

# Kluwer Arbitration Blog

## 2021 Year in Review: Key Developments in East and Central Asia

Theresa Tseung, Hiroko Yamamoto (Assistant Editor for East and Central Asia) · Thursday, January 20th, 2022

In 2021, East and Central Asia witnessed some noteworthy developments in domestic legislation, jurisprudence, and efforts to enhance the standing of arbitral institutions and seats in the region. There have also been developments in trade/investment agreements and investor-State claims in the region. In this post, our East and Central Asian editorial team reviews this progress over the past year.

### The PRC: Legislative Amendment, Jurisprudence, and Interim Measures

The 2021 coverage by our contributors continued to observe noteworthy steps towards reforming the arbitration framework in the PRC.

In July 2021, the PRC Ministry of Justice released the [Draft Amendment to the Arbitration Law](#) (“**Draft Amendment**”), the first substantial amendment to the existing [PRC Arbitration Law](#) in more than two decades. The Draft Amendment includes several breakthroughs. *First*, while the PRC only permitted institutional arbitration domestically under the existing law, a [proposed provision would permit the conduct of ad hoc arbitration in domestic arbitration with foreign elements](#). *Second*, the Draft Amendment adopts a [more liberal approach to determining validity of an arbitration agreement](#) by removing the statutory requirement for an arbitration agreement to designate an arbitration commission. *Third*, the Draft Amendment has [introduced other revisions](#) to, *inter alia*, allow foreign arbitral institutions to establish operations in Mainland China and conduct foreign-related arbitration business, recognize the concept of place of arbitration, recognize competence-competence of arbitral tribunals, and permit arbitral tribunals to order interim measures.

On jurisprudence, one contributor [observed](#) that PRC courts have generally continued to uphold the validity of arbitration agreements and recognize broad discretion for arbitral tribunals to determine their own jurisdiction, including in two recent judgments.

The past year has also seen occasions to explore emerging PRC jurisprudence. Our contributors observed that PRC courts demonstrated “*a predilection for respecting arbitral jurisdiction and upholding awards*” when [assessing multi-tiered dispute resolution clauses](#) in domestic annulment decisions. However, the Supreme People’s Court of China approved a [judgment setting aside an](#)

arbitral award involving the return of cryptocurrency on the ground that it was contrary to public interest, namely the “*financial market order*” and “*stability in the Chinese mainland society*.”

Our contributor reflected on the groundbreaking [Mainland China-Hong Kong Interim Measures Arrangement](#), which was signed in April 2019, and [noted](#) that it has become the bridge for seeking interim measures between the two jurisdictions with disparate legal approaches to granting interim measures. As of November 18, 2021, [56 successful applications](#) had been made. As [observed](#) by our contributor, we can expect to see more applications for interim measures in support of Hong Kong-seated arbitration in Mainland Chinese courts.

## Other Developments in Arbitration Acts and Domestic Legal Regimes

A number of other notable developments in legislation and legal regimes arose in the East and Central Asian jurisdictions, including the following:

- Hong Kong saw [enhanced prospects for a reform permitting outcome-related fee structures \(“ORFSs”\)](#) for arbitrations and arbitration-related court proceedings, as the Arbitration Subcommittee of the Law Reform Commission of Hong Kong published a Consultation Paper in favor of ORFSs toward the end of 2020. The Consultation Paper indicated that such reform would help safeguard Hong Kong’s standing as “*one of the world’s leading arbitral seats*.”
- Macau presented an additional advantage for choosing arbitration to resolve disputes in Macau through its [amendments to the Stamp Duty Law](#), which entered into force in March 2021. It offers tax reduction in Stamp Duty for certain documents with an arbitration clause specifying that a dispute will be resolved through an arbitral institution in Macau.
- In late 2020, the South Korean government proposed a bill that would permit class action lawsuits in any area of law. The enactment of the bill could in turn open up discussion on [permitting class action arbitrations in Korea](#).
- In August 2021, Uzbekistan’s new Law on International Commercial Arbitration (the “**ICA Law**”) entered into force. The ICA Law is based on the UNCITRAL Model Law. Our contributor [discussed](#) how the ICA Law is a significant development for establishing Uzbekistan as a reliable seat for dispute resolution in Central Asia and beyond. Uzbekistan’s existing domestic arbitration law will continue to apply to domestic arbitrations in the jurisdiction.
- The Japanese Ministry of Justice has been working on amending the [Japanese Arbitration Act](#) to bring it in line with the latest UNCITRAL Model Law. Our contributor observed that this would be an [opportunity to clarify the status of third party funding](#), which Japan currently seems to tacitly, but not explicitly, permit.
- A dedicated task force of the Chinese Arbitration Association, Taipei, has made progress on its Draft Amendment to Taiwan’s Arbitration Law. The goal of these amendments is to adopt the UNCITRAL Model Law with modifications specific to Taiwan, with the ultimate goal of [becoming a Model Law jurisdiction](#).

## Developments in Arbitration Institutions and Seats

The [2021 International Arbitration Survey](#) underscored the rise in seats and arbitration centers in Asia. SIAC, HKIAC, and, for the first time, CIETAC were ranked among the top five most-preferred arbitral institutions. HKIAC’s Secretary-General, Ms. Sarah Grimmer, [spoke to our Blog](#)

about how the HKIAC is staying ahead of legislative developments in the region, and promoting its capabilities in jurisdictions in East and Central Asia where arbitration is not as popular as in Hong Kong.

There were also developments in other institutions. The JCAA's revised arbitral rules, which included changes to expand the applicability of expedited arbitration procedures, [came into force](#) in July 2021. Our contributors also [compared](#) the guidelines and protocols on virtual hearings issued by the ICC, HKIAC, and KCAB, one year after [their release](#).

In the field of maritime arbitration, our Blog contributors [analyzed](#) how the [Asia-Pacific Maritime Arbitration Center](#) (“APMAC”) and its parent organization KCAB could amend the APMAC rules and beyond to achieve global prominence. The [Hong Kong Maritime Arbitration Group](#) swiftly [adopted new Terms and Small Claims Procedure](#), substantially based on the London Maritime Arbitrators Association's [2021 Terms and Small Claims Procedure](#).

Singapore, Hong Kong, Beijing, and Shanghai were [ranked](#) among the top 10 most-preferred arbitral seats, with those in Mainland China being nominated by more survey respondents than before. Given the extensive investment flows from the PRC into various countries in Africa in particular, our Blog contributor [analyzed](#) potential benefits for choosing to seat the disputes in a location in Africa. The Blog also [reviewed](#) the Japanese government's recent efforts to promote international arbitration and Japan's strength as an arbitral seat and location.

### **Trade/Investment Agreements**

2021 also saw developments in trade or investment treaties in East and Central Asia, and a glimpse of some States' cautious attitude toward ISDS. In December 2020, the PRC and the EU agreed in principle to the [EU-China Comprehensive Agreement on Investment](#). In January 2021, the [Japan-United Kingdom Comprehensive Economic Partnership Agreement](#) came into force. Our contributors [analyzed](#) ([here](#) and [here](#)) these agreements' lack of clear articulation of certain investment protection standards and investor-State dispute resolution mechanisms. In 2021, both the U.K. and the PRC announced a bid to accede to the [Comprehensive and Progressive Agreement for Trans-Pacific Partnership](#). While this agreement includes an ISDS mechanism, as our Blog contributor [highlights](#), several signatories have already signed side letters to exclude its application.

There were also notable ISDS disputes featuring investors or States from the regions, including a [notice of arbitration](#) submitted to Sweden by a PRC party, the [first ICSID arbitration against Malta](#) (by a PRC party), and the [first investment treaty claim against Japan](#) (by a Hong Kong party). The [Hong Kong-Japan BIT](#) was [invoked](#) in the last case, and our Blog also [considered](#) trends in investment agreements signed by Hong Kong.

### **The 10<sup>th</sup> Anniversary of Hong Kong Arbitration Week**

Our live coverage of Hong Kong Arbitration Week continued for the fourth year. We launched this year's coverage with a [conversation with Secretary-General Sarah Grimmer](#) of HKIAC, followed by reportage of events covering the [Hong Kong-PRC Interim Measures Arrangements](#), two years

on; virtual hearing from a Korean perspective; overcoming limitations on arbitral tribunals' powers in tackling cases involving fraud; as well as governmental policies and potential future disputes related to the renewables sector.

As always, we are grateful to our contributors for their continuous dedication to generating thoughtful and diverse coverage of the region. We eagerly anticipate the promising developments in arbitration to come in the next year and look forward to continuing our Blog's wide-ranging coverage of East and Central Asia.

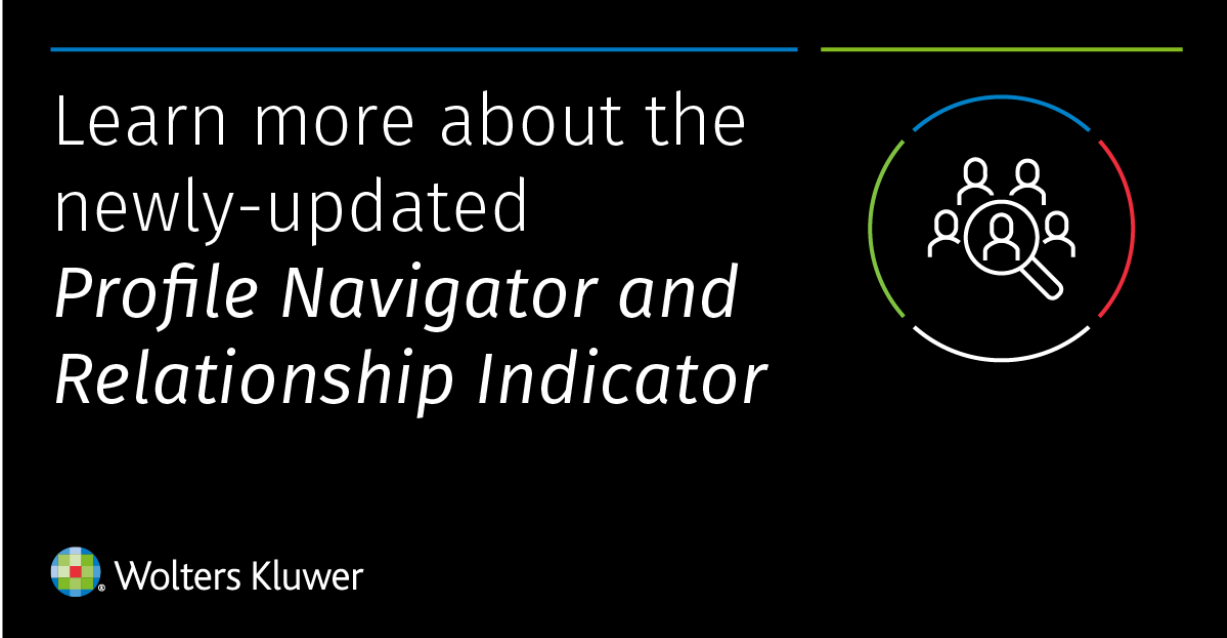
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