

2019 in Review: Reflections on another year of Arbitration in Southeast Asia

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Amidst the typical hustle and bustle of year-end festivities, our Southeast Asia editorial team takes a moment to look back on the arbitration developments in Southeast Asia in 2019.

New Free Trade Agreements and Developments in National Laws

In 2019, states comprising the Association of Southeast Asian Nations (“**ASEAN**”) continued to demonstrate their commitment to international investment protection. New free trade agreements containing investment protection provisions were signed with the European Union, members of the Regional Comprehensive Economic Partnership (RCEP) and Canada. Also, ASEAN’s free trade agreement with Hong Kong came into force, while Vietnam joined six other countries in ratifying the Comprehensive and Progressive Agreement for Trans-Pacific Partnership and further ratified the EU-Vietnam Free Trade Agreement, as was reported on our Blog.

Closer to home, on 4 March 2019, Indonesia and Australia signed the Indonesia-Australia Comprehensive Economic Partnership Agreement (the “**IA-CEPA**”) which contains in Chapter 14 provisions on the protection of foreign investments. Our contributors commented on the remaining hurdles that the IA-CEPA would have to conquer before ratification given Australia and Indonesia’s reservations on ISDS processes, and also analysed the effectiveness of the IA-CEPA’s Chapter 14 provisions both in protecting investors and in addressing Australia and Indonesia’s concerns on the ISDS regime.

Aside from new free trade agreements being signed, various states in Southeast Asia were also involved in revising their arbitration laws.

On 15 April 2019, amendments to the Thai Arbitration Act B.E. 2545 (2002) came into effect to allow foreign representatives and arbitrators to act in arbitrations conducted in Thailand by a Thai government agency. This development is significant in providing parties with greater autonomy over their choice of arbitrators and representatives. One of our contributors wrote a post canvassing these recent developments and identifying potential areas for future developments.

Papua New Guinea, a state located in the Southeast Asian region, became the 160th state to accede to the New York Convention in July 2019. The state is preparing a domestic arbitration bill to give effect to the Convention.

Significant Arbitrations Involving Southeast Asian States

On 21 March 2019, Thailand’s Supreme Administrative Court reinstated the arbitral award awarded to Hopewell Holdings Limited against the Thai Ministry of Transport and the State Railway of Thailand. Our contributors had previously reported on the annulment of the award in March 2014.

The twenty-year saga of *Trinh Vinh Binh v Vietnam* finally came to an end. As covered in this Blog post, on 10 April 2019, an UNCITRAL arbitral tribunal established pursuant to the 1994 Vietnam-Netherlands Bilateral Investment Treaty rendered an award ordering Vietnam to pay compensation in the sum of approximately US\$45 million to Mr. Trinh and his company.

On the other hand, in August 2019, Laos won an award against casino owners in an ICSID arbitration. The arbitration had been brought under the Laos-Netherlands bilateral investment treaty (“**BIT**”), by the holding company indirectly owned by US casino operators. The tribunal found that the casino owners had failed to demonstrate any legitimate expectations or establish other violations of the BIT.

Indonesia also succeeded in two mining-related arbitrations in 2019. The state defended itself against an arbitration brought by India’s Metal Ferro and Alloys, and similarly succeeded in an ICSID annulment committee’s decision regarding the ICSID tribunal’s award deciding that the claims were inadmissible due to forgeries in *Churchill Mining v Indonesia*.

As for arbitration of labour disputes in Southeast Asia, in June 2019, Cambodia’s Arbitration Council ruled that a Taiwan-based factory supplying global fashion brands including Gap, H&M and Levi’s, must give permanent contracts even to workers that it employed on a short-term basis. This arbitration ruling is a boost to the arbitration of business and human rights disputes in the region.

Coverage of YSIAC Conference 2019 and ITA-IEL-ICC Joint Conference

For the first time, we gave coverage of YSIAC Conference 2019 real-time as well as post-event in the immediate next two days. Our contributors reported on a panel discussion on how to win an arbitration and a debate on the motion that this House believes that emotional intelligence will always trump artificial intelligence. We also covered the inaugural ARBXTalk at YSIAC Conference where an in-house counsel was given 18 minutes to present a topic of his choice in an inspirational and thought-provoking way. We look forward to reprising this real-time coverage for SIAC Conference in 2020.

One of our contributors also reported on the ITA-IEL-ICC Joint Conference on International Energy Arbitration held in Singapore. The recurring themes were those of diversity, both in terms of experience, perspectives and nationalities, and the omnipresence of geopolitics in energy disputes and these were “against a backdrop of an increasingly important Asian market”.

Finally, we thank you all for your support and look forward to having even more insightful contributions on arbitration in Southeast Asia.