

Kluwer Arbitration Blog

2022 Year in Review: Key Developments in East and Central Asia

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East and Central Asia made further strides to promote arbitration, including through legislative reforms and enhancement of judicial assistance, as well as the accession, ratification, and creation of treaties. Some domestic courts clarified views on fundamental issues in arbitration. On the user side, East and Central Asian parties continued to be active as both claimants and respondents in investment treaty disputes. In the arbitration community, the resurgence of in-person interactions rejuvenated the cross-pollination of ideas.

Domestic Reforms

Several jurisdictions made efforts to update arbitration acts or other arbitration-related laws.

- In late 2021, the Japanese Ministry of Justice's Legislative Council outlined proposals to amend [Japan's Arbitration Act](#) (Act No. 138 of 2003) to reflect the 2006 amendments to the UNCITRAL Model Law. In 2022, the same council [published](#) proposed legislation for the enforceability of settlement agreements arising out of international and domestic mediation, either through a new law or an amendment of the [Act on Promotion of Use of Alternative Dispute Resolution](#) (Act No. 151 of 2004). Our contributor [observed](#) that this enhances prospects for Japan's adoption of the Singapore Convention on Mediation.
- Following the [amendment](#) of the [Law on International Commercial Arbitration](#) in 2021, Uzbekistan amended certain related legislative acts. Our contributor [noted](#) that these amendments further align the Uzbek arbitration law with international norms, including the 2006 UNCITRAL Model Law.
- In December 2021, the Hong Kong Law Reform Commission published its report on Outcome Related Fee Structures for Arbitration (ORFS), as analyzed by our contributors ([here](#), [here](#), and [here](#)). The ORFS regime came into [full operation](#) in December 2022 and [legalized](#) three types of ORFS: conditional fee agreement; damages-based agreement; and hybrid damages-based agreement.
- Data protection laws enacted in recent years are also impacting arbitration practice. Our contributors [discussed](#) the potential delays caused by the PRC's data protection laws and

strategies for the tribunal to minimize their impact. Such strategies include addressing the issue at the outset of the proceeding and, if appropriate, imposing adverse inferences or cost consequences on a party for failure to comply with required document disclosures or releasing both parties from document disclosure obligations to level the playing field.

The PRC in particular has continued to enhance judicial assistance of arbitration.

- Following the 2019 [Mainland China–Hong Kong Interim Measures Arrangement](#), Mainland China and Macau signed a similar agreement in February 2022, permitting parties in institutional arbitration seated in Mainland China or [Macau](#) to request interim measures from courts in the other jurisdiction.
- In June 2022, HKIAC became the [first arbitral institution outside of Mainland China](#) to be included in the China International Commercial Court (CICC)’s “One-Stop” Platform for Diversified International Commercial Dispute Resolution, allowing parties in certain HKIAC-administered cases to directly request interim relief or enforcement of arbitral awards from the CICC.

Almost all jurisdictions in East and Central Asia are [contracting States](#) to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (“New York Convention”). Our contributors reported on some of the last frontiers.

- In May 2022, [Turkmenistan acceded to the New York Convention](#). This follows Turkmenistan’s other recent efforts to promote arbitration, such as a presidential order in 2021 to create an international arbitration center. With that, all jurisdictions in Central Asia have acceded to the New York Convention.
- Our contributors also espoused the [benefits of enabling Taiwan to join the New York Convention system](#). They suggested remedying Taiwan’s exclusion at the international level through amendment of the New York Convention, adoption of a new treaty, or adoption of a series of bilateral (or multilateral) treaties, rather than through domestic legislative solutions.

National Court Cases

Our coverage featured domestic court cases that provided clarity on fundamental questions in arbitration.

The PRC: In late 2021, the [Supreme People’s Court published a lower court decision](#) that recognized the validity of a nonbinding arbitration agreement and struck down the accompanying litigation agreement as violating the principle that arbitration precludes court jurisdiction. Our contributor [inquired](#) as to whether the two agreements are truly separable but also highlighted the decision’s supportive attitude toward foreign-related arbitration, especially when Shanghai (where the lower court is located) is accelerating its efforts to become an arbitration center in the Asia-Pacific region.

Hong Kong: In June 2022, the Hong Kong Court of Appeal clarified in *C v D* that compliance with procedural pre-arbitration conditions is a matter of admissibility (not jurisdiction), so the tribunal’s decision in this regard is not subject to judicial review. Our contributor [commented](#) that this distinction between admissibility and jurisdiction is in line with international best practice.

South Korea: Our contributors analyzed the Korean Supreme Court’s landmark decision from March 2022 that enforced a Hawaiian court judgment that awarded treble damages, observing that it has positive implications for parties seeking to enforce awards with exemplary damages in Korea. While the Korean legal system has historically rejected punitive damages, the Court recognized that recently enacted laws allow them. Thus, the Court found that enforcement was not contrary to Korean damages law principles.

Another post highlighted an under-the-radar 2018 Supreme Court decision that presents a rare instance of a successful “public policy” challenge to enforcement. The at-issue award involved tax liability that, after the award was rendered, was reduced by the Korean tax authorities. The Supreme Court remanded the case, and the High Court accordingly partially refused enforcement of the award by subtracting the excluded tax amount.

Investment Treaty Disputes

Several East and Central Asian jurisdictions entered into new investment treaties. Our contributors observed that the Mexico–Hong Kong BIT, which entered into force in June 2021, may be especially useful for PRC investors utilizing Hong Kongese vehicles. Mexico had previously entered into the Mexico–PRC BIT, which has been in force since 2009. Another contributor highlighted that, in contrast to some countries, Japan has increasingly concluded BITs since 2011. In June 2022, Japan signed the Bahrain–Japan BIT. The Kazakhstan–Qatar BIT was signed in October 2022.

Case activity by Central and East Asian claimants and respondents has been steady. In September 2022, the ICSID registered the request for arbitration in *International Mining Company Invest, Inc. v. Kyrgyz Republic* (ICSID Case No. ARB/22/25), instituted under the U.S.–Kyrgyz Republic BIT. The case is the first to be filed under the ICSID Convention since the Kyrgyz Republic ratified the Convention in April 2022. PRC claimants have brought several claims in 2022, including *Huawei Technologies Co., Ltd. v. Kingdom of Sweden* (ICSID Case No. ARB/22/2) (regarding exclusion of Huawei from the 5G network); *PCCW Cascade (Middle East) Ltd. v. Kingdom of Saudi Arabia* (ICSID Case No. ARB/22/20) (regarding telecommunication enterprise); *PowerChina HuaDong Engineering Corporation and China Railway 18th Bureau Group Company Ltd. v. Socialist Republic of Vietnam* (ICSID Case No. ARB(AF)/22/7) (regarding construction project).

Other cases have reached the award stage. The private equity fund Lone Star received the award over the sale of its stake in the Korea Exchange Bank in *LSF-KEB Holdings SCA and Others v. Republic of Korea* (ICSID Case No. ARB/12/37), bringing the decade-long case that was at the time the first publicly known investment-treaty case against Korea one step closer to conclusion.

A quantum award was also issued in *Eurus Energy Holdings Corporation v. Kingdom of Spain* (ICSID Case No. ARB/16/4) over Spain’s reform of the renewable energy incentive regime. Final awards were issued for the treaty-based *Gardabani Holdings B.V. and Silk Road Holdings B.V. v. Georgia* (ICSID Case No. ARB/17/29) and the contract-based *Gardabani Holdings B.V. and Others v. Government of Georgia and Others* (ICSID Case No. ADM/18/1 & SCC Case No. V2018/039), both alleging that Georgia failed to uphold its commitment to increase electricity tariffs.

Annulment and enforcement actions across the globe are in progress for several awards. For

example, see *JGC Holdings Corporation v. Kingdom of Spain* (ICSID Case No. ARB/15/27); *Edmond Khudyan and Arin Capital & Investment Corp. v. Republic of Armenia* (ICSID Case No. ARB/17/36); and *Zhongshan Fucheng Industrial Investment Co. Ltd. v. Federal Republic of Nigeria* (UNCITRAL).

HK Arbitration Week and Other Events

In-person events resurged in 2022. The Blog covered several major events.

We continued our live coverage of the [Hong Kong Arbitration Week](#) for the fifth year, kicking off with an [interview](#) of HKIAC Secretary-General Dr. Mariel Dimsey, who assumed office in August 2022. We covered panels on the [implications](#) of the PRC's recent data protection laws on arbitration; [global debt recovery strategies](#) for creditors and enforcement actions involving parties in financial distress; and the impact of [ESG](#) on international arbitration, including climate disputes and industry efforts for greener behaviors.

Our coverage of the [Seoul ADR Festival](#) included a session on [procedural innovations](#), as well as one on trends and disputes in the [energy market](#). [Yonsei Arbitration Day](#) considered the power and challenges of arbitration in connection with [armed conflict](#).

Finally, the third [Taiwan International Week](#) included discussions on the challenges and opportunities afforded by the [pandemic](#), [digital economy](#), and [ESG](#).

Conclusion

We are grateful for the continued engagement of our contributors and readers, which allows this Blog to cover the numerous jurisdictions of East and Central Asia. While each jurisdiction may be at a different stage of maturity in terms of its exposure and approach to arbitration, one can sense a sustained shared interest among the jurisdictions to ensure that arbitration remains effective and dependable. We look forward to continuing and expanding our collaboration in the New Year and to providing up-to-date coverage of the East and Central Asia region.

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This entry was posted on Wednesday, January 4th, 2023 at 8:30 am and is filed under [2022 in Review](#), [Arbitration Act](#), [HK Arbitration Week](#), [Hong Kong](#), [Interim measures](#), [ISDS](#), [Japan](#), [Korea](#), [Legislative amendment](#), [Macau](#), [New York Convention](#), [PRC](#), [Taiwan](#), [Treaty](#), [Turkmenistan](#), [Uzbekistan](#)

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