

Kluwer Arbitration Blog

The Role of Hong Kong as a Dispute Resolution Hub in the Greater Bay Area

Madhav Kumar (CIETAC Hong Kong Arbitration Center) · Monday, April 29th, 2019 · CIETAC Hong Kong Arbitration Center

On 18 February 2019, the [Outline Development Plan for the Guangdong – Hong Kong – Macao Greater Bay Area](#) (the “Outline”) was published. Seen to rival the city clusters formed around San Francisco, New York and Tokyo, the development of the Greater Bay Area is a collaborative initiative to transform the Pearl Delta Region of China (south coast of China) into an eminent technology and innovation hub. With an approximate population of 70 million likely to be involved over a total area of approximately 56,000 square kilometers, the Greater Bay Area is set to become the largest megapolitan focusing on innovation, technological advancement and economic development.

In the dispute resolution segment, Asia’s world city – Hong Kong – is set to play a pivotal role in the region due to its reputation as a leading international arbitration place. A highly developed arbitration infrastructure; the enforceability of arbitral awards rendered in Hong Kong in the Chinese mainland and internationally; strict adherence to the rule of law and adherence to internationally recognized practice make Hong Kong a suitable place to refer disputes that may arise within the Greater Bay Area region.

Keeping the Outline in context, this post identifies some of the sector specific disputes which may arise amidst the development of the Greater Bay Area and highlight how the already developed arbitration ecosystem of Hong Kong may be best equipped to handle such disputes.

Maritime related disputes

Strategically located in the south coast of China, the Greater Bay Area anticipates a rejuvenated and active maritime industry and this is highlighted in the Outline. This may result in an increased volume in cargo shipments via sea and/or rivers, hence more maritime related transactions, and with that the higher likelihood of maritime related disputes arising.

A long and established history in maritime trade, the common law system, pro-arbitration judiciary and an extensive pool of maritime experts (including lawyers and arbitrators) make Hong Kong an ideal place for handling maritime related disputes using arbitration. Hong Kong also has specialized maritime arbitration centres and organizations such as the China Maritime Arbitration Commission Hong Kong Arbitration Center and the Hong Kong Maritime Arbitration Group to

effectively and efficiently assist parties in resolving maritime disputes.

Also, ad-hoc arbitration, which is generally favoured in the maritime industry, is permitted by law in Hong Kong and is often utilized. In view of this, the China International Economic and Trade Arbitration Commission Hong Kong Arbitration Center (“CIETAC Hong Kong”) released its [Rules as Appointing Authority in Ad Hoc Arbitrations](#) (the “Rules”) in April 2017. As per the Rules, parties can designate CIETAC Hong Kong as an appointing authority to appoint arbitrator(s) in an ad-hoc arbitration. The Rules have been primarily formulated to address the facilitative arbitration services, upon parties’ request in ad hoc arbitrations, in addition to those that are available under the UNCITRAL Arbitration Rules.

Construction related disputes

Developing the Greater Bay Area into a world-class city cluster necessitates numerous infrastructure and construction projects. The successful completion and opening of the Hong Kong – Zhuhai – Macau Bridge (the longest sea crossing bridge in the world), and the Guangzhou – Shenzhen – Hong Kong Express Rail Link, last year, is testimony to the efforts taken by China to boost infrastructural development in the region. Infrastructure and construction projects generally involve multiple contracts and parties. Though dispute resolution mechanisms such as mediation and adjudication are employed to resolve construction disputes, arbitration has generally been the preferred and final choice to resolve construction disputes due to the enforceable nature of the awards that are eventually rendered.

For a long time, Hong Kong has maintained its reputation as a centre for construction arbitration due to the expertise it offers in both construction and arbitration. The Hong Kong High Court maintains the [Construction and Arbitration List](#) (Practice Direction 6.1) which designates judges having technical expertise to hear certain civil actions related to construction, including applications pertaining to arbitration. Due to the List, we see an efficient and consistent disposal of applications generally relating to construction arbitration.

Experience and expertise are also associated with the arbitration institutions situated in Hong Kong. For example CIETAC, which has a sub-commission in Hong Kong (CIETAC Hong Kong) has administered a total of 228 cases related to construction projects in 2018 and a total of 172 cases in 2017 (to access the CIETAC Work Reports of 2017 and 2018 click [here](#)). CIETAC’s [Panel of Arbitrators](#) also includes a prolific list of arbitrators with technical construction expertise.

Hong Kong’s robust arbitration legislation also aids in the effective resolution of construction disputes. For instance, under the [Hong Kong Arbitration Ordinance](#) (Cap 609) (the “Arbitration Ordinance”), emergency arbitration is permitted, and the emergency relief granted by an emergency arbitrator can also be enforced by the Hong Kong court (Section 22B of the Arbitration Ordinance). This feature is useful since there is a possibility for issues arising at every stage of a construction project which may require urgent attention to avoid any undesired delays in the project. Institutional arbitration rules, such as the [CIETAC Arbitration Rules](#) (effective as from 1 January 2015), contain provisions to assist parties in appointing an emergency arbitrator and provisions that lay down the procedure for carrying out an emergency arbitration. Further, the option available under the Arbitration Ordinance to consolidate arbitrations with the assistance of the Court (by expressly opting the same in the arbitration agreement as per Part 11 of the

Arbitration Ordinance) is desirable for construction disputes. Consolidation becomes vital when construction projects comprise of multiple contracts and are multi-party. In the event that parallel arbitrations are commenced in reference to separate contracts but involve the same project, consolidation of the arbitrations into a single arbitration can save costs and time and avoid inconsistent outcomes.

Intellectual Property related disputes

With a development strategy driven by innovation and technology set to be implemented, huge policy changes and huge demand for the development of intellectual property (“IP”) is expected in the Greater Bay Area. The Outline highlights the importance to strengthen the protection and enforcement of IP in the region. It also endorses and seeks to promote alternative dispute resolution, including arbitration, to resolve disputes related to IP.

The advantageous features of arbitration make the mechanism suitable for resolving IP disputes. However, uncertainty often prevails over arbitrating IP disputes due to the interplay between [arbitrability and public policy](#). In prominent jurisdictions of Asia, like Singapore and the Chinese mainland, there is no clear picture regarding the arbitrability of IP disputes. For instance, in Singapore, the legislative history of the Arbitration Act of Singapore (Chapter 10) and the International Arbitration Act of Singapore (Chapter 143A) suggests that issues relating to validity of registration of trademarks or patents and copyrights are not arbitrable since they may have public interest elements (Section 2.37.17 of Review of Arbitration Law, LRRD No 3/2001); and in the Chinese mainland, Article 3(2) of the PRC Arbitration Law states that administrative disputes that are to be handled by administrative organs, which include the Trademark Adjudication Board and Patent Review Board, are not arbitrable.

The scenario in Hong Kong though is more certain due to a recent [amendment](#) made to the Arbitration Ordinance. In June 2017, the Arbitration Ordinance was amended to clarify that IP related disputes can be resolved using arbitration in Hong Kong and that it will not be contrary to the public policy of Hong Kong to enforce arbitral awards involving intellectual property rights (“IPR”). The amendment further clarifies that parties are not prevented from using arbitration to resolve their IP disputes if the IPR may be protected by registration or whether it is registered, or subsists, in other jurisdictions. The amendment came into force in January 2018 and it places Hong Kong in the forefront of IP dispute resolution. This makes Hong Kong more attractive for resolving IP disputes within the region.

Investment related disputes

Aiming to increase the degree of market integration, the Outline seeks to promote investment facilitation by implementing liberalisation measures and relaxing investor restrictions in the Greater Bay Area. The primary focus is to enhance the facilitation of investment under the ambit of the Closer Economic Partnership Agreement (“CEPA”) entered into between the government of the People’s Republic of China (“PRC”) and each of the two Special Administrative Regions of Hong Kong and Macao.

In 2015, the Permanent Court of Arbitration (“PCA”) and the Government of the PRC signed a

Host Country Agreement in order to facilitate the conduct of investor-state arbitrations in Hong Kong. As per the Agreement, PCA administered proceedings, which largely include investment arbitrations, can be handled in Hong Kong.

Further, in accordance with the [CIETAC International Investment Arbitration Rules](#) (the “Rules”) released in 2017, CIETAC Hong Kong can administer investment arbitration cases. The parties involved in the investment disputes only need to agree to adopt the Rules and specify CIETAC Hong Kong Arbitration to administer, or designate Hong Kong as the seat/place of arbitration (Art. 4 of the Rules).

Concluding remarks

The Outline aims to provide a refined and effective dispute resolution service to the economic and trade activities in the Greater Bay Area, and against such a backdrop, Hong Kong’s well-equipped arbitration ecosystem has plenty to offer. The potential for Hong Kong’s arbitration ecosystem to handle the various types of disputes that may arise along the development of the Greater Bay Area, not only signifies Hong Kong’s importance in the region, but also justifies its reputation as a leading dispute resolution hub in the Asia-Pacific.

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