

Kluwer Arbitration Blog

2020 in Review: Reflections on a Year of Steady Progress in East and Central Asia

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In spite of unfamiliar challenges that emerged in 2020, arbitration progress in East and Central Asia has persisted. In this post, our East and Central Asian editorial team recapitulates major arbitration trends and developments of the region featured in the past year from the perspectives of national and interstate policies, judicial and legislative changes, as well as the technological viewpoint, issues related to the COVID-19 pandemic, and beyond.

Further Opening Up of PR China to International Arbitration

Our 2020 coverage encompassed encouraging updates and forecasts from our contributors with a focus on the promising steps being made towards enabling the further opening up of the arbitration market in PR China.

An international arbitration-friendly environment is an often-mentioned prerequisite. One aspect of the progress is observed in the Free Trade Zone (“FTZ”) context wherein the Shanghai Pilot FTZ represents a pioneering attempt of the government to open up its arbitration market by [allowing foreign arbitral institutions to carry out arbitration activities in a specific FTZ from January 1, 2020](#). Even further potential may be seen under the Beijing Policy, which may permit foreign arbitral institutions to register an operational entity with no geographical restrictions confined to designated areas of Beijing. The [development of the 2018-designated Hainan FTZ](#) also reflects PR China’s effort in expanding effective dispute resolution options to encourage foreign investments and trades in additional designated areas.

Forward movement in enabling the operation of foreign arbitral institutions in PR China, as well as the expansion of dispute resolution options, could be seen as a clear demonstration of PR China’s willingness to enhance its dispute resolution environment for the conduct of international arbitrations.

Judicial development may also lend support to the growth of international arbitration in PR China. In the Guangzhou Intermediate People’s Court’s groundbreaking ruling, [a Chinese court has for the first time applied the “seat standard” in determining the nationality of an arbitral award rendered in PR China under the auspices of a foreign arbitral institution](#), which aligns with international practice and has sparked discussions on legal reform regarding the treatment of arbitrations in PR

China administered by foreign arbitral institutions. While uncertainty remains regarding judicial practice in PR China on this topic, an amendment to PR China's Arbitration Law and Civil Procedure Law may provide a solution to increasing predictability of enforcement outcomes in PR China.

Further, the Judicial Committee of the Supreme People's Court of China enacted detailed new rules of evidence, paving the way for document production to become more prevalent in PR China litigation, which will impact the conduct of arbitration proceedings in PR China.

Big data research and the "Standardization Guide" on cases involving "judicial review" of arbitration by the Beijing Fourth Intermediate People's Court also projects an arbitration-friendly narrative and the judiciary's endeavor to address legal ambiguities by "unify[ing] adjudication standards," which, together with the continued implementation of the Mainland China-Hong Kong Interim Measures Arrangement, indicate determined judicial efforts in fine-tuning PR China's readiness to further open up its arbitration market.

In reflection, the driving forces behind the opening up of the arbitration market in PR China include the foreseeable demand for arbitration system reform as triggered by changing international financial architecture, the need to reconcile different legal systems and currencies adopted amongst the PR China, Hong Kong, and Macau jurisdictions, as well as the necessity to address the arbitrability of antitrust-related claims in PR China given its increasing dominance in international trade and commerce.

Improvements to the Arbitration Infrastructure and Practice

Other East and Central Asian jurisdictions had some notable legislative and rule developments over the past year (or recent years), including the following:

- The Japanese Diet amended the Foreign Lawyers Act to, among other things, expand the scope of services that foreign lawyers can render in international arbitration proceedings.
- Hong Kong and Singapore announced moves to relax restrictions on outcome-related fee arrangements, thus potentially expanding the scope of access to justice for parties and increasing flexibility with respect to capital and risk management.
- Macau's new arbitration law came into effect, with key features including a new emergency arbitrator mechanism, a provision on court assistance in the taking of evidence, and abolishing the possibility of appealing an arbitral award before a local court.
- Armenia revised its Civil Procedural Code and made itself a more arbitration-friendly jurisdiction.

Meanwhile, our Blog contributors advocated for further improvements to certain aspects of regional arbitration infrastructure and practice. Our Blog featured commentary on:

- How PRC arbitration law should be modernized, including by loosening the requirements for a valid arbitration agreement and by strengthening judicial supervision and support of arbitration;
- Limitations on foreign attorneys as party representatives in arbitrations seated in PR China and changes needed to this regime;
- The tension between FDI screening measures and investment liberalization commitments in Japan, which has given rise to the need for an international cooperation mechanism; and

- The need for Georgian arbitral institutions to improve the way in which interim measure applications are handled in order to avoid potential bias.

Connecting Virtually; Responding to COVID-19 Challenges

Virtual hearings and technology were much discussed in 2020 amidst the COVID-19 pandemic (*see also 2020 in Review for ISDS, Europe, and Southeast Asia*). In East and Central Asia, arbitral institutions were quick to provide guidance on virtual hearings. KCAB released the [Seoul Protocol on Video Conference in International Arbitration](#) in March 2020. The Protocol grappled with issues of fairness, impartiality, and confidentiality that could arise from videoconferencing. The Protocol was drafted mostly before COVID-19, but it was welcomed as a timely release amidst the pandemic. CIETAC released the [Guidelines on Proceeding with Arbitration Actively and Properly during the COVID-19 Pandemic](#) in April. In May, HKIAC issued the [HKIAC Guidelines for Virtual Hearings](#), which provides a checklist for virtual hearings. Various institutions organized seminars on the topic, including [HKIAC](#) and [SHIAC](#).

The experience in virtual hearings increased knowhow on better preparing for the various facets of such hearings, from videoconferencing technologies and electronic presentation of evidence to interpretation and transcription. Our Blog contributors analyzed [whether such virtual hearings may replace physical hearings even post-COVID](#). Such developments related to the use of technology in arbitration are likely to continue into the [New Year and beyond](#).

Our Blog contributors also tackled other pressing issues related to the pandemic, including [how different jurisdictions may approach issues of force majeure in the context of the ongoing waves of COVID-19 and pre-award interest when procedural delay is beyond the parties' control](#).

Our annual live coverage of Hong Kong Arbitration Week continued. In 2020, all events were [accessible virtually](#). We kicked off our coverage with a [360-degree interview with Chiann Bao](#). We then covered events tackling [issues related to the COVID-19 pandemic](#), such as witness credibility, party agreement, and digital equality in [virtual hearings](#); [“asynchronous” arbitration](#); and the idea of a [“breathing space”](#) amidst the pandemic. We also covered events on [smart contracts, blockchain, and cryptocurrencies](#); the [“multi-faceted and pervasive issue”](#) of [U.S.-China relations](#); and a [debate on the motion, “This house believes that there is no such thing as a bad challenge.”](#)

Finally, we thank our contributors for their deeply engaging and wide-ranging contributions in 2020. We look forward to continuing our coverage of the East and Central Asian region, which we believe is likely to see exponential developments in arbitration this year.

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