

Kluwer Arbitration Blog

2023 Year in Review: Southeast Asia

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2023 in Southeast Asia witnessed several significant decisions issued by apex courts across various countries, and exciting new initiatives which promise an eventful 2024 ahead. In this post, we've put together a summary of 2023's key highlights.

Developments in Arbitral Rules and Regulatory Frameworks

2023 was an eventful year for arbitral institutions in Southeast Asia, several of which took the opportunity to update their arbitral rules to respond to the evolving needs of international arbitration users.

- The Asian International Arbitration Centre (AIAC) revised both its standard [Arbitration Rules](#) as well as its [i-Arbitration Rules](#) for Islamic arbitrations. In the Blog's [timely interview with Datuk Sundra Rajoo, Director of the AIAC](#), Datuk Sundra explained that the 2023 amendments have enhanced various aspects of the rules, including the provisions relating to consolidation and joinder, third-party funding, and summary determination.
- The Thai Arbitration Institute (TAI) also published the fifth amendment to its [Arbitration Rules](#) as part of its attempts to [modernise its Arbitration Rules to be in line with widely recognised international arbitration practice](#). The key changes to the TAI's Arbitration Rules include the empowering of tribunals to order experts from the same discipline to give evidence concurrently (i.e., hot tubbing) at any stage of the arbitration proceedings.
- While the Singapore International Arbitration Centre (SIAC)'s revised arbitration rules are still in the works, the SIAC took a major step in 2023 by publishing the [Draft 7th Edition of the SIAC Rules](#) (the "**Draft SIAC Rules**") for public consultation. The Blog [canvassed and discussed some of the key provisions in the Draft SIAC Rules](#), including the introduction of a "streamlined procedure" as an even faster alternative to the present expedited procedure.

National regulatory and judicial bodies also took steps to promote the development of arbitration as a method of dispute resolution.

- The Blog discussed [Memorandum Circular No. 8 \(s. 2022\) \(MC 8\)](#), issued by the Securities and Exchange Commission of the Philippines (SEC). MC 8 clarified the rules that apply to arbitrations involving intra-corporate disputes, including specifying the role of the SEC in such arbitrations.

- In Indonesia, the Supreme Court enacted Supreme Court Regulation No. 3/2023 which clarified various aspects of Indonesia's arbitration laws, including the procedure for the appointment of arbitrators by the Court, challenges to a court-appointed arbitrator, and proceedings for annulment of a domestic arbitral award.

On a related note, the Blog also considered whether Singapore's domestic and international arbitration legislation provides arbitral tribunals with the power to promote the amicable resolution of disputes through conciliatory processes such as mediation, and compared Singapore's approach to those taken in other jurisdictions.

Given the importance of the United Nations Convention on Recognition and Enforcement of Foreign Arbitral Awards 1958 ("New York Convention") to the development of international arbitration, it also bears mention that the Democratic Republic of Timor-Leste became the 172nd country to accede to the New York Convention in January 2023.

Potential Pitfalls

The Blog also discussed several 2023 decisions, which highlight the potential pitfalls with arbitration in different jurisdictions.

When it comes to commencing an arbitration, the Hanoi People's Court held in a recent 2023 decision that a power-of-attorney signed outside of Vietnam and authorizing the signing and filing of an arbitration in Vietnam must have received consular authentication. While not a binding precedent, it follows a similar decision of the People's Court of Ho Chi Minh City in 2020 and serves as clear guidance that arbitration users seeking to commence arbitration in Vietnam should be cognizant of.

On that note, the Blog also discussed the perspective of Vietnamese courts regarding non-compliance with pre-arbitral requirements or preconditions to arbitration, and conducted an interview with Mr Vu Anh Duong, the Secretary General of the Vietnam International Arbitration Centre (VIAC). Both articles may also provide readers with helpful insights on Vietnam-seated arbitrations or arbitrations under the VIAC Rules.

Once the arbitration has been commenced, the maintenance of confidentiality often creates issues for the parties. In that connection, two of the most debated arbitration-related decisions from the Singapore courts in 2023 concerned the maintenance of arbitration confidentiality. Both cases, i.e., *The Republic of India v Deutsche Telekom AG* [2023] SGCA (I) 4 and *CZT v CZU* [2023] SGHC(I) 11, were discussed in depth on the Blog.

The dispute between the Republic of India and Deutsche Telekom AG generated further jurisprudence as both the Singapore and Swiss courts rejected India's attempt to resist the arbitration award both at the seat (i.e., Switzerland) and at the place of enforcement (i.e., Singapore). The procedural complexities that arose as well as the practical guidance these decisions offer on how courts will approach belated jurisdictional objections were discussed on the Blog.

Arbitrability

Arbitrability was a hot topic in the region in 2023, on the back of two very significant decisions published by the apex courts in Singapore and the Philippines.

The Singapore Court of Appeal (SGCA) heralded the start of 2023 by releasing its decision in *Anupam Mittal v Westbridge Ventures II Investment Holdings* [2023] SGCA 1 (“*Anupam*”) on January 6, 2023. In *Anupam*, the SGCA considered what law should govern the question of arbitrability at the pre-award stage. The SGCA ruled that arbitrability should, at the first instance, be determined by the law of the arbitration agreement, but also added Singapore law as the law of the seat would be relevant – if Singapore law considers that dispute to be non-arbitrable, the arbitration would still not be able to proceed at the pre-award stage. *Anupam* was widely discussed in the arbitration community as the SGCA’s approach on the issue diverged from the position taken by other national courts, and our contributors ([here](#) and [here](#)) inquired as to whether the SGCA’s approach arguably results in a narrower approach to arbitrability.

In May 2023, the Philippines Supreme Court published its decision in *Maynilad Water Services, Inc., v National Water and Resources Board, et al.*. As observed by our contributor ([here](#)), this decision explored the tension between arbitrability and enforcement, as the Philippines Supreme Court refused to enforce an arbitral award on grounds of public policy, even though it found that the underlying dispute was arbitrable.

Events

The Blog covered several exciting events in 2023.

We provided full coverage of the [SIAC Symposium](#), SIAC’s flagship conference, which included panel discussions on the [next generation of disputes in international arbitration](#) and the [Draft SIAC Rules](#), as well as technology-driven panel discussions [exploring regional and topical developments, trends and forecasts](#). These discussions continued later in the year with the [SIAC Manila Conference](#), which also included panel sessions on [technology, corporate and investor-state disputes](#).

Both Vietnam and Brunei also hosted inaugural ADR/arbitration events in 2023. Vietnam’s inaugural ADR Week provided the opportunity for a comparative analysis across the region on the [separability doctrine and determination of the governing law of arbitration agreements](#), whereas the Brunei Darussalam Arbitration Centre’s first public arbitration event on 30 May 2023 tackled the very topical issue of [controlling costs in international arbitration](#).

Looking Forward

In view of the recent and upcoming developments in arbitral rules and legislative frameworks across the region, as well as in-person events resuming in full force, 2024 promises to be an exciting year for the development of arbitration across Southeast Asia. We look forward to receiving many more contributions from our network in the region and to keeping our community updated in 2024.

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