

OUTLINE

Founding president, Prof. Pryles: Can APRAG provide further assistance to developing countries other than a platform/forum for exchange of idea/experience or representing at UNCITRAL?

I. MOTIVATIONS FOR THE DEVELOPMENT OF ARBITRATION

1) Development of Arbitration to foster the Economic Growth

- *Economic Growth in the Asia-Pacific:*

The Developing Economies are now opened for foreign investment and international trade which are formalized by its legislation (latest accession to the WTO including Cambodia (13 Oct 2004), Vietnam (11 Jan 2007) and Lao (2nd Feb 2013) and on 15 July 2013, Myanmar formally acceded to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the “**New York Convention**”) as an important part to Myanmar investment framework in consequential to the introduction of the Foreign Investment Law in 2012.

Increasing needs for domestic arbitration from local business community who

Arbitration also plays a critical part in investment treaties concluded within the Asia-Pacific region, notably ASEAN Agreement for the Promotion and Protection of Investments.

Many economies within the region have neither signed nor ratified the ICSID including India, Vietnam, Laos and Myanmar; while Thailand has signed, but not ratified it. Such facts may however suggest the development of *ad hoc* investor-state arbitration administered by regional institutions¹.

¹ The ASEAN Agreement sets forth a complex and unusual investor-state dispute settlement mechanism, pursuant to which ‘either Party’ can elect to submit the dispute to arbitration. The disputing parties can agree to submit the dispute to ICSID, *ad hoc* arbitration under the UNCITRAL Arbitration Rules, arbitration at the Regional Centre for Arbitration at Kuala Lumpur or at any other regional centre for arbitration in ASEAN. Failing an agreement between the parties to the dispute on the suitable body for arbitration, the dispute will be submitted to an *ad hoc* tribunal with the President of the International Court of Justice acting as appointing authority – John Savage, “Investment Treaty and Arbitration: Survey and Comment”

2) Arbitration in Asia-Pacific Region is adapted to the need of foreign investors and business community

- Besides its famous selling points *i.e.* confidentiality, expertise of tribunal, enforceability of arbitral award etc., arbitration in the region is highly regarded for its harmonization thanks to the widespread adoption of UNCITRAL Model Law². Dr. Julian Lew QC conclude that Asian countries using Model Law as baselines for arbitration legislation were likely to be attractive arbitration destination.

II. FOUNDATION FOR DEVELOPMENTS

1. National Legislation closer to UNCITRAL Model Law on commercial arbitration/modernize its arbitration laws

Significant Arbitration Hubs within the region (Australia, Hong Kong, Malaysia, Singapore, South Korea):

Recently open economies (Vietnam and Myanmar)

Vietnam: Vietnam promulgated the Law on Commercial Arbitration which is drafted based on Model Law and tailored to local circumstances in 2010; the Law is in force as from 01 January 2011. It is also expected in 2014 that the Supreme People's Court shall promulgate the Resolution to provide guidance on certain provisions of the LCA.

Myanmar: The Arbitration Act 1944 has not been amended yet, though the accession to the New York Convention is a giant leap towards international standard and harmonization.

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- recent trends in the abovementioned amendments is fine-tuning judicial policy of facilitating and promoting arbitration. Vietnam is not an exception.

Modern attitude of judiciary, not only modern law, public policy!

Common law jurisdictions!

² Chief of Justice Sundaresh Menon, supra note 2

- Wisdom Lines (Singapore) vs. Bac Chu Sa – enforcement of a Singaporean adhoc arbitral award (C/P dispute) was granted in 26th February 2014 (a month ago);
- Ecom (Swiss company) vs. Vinatex Trading – enforcement of ICA arbitral award (international sale contract dispute) was granted in 5th March 2014 (23 days ago);
- Noble Resource Pte (Singaporean company) vs. Phuoc Think – enforcement of ICA arbitral award is pending in 25th March 2014 (3 days ago) for affidavit of Singaporean lawyer;
- **Bill Magenis: 10% achieved for enforcement;**
- **No signitary capacity under law of Vietnam.**
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3. The development of the legal profession and the growing pool of arbitrators

ICCA conference in Singapore in 2012: recorded number of participants: 1059

CIArb East Asia Branche: 1700 members.

APRAG: nearly 200

Promote Education in cooperation with CIArb?

4. The active Role of the arbitration Institutions in the Region such as ICC, SIAC, HKIAC, KL, etc.

Engines for Developments: new or old, latest modern or old one, already developed or newly established arbitration center?

Recent restructures of arbitration institution to meet the changes of modern arbitration:

- Revising Arbitration Rules (HKIAC in 2013, KCAB, and KLRCA in 2012)/ Unveiling new rules (SIAC Arbitration Rules 2013).

Besides, arbitration institutions also

Promoting arbitration market

Educating: new users

Drafting legislation on ADR

Adapting change of modern arbitration

III. Trends:

1. The influence of international arbitration organization/forums in establishing a framework for co-operation and development

The establishment of IBA (i) The Working Group on Harmonizing Arbitration Laws in the Asia Pacific Region; and (ii) The Working Group on Initiatives for Harmonizing Arbitration Rules and Practices of IBA.

Prof. Garnett: trend: public policy is limited ,

The aim to increase harmonization within the Region (adopting the Model Law, bridging the procedural approaches of Common Law and Civil Law jurisdictions etc.)

2. The Growth of Investment Treaty Arbitration

Drafting work is problem for developing countries

Uncertainty of investment legal environment

3. The unique role of developing countries³

Mc Kenzie vs. Vietnam: no qualifying investor/good faith in dealing with investment

China: bidding for all Chinese lawyers

Conclusion: limited financial and human resources/organizational structure of APRAG

³ Sundaresh Menon, SC, "International Arbitration: The Coming of a New Age for Asia (and Elsewhere)" Opening Plenary Session of ICCA Congress 2012