
Kluwer Arbitration Blog

Hong Kong Arbitration Week Recap: The Future of Arbitration in Hong Kong

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As Hong Kong Arbitration Week 2019 hits the midway point, we asked three next-generation arbitration practitioners: how do you see the future of arbitration in Hong Kong?

These are their answers:

Joyce Leung: As a construction lawyer, I am seeing an increase in arbitrations arising from the construction sector in light of the completion of a number of major infrastructure projects in Hong Kong. Apart from local projects, disputes have also arisen on projects under the Belt and Road initiative. Coupled with the developments in the Greater Bay Area, there are significant opportunities for Hong Kong as an arbitration forum going forward.

There are speculations that the proposed security of payment legislation, which introduces statutory adjudication as a dispute resolution mechanism to increase cash flow in the construction industry, would significantly reduce the amount of arbitrations in Hong Kong as overseas experience suggests that parties tend to accept the adjudicator's decision as final. My view is that whilst this may be true for smaller disputes, parties would probably still refer disputes which are more complex or of higher value to arbitration.

There have been a number of welcoming developments this year which will help boost Hong Kong's attractiveness and competitiveness as a seat for arbitration. The third party funding provisions of the Arbitration Ordinance (Cap. 609) came into full operation on 1 February 2019, giving parties comfort that third party funding of arbitration in Hong Kong is not prohibited by the common law doctrines of maintenance and champerty. Further, by virtue of a unique arrangement between the Mainland and Hong Kong which came into effect on 1 October 2019, the Mainland courts may order interim measures in support of institutional arbitrations seated in Hong Kong. There is currently no such arrangement for arbitrations seated in other foreign jurisdictions, giving Hong Kong a further competitive edge.

Despite the dark times that Hong Kong has been experiencing in the past months, I think the future of arbitration in Hong Kong remains bright.

Joanne Lau: I have every confidence in the future of arbitration in Hong Kong even though it is not without its challenges.

The biggest challenge that Hong Kong faces is perhaps one of perception. Given the complicated socio-political environment, it is important that Hong Kong is able to defend itself against any perception that it is no longer a safe and reputable jurisdiction for conducting arbitration.

Taking a fact-based approach, I do not consider the future of arbitration in Hong Kong to have been undermined. The HKIAC remains very well-regarded with increasing caseload and constant self-improvements, such as the 2018 revision to the HKIAC Rules. Arbitration-related judgments have shown that the Hong Kong courts remain neutral and pro-arbitration. The legal infrastructure is sound. Changes have been introduced to the Model Law-based Arbitration Ordinance over the years in response to evolving demands, including with respect to emergency arbitration and third party funding. There is also a vibrant community of arbitration practitioners, with a number of high profile events being held in Hong Kong, including the Hong Kong Arbitration Week now in its eighth year, the ISDS Reform Conference earlier this year and the ICCA Congress coming up in 2022. A significant recent development is the Mutual Arrangement on Interim Measures which Joyce mentioned.

Hong Kong's unique position lies in the fact that it is part of China but that it nevertheless differs from China in various ways, most significantly by its separate legal and judicial system. The future of arbitration in Hong Kong will depend on how well Hong Kong is able to capitalise on its special relationship with Mainland China whilst ensuring that the distinctiveness of Hong Kong as a leading international arbitration venue in its own right is also maintained and conveyed.

Nicole Tsui: I see a bright future for Hong Kong as a seat of arbitration. The arbitration market is busy and the number of disputes arbitrated in Hong Kong has remained at a consistently high level for the last five years. Due to foreign exchange and other regulatory restrictions in Mainland China, Hong Kong remains China's bridge to the world and has always been the go-to seat for PRC-related disputes that are eligible for arbitration offshore. Hong Kong is seeing an increasing number of disputes involving Mainland Chinese entities being referred to arbitration. I believe that this upward trend will continue as Chinese outbound investment activity increases.

In addition, I expect that we will see an increase in the number of PRC-related disputes arbitrated in Hong Kong for two further reasons:

- First, the PRC Supreme People's Court has incrementally liberalized the types of disputes that are eligible for arbitration outside Mainland China, including some between wholly foreign-owned enterprises registered in Chinese FTZs. Hong Kong is a natural offshore seat for these disputes.
- Second, there is the arrangement between Hong Kong and Mainland China on interim measures referred to by my co-contributors.

For these reasons, and because of the unique benefits that Hong Kong offers (including our multi-lingual legal profession, highly independent judiciary, and geographical proximity to Mainland China), I expect that Hong Kong will maintain and consolidate its position as one of the world's leading arbitral seats in the future.

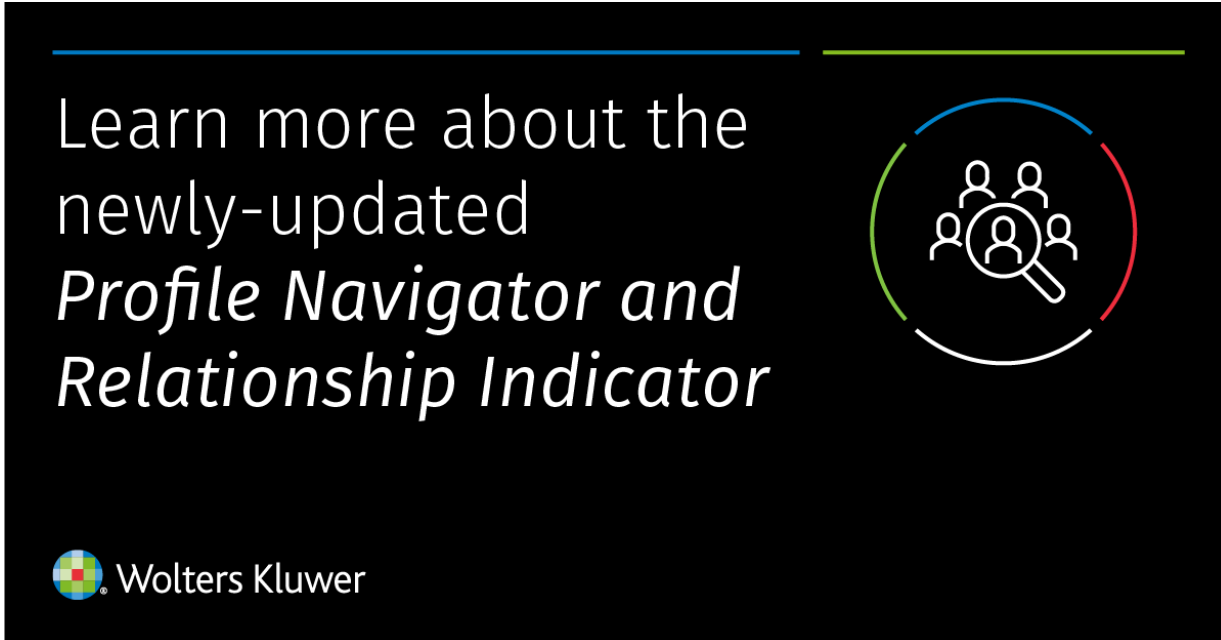
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