

Kluwer Arbitration Blog

Interviews with Our Editors: In Conversation with Sarah Grimmer, Secretary-General of the Hong Kong International Arbitration Centre

Hiroko Yamamoto (Assistant Editor for East and Central Asia) · Tuesday, October 26th, 2021

Sarah has been HKIAC Secretary-General since September 2016. During her time at the helm, the HKIAC has, among other actions, released its 2018 Administered Arbitration Rules, overseen the changes arising from the 2019 arrangement between Mainland China and Hong Kong regarding interim measures for arbitration (“Interim Measures Arrangement”), become the first foreign arbitral institution to be granted permission to function as a permanent arbitral institution under Russia’s Federal Law on Arbitration in 2019, and has offered a breadth of audio-visual content, including the newly launched Interview Series with HKIAC council members.

Our Blog is providing live coverage of Hong Kong Arbitration Week (“HKAW”) for the fourth year running. We are privileged to interview Sarah as this year’s HKAW kicks off.

Thank you, Sarah, for joining us.

1. Looking back, what made you decide to choose a career in arbitration?

In 2002, I left New Zealand to live and work in France for what I thought would be one year. Shortly after my arrival in Paris, I joined Shearman & Sterling. This was my introduction to international arbitration. From there, I joined the Secretariat of the ICC Court of Arbitration in Paris. After three years, I moved to the Permanent Court of Arbitration in The Hague where I worked for ten years. Five years ago, I moved to Hong Kong to take up the role of HKIAC Secretary-General. Looking back, it is clear that in 2002, I was in the right place at the right time meeting the right person (Dr. Yas Banifatemi). That meeting commenced my career in international arbitration, and there has never been a boring moment since.

2. This year marks the tenth anniversary of HKAW, which has now become a staple in international arbitration events around the world. What have been some highlights of HKAW?

The first HKAW was held in 2011 and was the first of its kind. It was the brainchild of Karen Tan,

Chiann Bao, and Michael Moser to discuss the latest developments and design events for the whole arbitration community.

Every year, we at HKIAC carefully design the program for our flagship event, the ADR in Asia Conference. Our goal is to make it substantive and entertaining. When we achieve that goal, it is a true highlight.

Another highlight of the week is the Charity Ball where amongst glitz and glamour, music, and rowdy bidding, we raise a lot of money for people who need it much more than us.

The idea of an arbitration week has since caught on, and now there are arbitration weeks in many cities. We might get to the stage where we have arbitration weeks in 52 cities, one for each week of the year.

- 3. The HKIAC was the first institution to offer a Tribunal Secretary Training Programme, now in its seventh year. HKIAC also offers the Tribunal Secretary Service, whereby HKIAC legal staff can serve as tribunal secretaries in arbitrations under HKIAC's auspices. HKIAC has reported an increase in such appointments in recent years, with 80% of the appointments being made since January 2018. What are your views on the value of tribunal secretaries and the "fourth arbitrator" concern?*

I think that tribunal secretaries can add real value to the process. Their work saves costs because they shift an administrative burden off the arbitrator at lower hourly rates or no additional fee, and their contribution can improve the quality of the final product by adding a layer of clerical or linguistic review. This allows arbitrators to focus on the key procedural and substantive issues and render decisions faster. They are of particular assistance in proceedings conducted under time pressure (emergency arbitrations, for example) and in large, complex matters. Such appointments also provide younger lawyers with valuable experience. When the appointment is made from within an institution, it provides arbitral participants with a direct link to the institution's experience and oversight and introduces an intermediary who can help with minor or innocuous but delicate issues.

I think the fears of a tribunal secretary acting as a "fourth arbitrator" can be overstated. In my experience, most arbitrators understand well that their appointment is personal and their responsibility is a serious one. I think it is generally unwarranted to think that a tribunal secretary can improperly influence the views of an arbitrator. There will be cases where an unconscientious arbitrator may delegate work involving judgment to a tribunal secretary and then rely on that work without doing his or her own. However, unconscientious arbitrators are problematic whether there is a tribunal secretary or not. I do think, however, that arbitrators should be careful as to which aspects of drafting they delegate as that exercise is important to the decision-making process.

While there is no perfect answer, there are various ways to control for these concerns, and, in practice, I think they are generally effective; for example, the parties can limit the tasks of a tribunal secretary, adopt guidelines like the [HKIAC Guidelines on the Use of Tribunal Secretaries](#), and require detailed time sheets from the tribunal and secretary. Done right, the appointment of a tribunal secretary can bring benefits to all in a case and to the community more widely.

4. *The HKIAC's 2018 Administered Arbitration Rules expressly address disclosure, confidentiality, and costs in relation to third-party funding in response to Hong Kong's legislative amendment permitting the use of third-party funding for arbitration in Hong Kong. Has third-party funding taken off in Asia-Pacific as much as you thought it could have?*

Our Rules require parties to disclose the fact of a third-party funding arrangement, including the identity of the funder. Since third-party funding became lawful in Hong Kong on 1 January 2019, HKIAC has seen eight cases in which a funding arrangement has been disclosed. These cases include diverse types of funders, ranging from private funding from entities affiliated with the funded party, to well-known funding providers. The cases have also ranged in size, from reasonably modest sums in dispute to billion-dollar cases.

As users in the Asia-Pacific region become more familiar with the benefits of third-party funding and aware that it is available, I have no doubt we will see more. The important point is that the legal infrastructure is in place to make it an option.

5. *The HKIAC has recently signed the Green Pledge to support the Campaign for Greener Arbitrations and is on the Campaign's Steering Committee. What are some current or future efforts at the HKIAC to promote more environmentally friendly practices in international arbitration?*

Contributing to the Committee and signing the Green Pledge formalized our commitment to reducing the environmental impact of our activities.

Other efforts in relation to case administration include (i) actively encouraging parties and tribunals to communicate by electronic means only; (ii) providing an online case management system to reduce paper and delivery waste; and (iii) offering comprehensive virtual hearing services to reduce the need for travel. Our rules also expressly exhort tribunals to use technology to save time and costs, and recognize the upload of a document to an online site as notification.

We also apply policies that reduce the environmental impact for HKIAC events and our internal operations, such as eliminating paper waste, increasing recycling, and removing single-use items. In the grand scheme of things, our efforts are modest but by making them, at least we become part of the solution.

6. *In July 2021, the Ministry of Justice of the People's Republic of China published a consultation draft of revisions to the PRC Arbitration Law ("Draft"). If implemented, what are some impacts you expect to see for arbitration in front of the HKIAC?*

The current Draft proposes important amendments to modernize the arbitration regime in Mainland China. Some of those proposed amendments are relevant to HKIAC arbitration. For example, Article 21 of the Draft **removes the requirement** for designating a Mainland arbitration commission in an arbitration agreement, which may suggest that it is permissible to designate a non-Mainland arbitral institution (such as HKIAC) in arbitration agreements governed by PRC law. Article 12 of the Draft recognizes that foreign arbitral institutions (such as HKIAC) **may establish business offices on the Mainland** to administer foreign-related arbitrations.

Some of the proposed provisions are also in line with the relevant provisions of the 2018 HKIAC Administered Arbitration Rules (“**2018 Rules**”). For example, both Article 28 of the Draft and Article 19.5 of the 2018 Rules empower the arbitral institution to decide whether to proceed with an arbitration on a *prima facie* basis before the constitution of an arbitral tribunal. Article 49 of the Draft permits a party to seek urgent relief from an emergency arbitrator pursuant to the applicable rules, and Schedule 4 of the 2018 Rules likewise provides a comprehensive emergency arbitrator procedure for that purpose.

7. *Could you speak about what HKIAC is doing to promote its capabilities vis-à-vis jurisdictions in East and Central Asia where arbitration is not as popular as in Hong Kong?*

HKIAC as the flagship institution of Hong Kong is embedded in one of the most sophisticated arbitral jurisdictions in Asia and the world. We frequently see East and Central Asian parties in our cases.

We have done a lot of capacity-building in East and North Asian jurisdictions. We work typically with government officials, the judiciary, lawyers, and business groups.

For example, we have worked with UNCITRAL’s Regional Centre for Asia and the Pacific in outreach to micro, small, and medium-sized enterprises; Hong Kong’s Department of Justice to facilitate judicial training; the Asian-African Legal Consultative Organisation to train government officials; the Asian Development Bank for capacity-building in the Pacific Islands; and the U.S. Department of Commerce’s Commercial Law Development Programme to train arbitral institutions in the region.

We are also the only Asian institution to have administered investor-State arbitrations. We offer our hearing facilities free of charge in any case involving a State eligible for OECD financial assistance, which includes some East and Central Asian jurisdictions.

For younger lawyers, we recruit many interns from across Asia. We have also developed a [Tribunal Secretary Training Programme](#) that has now trained hundreds of candidates. The Programme is available online and thus accessible to those who cannot easily travel to Hong Kong.

8. *What are your hopes and visions for HKIAC in terms of case administration and its impact on the arbitration community in Greater China and beyond?*

In terms of case administration, my goal is that for every case, the HKIAC Secretariat and decision-making bodies do their work intelligently and efficiently every day, consistently for years, such that the expectations of anyone who uses HKIAC are exceeded. We have systems in place to make this happen. We have hard-working, smart lawyers on the team. Our decision-making bodies are comprised of experienced practitioners, in-house counsel, and arbitrators, so decisions on cases are made by a collective of specialists who truly know what is at stake.

HKIAC is one of the leading arbitral institutions in the world. When users choose HKIAC, they can expect international best practices. HKIAC also occupies a special place in the landscape of arbitral institutions as it is the one that connects Mainland Chinese and non-PRC parties. Our role

in that connection is perhaps best [reflected](#) by the 2019 Interim Measures Arrangement under which parties to Hong Kong-seated HKIAC-administered arbitrations can obtain interim relief from the Mainland Chinese courts (not available in any other foreign seat). Since 2019, 54 applications under the Interim Measures Arrangement have been [processed](#) by HKIAC, and Mainland Chinese court orders have preserved a total of USD1.8 billion worth of assets. Ultimately, international arbitration is about enforcement. The Interim Measures Arrangement ensures successful enforcement against assets in Mainland China (owned by PRC and foreign entities alike) and is therefore one of the most meaningful developments in international arbitration in recent years.

Sarah, thank you very much for your time and invaluable insights.

More coverage from Hong Kong Arbitration Week is available [here](#).

This interview is part of Kluwer Arbitration Blog's "Interviews with Our Editors" series. Past interviews are available [here](#).

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