Kluwer Arbitration Blog

Can Arbitration Keep Up? Singapore Ratchets Up Forum Competition

Michael McIlwrath (MDisputes) · Thursday, October 31st, 2013

This morning, a colleague in Asia forwarded me an article with news of the latest efforts by Singapore to establish itself as a preferred location for international dispute resolution: an ambitious initiative by the country's Law Ministry to make Singapore a regional destination for international commercial mediation, and plans to create a Singapore International Commercial Court.

Is this relevant for the future of international commercial arbitration?

Very much so.

As a fee-based service, arbitration already finds itself in highly competitive markets. The ICC competes with the ICDR to attract parties to adopt their rules, and they both compete against regional institutions like the Singapore International Arbitration Centre (SIAC). And together, the international institutions like ICC, ICDR, and SIAC all face competition from ad hoc arbitration under domestic procedural laws or UNCITRAL, as well as established and emerging national institutions.

That competition is already fierce, and it is only the beginning.

Cities also recognize the potential for revenue, and compete to appear as preferred places of arbitration, at least in countries known for having efficient and fair judicial systems (and relatively straightforward visa entry requirements). For example, while Paris was competing with London as a preferred European seat, Geneva was not sitting idly by… and is said to have tried, unsuccessfully, to coax the ICC to move its headquarters to the foot of the Alps. In Asia, Hong Kong and Singapore have famously rivalled each other for years for a thicker slice of the region's arbitration pie.

Yet the biggest competitive threat to arbitration providers comes not from other institutions or locations, but from other forms of dispute resolution. Mediation offers parties an inexpensive and relationship-preserving way to avoid arbitration altogether, and in some countries parties may view court litigation as offering significant advantages over arbitration in terms of time, cost, and predictability of outcome.

Both mediation and court litigation are developing capacity for international commercial disputes, a domain previously dominated by arbitration.

Most leading arbitration institutions now offer mediation, a sensible defensive move to prevent parties from moving their business to other providers. Many have also implemented changes in their arbitration rules to encourage arbitrators to streamline proceedings to reduce time and cost, making them more competitive with court procedures. And some courts, notably in England and Germany, have even begun to promote themselves to foreign parties as ideal venues for resolving their international commercial disputes.

And this is where the Singapore initiatives are nothing short of a savvy attempt to win the trifecta of international commercial dispute resolution. By developing a reputation as a center for international mediation and marrying an international court for commercial cases to a judicial system with a strong international reputation for enforcing arbitration agreements, the country will be able to draw even more international parties to use its hotels, airlines, restaurants, lawyers and other professionals, and even its courts.

This is not the sort of thing that many countries can even attempt. The implementation of a special international commercial court will require, according to the Minister, "a change in the Constitution, and also who should be the judges. Ideally, we should have judges of international standing from different parts of the world." Talk of similar changes would be unheard of in other countries, at least those where the rule of law is known to be strong.

To enhance Singapore's standing in the field of international mediation, the Law Ministry can rely on a strong regional mediation provider, the Singapore Mediation Centre. Moreover, the Ministry's representatives are speaking directly with representatives of industry around the world, to discover how to enhance Singapore's standing in the field of international commercial mediation.

So if the question is, can Singapore really pull this off? The answer is, yes, it probably can.

What does this mean for international arbitration?

Simply, that the practice of arbitration, however and wherever it is conducted, does not exist in isolation from the world's legal systems. It is instead caught with them in a current of constant change, and risks being borne back into the past if it cannot keep up. Its growth will depend on the ability to row faster and stretch farther, to find new ways to innovate and offer better solutions than the alternatives being proposed today in Singapore, and which tomorrow could appear in Florence or San Francisco.

In other words, just to keep pace in the market for dispute resolution services, arbitration needs to be better than just other forms of arbitration.

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uncover potential conflicts of interest.

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