Kluwer Arbitration Blog

# SIAC Congress Recap: Interviews with our Editors – Perspectives from Singapore with Ariel Ye

Christine Sim · Wednesday, September 2nd, 2020

***This year our Blog is providing live coverage of the SIAC Virtual Congress 2020. We kick off our coverage with our interview with Ariel Ye.***

Ariel has more than 35 years of experience in cross border commercial dispute resolution. She handled, together with her colleagues, the first international arbitration case since China instituted its open door policy in the late 1980s. Following her graduation from the Law School of the Chinese Academy of Social Science and the Law School of Peking University, she started her practice of law in mainland China in Chinese law firms and then joined an international law firm in Hong Kong for several years. She continued her legal practice at King & Wood Mallesons since 2004 and she is currently a senior partner there. A former member of the task force for the IBA Rules on Taking Evidence in International Arbitration, she is currently a member of the Court of Arbitration of the Singapore International Arbitration Centre ("**SIAC**").

*Thank you Ariel for joining us today.*

1. ***When (and why) did you become interested in arbitration?***

I was lucky to enter into college after China's Cultural Revolution, which ended in the late 1970s. My first court experience was in the Spring of the early 1980s when I was an intern to a judge working on a tort case. My interest in dispute resolution practice began at that time. After graduation, I joined a Chinese state-owned law firm. It was there that I had a chance to participate in the first international arbitration case since China's Open Door Policy, acting for a Chinese company in its trade dispute against a Middle-Eastern company before an international arbitral tribunal.

Interestingly in that first international arbitration case, the hearing happened to be conducted in a hotel room in Singapore, so Singapore was the first foreign country that I visited in the late 1980s.

2. ***What do you enjoy most about being a SIAC Court of Arbitration member? What do you see as the future for SIAC?***

I have served as a member of the SIAC Court of Arbitration for several years. I have also handled SIAC arbitration cases either as counsel or as arbitrator. In my experience, SIAC deserves the trust and respect of the international arbitration community because it is truly one of the few leading international arbitration institutions of the world, rising in a relatively short time period. The other leading institutions have a much longer history.

What impressed me most are the people of SIAC: the SIAC Court members are some of the most experienced arbitrators and arbitration counsel of the international arbitration community, so it has been a good opportunity for me to learn from them. The SIAC Secretariat team is well-trained, hardworking and they form the backbone of the institution. As a SIAC Court member, whenever I was requested to make decisions on consolidation and requests for joinder, the briefing notes I received were always of top quality. One procedural quality of SIAC case administration is particularly "Singaporean": emergency arbitration applications are processed in 24 hours, which is usually difficult in many other jurisdictions.

Given the significant increase of cross-border investment and economic activities in Asia, I can only envisage further successes of SIAC because people working in the institution are those whom one can trust and count on.

3. ***International arbitration inherently involves a diversity of legal cultures. In future, do you think there will be differences in the way that arbitration is currently practiced, for instance, in document production or waivers of rights to seek annulment on certain grounds?***

My experiences suggest that due to great teaching and training efforts made in promoting international arbitration by organizations like International Council for Commercial Arbitration ("**ICCA**") and the International Bar Association ("**IBA**"), various arbitration institutions, as well as LLM programs on the subject of international law in many law schools around the world, the way arbitration is practiced is increasingly convergent. I have handled arbitration cases before the Arbitration Institute of the Stockholm Chamber of Commerce ("**SCC**"), which tend to be of civil law tradition, and Hong Kong International Arbitration Centre ("**HKIAC**") and SIAC, which tend to be of the common law tradition. There was little difference between those arbitration proceedings before the SCC and the HKIAC / SIAC.

As arbitration is a tool for resolving international commercial or investment disputes, I do not think the so-called "differences in legal culture" should be exaggerated. For example, SCC rules allow document production, and so do the SIAC rules. In a recent SIAC case involving our Chinese client, it was not difficult to explain to the Chinese company the importance of and rules for document production that it should follow.

Document production is a pillar of international arbitration for the purpose of seeking the truth. My strong personal view is that such procedural requirements should be widely accepted in international arbitration and become the norm, whether in civil, or common law, or any other legal systems.

4. ***Do you expect to see arbitration feature as the most preferred method of dispute resolution for Belt and Road disputes? Why or why not?***

According to statistics provided at the website of the State Council, in the first quarter of 2020, the total amount of capital invested in projects along the Belt and Road countries was valued at USD 4 trillion. Russia, Saudi Arabia and Malaysia are the top three countries attracting most of capitals / projects, followed by UK. The transportation sector accounts for 47% of the total investment; the power/energy sector accounts for 23%. Out of the total investment, capital from the private sector accounts for 25.8%.

Given that most of these projects are meant to be the long term investments, including a long period of time for construction, it is my view that Belt and Road disputes are likely to arise in the near future.

In my experience, arbitration would still be the preferred method for dispute resolution for Belt and Road disputes. However whether publicly funded projects will instead choose courts, such as the China International Commercial Court ("**CICC**") set up by the Supreme People's Court of China in 2018, remains to be seen.

Some arbitration institutions have been very active in the resolution of Belt and Road disputes. In 2019, CIETAC published a report, which stated that it studied 263 cases administered by CIETAC involving companies doing business in Belt and Road countries.

5. ***Arb-med is widely and regularly used in PR China. In your experience, how could mediation best complement arbitration? Should arbitrators and counsel use mediation more? How can we benefit from both mechanisms while avoiding any due process challenges? Is it a myth that Asian parties tend to prefer mediation over contentious arbitration?***

According to the annual report published by CIETAC in 2017, only 29% of arbitration cases administered by Chinese arbitration institutions, including CIETAC, were settled by mediation where arbitrators acted as mediators without commencing a separate mediation proceeding. The number of such cases has been decreasing from 65% in 2014 to 41% in 2015 to 58% in 2016. This clearly indicates that Chinese parties are now more conscious of potential due process concerns and are more willing to accept decisions made by tribunals.

Again, I would personally recommend that parties first consider mediation as a dispute resolution method, given the cost associated with arbitration and the length of time spent on proceedings. Chinese courts increasingly encourage parties to mediate in recent years and many small claims in domestic court cases have been referred to mediation institutions for resolution with the consent of the parties, which I believe is the new trend for dispute resolution.

According to the Singapore International Mediation Centre, during the period of 2014 to 2019, there were approximately 80 cases referred to it, and a good number of cases involved Chinese parties, which accounted for 22% of its international cases.

When arbitration and mediation are combined in one proceeding, an arbitrator switches his / her "hat" from an arbitrator to a mediator. From a counsel's perspective, I take a very conservative view when advising my clients to engage in Arb-Med. Therefore, as arbitrator, only in cases where I assess that the chances of a successful mediation as high after the hearing would I then initiate an Arb-Med process at the end of the hearing with the parties' agreement. Nevertheless, most of the time, I always encourage parties to further negotiate and seek settlement with the assistance of their

counsel, *i.e.* asking their counsel to facilitate settlement discussion rather than having arbitrators involved in the process.

These are my personal views, and I would like to make it clear that my personal experience and preference do not represent or reflect the views of others in the Chinese arbitration community in this regard.

6. ***While there have been a number of initiatives aimed at improving gender diversity in international arbitration, we are still frequently faced with under-representation of women at senior levels in the legal profession and on arbitral tribunals. What positive steps can we take towards gender equality and diversity in international arbitration?***

In the early years of my career, there were only a few female practitioners in international arbitration. Now in the younger generation, the situation is quickly changing, both in China and internationally. I believe that I personally did not experience such discrimination as a female practitioner largely because of my language skills. I have noticed that usually female lawyers are equipped with better English language skills, which is critical to their success in international arbitration.

I do see the progress of gender equality in this field in recent years, and this could not have been achieved without the efforts taken by members of the international arbitration community. There are a lot of outstanding female lawyers and arbitrators in Asia. Noticeably, there are ten female SIAC Court members.

I also highly appreciate the Equal Representation in Arbitration Pledge and other initiatives that further raise awareness on gender equality and create more opportunities for those excellent female arbitrators, while acknowledging equal opportunities for male arbitrators. I believe these efforts will lead to greater gender equality. Currently, I am working on a SIAC case as a party appointed arbitrator, in which the presiding arbitrator for the case is also a female arbitrator, which is good proof of such progress in gender equality.

***Thank you Ariel for your time!***

***More coverage from SIAC Congress 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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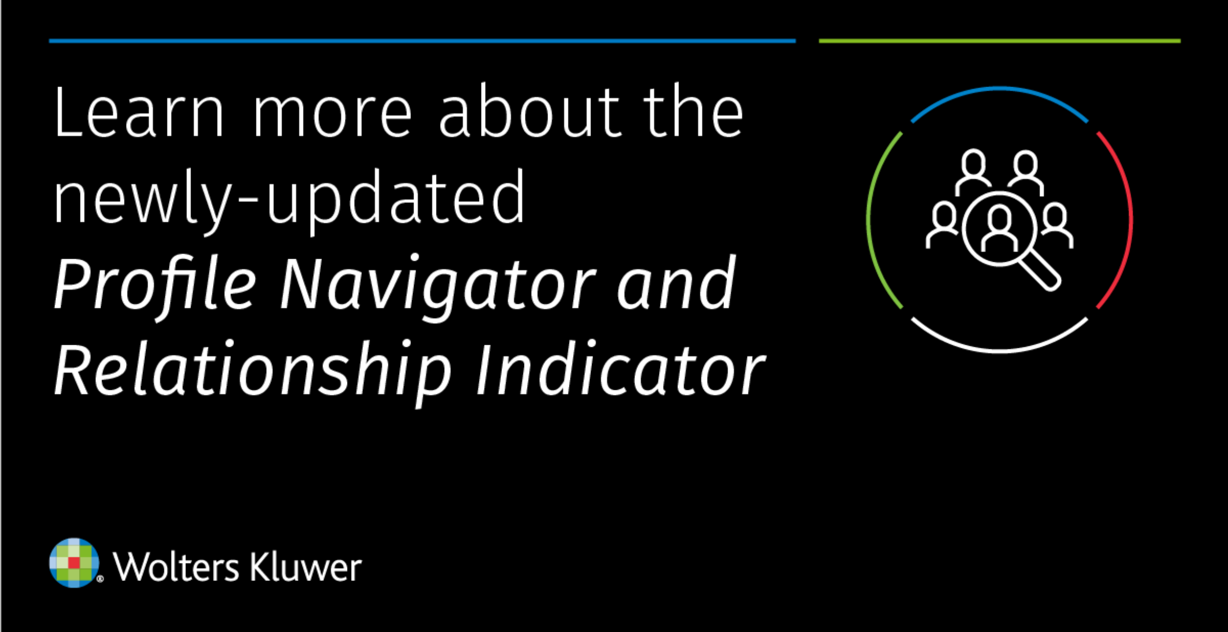


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