
- To widely publish its admission criteria and method of selection of arbitrators to gain the confidence from users on its transparency and quality.

¹²³ This survey focuses on selected 20 law firms which have strong arbitration practice in the Asia Pacific Region. See survey questionnaires form in the appendix.

c) For Arbitration Practitioners:

It is compulsory requirement for arbitration practitioners to fully understand the different and common essential characteristics of various arbitration institutions. It is a beneficial to consequentially evaluate different degree of administrative intervention of an arbitration institution in the conduct of international arbitration.

Appendix

SURVEY QUESTIONNAIRES

"An Attempt to Identify the Essential Characteristics of Major Regional Arbitration Institutions and New Trends in the Asia – Pacific Region."

Name: _____ Job title: _____

Jurisdiction: _____

Telephone: _____ Email: _____

1. Have your firm been involved in any arbitration conducted in the following arbitration institutions since January 2004?

American Arbitration Association /International Center of Dispute Resolution	
Arbitration Association of Brunei Darussalam	
Australian Centre for International Commercial Arbitration	»
Australian Commercial Disputes Centre	
Beijing Arbitration Commission	»
Chartered Institute of Arbitrators (Australia)	»
Chartered Institute of Arbitrators (East Asia)	
Chartered Institute of Arbitrators (Malaysia)	
China International Economic and Trade Arbitration Commission	»
Dubai International Arbitration Centre	»
Hong Kong Institute of Arbitrators	»
Hong Kong International Arbitration Centre	»

ICC in Asia	»
Indian Council of Arbitration	»
Indonesian National Arbitration Board	»
Institute of Arbitrators and Mediators Australia	
Japan Commercial Arbitration Association	»
Korean Commercial Arbitration Board	»
Korean Council for International Arbitration	
Kuala Lumpur Regional Centre for Arbitration	»
London Court of International Arbitration	
Malaysian Institute of Arbitrators	
Mongolian Chamber of Commerce & Industry	»
Philippine Dispute Resolution Center, Inc	»
Singapore Institute of Arbitrators	»
Singapore International Arbitration Centre	»
Tokyo Maritime Arbitration Commission	
Thai Arbitration Institute ("TAI");	
Vietnam International Arbitration Centre	
Western Australian Institute of Dispute Management	

2. Please name three best-known arbitration institutions to your firm.

1.	
2.	
3.	

3. Please indicate any of the following factors which your firm is interested in conducting arbitration in such above mentioned arbitration institutions and explain why.

1.	Sociological factors (historical tradition, language, etc.)
2.	Economic environment
3.	Legislation favouring arbitration activities
4.	The supportive attitude towards arbitration of the local courts
5.	The development of legal profession
6.	The role of the Government
7.	The independence of arbitration institution
8.	The neutrality of arbitration institution

4. Please let us know if your firm is familiar with any of the following issue in such arbitration institution.

1.	Organisational structure
2.	Administration services offered for arbitration cases
3.	Service charges (filling/registration fee, administrative fee, appointment fee, arbitrator fee, facilities charge, etc.)
4.	Informative activities (website, newsletter, journal, seminar and conference, brochure, etc)
5.	Research, Education and Training activities

6.	Arbitration Rules and Administrative Rules
7.	Admission of arbitrators
8.	ADR and other services

5. Please let us know which of the above you are most happy with and/or unhappy with and explain why.

1.	
2.	
3.	

6. From a practical perspective, which do you consider to be the most significant advantage/disadvantage in such arbitration institution?

1.	The composition of the arbitral tribunal
2.	The selection of arbitrators and methods of appointment and challenging arbitrators

3.	The designation of the conduct of the procedure
4	The applicable laws
5	Amicable composition
6	The tribunal's competence to determine jurisdiction
7	Application of interim measures
8	Production of documents and evidence
9	A default procedure
10	The method of rendering decisions
11	Place of Arbitration
12	Cost of arbitration
13	Scrutiny of awards
14	Any other issue

7. What in your opinion makes an arbitration institution is successful?



Thank You!

We value your opinions and appreciate your time.

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APRAG: <http://www.aprag.org/index.html>

CIETAC: http://cietac.org.cn/english/introduction/intro_3.htm

HKIAC: http://www.hkiac.org/HKIAC/HKIAC_English/main.html

JCAA: <http://www.jcaa.or.jp/e/index-e.html>

LCIA: <http://www.lcia-arbitration.com/>

SIAC: <http://www.siac.org.sg/facts-statistics.htm>.