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Hong Kong Arbitration Week Recap: ADR in Asia Conference on US-China Relations – Challenges and Opportunities

Tze Siong Ang (Allen & Overy) · Thursday, October 22nd, 2020 · HK45

Day three of Hong Kong Arbitration Week 2020 featured, as part of the ADR in Asia Conference, a panel session on US-China relations and the challenges and opportunities that arise out of that relationship. The session was chaired and moderated by **Mr Peter Yuen** of Fangda Partners. **Mr Yuen** was joined by a diverse group of panellists who each brought a different perspective on the current state of US-China relations and its impact on the global economy and how businesses operate. The panellists were:

- **Ms Janet Pau** of the Economist Corporate Network;
- **Mr Mark Feldman** of Peking University;
- **Mr Randall Lewis** of EHC Global; and
- **Ms Jingyi Li Blank** of Mintz Group.

Mr Yuen opened the session by observing that US-China relations have rapidly deteriorated in recent years, pointing to events such as: (1) the ongoing US-China trade war; (2) the protests in Hong Kong; (3) the US presidential elections, where the candidates hold differing views in respect of US relations with China; and (4) increased military activities by both the US and China around the region. **Mr Yuen** then invited the panellists to each share their perspectives and thoughts on this particular phenomenon.

US-China relations – a multi-faceted and pervasive issue

The key observation that can be drawn from the session is that the issue of deteriorating US-China relations is a pervasive and multi-faceted one that can be examined from many different angles. Indeed, **Ms Pau** opened the stage by sharing her views as a director at the Economist Corporate Network, an institution that, amongst others, assists business leaders with navigating the increasingly complex global environment. In **Ms Pau's** view, the US-China relationship is both a cause and a consequence of a global trend that involves governments taking a more interventionist approach, often justified on the basis of national security, whether real or false. She observed that there has been a fragmentation of the global order, with countries forming alliances on an issue-by-issue basis, rather than working with traditional allies. This fragmentation of the global order has caused voices that are more neutral and centric to be sidelined, making it difficult for businesses that are accustomed to remaining neutral.

Mr Feldman in turn shared his views from the perspective of a law professor. Focusing on two recent multilateral international treaties, the [Regional Comprehensive Economic Partnership](#) and the [Comprehensive and Progressive Agreement for Trans-Pacific Partnership](#), coupled with the introduction of the One Belt, One Road initiative and the Asian Infrastructure Investment Bank, he observed that there is going to be greater regional integration of the Asian economy. **Mr Feldman** contrasted this with the decoupling of the US-China relationship and how both countries are intervening more in global business through tariffs and national security legislation. He noted that the business community would have to learn how to balance these tensions.

Mr Lewis provided his perspective as the general counsel of a Canadian multinational company headquartered in the US with global operations. Speaking from experience, **Mr Lewis** shared that doing business in China has become increasingly difficult with an increase in social media pressure (for example, having to watch what the firm's employees say about China) and a more aggressive Chinese policy in promoting local businesses. That being said, he stated that these are obstacles one would expect from doing business in China. Where the ground has shifted, according to **Mr Lewis**, is the US-China trade war, which has caused a whole host of problems ranging from having to shift production to other countries due to tariffs, and levels of regulatory scrutiny on US-based businesses hitherto not experienced. This has led to delays in key M&A transactions and compliance issues with their supply obligations. Interestingly, **Mr Lewis** said it was the COVID situation that gave businesses some respite as Chinese regulators became more cooperative in order to boost the economy. However, he pointed out that this respite will not last for long and businesses will still have to consider how to manage their global operations and how much of it to base in China.

Finally, **Ms Li Blank** provided a unique perspective as a partner of the Mintz Group, a financial investigations company. She observed that whilst the US-China relationship has certainly worsened in the last twelve months, many of the issues have been going on for some time. **Ms Li Blank** noted that with increasing tensions between US and China, certain information, whilst not illegal to collect, has become too sensitive to collect. She cited collection of human rights data in Xinjiang as an example – the Mintz Group had to stop sending investigators into the region and think of other ways to collect information. **Ms Li Blank** also stated that with economies becoming more insular and nationalisation on the rise, information collection has become more difficult.

Impact on Hong Kong

Mr Yuen also asked the panellists to chime in on how US-China relations have impacted Hong Kong. **Ms Pau** noted that the views of business leaders have largely fallen into two camps. One group of executives think that there will be little change because some of the advantages Hong Kong has are hard to replicate. Amongst others, Hong Kong has been able to 'play both sides' whilst upholding many global standards in terms of legal and financial systems, a feature that these executives think will not change. The other group of executives are worried about how Hong Kong is becoming increasingly caught in the crossfire between the US and China, with governments increasingly requiring businesses to pick sides (and therefore winners and losers). **Mr Feldman** thought that arbitration numbers continued to look strong in Hong Kong, with the [mutual enforcement arrangement of arbitral awards between Hong Kong and China](#) being a significant contributor to that.

Who are the likely winners?

Mr Yuen ended off by asking the panellists to pick the likely winners to emerge from the US-China saga. **Mr Lewis** thought that businesses that had to rethink their supply chain strategy as a result of the trade war are going to come out stronger and better. **Mr Feldman** thought that an integrated Asian economy will emerge on top. **Ms Li Blank's** view was that businesses involved in dealing with and resolving dispute resolution will benefit. Finally, **Ms Pau** thought that global investors who are able to think flexibly and place capital where there is growth will emerge winners.

Conclusion

The issue of US-China relations is obviously one with many faces. Whether it presents itself as a bane or a boon will depend on who you ask and where those individuals' interests lie. Nevertheless, it is safe to say that uncertainty and unpredictability remain a common theme in all answers.

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

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