

# Kluwer Arbitration Blog

## The Gary Born Book Award Prompts Debate over Ad Hoc Arbitration in Mainland China

Fan Yang (City University of Hong Kong, School of Law) · Monday, January 27th, 2014

On 23 January 2014, the Centre for Judicial Education and Research (CJER) at the City University of Hong Kong (CityUHK) hosted a lecture delivered by Ms. Olga Boltenko, Arbitral Clerk to Neil Kaplan CBE QC SBS. In addition to discussing the advantages and disadvantages of both *ad hoc* and institutional arbitration, the lecture covered various interesting and topical issues, including confidentiality, criminal charges against arbitrators and arbitrators' immunity, and challenge of arbitrator. Professor Gary Born, Chair of the international arbitration practice group of Wilmer Cutler Pickering Hale and Dorr in London, sponsored the lecture and donated a number of his books on international arbitration to the CJER. In recognition of this support, Ms. Boltenko awarded the second ever Gary Born Book Award to two lecture attendees, a Hong Kong barrister (and alumnus of CityUHK) and a young judge from Mainland China, as a reward for their participation in the discussion segment of the lecture.

It is important to note that the current Mainland Chinese arbitration law differs from the UNCITRAL Model Law in many aspects. In particular, it requires that parties shall specify a designated arbitration commission in their arbitration agreement, failing which the arbitration agreement is invalid. Moreover, Article 128 of the PRC Contract Law (1999) provides that parties to a foreign-related contract may in their arbitration agreement stipulate to arbitration in Chinese arbitral institutions or 'other arbitration institutions'. This provision seemingly has only allowed parties to a foreign-related contract to choose institutional, as opposed to *ad hoc* arbitration – even outside of China. That being said, *ad hoc* arbitration agreements governed by Hong Kong law, for example, are valid under current mainland Chinese law and practice. Also, *ad hoc* arbitral awards made outside of Mainland China are enforceable in the Mainland pursuant to the New York Convention.

Designed to explore the differences between institutional and *ad hoc* arbitration, the lecture prompted a heated debate between the participants, including some judges from Mainland China on the feasibility of amending the current Mainland Chinese arbitration legislation to permit *ad hoc* arbitration in the mainland. The debate was resolved by a vote through which the participants decided that the arguable benefits of *ad hoc* arbitration do not outweigh the effort China will have to undertake to recognize *ad hoc* arbitration.

During the lecture, some of the judges confessed that lower courts in mainland China are rarely exposed to international arbitration and emphasized that educational initiatives such as the Gary Born Book Award hosted by the CJER are undeniably important.

The CJER was established in September 2013 at the CityUHK. Under the leadership of Professor Guiguo WANG, Director of the CJER and Chair Professor of Chinese and Comparative Law, the CJER oversees the management and strategic development of Mainland Chinese judges programmes, currently run by the School of Law of the CityUHK. Working closely with the Supreme People's Court of China and its National Judges College, the CJER endeavours to promote academic exchange and research in all areas of Chinese and International Comparative law and practices.

Following the success of Ms. Boltenko's lecture, the 1st CJER ADR Lecture Series will be inaugurated on 12 February 2014. The opening lecture will be given by Cecilia WONG, Chairperson of the Mediation Committee of the Hong Kong Law Society. Other confirmed speakers include United Nations Judge Chang-ho CHUNG, Professor Joel LEE and Ms. Karen MILLS. Inspired by the success of the Gary Born Book Award, the CJER has established the CJER Book Award to continue to award books donated by prominent authors at these lectures to further encourage open debate and active participation.

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