

Kluwer Arbitration Blog

2019 in Review: Noteworthy Developments in East and Central Asia

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Gong Xi Fa Cai! The Year of the Earth Pig has drawn to a close. In what was certainly an auspicious and lucky year for arbitration developments in East and Central Asia, we take a closer look at five key developments:

1. Initiatives in PR China to boost arbitration

In southern coastal China, the [Outline Development Plan for the Guangdong – Hong Kong – Macao Greater Bay Area](#) was announced on 18 February 2019, with the aim to develop cities of the Pearl Delta Region in the Southern coast of China into a [megapolitan focusing on innovation, technological advancement and economic development](#). Increased needs for dispute resolution services arising from the region are anticipated as the Greater Bay Area foresees growth in foreign investment, maritime-related transactions, infrastructure and construction projects, and demand for intellectual property development in support of its development strategy.

Formerly, there were no provisions in the PR Chinese legal framework that expressly permit foreign arbitral institutions to administer cases seated in mainland China. On 6 August 2019, the [Framework Plan for the New Lingang Area of the China \(Shanghai\) Pilot Free Trade Zone](#) was published which paved the way for foreign arbitration and dispute resolution institutions to set up operations in that area. Specifically, registered institutions will be permitted to administer arbitrations involving civil and commercial disputes, and to implement rules to allow interim measures such as preservation of assets and evidence in favour of both PR China and foreign parties (see further discussion in [previous post](#)).

Progress was also made with regard to online dispute resolution (“ODR”) in PR China. As explored in the [post on ODR](#), China has made strides towards utilisation of artificial intelligence tools for online courts, arbitration and mediation for cross-border small value disputes in particular. In this regard, our [previous post](#) has discussed the launch of online platforms by arbitral institutions such as the Guangzhou Arbitration Commission which aim at improving flexibility, efficiency and time-effectiveness of arbitral proceedings in response to the exponential growth of e-commerce in mainland China. As technology rapidly advances, the use of AI-arbitrator may no longer be a myth but a real possibility in the foreseeable future.

2. Resolving trade tensions in Northeast Asia

Trade tensions between Korea and Japan increased significantly during the summer of 2019 and, at the height of these tensions, the Blog explored avenues for resolving the dispute in a two-part series of articles ([Part I](#) and [Part II](#)). Our contributors first explained the nature of the dispute, which arose when Japan introduced measures affecting exports to Korea of three chemicals used by Korean companies to make semiconductors, memory chips and displays for consumer electronics. They then analyzed the various dispute resolution possibilities that the two countries and their affected corporations may resort to, including inter-state arbitration, WTO dispute settlement, investor-state dispute settlement or mediation.

3. Central Asian jurisdictions continued to enhance arbitration infrastructure

Kazakhstan internationalised its international arbitration law in January 2019 (see [rough translation in English of the Law](#)) to align it with international conventions and practice. The more important 2019 amendments relax the requirements for the arbitration agreement, enable foreign law to be chosen to govern the dispute, allow the tribunal to use foreign law to determine the governing law, reduce the grounds for annulment of an award, internationalise the grounds for refusing to recognise an award, and restrict a state party's revocation of consent to arbitration.

The Astana International Financial Centre (“AIFC”) in Kazakhstan came into existence in 2018, and the efforts to reform Kazakhstan's international arbitration law (described above) were also aimed at bolstering the [AIFC's International Arbitration Centre](#). Similarly [the Tashkent International Arbitration Centre in Uzbekistan](#), which was established in November 2018, began administering disputes.

In [Kyrgyzstan](#), the government proposed institutionalizing arbitration as a mechanism for improving access to justice and addressing pervasive corruption. The government has proposed developing a system of dispute settlement between entrepreneurs and administrative state bodies in the International Arbitration Court of Kyrgyzstan.

In [Georgia](#) the Supreme Court upheld a permissive ICC arbitration clause, sending a clear pro-enforcement message.

Further several notable conferences, fora and events touched on issues of importance to arbitration Central Asia.

In April 2019, at the [American Bar Association's Section of International Law Annual Conference](#) arbitration practitioners and others shared insights on challenges to Central Asia arising from China's Belt and Road Initiative, including through the investor-state dispute settlement mechanism. Also in April 2019, arbitration practitioners and others took part in the inaugural [Tashkent Law Spring Legal Forum](#), which featured several panels that focused on international arbitration. On a related note, one of our contributors detailed [damages considerations that are especially pertinent to Central Asian investment disputes](#).

At the [Paris Arbitration Week's](#) second edition of Jeantet “Arbitrating in CEE and CIS”

roundtable, practitioners discussed issues of transparency, accountability and choice of arbitrators. In May 2019, a [Young ICCA Workshop](#) was held in Bishkek, Kyrgyzstan, prompting reflection on the state of arbitration law and practice in Kyrgyzstan. In November 2019, leading arbitral institutions in the region participated in the [Belt and Road Arbitration Institutions Roundtable Forum](#) in Beijing.

4. Significant challenges to growth of arbitration in Central Asia

Obstacles hindering the growth of arbitration in Central Asian jurisdictions continued to exist.

In [Armenia](#), the Civil Appeals Court found that arbitral tribunals do not have competence over the issue of contract invalidity. In 2014, Armenia's highest court found that only state courts may exercise jurisdiction over the issue of contract invalidity. Thereafter, the Parliament amended the Civil Code in 2015 to provide that civil rights may be protected by a court or arbitral tribunal. Notwithstanding that, [our contributor](#) [opined](#) that the latest court decision in April 2019 indicates the court practice of rejecting the jurisdiction of arbitral tribunals over the contract invalidity issue appears to remain intact.

In [Uzbekistan](#), the Supreme Court and lower courts refused to accept a UK-based company's claim for recognition and enforcement of an arbitral award based on dubious jurisdictional grounds. The courts referred to Article III of the [New York Convention](#), quoting that "each contracting state shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon...." The court rejected jurisdiction under Article 249 of Economic Procedural Code and refused to conduct a hearing.

In [Azerbaijan](#), analysis of the legal framework and recent developments suggests that, while the state has liberal and pro-arbitration legislation concerning recognition and enforcement of foreign arbitral awards, the actual application of the laws may not reflect that.

5. Relentless drive to improve Hong Kong's arbitration framework

As [reported](#) in our Blog, following the publication of the [Code of Practice for Third Party Funding of Arbitration](#) in December 2018, the amendments to [Arbitration Ordinance \(Cap. 609\)](#) came fully into force on 1 February 2019 (save for provisions which relate to third party funding of mediation), thereby expressly permitting parties the use of third party funding for arbitrations in Hong Kong.

Previously, international commercial parties had no choice but to arbitrate in mainland China if they wish to ensure the availability of interim measures in the PR China (see posts [here](#) and [here](#)). Since the [Arrangement Concerning Mutual Assistance in Court-ordered Interim Measures in Aid of Arbitral Proceedings by the Courts of the Mainland and of the Hong Kong Special Administrative Region](#) was brought into force on 1 October 2019, the courts of each jurisdiction may now award interim measures in support of arbitrations seated in the other territory (see also commentary from the Mainland China perspective: [Part I](#) and [Part II](#)). Parties have [swiftly begun utilising this instrument](#) by filing with the Hong Kong international Arbitration Centre ("HKIAC"), five applications for interim measures to be ordered by courts in mainland China, with the first of

such orders granted by the Shanghai Maritime Court on 8 October 2019.

These widely welcomed developments to Hong Kong's arbitration framework stand to bolster its reputation as a key arbitral seat for international disputes, despite recent public unrest in the territory as discussed in our previous [post](#).

Our live coverage of Hong Kong Arbitration Week also continued for the second year. We kicked off our coverage with a vivid [conversation with Joe Liu](#) of HKIAC and concluded it with a heartfelt interview with [Winnie Tam, Senior Counsel](#). We also invited three next-generation arbitration practitioners in Hong Kong to provide [their views on the future of arbitration in Hong Kong](#). Topics covered by our other contributors included the [suitability of arbitration for resolving private equity, financial services and insurance disputes](#), proliferation of institutional rules, as well as [sustainability of arbitration](#).

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