

Kluwer Arbitration Blog

2020 in Review: Reflections on the Sea-Change in Arbitration in Southeast Asia

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Today is the last day of 2020. For most of us, 2020 has been a particularly unusual year due to the COVID-19 pandemic.

Prompted by necessity, arbitration in Southeast Asia adapted to the sea-change by: (i) using technology for virtual hearings, events and to build on existing diversity initiatives, (ii) developing domestic arbitration case law and legislation, and (iii) propelling international economic treaties forward.

Our Southeast Asia editorial team looks back on how the region has subtly shifted towards private commercial dispute resolution this year, and considers whether these developments are likely to stay with us.

Using technology to connect the arbitration community in Southeast Asia

Amidst the travel and other restrictions on gatherings arising from the COVID-19 pandemic, arbitration hearings and conferences took to virtual platforms. Arbitral institutions in Southeast Asia were no exception.

Our Blog provided same-day coverage of the Singapore International Arbitration Centre (“[SIAC](#)”)’s first virtual congress, in particular on the congress’ plenary session on “[International Arbitration: the Challenges and Changing Landscapes](#)” and its debate with the highly apposite motion “[This House believes that Virtual Hearings are just as effective as In-Person Hearings](#)”. We also specially conducted an [interview](#) with a member of the SIAC Court of Arbitration, Ms. Ariel Ye, as part of our Blog’s [Interviews with our Editors](#) series.

Given the significant increase in the use of technology in business this year, one of our Blog’s Permanent Contributors, the Asian International Arbitration Centre (“[AIAC](#)”), also covered [the potential use of standard form contracts in the tech industry](#).

By using far-reaching and popular webinar platforms, the international arbitration community in Southeast Asia re-doubled its commitment to wide-ranging diversity initiatives. Most notably, arbitral institutions placed themselves at the forefront of championing diversity. Several arbitral

institutions which have significant presences in Southeast Asia, including the [Hong Kong International Arbitration Centre](#) and the [International Chamber of Commerce](#), were part of the [Cross-Institutional Task Force on Gender Diversity in Arbitral Appointments](#) (the “**Task Force**”). The Task Force published a report on 28 July 2020, which analysed recent statistics on the appointment of female arbitrators and identified opportunities and best practices to promote gender diversity in international arbitration.

Additionally, the AIAC launched its inaugural [Diversity in Arbitration Week](#) as part of its ADR Online: An AIAC Webinar Series, during which it engaged with gender, age, professional, race, and ethnic diversity. Young SIAC (“**YSIAC**”) – another Permanent Contributor of our Blog – also held a webinar on [gender diversity in arbitral appointments](#) and proceedings which discussed and supported the Task Force’s findings in its report.

Developments in national arbitration laws and cases

Significant amendments were made to the Singapore’s International Arbitration Act in September 2020. Our Blog covered [the key features of the amendments](#), including a default mechanism for appointment of arbitrators in a multi-party arbitration and an express recognition that both the arbitral tribunal and the High Court have the powers to enforce confidentiality obligations when parties have agreed to such obligations in writing.

Our contributors also opined on [potential amendments to Indonesia’s Law Number 30 Year 1999 on Arbitration and Alternative Dispute Resolution](#), to commemorate the 21st anniversary of the legislation on 12 August 2020.

Some potential [uncertainty](#) was noted in the enforcement of awards in Vietnam this year. On 20 February 2020, the Vietnam’s Supreme People’s Procuracy issued Notice No. 97/TB-VKSTC (Notice 97) drawing the attention of Vietnamese courts to Decision No. 253/2017/KDTM-PT dated 13 September 2017 (Decision 253), which is an appellate court decision upholding the People’s Court of Hanoi’s refusal to recognise an arbitral award.

In August 2020, Timor Leste amicably [concluded an arbitration](#) with an international oil and gas consortium regarding production sharing in the joint petroleum development area in the Timor Sea, by entering into a deed of settlement.

Treaty developments and economic recovery

In 2020, Southeast Asia persisted in leading the conclusion and promotion of international economic treaties.

Most notably, the [Regional Comprehensive Economic Partnership](#) (“**RCEP**”) was signed on 15 November 2020 by the Association of South-East Asian Nations, Australia, China, Japan, Korea, and New Zealand, creating one of the world’s largest international trading blocs. [Investor-state arbitration was conspicuously left out of the RCEP](#); however, the treaty contains a work programme that requires the States Parties to enter into discussions on the settlement of investor-State disputes within the next two years after entry into force of the RCEP.

The Singapore Mediation Convention (the “**Singapore Convention**”) entered into force on 12 September 2020, prompting contributors to further consider its potential impacts, particularly on the role of mediation as a dispute resolution tool in investor-state disputes vis-à-vis arbitration: see [here](#) and [here](#). Apart from Singapore, however, the other Southeast Asian States have yet to ratify the Singapore Convention. Further discussion of the Singapore Convention can be found at [Kluwer Mediation Blog](#).

On a separate note, the Indonesia – Australia Comprehensive Economic Partnership Agreement (the “**IA-CEPA**”) [entered into force](#) on 5th July 2020. This was preceded by the termination of the Australia – Indonesia Bilateral Investment Treaty (the “**BIT**”) together with the survival clause therein. The IA-CEPA is one of the most highly anticipated international economic agreements that has been gaining traction in recent years. Observations on the effect of termination of the BIT and its survival clause, and how it unfolds vis-à-vis investor-state dispute settlement under the IA-CEPA is certainly one for the book!

Looking forward to 2021

As 2020 ends on a hopeful note, with reports of imminent vaccines promising to curb the COVID-19 pandemic, our Southeast Asia editorial team hopes that 2021 will bring positive developments to the arbitration scene. Chiefly, we anticipate more diversity initiatives and events and greater gender diversity in arbitral appointments.

It seems that along with the retreat into our homes this year, we may see a shift away from the traditional and adversarial arbitration model, and towards more private and amicable dispute resolution methods such as mediation. If such a shift manifests, it would not necessarily mean a decrease in arbitration, as these are complementary forms of dispute resolution. It would, however, require arbitration lawyers to adapt their skills and approaches to disputes.

As restrictions lift and Southeast Asia recovers economically in the wake of the pandemic, it will also be interesting to observe whether the shift to virtual hearings and the embracement of technology in 2020 sustains. As travel corridors are proposed in this region, we may see a contrast between events involving regional parties that will be increasingly held in person, and larger and more international events that will continue to take place virtually.

We thank our readers and all our contributors this year for engaging with us. We look forward to an equally fruitful discussion of arbitration developments and thoughts on our Blog in 2021!

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