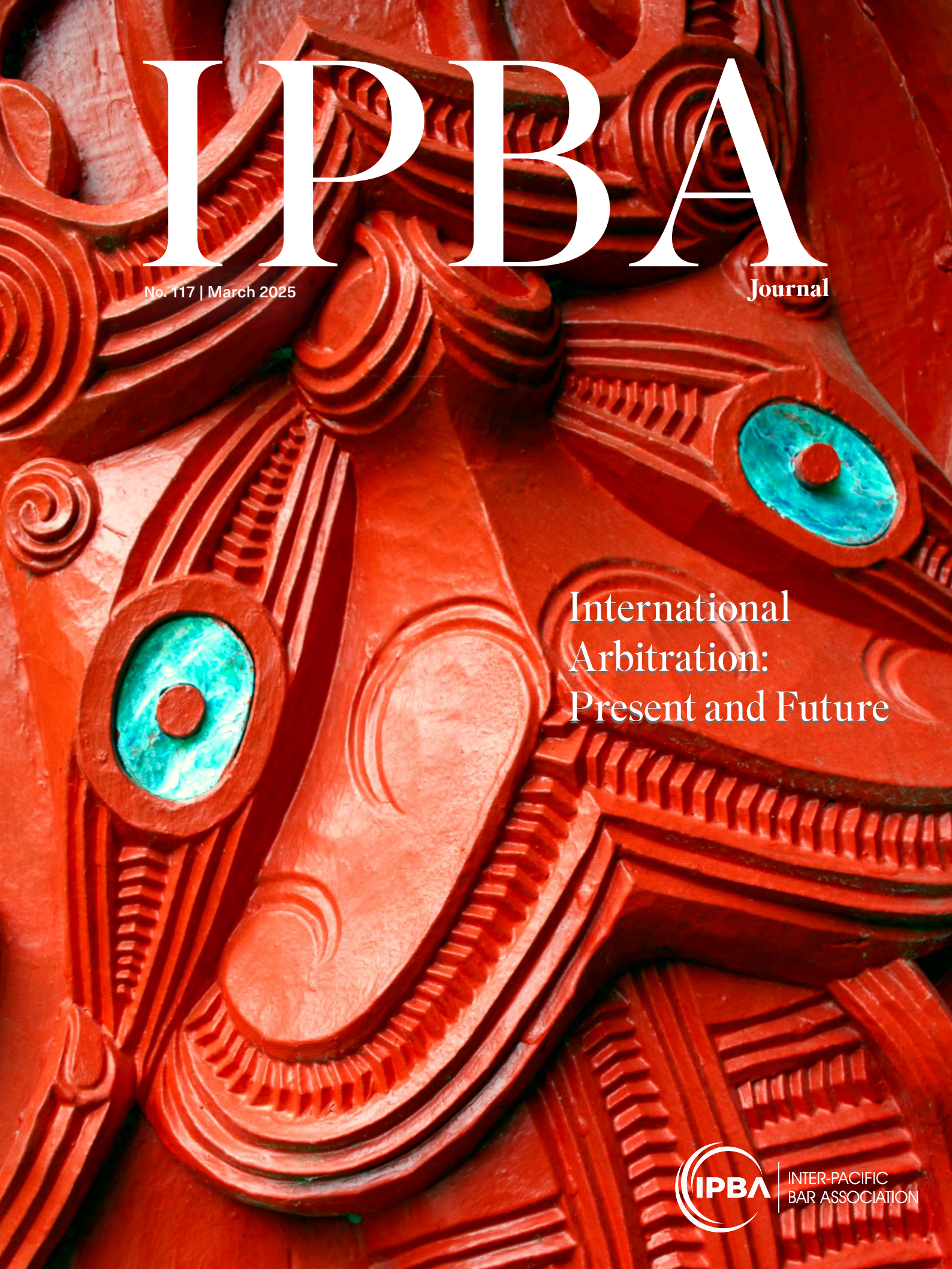
IPBA
Journal
No. 117 | March 2025
International Arbitration: Present and Future
IPBA
INTER-PACIFIC BAR ASSOCIATION

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Level 12, Infinitus Plaza,
199 Des Voeux Road,
Sheung Wan, Hong Kong
Tel: +852 3796 3060
Fax: +852 3020 7442
Email: enquiries@ninehillsmedia.com
www.ninehillsmedia.com

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The President's Message

Miyuki Ishiguro

Dear IPBA Friends and Colleagues,

How time flies. I am writing my final message as the President in the IPBA Journal before the end of my term which will expire at the conclusion of the Annual General Meeting in Chicago on 26 April 2025. It has been an exciting experience during my offices as the Vice-President, the President-Elect and the President.

My first involvement with the IPBA was as organising committee member of the IPBA Kyoto Conference and Meeting held in 2011 immediately after the huge earthquake in the northern area of Japan. At the Kyoto Conference, I was also involved as one of the speakers at a session initiated by the Woman Business Lawyers Committee. After that, I attended all Annual Conferences and Meetings held every year and made a lot of close friends on such occasions. In 2015, I was appointed as the Deputy Secretary-General, and then my long journey as one among the IPBA leadership began. In 2019, I was appointed as the Vice-President at the time of determining Tokyo as the 2021 conference venue. The terms of the Vice-President, President-Elect and President are normally one year, but in my case, my term as President-Elect was four years, spanning 2020, 2021, 2022 and 2023. These irregular terms resulted from several postponements of our annual conferences due to COVID-19. But because of these irregular terms, I was able to deeply enjoy many activities and events of the IPBA. Let me thank you for giving me such an opportunity.

During my terms, the most significant achievement of the IPBA is the introduction of the conference registration system operated by the IPBA headquarters. Before the introduction, the registration systems were made and operated by each conference organising committee and this resulted in the delayed transfer of conference surplus from the conference organising committee to the IPBA headquarters. In addition, this new system reduced the administrative burden on conference organising committees. With this new system, the Tokyo Conference was able to transfer a huge amount of conference surplus immediately after the conference. This new system was initially developed by the former Secretary-General, Michael Burian, and completed with a strong driving force led by the current Secretary-General, José Cochingyan, III. Our CTO team, including Varya Simpson and Riccardo Cajola, and the Secretariat team consisting of Randa Morioka and Yukiko Okazaki, also largely contributed to the development of this new registration system. Let me thank all such members involved for their efforts in establishing this helpful system.

When you read my message, our Annual Conference in Chicago will be approaching. I really look forward to seeing you in Chicago, which will offer you fantastic entertainment and opportunities to absorb new and renewed knowledge and information. See you soon!

The Secretary-General's Message

I come now to the end of my term. It started auspiciously at the AGM of the first onsite annual conference held coming out of the pandemic. It was a wonderful moment in Dubai, seeing in person old friends again after a long two-year adjournment from normalcy. As Secretary-General, I have focused on the process improvement begun by Michael Burian when he was Secretary-General. I adopted as my motto "Enhance User Experience." Looking back in the last two years, I am happy to share with you that I feel that I have accomplished all that I have set out to do.

I initiated and implemented the change of the functional currency of IPBA from Japanese Yen to USD, making it easy for all to understand the costs of being a member of the IPBA and to understand our financial reports. Our financial management is now vastly improved with our level of compliance elevated to the best possible level. The collection of our annual conference fees has now been centralised to our registered Singapore corporate accounts. IPBA fund management has also vastly improved with fixed time deposits that earn six figures annually in interest alone. Membership fees have also been restructured during my term. As a result of these combined measures, we have doubled our cash resources. We have also been able to launch the Nobuo Miyake Fellowship, which allows those with five years of membership a chance to show how they can benefit IPBA with their wealth of experience. At the same time, it allows us a pause to remember this great man. It was in his soul and mind that IPBA was born. It is with sadness that we had to bid him farewell during my term as Secretary-General.

We have also invested heavily in technology to ensure that members can enjoy what IPBA has to offer. As of this writing, our CTO Robert Quon and Deputy CTO Catrina Luchsinger are developing and testing an App that aims to give our members a wonderful tech experience when attending our annual conference. Through this App our members will enjoy the benefits of being part of the IPBA. The Association owes much to Robert and Catrina for all their efforts to maximise our ability as an organisation to access technology and to rationalise our adherence to data privacy rules.

I also thank Olivia Kung, our Publications Chair, for taking the initiative to give us such a wonderful Journal. It was during her term, without any need for intervention from my side, that we are now enjoying a sublimely attractive IPBA Journal that is easy to read, lovely to hold.

In the area of leadership, I, together with our very capable Deputy Secretary-General, Jan Peeters, have worked closely with the chairs and coordinators, vice-chairs and deputy coordinators for membership, committees and programs. Program Coordinator Sara Marchetta and her Deputy, Robert Rhoda; Membership Committee Chair Sebastian Kühl and his Vice-Chair Angela Li; and Committee Coordinator Gmeleen Tomboc and her Deputy Shigehiko Ishimoto now work as one for IPBA. I have much to be thankful for in their enthusiastic support and for enduring our long meetings together addressing present issues and planning for the future. I believe that Jan and I have succeeded in uniting the IPBA leadership to work seamlessly and in full coordination with each other and the goals of the IPBA. Thank you, Jan, for working with me whole-heartedly. You have given your time and trust and this I will always remember. I gladly and confidently kick the can over to you! With Jan as my successor, the IPBA will move even more aggressively into enhancing the membership experience.

The presidents---past, current, and elect---have likewise been very helpful in acting as leaders all throughout my term and it has been wonderful to work with them. Thus, I thank Jack Li, Richard Briggs, Miyuki Ishiguro and Michael Chu. You have all been wonderful.

Finally, a huge thank you to Randa Morioka and Yukiko Okazaki who have been so helpful during my term as Secretary-General and even before this, in my other posts in IPBA. Their patience, endurance and understanding despite all the pressure I have brought down to bear on them is simply amazing. They have done the heavy lifting of all the drastic changes I have undertaken during my term as Secretary-General.

So, I take my bow here. I love the IPBA and all of you have made a great decision in joining the IPBA and continuing your membership in the IPBA. It has been both an honor and pleasure to have served you.

Jose Cochingyan III

Publication Committee Chair's Message

Olivia Kung

Dear Readers,

International arbitration is becoming the preferred method for resolving commercial disputes on a global scale. In this edition, we delve into the various options available for engaging in international arbitration, examining the benefits and drawbacks associated with each approach.

As geopolitical tensions rise, climate change escalates and economic uncertainties loom, jurisdictions are adopting new strategies to address these evolving challenges. We also recognise that clients frequently raise concerns about the high costs involved in arbitration, and we investigate how different jurisdictions are tackling these financial issues.

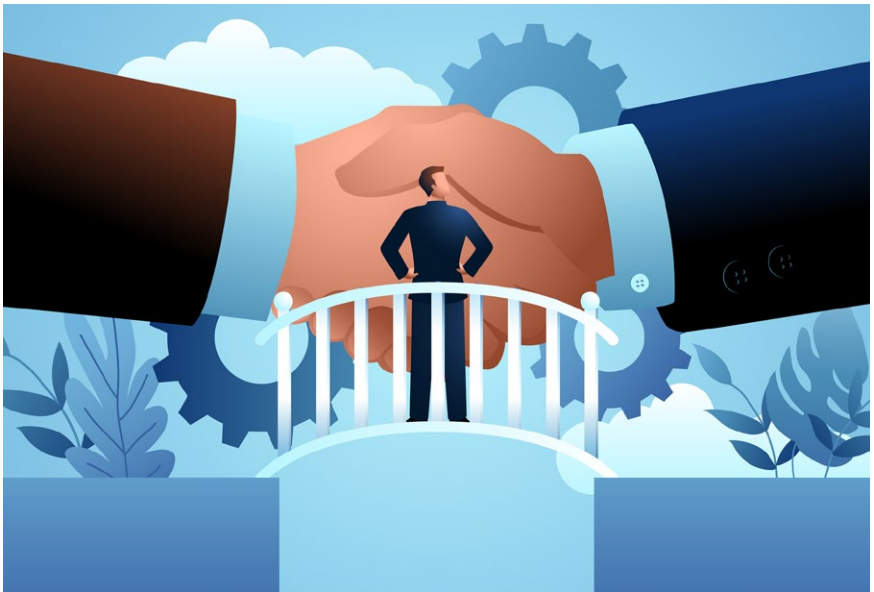
Looking to the future, we explore potential trends and changes that may shape the landscape of international arbitration over the next five years.

This issue includes a diverse array of articles from various jurisdictions, highlighting key aspects of arbitration, such as:

- Challenges and Coping Strategies for Chinese International Arbitration
- Waiver of Jurisdictional Challenges – Common Mistakes and Missteps
- Arbitration in France and Japan – Shared Perspectives and Insights
- Fundamental Principles and Innovations in International Arbitration in China

In addition to our theme topic, we would also like to extend our appreciation to the writers who contributed to other sections of the Journal. Their exploration of cultural festivals, unique laws and other intriguing topics adds a refreshing dimension to our publication.

Finally, we would like to thank everyone involved in organising all the exciting events and for sharing memorable highlights that enrich our community.



Events

Luxembourg

Friendly Dinner Followed by an Exclusive visit of the Court and Two Lively and Insightful Panels

A Group Dinner at Cercle Munster

A group dinner at Cercle Munster in Luxembourg is a sophisticated culinary experience. Nestled in the historic Grund district, this private club exudes charm and exclusivity. The ambiance is refined, with elegant decor and stunning views of the Alzette River. On the evening of 13 November 2024 we were welcomed into a warm, intimate atmosphere, ideal for fostering connections.

The dinner began with expertly crafted appetizers, followed by a menu showcasing seasonal ingredients and French-inspired cuisine. Each dish was an harmonious blend of flavours, complemented by an extensive wine selection. The attentive service ensured a seamless dining experience, catering to every need with grace.

Conversations flowed effortlessly in this serene setting, making it a perfect venue for meeting new friends and enjoy spending enjoyable time with IPBA members.

A Visit to the Court of Justice of the European Union

The Court of Justice of the European Union ('CJEU'), located in Luxembourg, is a key institution of the EU, tasked with interpreting EU laws and ensuring its uniform application. We were lucky enough to have the opportunity to visit this prestigious court, gaining insight into its role and operations.

First Impressions and Overview

The CJEU complex in Luxembourg City features modern glass towers symbolizing transparency. A guided tour provided insights into its history, beginning in 1952, and its evolution as a cornerstone of European integration.

The Court has two primary branches: the Court of Justice (la Cour) and the General Court (le Tribunal). The role of Advocates General, who provide impartial opinions to assist judges, was also explained.

Observing a Hearing

A highlight of the visit was observing a live hearing. Just before it began, a secretary of the court explained to us the case we would be hearing and its context (facts and procedure). The courtroom's blend of tradition and modernity, along with interpreters accommodating 24 official EU languages, emphasized the court's commitment to diversity and fairness. The case involved a preliminary ruling question to help the Warsaw Court of Appeal to rule on a local dispute between a Polish bank and a Polish national individual.

Reflections

The visit highlighted the CJEU's vital role in upholding EU laws and fostering unity among nations. It was a reminder of the importance of justice, democracy and cooperation within the European Union. For anyone interested in governance or law, visiting the CJEU offers a unique and enriching experience.

Thanks to the connections of Jan Peeters, our Deputy Secretary-General, we were privileged to benefit from the explanations, insights and views of Marc van der Woude, the President of the General Court for almost an hour.

We then proceeded with the conference part of the event hosted by Stibbe Luxembourg.

Half-Day Conference

The first panel addressed 'The quest for predominance: European litigation after Brexit'. Moderated by Nicholas Peacock, an English-qualified Advocate & Arbitrator based in London, the panel considered the complexities of recognition and enforcement of judgments between the UK and EU member states now that the Brussels I Recast Regulation no longer applies to the UK.

Estelle Brisson, a Counsel in the Banking & Financial Services practice of Arendt & Medernach and a member of the Paris and Luxembourg Bars, gave a civil law perspective of how UK judgments might be dealt with in Luxembourg. Deirdre O'Donovan, a Partner with William Fry in Dublin, then offered a common law perspective based on Irish provisions for the recognition and enforcement of UK judgements, and also considered whether Dublin may profit from London's absence

as an English-speaking common law jurisdiction within the EU. Finally, Gilles Cuniberti, a Professor of Comparative Law and Private International Law at the University of Luxembourg and a former member of the Paris Bar, offered perspectives based on empirical research of the choice of law and forum in cross-border disputes and in particular the relative usage of English law and English courts compared with European alternatives (including the Paris commercial courts). The discussion opened up with contributions from the floor and Nicholas offering a 'view from London' of the continuing activity levels of the English commercial courts, and the post-Brexit options to enforce judgments from EU member states within the UK.

The second panel addressed 'The Quest for Supremacy: EU Courts and Investor-State Arbitration'. Moderated by Mariel Dimsey, Managing Partner of CMS Hong Kong, Vice-Chair of the DRAC and Co-Chair of the IASC, the panel explored the developments in EU law and court jurisprudence and the impact on investor-state arbitration both within and outside the EU.

The panel was held in an interactive Q&A format with all panellists addressing multiple aspects of this wide-ranging topic and focusing on certain sub-topics. Professor Hans

van Houtte, an independent arbitrator who has decided a number of cases involving these issues, discussed the developments of the past years, both in ICSID and non-ICSID proceedings and various nuances of the relationship between intra-EU investment arbitration and EU law, including with respect to the Energy Charter Treaty. Elisabeth Omes, a Partner at Elvinger Hoss in Luxembourg, not only delved into historical developments, but also addressed the role of the so-called 'Termination Agreement' and of human rights instruments in the evolving tension with EU law and investment arbitration within the EU. Dr Jean-Claude Beaujour, Of Counsel at Harlay Avocats in Paris, discussed elements of enforcement of treaty awards both within and outside the EU. Katrien Baetens, Senior Managing Associate at Linklaters in Luxembourg, highlighted the issues associated with investor expectations, and the consequences of the EU jurisprudence for investment structuring.

Stay tuned for our next European event!

Frédérique David
Harlay Avocats, Paris France
IPBA ALCM for Europe

Shenzhen

Shenzhen Arbitration Day 2024

On 25 October 2024, the IPBA Arbitration Day 2024 event was held in Shenzhen, jointly organized by the Shenzhen Court of International Arbitration (also known as the South China International Economic and Trade Arbitration Commission, the International Arbitration Center for the Greater Bay Area, abbreviated as 'SCIA') and the Inter-Pacific Bar Association at the SCIA Tower in Qianhai, Shenzhen.

Under the theme 'Arbitration in the Face of Tech Innovation and a Changing Landscape', the conference featured speeches and panel discussions by professionals from 12 countries and regions, including Japan, South Korea, Singapore, Mainland China and Hong Kong. The event attracted nearly 150 international arbitration experts, experienced arbitrators, lawyers from internationally renowned law firms, and academics from prestigious universities across over 30 countries, including China, Singapore, Japan, South Korea, the United States, Russia, Spain, Switzerland, Australia, the UAE and India.

Hu Ke
Partner, Jingtian & Gongcheng, Beijing

Philippines

Villaraza & Angangco Hosts First IPBA Southeast Asia Regional Conference in Manila—The Rising Tide: Exploring Investment Opportunities in Southeast Asia

Marking the start of a series of events in celebration of the firm's 45th anniversary, Villaraza & Angangco (V&A Law) hosted the IPBA's first Southeast Asia Regional Conference in Manila from 5-6 February 2025 at the V&A Law Center. With the theme, 'Rising Tide: Exploring Investment Opportunities in Southeast Asia', this event brought together both Filipino and foreign legal professionals for a series of meaningful discussions on navigating cross-border investments, trends and regulatory developments shaping the region.

The Conference had the privilege of welcoming IPBA President Miyuki Ishiguro, who visited the Philippines to promote the organisation and the upcoming Annual Meeting and Conference which will be held in Chicago from 23-26 April 23-26 2025.

Welcome Cocktails

V&A Law hosted Welcome Cocktails on 5 February to formally launch the Conference. Bringing together esteemed guests and key figures from the IPBA and various local and international law firms, the evening provided an opportunity for both the speakers and the attendees to meet new and old acquaintances and foster meaningful connections ahead of the Conference.

Among the attendees were IPBA President, Miyuki Ishiguro; IPBA Secretary-General, Jose Cochingyan III; IPBA Program Coordinator, Sara Marchetta; IPBA Jurisdictional Council Member for the Philippines, Emerico De Guzman; and former IPBA President, Perry Pe.

IPBA Southeast Asia Regional Conference

With V&A Law Associate Richard Martin De Leon as the emcee, the Conference kicked off with opening remarks from V&A Law Managing Partner and IPBA Southeast Asia Regional Coordinator Sylvette Tankiang, setting the stage for a full day of insightful sessions. In her speech, Sylvette emphasised the crucial role of legal practitioners as key partners in progress, particularly as Southeast Asia cements its status as an economic powerhouse.

The Conference featured a lineup of eight distinguished speakers from law firms across Southeast Asia, including V&A Law Partner Mark Benjamin Yam, who kicked off the morning session of the Conference with his presentation on 'Emerging Investment Opportunities and Navigating Roadblocks in the Philippines'. Mark discussed the country's evolving economic landscape, highlighting the infrastructure, renewable energy and business process outsourcing sectors as some of the key sectors with a high potential for growth in the Philippines. Mark also discussed investment incentives and regulatory challenges for investors, offering ways to capitalise on opportunities while mitigating risks in one of Southeast Asia's most dynamic markets.

Nagashima Ohno & Tsunematsu's Singapore Office Head, Nobuo Fukui, brought in a perspective from outside of Southeast Asia with his presentation on 'Investment Trends and Typical Legal Issues Involving Japanese Companies Investing in Southeast Asian Countries'. Nobuo's insights shed light on key market trends, regulatory challenges and the legal considerations that Japanese investors would have to face when entering Southeast Asian markets, offering attendees a comprehensive understanding of cross-border investment dynamics.

Ong Eu Jin Partnership's Managing Partner, Ong Eu Jin, explored 'Current Trends in Malaysian Inbound and Outbound Investments in Southeast Asian Countries'. Eu Jin's presentation covered a range of critical topics including opportunities for foreign investors to enter the Malaysian market, the expansion of Malaysian businesses into neighbouring countries, the relationship between Malaysia and China, and relevant laws for investors among others.

Wrapping up the morning session, Abi Abadi Tisnadisastra, Managing Partner of ATD Law and the IPBA Jurisdictional Council Member for Indonesia, discussed 'Inbound Investment into Indonesia by Southeast Asian Entities'. During his presentation, Abi provided an overview of Indonesia's foreign investment climate, presenting data on ASEAN countries actively investing in the region. His presentation also highlighted key developments, including updates on the New Capital City Projects ('IKN') and major investment opportunities under Indonesia's National Strategic Projects ('PSN'). Additionally, Abi addressed challenges hindering Indonesia's growth, such as regulatory inconsistencies, government corruption, shortages in skilled human resources and territorial disparities. Despite these hurdles, Abi emphasized Indonesia's optimism, underscoring the nation's commitment to fostering a thriving investment environment for the future.

The afternoon session began with a compelling presentation on 'How

to Avoid Investment Risks in Hong Kong'. ONC Lawyers Partner and IPBA Publications Committee Chair Olivia Kung captivated the audience with a real-life case in Hong Kong reminiscent of the infamous fraudster, Anna Sorokin, detailing how a con artist stole eight diamonds from a jewellery store without even using weapons. Olivia then highlighted common scams investors face, including phishing emails, fraudulent websites, Ponzi schemes and unlicensed investment advisors. To help attendees safeguard their assets, she outlined key strategies for detecting and avoiding these financial traps, emphasising the importance of vigilance in today's evolving investment landscape.

Dilinh Legal Founding Partner and IPBA Jurisdictional Council Member for Vietnam, Diep Hoang, continued the afternoon session with her presentation on 'Trade and Investment Between Vietnam and Southeast Asian Countries'. She structured her discussion around three key topics: trade and investment trends, common investment structures and commercial dispute resolution. She began by analysing trade figures and investments from other Southeast Asian nations, highlighting Vietnam's most attractive sectors for foreign direct investment ('FDI'), including manufacturing and processing; real estate business; the production of electricity, gas and air conditioning supply; and accommodation and food service activities. She then explored common investment forms in Vietnam, including equity acquisitions and the establishment of foreign-invested enterprises ('FIEs'). To conclude, she provided insights into Vietnam's dispute resolution mechanisms, comparing arbitration and litigation as key avenues for resolving commercial conflicts.

Building on the discussions about trade, investment, and regulatory landscapes in Southeast Asia, Providence Law Asia LLC Director Jiaxiang Zhuo shifted the focus to a critical aspect of cross-border business during his talk about 'Navigating Dispute Resolution for Overseas Investments in Southeast Asia'.

Capping off the afternoon's sessions, Nishimura & Asahi Thailand's Dr Apinya Sarntikasem presented on 'Overseas Investment Trends of Thailand in Southeast Asian Countries'. Dr Apinya provided an overview of the different types of foreign entities in Thailand, including private limited companies and representative offices, and explored key investment-related regulations such as the Foreign Business Act ('FBA'), the Land Code, and industry-specific laws like the Land Transport Act and the Financial Institution Act. She also analysed prevailing investment structures, emerging

foreign investment trends, and the driving forces behind Thai businesses seeking opportunities abroad.

The Conference concluded with closing remarks from V&A Law CEO and Chairman Raoul Angangco, who emphasized the pivotal role of legal professionals in Southeast Asia's evolving economic landscape. Rather than simply navigating the waves of change brought by the region's rapid growth and transformation, he urged to take an active role in shaping the legal frameworks that will sustain and support this development, ensuring a stable and dynamic environment for investors and businesses alike.

The Conference was organized under the leadership of Sylvette Tankiang, who closely coordinated with the IPBA to bring together an esteemed group of legal experts from across Southeast Asia for a series of meaningful discussions.

As the tide of opportunity continues to rise across the region, we want to thank our speakers, attendees and partners again for making this Conference a success.

Sylvette Y. Tankiang
Managing Partner, Villaraza & Angangco, Manila

Webinar

Restrictive Covenants, Trade Secrets, and Confidential Information in the Digital Age: Legal Complexities and Best Practices

The digital transformation of the workplace has blurred national borders, accelerated employee mobility, and heightened the risks associated with confidential information. Against this backdrop, an IPBA online seminar held on 25 March 2025 brought together three leading employment lawyers from Italy, India and the United States to explore how restrictive covenants, trade secrets and confidentiality obligations are being redefined across jurisdictions. Moderated by Christine Chen, Partner at Winkler Partners in Taipei and member of the IPBA Employment Committee, the session offered a comparative perspective on both enduring legal principles and the challenges of a rapidly changing environment.

The panellists each carried impressive credentials. From New York, Philip M. Berkowitz, shareholder at Littler Mendelson and Co-Chair of its International Employment Law Practice Group brought a US perspective to the table shaped by decades of experience in financial services and international employment law. Swarnima, a Partner at Trilegal in Bengaluru and a specialist in workplace compliance and employee relations, offered the Indian view, grounded in her extensive experience with multinationals and her recognised expertise in preventing workplace harassment. Completing the panel was Alberto De Luca, Senior Partner at DL-LAW in Milan and Vice-Chair of the IPBA Employment Committee, whose practice spans reorganisations, M&A and cross-border employment issues. Together, they reflected not only three jurisdictions but also three distinct regulatory philosophies.

The seminar opened with short introductions of the panellists, setting the stage for a comparative discussion across Italy, India and the United States. The conversation began by examining differences in legal frameworks for restrictive covenants and trade secrets, highlighting how jurisdictions approach non-compete clauses, confidentiality obligations, and the protection of sensitive business information.

Attention then turned to the drafting of non-compete, non-solicitation and confidentiality agreements, with an emphasis on enforceability and compliance. The panel stressed that enforceability varies widely, reminding participants that agreements valid in one jurisdiction may be void in another. This section highlighted the risks of applying boilerplate clauses without adjustment and underscored the need to carefully tailor contracts to specific local laws, regulatory expectations and cultural practices.

Remote work also emerged as a significant theme, particularly in cross-border settings. With employees increasingly working from home or abroad, the panel highlighted the challenges of maintaining data security and confidentiality when information flows across jurisdictions. Different and sometimes conflicting data protection rules create compliance burdens, and the discussion emphasised practical steps companies can adopt—such as stronger contractual safeguards, training and IT monitoring—to mitigate risks associated with remote arrangements.

Technology-related challenges featured prominently in the seminar. The speakers explored how artificial

intelligence and machine learning are reshaping trade secret protection and contract enforcement. Closely tied to this was a discussion of the risks created by employees' use of open-access AI tools such as ChatGPT or DeepSeek. These exchanges focused on issues of confidentiality, liability and the absence of clear statutory frameworks, showing how quickly evolving technologies complicate employers' obligations and demand proactive risk management.

The seminar concluded with a lively and interactive Q&A session. Audience members presented practical questions and hypothetical scenarios, which enabled the panel to connect the structured themes with real-world business challenges. This exchange reinforced the value of the comparative format and highlighted both the immediacy and the complexity of the issues under discussion. The overall tone of the event suggested that companies and practitioners must continue to adapt swiftly, combining legal knowledge with technological awareness to navigate the evolving landscape.

To conclude the event, each panellist was invited to offer a short final reflection, sharing a concise piece of advice for employers and practitioners. Christine then closed the seminar by summarising the main takeaways: the need to adapt restrictive covenants to jurisdictional requirements, the importance of prioritizing trade secret protection, the urgency of preparing for AI regulation, and the necessity of building robust data security frameworks for remote work. She also encouraged participants to continue the conversation at the upcoming IPBA Annual Conference in Chicago.

The flow of the program moved deliberately from foundational legal comparisons, through practical drafting and compliance considerations, and finally into forward-looking debates on AI and remote work. This structure provided participants with a clear map of the legal landscape, while also showing how traditional employment law concepts are being tested by new technologies and global working arrangements.

Christine Chen
Partner, Winkler Partners, Taipei

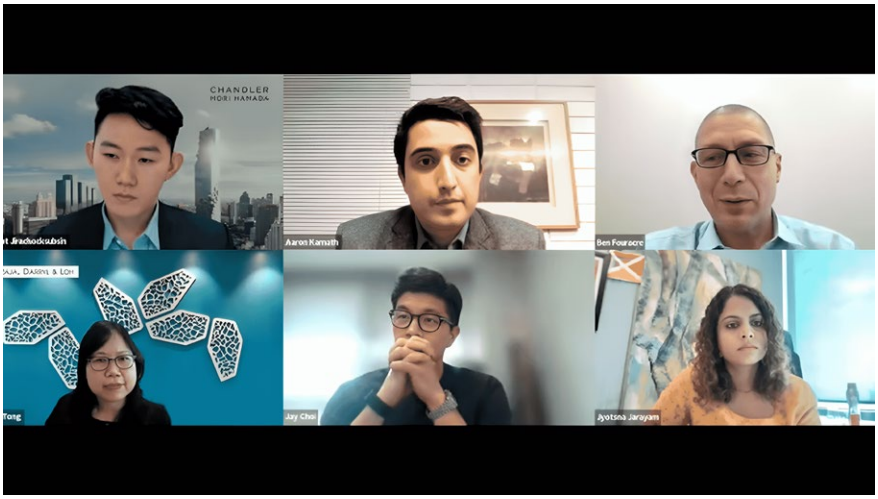
Webinar

Digital Battlefields: Navigating Legal, Regulatory and Ethical Frontiers

Moderator: Aaron Kamath, Leader, Nishith Desai Associates, Bangalore

Panellists:

- Ben Fouracre, Managing Director and Head of Japan, G3, Tokyo
- Jay Choi, Chief Strategy Officer for the Cyber Security Division, SK Shieldus, Seoul
- Jyotsna Jayaram, Partner, Trilegal, Bangalore
- Koraphot Jirachocksubsin, Counsel, Chandler Mori Hamada, Bangkok
- Lai Ling Tong, Partner, Raja, Darryl & Loh, Kuala Lumpur



In this webinar, held on 25 March 2025, in the context of increasing complexity and vulnerability to cybersecurity attacks, panellists discussed cross-jurisdictional legal approaches and practical steps for professionals to advise organisations and stakeholders across the ecosystem. The key points of discussion included:

Vulnerabilities Due to Increasing Reliance on Technology

The panellists noted that growing reliance on technology has amplified the complexity and scale of cybersecurity threats. Traditional threats such as ransomware and phishing have become more sophisticated, and emerging risks like quantum computing and AI-driven attacks may compromise encryption. Internet of Things (IoT) and connected systems often lack sufficient security, making them easy targets for cybercriminals.

Role of AI in Cybersecurity

AI may be employed both as a defensive and offensive strategy in cybersecurity, creating the need for responsible and ethical use. Over-reliance on automation can cause operational disruptions, as seen in outages at companies like CrowdStrike and Microsoft.

Legal Responses to Cybersecurity Attacks and the Need for Harmonisation

Cyberattacks are often directed at critical infrastructure such as energy, telecommunications, digital payments and financial systems. In the absence of a uniform international framework, most countries rely on domestic cybersecurity laws, which differ in scope and approach. Laws such as the EU's NIS2 Directive and the EU Cybersecurity Act are primarily defensive, focusing on coordination within jurisdictions rather than across borders. Singapore incorporates proactive measures to build resilience, while countries including India and the US combine defensive regulations with reporting obligations. The main challenge remains harmonising these regulations across countries to enable a coordinated international response.

Personal Data Misuse and Enforcement in Thailand

Koraphot Jirachocksubsin discussed the legal measures taken by Thailand against cybersecurity attacks by citing organised groups of tele-scammers that exploit personal data. Thailand has responded with several legal measures, including the Personal Data Protection Act (PDPA), the Computer Crime Act, and the Money Laundering Act. Authorities collaborate both regionally and internationally to investigate cross-border data misuse.

Cybersecurity Breach Response and Reporting in Malaysia

Lai Ling Tong elaborated on how Malaysia handles reporting after a cyber breach by way of a presentation, noting that many elements are similar across jurisdictions. She highlighted the Cybersecurity Act which applies to National Critical Information (NCI) entities. She also discussed the Personal Data Protection Act (PDPA).

Comparison of Cybersecurity and Data Breach Frameworks Across Jurisdictions

Following the GDPR's 72-hour personal data breach reporting requirement, many countries have implemented similar rules, including Malaysia's six-hour reporting framework and comparable regulations in India and Indonesia, sometimes involving multiple industry-specific regulators. Aaron Kamath highlighted the complexity created by overlapping privacy and cybersecurity laws and obligations to notify both regulators and affected individuals.

Organisational Resilience, Prevention and Post-Breach Implementation

Cybersecurity must be made a board-level priority, with a Chief Information Security Officer leading the efforts, covering employee awareness, regulatory compliance, third-party risk management and data protection. Gaps often exist between the IT and legal teams' understandings of compliance requirements and must be avoided. European regulations like the Cyber Resilience Act and DORA emphasise process-level resilience over system backups, spreading responsibility to business leaders alongside IT teams.

Global organisations may face challenges from differing reporting requirements in the event of a widespread cybersecurity incident. This highlights the need for process-level backups, which are difficult but essential. Despite these efforts, breaches may be inevitable, making effective post-incident response critical.

Industries Most Vulnerable to Cyberattacks

These, as identified by the panellists, include energy (especially renewable infrastructure), banking and financial services, transportation (including airports), manufacturing and supply chains, and telecommunications, particularly where 'super-applications' manage personal and financial data.

The conference witnessed an examination of cross-jurisdictional approaches to cybersecurity by the panellists, placing emphasis on the need for a harmonised response across jurisdictions to tackle significant cybersecurity incidents. The panellists also provided actionable points for organisations to prevent and respond to cybersecurity attacks.

Aaron Kamath
Leader, Nishith Desai Associates, Palo Alto, CA

Something New

Judicial Interpretation on Application of Law in Labor Dispute Cases to Take Effect on September 1

Among other matters, Interpretation II primarily addresses the following issues:

1. Criteria for determining consecutive conclusion of twice-concluded fixed-term labour contracts

Pursuant to Article 14 of the Labor Contract Law of the People's Republic of China, where a fixed-term labour contract has been concluded consecutively twice, the employer shall not refuse the employee's request to conclude an open-ended labour contract if none of the following circumstances apply:

- the employer lawfully unilaterally terminates the labour contract;
- the employee is unable to perform the original work or any new work arranged by the employer after the expiration of the prescribed medical period for illness or non-work-related injury; or
- the employee remains incompetent after training or adjustment of the position.

In response to practical disputes over the criteria for identifying consecutive twice-concluded fixed-term labour contracts, Interpretation II clarifies specific scenarios that shall be recognised as such, including:

- where the cumulative extension of the labour contract term through negotiation reaches one year or more and the extended term expires;
- where the labour contract is automatically renewed upon expiration and the renewal term expires; and
- where the subject executing the labour contract is changed for reasons not attributable to the employee.

These provisions prevent employers from evading their obligation to conclude open-ended labour contracts, thereby maintaining harmonious and stable labour relations.

2. Exceptions to the validity of non-compete clauses

Interpretation II stipulates that where an employee has no knowledge of or access to the employer's trade secrets or confidential matters related to intellectual property, any non-compete clause agreed upon between the employer and the employee shall not take effect and shall not be binding on the employee.

For employees subject to non-compete restrictions, the scope, geographical area, and duration specified in the non-compete clause shall correspond to the trade secrets and confidential matters related to intellectual property that the employee has knowledge of or access to. Any part of the clause exceeding such limits shall be invalid.

3. Legal consequences of agreements or commitments to waive social insurance contributions

Any agreement between an employer and an employee, or any commitment by an employee to the employer, to waive social insurance contributions shall be null and void.

Where an employee terminates the labour contract on the grounds that the employer has failed to contribute to social insurance in accordance with the law and claims economic compensation, the people's court shall support such claim in accordance with the law.

If the employer makes retroactive payments as required by administrative authorities, it may seek repayment of the social insurance compensation paid under the agreement.

This provision fully protects the fundamental rights of employees, such as the right to social security.

Scott Li

Partner, Jin Mao Partners (Lin Gang), Shanghai

Challenges and Coping Strategies for Chinese International Arbitration

As globalisation intensifies, Chinese international arbitration institutions face unprecedented challenges, including geopolitical tensions, climate change and economic uncertainty. To address these issues, these institutions have implemented strategies to enhance their competitiveness and provide more efficient, high-quality services. This article explores the measures that have been taken to strengthen arbitration practices, reduce costs and foster international cooperation.

Introduction

As globalisation deepens, Chinese international arbitration institutions, which play a crucial role in resolving international commercial disputes, bear the responsibility of maintaining international economic order and fairness. However, factors such as escalating geopolitical tensions, climate change, economic uncertainty and ever-evolving regulatory frameworks have brought unprecedented challenges to Chinese international arbitration institutions. In response, these institutions have adopted a series of effective strategies to enhance their competitiveness and influence and to provide higher quality and more efficient arbitration services to the parties involved, as discussed below.

Responding to International Systemic Risks and Challenges

In the current international environment, political, economic and compliance fluctuations have weakened stability, presenting significant challenges to Chinese international arbitration institutions. To tackle these systemic risks, China's international arbitration institutions have taken the following measures:

1. ***Enhancing internationalisation.*** Chinese international arbitration institutions continuously strengthen communication and cooperation with international arbitration bodies, actively participate in the formulation

of international arbitration rules and join international arbitration organisations. These initiatives have not only enhanced the institutions' international influence and voice but have also provided a broader and deeper platform for international cooperation when dealing with international commercial disputes.

2. ***Improving arbitration rules.*** To ensure the fairness, efficiency and flexibility of arbitration procedures, these institutions continually refine their arbitration rules, strengthen the training and management of arbitrators and improve the quality and authority of arbitration decisions. These efforts enable Chinese international arbitration institutions to better handle complex and sensitive commercial disputes, accurately grasp the core issues of the dispute and offer fairer and more reasonable solutions for the parties.

3. ***Promoting arbitration innovation.*** In terms of technological innovation, Chinese international arbitration institutions actively explore new arbitration models and service methods. For example, the Beijing Arbitration Commission uses big data, artificial intelligence and other technologies to enhance arbitration efficiency and quality, reducing the cost and time burden for the parties. The Shenzhen Court of International Arbitration has introduced emergency arbitration procedures and expedited arbitration procedures to meet urgent demands. These innovations not only improve the convenience and efficiency of arbitration services but also offer more flexible and varied arbitration choices for the parties involved.

4. ***Optimising arbitration service processes.*** To reduce arbitration costs and time burdens, Chinese international arbitration institutions continually optimise their service processes. Measures such as establishing dedicated arbitration panels and offering convenient online arbitration services enable parties to more easily participate in arbitration procedures and enjoy efficient, high-quality arbitration services.

5. ***Strengthening industry self-regulation.*** Chinese international arbitration institutions also aim to improve the overall image and credibility of the arbitration industry by setting industry standards, enhancing arbitrators' professional ethics education and through other initiatives. These efforts not only contribute to the healthy and orderly development of the arbitration industry but also create a fairer and more transparent arbitration environment for the parties involved.

6. ***Promoting diversified dispute resolution.*** To foster harmonious and stable social relationships, Chinese international arbitration institutions actively promote the development of diversified dispute resolution mechanisms. Through mediation, reconciliation and other methods, they offer more options for the parties involved, allowing more flexible responses to various complex situations. This diversified dispute resolution mechanism not only alleviates the pressure on arbitration institutions but also improves the efficiency and satisfaction of dispute resolution.

Addressing the Challenge of High Arbitration Costs

In addition to systemic risks, Chinese international arbitration institutions also face the challenge of high arbitration costs for the parties involved. To address this issue, these institutions have implemented several measures to reduce the financial burden on the parties:

1. ***Improving fee transparency.*** Chinese international arbitration institutions are continually improving the transparency and disclosure of arbitration fees, allowing parties to clearly understand the sources and calculation methods of fees. This helps parties make more informed decisions when choosing an arbitration institution. Additionally, this transparency enhances the credibility and image of the institutions.

2. ***Offering fee reductions or discounts.*** In certain cases, arbitration institutions may provide fee reductions or discounts based on the specifics of a case or the economic conditions of the parties involved. For example, in cases involving economically disadvantaged parties or matters of significant social importance, arbitration institutions may consider reducing or waiving some or all of the arbitration fees. These measures reflect the institutions' humanitarian care and social responsibility, while also easing the financial burden on the parties.

3. ***Providing flexible payment methods.*** To make it easier for parties to pay arbitration fees, Chinese international arbitration institutions offer various flexible payment options, such as installment payments or deferred payments. These options not only help alleviate the financial pressure on the parties but also improve the convenience and efficiency of arbitration services.

4. ***Optimising arbitration procedures to improve efficiency.*** By optimising arbitration procedures and enhancing efficiency, Chinese international arbitration institutions work to shorten arbitration cycles and reduce costs. For example, simplified procedures and fast-track decisions are used to speed up the arbitration process. These measures not only help lower the financial burden on the parties, but also enhance the overall quality and efficiency of arbitration services.

5. ***Encouraging mediation and reconciliation.*** Mediation and reconciliation are often more economical and efficient than formal arbitration procedures. Therefore, Chinese international arbitration institutions actively encourage parties to resolve disputes through mediation or reconciliation. This not only helps reduce the financial burden on the parties but also promotes the maintenance of harmonious and stable social relationships.

6. ***Providing legal aid information or guidance.*** For parties who qualify for legal aid, Chinese international arbitration institutions provide legal aid information or guidance to help them access programs that may cover part or all of the arbitration costs. This initiative reflects the institutions' humanitarian care and social responsibility, ensuring that the legitimate rights of the parties are protected.

The International Arbitration Landscape in the Next Five Years

Looking ahead to the next five years, the landscape of international arbitration is expected to undergo a series of trends and changes. In particular, Chinese international arbitration institutions will experience more intelligent and efficient development with the use of advanced technologies such as big data and artificial intelligence. Technology-driven optimisation of arbitration procedures will become a key trend, with traditional paper-based document management accelerating its shift to electronic document management. The widespread adoption of video conferencing technology will revolutionise arbitration hearings, making remote hearings possible. At the same time, the application of artificial intelligence in evidence review will play an increasingly important role.

In terms of data security and privacy protection, with the advancement of technology and the improvement of privacy regulations, Chinese international arbitration institutions will place greater emphasis on safeguarding the data security and privacy of the parties involved. By utilising advanced encryption technologies, strengthening cybersecurity protocols and complying with privacy regulations, these institutions will ensure the safety of data transmission and storage throughout the arbitration process.

Considering the current international economic situation and changes in arbitration demands, the industries involved in international arbitration over the next five years are likely to become more diversified, specialised, and efficient. Traditional industries such as international trade, finance, and investment will continue to drive the demand for international arbitration. At the same time, emerging industries like the Internet, e-commerce, renewable energy and the green economy, as well as biotechnology and healthcare, will also become important sectors for international arbitration. These industries are expected to generate more disputes and controversies in cross-border cooperation and transactions, leading to a corresponding increase in demand for international arbitration services.

Conclusion

In conclusion, in the face of challenges such as escalating geopolitical tensions, climate change, economic uncertainty and constantly changing regulatory frameworks, Chinese international arbitration institutions have implemented a multi-dimensional strategy. These strategies have not only enhanced the institutions' competitiveness and influence but also provided higher-quality and more efficient arbitration services for the parties involved. In the future, with the continuous advancement of technology and the ongoing development of international arbitration, Chinese international arbitration institutions will continue to innovate and optimise, making greater contributions to the global arbitration community.

Xiaoan He
SGLA Law Firm, Guangzhou Office

Xiaoan He is a practising lawyer with SGLA Law Firm, Guangzhou Office in P.R.China with a particular focus on intellectual property, foreign-related commercial issues and cross-border investment. Xiaoan graduated from Peking University in 2013 with a Master's Degree in Law and was duly licensed to practice law in 2015. Xiaoan is fluent in Mandarin, Cantonese and English.

Waiver of Jurisdictional Challenges—Mistakes and Missteps

Jurisdictional objections are commonly raised by parties who have lost an arbitration and are seeking to challenge the award. However, if a party could have raised the same objection at an earlier point in time before the tribunal but did not do so, the party may find itself being found to have waived the right to raise the jurisdictional objection in court subsequently. A recent Singapore decision and comparative English litigation in this regard are discussed in this article.

Waiver or Loss of the Right to Object to Jurisdiction

When a party wishes to challenge an arbitration award made against it, a common way of doing so is by arguing that the arbitral tribunal does not have jurisdiction. However, there are situations where a party may be found to have waived or otherwise lost the right to raise such an objection. This has serious consequences, as a losing party in an arbitration may then find itself unable to challenge the arbitration award. This article looks at a recent decision of the Singapore Court of Appeal in this regard and compares it with decisions in another high-profile litigation in the courts in England.

In Reliance Infrastructure Ltd v Shanghai Electric Group Co Ltd,[1] the Singapore Court of Appeal held that the appellant who had been found liable in an arbitration had waived any objection to jurisdiction on the basis that a particular guarantee letter (which contained the arbitration agreement pursuant to which the award was rendered) was a forgery. Before the Court of Appeal, the appellant argued that the signature on the guarantee letter was not genuine, relying on what it said was fresh evidence, namely that of the purported signatory who claimed he did not sign the letter, as well as evidence of a handwriting expert.[2] However, the Court found that the appellant was already apprised of facts which might have led it to suspect that the signature was not genuine. Despite this, the appellant had, in the arbitration, previously taken the position that it was not claiming the signature was forged. The appellant also did so without any reservation of rights. As such, the Court held that the appellant could not belatedly, after the conclusion of arbitration when it was faced with an adverse arbitration award, raise an objection to jurisdiction on the basis that the letter had been forged.[3]

The Court of Appeal also agreed with the High Court below that there was no basis to set aside the award as being contrary to public policy. Otherwise, it would mean that a party could undermine an award on grounds that it had disavowed in the arbitration, which would effectively be a change in position. The Court observed that, taken to the extreme, allowing a party to challenge an award on the grounds of public policy in this way would hypothetically permit any unsuccessful party in an arbitration to set aside the award on the basis that its witnesses in the arbitration had lied.[4] This would be an untenable conclusion.

This decision echoes the similar conclusions reached in the decision of the English courts in National Iranian Oil Co v Crescent Petroleum Co International Ltd & Anor, which provides an interesting insight into the operation of the English Arbitration Act 1996. In that case, the respondent in the arbitration challenged part of an award pursuant to which damages of more than US$2.4 billion had been awarded, arguing that the respondent had been found liable in relation to a matter outside the scope of the arbitration clause. The claimants argued that the respondent had not raised this objection in the arbitration and therefore section 73 of the Arbitration Act 1996 meant that the respondent was precluded from doing so before the courts.

Section 73(1) provides that if a party to an arbitration takes part, or continues to take part, in the arbitration without making within the relevant time any objection '(a) that the tribunal lacks substantive jurisdiction; (b) that the proceedings have been improperly conducted; (c) that there has been a failure to comply with the arbitration agreement or with any provision of this Part; or (d) that there has been any other irregularity affecting the tribunal or the proceedings', that party may not raise that objection subsequently, whether before the tribunal or court, 'unless he shows that, at the time he took part or continued to take part in the proceedings, he did not know and could not with reasonable diligence have discovered the grounds for the objection'. In other words, unless a party has raised an objection before a tribunal previously, it cannot challenge an award using the same objection unless it has good reasons for doing so.

The High Court[5] first held, among other things, that a party must raise a jurisdictional objection that a party considers renders the whole or part of the arbitral process or award invalid in some form before the tribunal, with the substance of each ground of objection being communicated to the

tribunal and opposing party. This is to avoid wastage of time and costs, and also because a litigant should not be permitted to keep an objection in reserve to ambush another party with after an arbitration is concluded.[6]

That said, the High Court found on the facts that the respondent had not lost the right to raise this jurisdictional objection. Although, the respondent had not raised the point in exactly the same manner before the tribunal, the respondent had raised the substance of its current objection,[7] and there would not be any significant unfairness to the claimants in allowing the respondent to bring the challenge to the courts.[8] However, the twist then came as the High Court dismissed the jurisdictional objection summarily on the basis that the wording of the arbitration agreement was wide, and on a literal reading, it covered the claim in question.[9] Thus, there was no realistic prospect of the respondent's objection succeeding and early dismissal was warranted.

On appeal, the Court of Appeal[10] dismissed the claimant's appeal, holding that the High Court had correctly concluded that the objection had no real chance of success.

The High Court's decision in National Iranian Oil demonstrates that the English courts eschew an overly strict approach to the question of whether a party has failed to raise a jurisdictional objection before a tribunal previously and is thus precluded from raising the same objection to challenge a subsequent award. However, the courts remain cognisant of the need to prevent disgruntled respondents from challenging awards on grounds which could have been, but were not, raised earlier.

As such, the importance of raising a jurisdictional objection before the tribunal at the earliest opportunity cannot be overstated. If a party finds itself in a situation where it must raise an objection for the first time before a court, it has to carefully consider how to explain why it was unable to do so earlier. For example, a party may wish to consider whether it is possible to take the position that the objection is premised on facts that were not known (or could not have been reasonably known) to it at an earlier point in time, such that it was unable to raise the objection before the tribunal.

Obligations on Counsel and Reasons for Limiting the Scope of Jurisdictional Objections

The risk of a client's right to object being waived means

lawyers are obliged to ensure clients are properly advised to take up every jurisdictional objection possible, at the earliest opportunity, before the tribunal. If a client decides, whether for strategic reasons or otherwise, to not raise an objection before the tribunal despite knowing the grounds for raising the objection, it is imperative that the client is properly advised of the risks in taking this approach. Lawyers who do not properly advise their clients on the available modes of challenging jurisdiction or the possible risks in not pursuing a ground of objection, may find themselves in the unenviable position of being exposed to allegations of negligence.

While this places a heavy responsibility on counsel having conduct of an arbitration, it is important to remember that the limitations on the modes of challenging an arbitration award are ultimately intended to preserve the legitimacy of arbitration as a mode of dispute resolution. International arbitration is often criticised for being increasingly costly and time-consuming. If parties were permitted to belatedly raise objections to jurisdiction to challenge awards rendered at the end of an entire arbitration process (which not infrequently take a few years to complete), this could cast doubt on the effectiveness of arbitration in resolving disputes with finality.

In this regard, one of the key selling points of arbitration is that it permits parties to take disputes out of the remit of national courts and put them in the hands of privately-appointed third-party decision makers. Not only does this allow for greater confidentiality, but it also gives parties more say as to the person who will decide their disputes. For example, parties may nominate or appoint arbitrators who are specialists in the area of dispute compared to generalist national court judges. In recognition of this feature that makes arbitration more attractive as a mode of dispute resolution, it is imperative that judicial intervention in arbitration is kept to a minimum. One way that this is achieved is by not permitting parties to raise before the courts jurisdictional objections that could have been, but were not, raised before the tribunal. Limiting the scope for jurisdictional objections before the courts in this way recognises that tribunals should be given the full opportunity to adjudicate on a dispute and a tribunal's decision is generally permitted to stand in all except the narrowest circumstances.

Indeed, national courts are recognising the importance of minimal curial intervention in increasing the attractiveness of their jurisdictions as seats of arbitration. The decisions examined in this article come out of England and Singapore, which are typically seen as 'arbitration-friendly jurisdictions' as their courts generally incline towards enforcing arbitration awards and impose a higher threshold for challenging awards. Indeed, in 2023, London and Singapore ranked as the second and fifth most commonly selected cities globally as seats for arbitration.[11]

Conclusion

In conclusion, the possibility that a jurisdictional objection before a court may be waived, whether inadvertently or otherwise, by the positions a party has taken before a tribunal carries important lessons for all involved in the system of international arbitration. While the consequences of not raising a jurisdictional objection promptly before a tribunal may appear onerous, ultimately it is one factor that goes towards safeguarding the legitimacy of arbitration as a mode of dispute resolution.

Endnotes

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[2] Ibid at [22].
[3] Ibid at [71]–[72].
[4] Ibid at [74].
[5] National Iranian Oil Co v Crescent Petroleum Co International Ltd & Anor [2023] Bus LR 235.
[6] Ibid at [36].
[7] Ibid at [38(5)].
[8] Ibid at [38(6)].
[9] Ibid at [59(a)]–[59(b)].
[10] National Iranian Oil Company (NIOC) v (1) Crescent Petroleum Company International Limited and (2) Crescent Gas Corporation Limited [2023] EWCA Civ 826.
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Matthew Koh
Partner, Rajah & Tann Singapore LLP, Singapore

Matthew practises primarily in the sphere of international arbitration and construction law. He has experience in arbitrations conducted under various arbitration rules, statutory adjudication of construction disputes, as well as in general commercial litigation. He has also acted in arbitration-related court proceedings to enforce or set aside arbitration awards or in relation to interlocutory matters arising out of ongoing arbitrations.

Arbitration in France and Japan: Commonalities and Shared Perspectives

One of the major advantages of international arbitration is the active role of the parties in choosing the rules of the arbitration procedure and the seat of arbitration. This article discusses a perfect illustration of this for Japanese companies dealing with their international contracts, namely, consideration of a French seat of arbitration.

Introduction

The international nature of arbitration takes on its full meaning when a party needs to consider and choose a seat for resolving its future disputes, regardless of borders, but rather with regard to the legal tradition and arbitration-friendly context in the State of the chosen seat. Therefore, one of the major advantages of international arbitration is that it enables the parties to have a certain degree of control over the outlines of the procedure that will deal with their future disputes, the seat of which can be a crucial element regarding the conduct of the said procedure and its outcome.

This article illustrates this principle for Japanese parties as it aims to point out the main common points between Japanese and French arbitration law as well as the advantages for Japanese companies to choose arbitration with a French seat.

While preserving the 'Japanese soul', let us adopt the 'Western arts'.[1] This motto bears witness to the fact that European and particularly French civil law traditions have been rooted in the Japanese legal system since the time of the Meiji Restoration (1867). The first interaction between French and Japanese civil law dates back to the codification of the latter during the Meiji period, which was initially inspired by the French *Code Napoléon* of 1804 and involved the famous Professor Gustave Émile Boissonade de Fontarabie (1825–1910), a qualified Professor at Paris University, who witnessed the French imprint on modern Japanese law.[2]

Even though the first Japanese Civil Code and Code of Civil Procedure applied were ultimately inspired by German law, they were drafted by lawyers trained in French law. Even at that time, the Code of Civil Procedure contained provisions relating to arbitration, so that arbitration law in Japan has essentially been inspired by the civil law tradition. The Japanese Arbitration Law then remained unchanged until 1 August 2003 when the model arbitration law of the United Nations Commission on International Trade Law ('UNCITRAL') was incorporated into Japanese law.[3]

Nearly 20 years later, it is clear that the Japanese government is promoting arbitration for Japanese companies, spurred in particular by the rise in trade between Japan and the rest of the world. These efforts need to continue as one of Japan's leading arbitration centres, the Japan Commercial Arbitration Association ('JCAA'), handled only 13 arbitration cases in 2018 and nine in 2019.[4]

Some believe that the relative lack of interest in arbitration in Japan is due to a lack of knowledge related to this type of procedure and a lack of historical Japanese arbitration institutions.[5] Others, such as Professors Yasuhei Taniguchi and Tatsuya Nakamura,[6] believe that the emphasis placed by arbitrators on conciliation is another explanation.

Given these remarks, continuing efforts to promote arbitration in Japan and, at the same time, choosing an arbitration seat in one of the four major centres—Paris, London, New York and Singapore—could appear to be a solution that is both reassuring and relevant. Thus, given the enthusiasm of Japanese companies, which are increasingly motivated to settle their disputes through arbitration, France, which is undoubtedly a civil law jurisdiction, and Paris in particular, as the seat of an arbitration, would offer undeniable advantages.

Arbitration in Japan

From an Initial Rejection to an Appealing Option

As discussed below, despite an initial rejection due to mistrust by Japanese companies, arbitration has gained ground in Japan from the beginning of the twenty-first century.

The Special Nature of Commercial Litigation Under Japanese Law

In Japan, under the influence of collectivism there was a preference for a conciliation mechanism for resolving disputes in the interests of social harmony before a trusted third party who had authority and could take decisions as a judgment or settlement. Thus, the role of the judge in Japan is sometimes confused with that of the mediator, which explains why Japanese civil procedure contains several conciliation procedures in which the judge plays a central role.

In contrast, set up outside the state judicial system, Japanese companies mistrusted arbitration as the report of the Liaison

Conference of Ministries responsible for the revitalisation of international arbitration has proven.[7] This partly explains the initial reluctance towards arbitration, which is seen as private justice rendered unilaterally by a third party and resulting in an arbitral award with no possibility of challenge.[8] However, one must be optimistic as a mindset switch is beginning to emerge in Japan ...

The Rising Interest in Arbitration for Japanese Companies

Since the beginning of the twenty-first century, in the context of growth in Euro-Japanese economic relations fuelled by the entry into force on 1 February 2019 of the free trade agreement between the European Union and Japan ('JEFTA'), as a study by the Japan Shipping Exchange ('JSE') has shown,[9] the trend has flipped and Japanese companies are attracted by arbitration given the expertise of arbitrators: *ubi arbiter ibi jus* ('arbitration is as good as the arbitrator').

Consequently, if it seems crucial to draft a dispute resolution clause in future contracts to protect the interests of all the contracting parties, this is now encouraged by the efforts of the legislative authorities to promote arbitration. For example, Law No 66 of 23 May 1986, as amended in 1996 and 2020, now allows foreign lawyers to represent parties in Japan in international arbitration proceedings held in Japan. In addition, new international arbitration centres have opened since 2018 in Osaka and Tokyo to handle proceedings in English.

However, while two obstacles remain, namely the appointment of former judges as arbitrators to bring arbitration into line with civil procedure[10] and the preponderance of conciliation attempts,[11] choosing a seat that is favourable and experienced in arbitration, as in France, and applying a favourable *lex arbitri*, as French law, may be a convenient solution.

The Choice of the Civil Law Tradition

As the choice of a seat can be decisive, especially for the procedural law and for the familiarity between two legal systems,[12] France presents undeniable legal advantages as well as equally important practical advantages for Japanese companies. These are explored further below.

The Legal Advantages of Having an Arbitration Seat in France for Japanese Companies

When it comes to a favourable environment for arbitration, France was the birthplace of the first international arbitration institution, with the creation in 1923 of the International Court of Arbitration within the International Chamber of Commerce '(ICC') which is one of the arbitration institutions most frequently chosen by international companies[13] and where France is the leading country designated for such arbitrations.

Also, in recent years, the number of arbitration proceedings involving Asian parties and particularly Japanese parties has been rising steadily, reaching 28 in 2019.[14]

Moreover, apart from well-established case law, although France, like Japan, is a signatory to the New York Convention of 10 June 1958 on the Recognition and Enforcement of Foreign Arbitral Awards, its arbitration law is even more favourable.

France thus appears to be an appropriate choice for Japanese parties because, as a country with a civil law tradition, it does not impose several practices that are used in common law systems, such as the possible predominance of orality over written pleadings or the importance of cross-examination versus written statements. The absence of these practices is therefore a common feature of French and Japanese law,[15] but these methods dealing with the standards of proof can now also be found within French arbitration institutions which are amply familiar with certain Anglo-Saxon practices. This double feature of the French arbitration environment would enable Japanese companies to feel more comfortable and to possibly make up for their initial cultural and legal differences with the common law tradition if they want so, as companies from French-speaking African countries[16] and parties from the Middle East do when they choose a seat in France.[17]

Lastly, Paris is also favoured because of its neutrality, a crucial concept that avoids any possible local influence to the benefit of a party because of its nationality or its economic weight in the country.

Opting for arbitration with its seat in France therefore means placing a proceeding in a forum with a civil law tradition which is also able to combine with common law inputs.

The Practical Advantages of a Seat in France

Apart from the legal aspects, the cost of the proceedings, the remedies available and the expertise of the practitioners are fundamental for the parties to the arbitration.

As far as the cost of arbitration is concerned, the familiarity of the two civil law systems in France and Japan is significant. Indeed, for example, written evidence takes precedence in France and Japan. Such a rule leads to serious savings in costs associated with the discovery procedure inherited from common law systems and which would be used in an arbitration following this tradition because of its seat. On average, discovery costs account for more than 80 percent of the costs incurred,[18] so it is essential to reduce them.

As far as enforcement is concerned, it should be noted that in France, in addition to a well-developed practice in this area, the Paris Court of Appeal has an international chamber, created in 2018, which allows the use of English for debates and exhibits. It has seen litigants from 73 different countries and, in 2022, it ruled on more than a hundred appeals against arbitration awards.[19]

Finally, in terms of the experience and professionalism of French arbitration practitioners, France is a hub for arbitration experts, particularly in Paris, where arbitration represents a significant part of the business of law firms. On this last point, Japan has been working for several years to train its arbitration practitioners, hence the recent popularity and development of arbitration in Japan.[20] Therefore, France may attract more and more Japanese practitioners soon thanks to its civil law tradition and the strengthening of historical ties with Japan.

Conclusion

In conclusion, in the development and conduct of its international relations, Japanese companies have a real advantage in considering recourse to arbitration and France as an ally for Japanese companies thanks to a system with which they are familiar and notably because of shared civil law traditions.

Endnotes

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Wissam Mghazli
Managing Partner, Komon Avocats, Paris

Wissam Mghazli is an attorney-at-law registered with the Paris Bar and managing partner of the international business law firm Komon Avocats particularly renowned for its expertise in French-Japanese business relations.

With over 10 years of experience in international arbitration and complex, high-stakes business disputes, he is a skilled litigator, fluent in 5 foreign languages.

He mainly represents clients in commercial, institutional and ad hoc arbitration, as well as in international litigation.

Wissam particularly handles peripheral arbitration disputes before state courts, notably related to conservatory measures litigations as well as the recognition and enforcement in France of domestic or international arbitral awards.

Fundamental Principles and Innovation of International Arbitration in China

Introduction

At present, with the deepening of the process of world economic integration, the demand for resolving transnational disputes is growing. In the field of transnational dispute resolution, international arbitration has become a hot topic and an important legal method for many legal and business people. It can be said that whether we can build and use international arbitration well and settle disputes efficiently and properly has become an important indicator for the international community to evaluate the quality of a country's business environment.

As the world's second largest economy and deeply involved in transnational economic and trade cooperation, China is also concentrating its efforts on consolidating the fair and reasonable arbitration rule of law through institutional innovation, institutional optimisation and effectiveness enhancement, while extensively absorbing various new initiatives, new ideas and new vitality, which has attracted widespread attention from people with insights, at home and abroad.

Institutional Innovation Opens up the Track of Rule of Law for the Sustainable Development of International Arbitration

The legal system is the foundation of any arbitration and the implementation of arbitration and the enforcement of awards cannot be separated from the close protection of the legal system. Therefore, if the system is flexible, arbitration will be flexible, and if the system is rigid, arbitration will be rigid. On 4 November 2024, the Arbitration Law of the People's Republic of China (Revised Draft) ('Draft Arbitration Law') was submitted to the 12th Session of the Standing Committee of the 14th National People's Congress for first consideration. This is another important revision of the Chinese Arbitration Law since its implementation in 1995. The legislative purpose of the draft clearly states that it is necessary to promote international economic exchanges and several major innovations have been formed in the specific provisions to help achieve this goal.

One is to introduce the ad hoc arbitration system explicitly. Ad hoc arbitration is a concept corresponding to institutional arbitration, which is more common at present. Generally speaking, institutional arbitration refers to an arbitration in which the parties submit their disputes to a permanent arbitration institution according to the contract, which is responsible for arranging the arbitration procedure and usually applies its own arbitration rules. Ad hoc arbitration is not conducted through any permanent arbitration institution, but according to the provisional procedures agreed by the parties or freely referring to some specific arbitration rules. The parties may also allow the arbitral tribunal to decide the arbitration procedure independently. From the definition, we can see that ad hoc arbitration has a high degree of convenience, which helps to fully meet the flexible and highly customised needs of cross-regional parties in handling cases and it is an important arbitration mechanism conducive to promoting the development of international arbitration. Based on the above characteristics, ad hoc arbitration has its irreplaceable advantages in some international commercial fields where both parties need to settle disputes quickly,

such as international maritime trade, which is particularly sensitive to cash flow.

On 18 March 2020, the China Maritime Law Association and China Maritime Arbitration Commission simultaneously issued the Ad Hoc Arbitration Rules of China Maritime Association ('Ad Hoc Arbitration Rules') and the Ad Hoc Arbitration Service Rules of China Maritime Arbitration Commission ('Service Rules') in Beijing. The promulgation of these two Rules is a milestone for China's arbitration to further integrate with the international community and integrate into the flexible settlement mechanism of transnational commercial disputes.

Article 91 of the Draft Arbitration Law clearly states that the parties to a commercial dispute with foreign-related factors may agree to arbitrate by an arbitration institution or directly agree to arbitrate by a special arbitration tribunal. The arbitration proceedings before the ad hoc arbitration tribunal shall commence from the date on which the respondent receives the application for arbitration. If the place of arbitration has not been agreed upon by the parties or such agreement is unclear, the arbitration tribunal shall determine the place of arbitration according to the circumstances of the case. This provides a solid institutional guarantee for China to introduce ad hoc arbitration in an all-round way and further enhance the convenience of international commercial dispute resolution.

The second matter is to clarify the legitimacy of arbitration work in the form of a network (for instance, resolving a conflict through multiple devices communicating over a network). The advantages of network arbitration are self-evident. Network arbitration can greatly break through the geographical and time barriers under the traditional on-site arbitration mode and promote the intelligent construction of arbitration with the help of supporting electronic information systems. It is a natural way of arbitration implementation that meets the needs of dealing with transnational disputes.

With the promotion of the Chinese national information development strategy, as early as 31 December 2018, the General Office of the Central Committee and the General Office of the State Council issued Several Opinions on Improving the Arbitration System and Enhancing the Credibility of Arbitration, which clearly put forward that we should actively develop internet arbitration and move the original offline case handling procedures to online, meaning a more active use of internet arbitration to hear and handle arbitration cases. Under the guidance of this Opinion, many places in China have launched a useful attempt at internet arbitration. Taking Guangzhou as an example, the world's first Internet Arbitration Recommendation Standard formulated and issued by the Guangzhou Arbitration Commission has become a template for internet arbitration, which is called the 'Guangzhou Standard' by international arbitration institutions. It has been recognised and promoted by more than 40 overseas institutions from 18 countries and regions around the world and has produced a benign chain reaction—the number of international arbitration cases accepted by the Guangzhou Arbitration Commission in 2021 ranks first among the national urban arbitration institutions and the number of international arbitration cases in 2022 has increased by 40 percent year on year.

Article 30 of the Draft Arbitration Law explicitly allows arbitration to be conducted through the Internet. Article 58 allows the arbitration tribunal to examine and render an award in accordance with the arbitration application, the statement of defence and other documents in writing if the parties agree not to hold a hearing. Article 63 allows the parties to agree on the method of cross-examination or to cross-examine in a way that the arbitration tribunal considers appropriate. Thoroughly consolidating the effectiveness of online arbitration in the form of legal provisions and standardising the operation of online arbitration will further stimulate China to strengthen the promotion of the use of the Internet in arbitration work and open a convenient door for parties from all countries to participate in China's international arbitration.

Institutional Optimisation Lays a Solid Foundation for the Stable Operation of International Arbitration

It is undeniable that although a number of highly flexible forms of arbitration, such as ad hoc arbitration, are highly favoured, the status of traditional arbitration institutions as the mainstay in the field of international arbitration cannot be ignored. The overall organisational level, organisational efficiency and organisational strength of a country's arbitration institutions will directly affect the quality and quantity of its international arbitration. In this regard, China has always paid attention to constantly updating and strengthening the requirements and development of domestic arbitration institutions, to make them a professional team with both an international advanced level and domestic characteristics. The Draft Arbitration Law also upholds the principle of attaching great importance to the development of arbitration institutions and works in multiple ways:

1. In terms of subject qualification, Article 13 of the Draft Arbitration Law first clarifies that arbitration institutions are non-profit legal persons providing public welfare services for the settlement of contract disputes and other disputes over property rights and interests, including arbitration commissions and other specialised organisations engaged in arbitration business. The arbitration institution has obtained legal personality through registration.

2. In terms of personnel management, Article 78 of the Draft Arbitration Law adds a negative list provision on the basis of positive requirements, specifying that the list of arbitrators is a recommended one and makes separate provisions for arbitrators engaged in foreign-related arbitration. Article 89 emphasises that arbitrators engaged in foreign-related arbitration may be Chinese and foreign professionals who are familiar with foreign-related laws, arbitration, economic and trade, science and technology, so as to further enhance the professional level of international arbitration personnel.

3. In terms of the transparent handling of cases, it is required in Articles 52, 54 and 55 of the Draft Arbitration Law that arbitrators shall sign a guarantee of independent and impartial arbitration and serve it to the parties; We should consolidate the necessary information disclosure obligations of arbitrators, link disclosure with avoidance systems and require arbitration institutions to explain the reasons for avoidance decisions, so as to strive to maintain the basic requirements of open, transparent and honest arbitration.

4. In terms of industry self-discipline, the Draft Arbitration Law changes the orientation of China's arbitration associations from the self-discipline organisation of the arbitration commission to the self-discipline commission of the arbitration industry. In addition to arbitration institutions, their members and arbitrators, other arbitration practitioners have been added to prevent blind spots among the supervised objects, to crack down on violations and protect the pure land of the rule of law in Chinese international arbitration.

Enhanced Effectiveness Providing a Strong Basis for International Arbitration to Win Trust

Whether a country's international arbitration service has sufficient credibility directly affects the rise and fall of the country's international arbitration development. At present, China is making great efforts to strengthen the viability of arbitration agreements, the attractiveness of arbitration venues and the enforcement of arbitral awards, to comprehensively strengthen the effectiveness of Chinese international arbitration.

In terms of the viability of arbitration agreements, Article 21 of the Draft Arbitration Law expands the definition of 'arbitration agreement' to include arbitration clauses concluded in contracts and agreements with the intention to request arbitration reached in other written forms before or after disputes arise. If one party claims that there is an arbitration agreement in the arbitration and the other parties do not deny it, it shall still be deemed that there is an arbitration agreement between the parties. The arbitration institution is deleted in Article 35 as a necessary element of a valid arbitration agreement, showing a stronger inclusiveness.

In terms of the attractiveness of arbitration venues, as early as April 2015, the State Council of China issued the Plan for Further Deepening the Reform and Opening-up of the China (Shanghai) Free Trade Pilot Zone, proposing for the first time that Shanghai should speed up the building of a global-oriented Asia-Pacific arbitration centre. In 2019, Several Opinions on Improving the Arbitration System and Enhancing the Credibility of Arbitration and Implementing Opinions on Improving the Arbitration Management Mechanism and Enhancing the Credibility of Arbitration and Accelerating the Building of a Global Asia-Pacific Arbitration Center were issued, one after another. In 2022, the Shanghai Municipal Committee further announced Several Measures to Support the Development of a Global Asia-Pacific Arbitration Center to Enhance the Soft Power of the City, which clearly defined the goal of building a global Asia-Pacific Arbitration Center preliminarily by 2025 and in an all round way by 2035. Article 27 of the Draft Arbitration Law continues to implement this concept, allowing the parties to agree on the place of arbitration in the arbitration agreement and, if the parties have not agreed on the place of arbitration or such terms and conditions in the agreement is not clear, the seat of the arbitration institution that administrates the case shall be the seat of arbitration and the determination of the place for arbitration shall be in accordance with the law. It does not affect the parties or the arbitration tribunal to agree on or choose an appropriate place different from the place of arbitration for arbitration activities such as collegial

discussion and hearings. This provision is fully in line with international arbitration practices and further increases the attractiveness of China as an international arbitration venue.

In terms of the enforcement of arbitral awards, the Draft Arbitration Law explicitly adds interim measures as an innovative measure. Articles 43 to 49 of the Draft Arbitration Law stipulate that in order to ensure the conduct of arbitration proceedings, ascertain the facts of disputes or the enforcement of awards, the people's court or arbitral tribunal may be requested to take temporary and urgent measures related to the subject matter of disputes. These include not only traditional judicial preservation measures such as property preservation, evidence preservation and behaviour preservation, but also other short-term measures deemed necessary by the arbitral tribunal, thus giving the arbitral tribunal full freedom to choose the appropriate means to prevent accidents and ensure the enforcement of arbitral awards; At the same time, it further unifies the standards of enforcement review of domestic and foreign-related arbitration cases by enforcement courts, and takes public interest as the core element of court review. Article 82 of the Draft Arbitration Law clearly states that if the people's court, after examination, determines that the enforcement of the award is not contrary to the public interest, it shall make a ruling to confirm the enforcement; otherwise, it shall not make a ruling to confirm the enforcement.

Conclusion

Since its birth, international arbitration has never been static. It is destined to make progress through extensive exchanges and mutual learning. Chinese President Xi Jinping expressed his concern about the development of arbitration and pointed out that efforts should be made to foster a number of world-class law firms and arbitration institutions, further promote the pilot construction of international commercial arbitration centres and actively carry out the establishment of national demonstration institutions for foreign-related legal services to improve the level of foreign-related legal services. At present, Chinese international arbitration is on the road to upholding the fundamental principle of fairness and keeping pace with the times. The authors hope that lawyers from all over the world can work together to exchange and disseminate their diverse experience of international arbitration.

Jack LI (Li Zhiqiang)

Founding Partner, Jin Mao Partners, Shanghai

Jack Li is the Founding Partner of Jin Mao Partners, the 30th President of the IPBA and is an Arbitrator of more than 32 international and domestic Arbitration Commissions. He is Vice President of the Shanghai Association of Bankruptcy Administrators. Jack commenced legal practice in 1990, mainly engaged in securities listing, corporate mergers, project financing and other legal services. He has served as a legal consultant for more than 300 Chinese and foreign enterprises for restructuring and mergers and acquisitions, financing, IPO and for the Office Building project of the Shanghai Government, China's first Chinese-funded financial institution's mortgage loan business, China's largest joint venture project, the first RMB business of foreign banks, the first foreign-funded corporate banks to issue RMB bonds, China's 2010 Shanghai World Expo, Shanghai Disney and other national major projects. In 1997 he worked as a Chinese legal consultant in an internationally renowned law firm. Jack was the 8th Shanghai Top Ten Outstanding Youth in 2001 and was the chief editor for more than 30 legal books.

James Yang (Yang Zian)

Partner and Lawyer, Jin Mao Partners, Shanghai

James Yang is a Partner of Jin Mao Partners and is a highly experienced and qualified lawyer. He has degrees of Master of Law from Cornell University and Bachelor of Law from Tongji University. James has comprehensive experience in legal practice including IPO, bond issuance, commercial disputes and company consultation and he has taken advantage of his cases to write a few articles, being one of the editors and authors of the Legal Research on Investment and Financing of Chinese Enterprises in Foreign Countries Series. James also assists in translation and analysis of various foreign law rules, transaction documents and articles in his team.

Did You Know?

Interesting Laws Around the World

Crave a Seat in Panchayat: Build a Toilet First!

India's statute book is renowned not only for its voluminous content but also for its curious relics, laws that have long outlived the socio-political moments that birthed them. Consider, for instance, the Aircraft Act of 1934, which rather improbably continues to categorise even celebratory kites as 'aircraft,' or the colonial-era Treasure Trove Act of 1878, which obliges a citizen to report the discovery of a ten-rupee coin to the district Collector. While such provisions often evoke bemused headlines and public curiosity, they underscore a deeper structural challenge: the coexistence of archaic laws with India's modern governance needs.

Yet, it would be erroneous to view this legal landscape as static or neglected. Through the Repealing and Amending Acts, the Ministry of Law and Justice undertakes systematic legislative pruning. The Repealing and Amending Act, 2015 (Act 17 of 2015) alone annulled obsolete statutes, and successive exercises since then, most recently in 2023, have removed more. These acts are evidence of Parliament's continuing commitment to legal housekeeping. But even amid this clean-up, from new legislative experiments emerge some bold, some unconventional, and some undeniably peculiar laws.

A Case in Point: Section 19(q) of the Rajasthan Panchayati Raj Act, 1994

One such contemporary curiosity is Section 19(q) of the Rajasthan Panchayati Raj Act, 1994 , a provision inserted through an amendment dated 8 December 2014, which disqualifies individuals from contesting village-level elections if they do not have a functional toilet at home and if any household member engages in open defecation. Though not criminalising the act itself, this provision links political eligibility to personal sanitation practices, reflecting an innovative, albeit controversial, mode of behavioural regulation.

The section is part of a broader catalogue of disqualifications listed under Section 19, including financial default, conviction for moral turpitude, bigamy, and the much-debated two-child norm; each attempting to align grassroots leadership with specific socio-welfare objectives. Explanation II of the amendment defines a 'sanitary toilet' as a water-sealed unit with three walls, a door and a roof; even shared household latrines meet the requirement.

Constitutional Viability and Justification

From a constitutional standpoint, Section 19(q) withstands scrutiny under Article 14, as its classification ownership of a sanitary toilet bears a rational nexus with the objective of promoting public health and sanitation. Entry 23 of the Eleventh Schedule explicitly places sanitation under the jurisdiction of village panchayats, reinforcing the constitutional propriety of such a measure.

Critics argue that the clause disproportionately penalises economically disadvantaged candidates. However, the state government contends that substantial subsidies under the Swachh Bharat Mission significantly mitigate the cost of compliance, thereby satisfying the proportionality test. Since candidacy in local elections is a statutory right, not a fundamental one, the State has broader latitude to impose reasonable restrictions, especially when they align with compelling public interest.

Alignment with Swachh Bharat and SDG Goals

This provision must be seen in the context of the Swachh Bharat Abhiyan, launched on 2 October 2014, with the ambitious goal of eliminating open defecation by Mahatma Gandhi's 150th birth anniversary in 2019. The state of Rajasthan declared itself open defecation-free (ODF) in March 2018, following the construction of over 100 million household toilets nationwide. Section 19(q) thus serves as a convergence clause, linking political eligibility with India's sanitation goals and furthering Sustainable Development Goal 6.2, which aspires to ensure adequate and equitable sanitation for all.

From a gender justice lens often overlooked in policy analysis, this provision carries significant weight. Access to household toilets enhances safety for women, facilitates menstrual hygiene, and reduces the burden of waterborne diseases that disproportionately impact women and children. In that regard, it supports Article 15(3) (permitting special provisions for women and children) and Article 47, which directs the State to improve public health.

Tailored, Experimental, and Open to Repeal

Importantly, the disqualification is narrowly tailored: it applies only to Gram Panchayat elections, the lowest rung of India's federal democratic structure. Its de minimis nature makes it an experimental tool, one that can be reversed or reformed if future cost-benefit analyses suggest diminishing returns or unintended consequences. Until then, Section 19(q) remains a vivid illustration of how the Indian legal system fuses welfare imperatives with electoral engineering, sometimes at the expense of appearing 'peculiar', but often in pursuit of substantive change.

Conclusion: Legislative Eccentricity as Evolution

India's so-called 'peculiar' laws are not simply bureaucratic oddities or colonial hangovers, they are reflections of a dynamic legal culture grappling with complex governance demands. While the Ministry of Law and Justice continues its legislative pruning, statutory experiments like Section 19(q) demonstrate the State's willingness to recalibrate rights and responsibilities in service of public welfare. This evolving legal mosaic—part heritage, part innovation—might appear eccentric at first glance, but it embodies a constitutional ethos that is pragmatic, responsive and unapologetically transformative.

Shweta Bharti
Managing Partner, Hammurabi And Solomon Partners, New Delhi

Pranshu Singh
Senior Associate, Hammurabi And Solomon Partners, New Delhi

It Sounds Strange, But It's Legal: A Collection of Taiwan's Most Delightfully Peculiar Laws

In Taiwan, the law isn't just a set of rules—it's part of everyday life. Some laws are endearingly practical, others unintentionally humorous, and a few are so peculiar that outsiders might assume we're pulling their leg. Rest assured, each one is firmly grounded in our legal system.

Here's a selection of uniquely Taiwanese laws that might make you smile—or raise an eyebrow—while affirming: "Only in Taiwan!"

1. Your Lunch Receipt Could Be Worth Millions: Invoices Are Not Trash—They're Treasure

In Taiwan, tossing out your receipt might feel like a minor crime (and we're only half-joking).

Thanks to the government's Uniform Invoice Award system, every receipt—

whether from a bubble tea shop or a luxury department store—could potentially make you rich. Under Article 58 of the Value-Added and Non-Value-Added Business Tax Act, the Ministry of Finance earmarks 3% of annual business tax revenue to fund this lottery-style prize pool. The result? Consumers are transformed into part-time tax enforcers—and tax evasion, ironically, becomes a public concern.

Some enterprising individuals have even tried to game the system, breaking purchases into thousands of tiny transactions (as little as NT$1 to NT$7, or about US$0.03 to US$0.23) just to increase their odds. In response, the Ministry amended Article 15 of the Uniform Invoice Award Regulations: receipts obtained through fraudulent or excessive small transactions are no longer valid for awards. Any prize money already claimed? The government wants it back.

2. Can't Agree on the Baby's Surname? Time to Draw Lots

You might expect a child's surname to reflect family tradition or result from thoughtful parental negotiation. But in Taiwan, there's also a third option: draw lots.

Under Article 1059 of the Civil Code, when parents can't agree on whether their child should take the father's or mother's surname, the Household Registration Office will organize a public lottery to decide.

This rule, while ensuring gender equality, also showcases Taiwan's whimsical fondness for chance-based decision-making—another reminder that here, the lottery extends beyond just receipts.

3. Paid Leave for Tribal Ceremonies? Absolutely.

In Taiwan, Indigenous individuals have a legal right to take a paid day off each year to participate in traditional tribal ceremonies. Yes, it's official—and no, your boss can't say no.

According to Article 4, Paragraph 6 of the Regulations on Memorial Days and Holidays, and relevant provisions of the Labor Standards Act, individuals recognised as Indigenous may take leave to attend a ceremony belonging to their own tribe, or that of a parent or spouse.

Whether it's for singing, dancing or sacred rituals, employees can confidently tell their supervisor, "I'm honouring my heritage today."

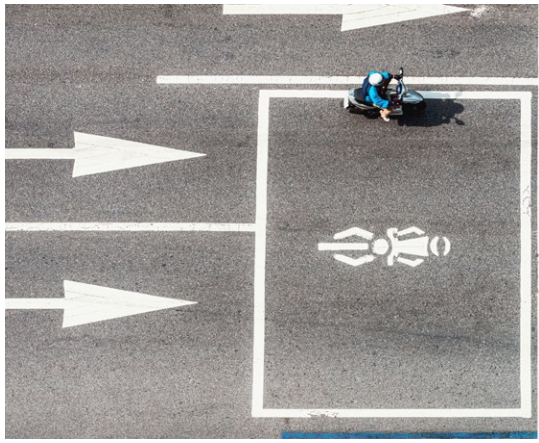
What makes this particularly significant is that it's enshrined in national regulation—not merely a corporate benefit or local policy. It's a formal celebration of cultural diversity and inclusion.

4. Want to Turn Left? Go Right First: Taiwan's Two-Stage Turn Rule

Anyone who's ridden a scooter in Taiwan is familiar with the "waiting zone"—a poetic way of saying, "You're not turning left just yet."

According to Article 99 of the Road Traffic Safety Rules, scooter riders must often perform a two-stage left turn: first ride straight through the intersection, stop at the designated waiting area on the right, then proceed once the light changes.

On some roads, even right turns require the same manoeuvre—especially on wide, one-way streets. Riders starting in the left lane must



veer right in two stages, prompting locals to nickname these waiting zones "waiting-to-be-hit areas." While the rule may seem counterintuitive, it's meant to prevent riders from darting into fast-moving left-turn lanes.

Although critics argue it's inefficient, this practice has become a hallmark of Taiwan's unique traffic logic—almost like Confucianism on wheels: take a step back before you move forward.

Epilogue: Laws Only Taiwan Could Invent

Laws are often seen as dry or impersonal, but in Taiwan, they mirror our culture, history and everyday humour.

From turning tax receipts into lottery tickets, to resolving surname disputes with a public drawing, to honouring Indigenous culture through paid leave, and turning left by first going right—these seemingly odd regulations form an essential part of Taiwan's legal and cultural tapestry.

So, if you ever feel like Taiwan is delightfully different, know this: it's not just our people—it's even in our laws.

Monica Wang
Partner, Formosa Transnational Attorneys at Law, Taipei

Celebrations

Matariki – a culturally significant festival in New Zealand

Matariki, the Māori name for the Pleiades constellation, is a celebration in New Zealand that marks the Māori New Year. The constellation, which is visible for eleven months of the year and disappears in May/June, rises again at the end of June/early July. This celestial event has profound cultural, spiritual, and agricultural significance for the Matīori people, the tangata whenua (indigenous people) of New Zealand.

Historical significance

The return of the Matariki constellation was an occasion traditionally used to mourn the deceased by honouring ancestors, reflecting on the past year, and preparing for the coming year. It also marked the end of the harvest season and the beginning of the planting season. An important part of the traditional celebration was to have a ceremonial offering of food to the stars. The celebration involves a variety of customs, including the sharing of food, storytelling, singing, and the performance of traditional dances and rituals.

The Matariki stars, also known as the Seven Sisters, have individual significance and stories associated with them. Each star is linked to different aspects of Māori life and the natural world, such as Tupu-ā-rangi, which is connected to food from the sky, and Waipunarangi, associated with rain. These connections underscore the holistic view of life and the environment in Māori culture.

Revival and modern celebrations

In recent decades, there has been a resurgence of interest in Matariki as part of a broader movement to recognise and revitalize Māori culture and traditions in New Zealand. This revival has been supported by educational initiatives, cultural programs, and the efforts of community leaders and organisations. Today, Matariki is celebrated not only by Māori, but by all New Zealanders, with a public holiday officially being recognised in 2022. This decision was a milestone in acknowledging the significance of Māori culture and providing a dedicated time for all New Zealanders to come together in celebration.

The Matariki public holiday is observed with a variety of events that highlight Māori customs and traditions, including local councils hosting concerts, cultural performances, educational workshops, and community feasts of traditional Hāngī meals, which is a traditional Māori method of cooking using heated rocks buried in a pit oven, called an umu. The umu cooks meats (usually pork or chicken) and root vegetables such as kumara, potatoes and pumpkin which are wrapped in leaves, giving them a distinctive smoky flavour). These events provide an opportunity for people of all ages and backgrounds to learn about and engage with Māori culture. Schools and institutions play a significant role in this cultural transmission, often incorporating Matariki themes into activities.

Environmental and community focus

Matariki also emphasises the importance of environmental stewardship and community well-being. The themes of reflection, renewal, and preparation for the future resonate increasingly in contemporary society, especially in the context of sustainability and environmental conservation. Community planting projects, clean-up events, and initiatives aimed at promoting ecological awareness are common during Matariki, reinforcing the connection between the celebration and the natural world.

Matariki is more than just a cultural event; it is a celebration of life, community, and the environment. The future of Matariki looks promising, as to date it has inspired New Zealanders from a multitude of backgrounds to come together to participate in the celebrations. New Zealanders' engagement and participation in the Matariki celebrations continue to grow, which is a testament to the dynamic and culturally diverse make up of New Zealand society.

Michael Shanahan
Partner, Tompkins Wake, Auckland

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December 2024 through February 2025

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Suite 3A-2, Level 2, Block 3A,
Plaza Sentral, Jalan Stesen Sentral,
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