

Kluwer Arbitration Blog

Hong Kong Arbitration Week 2024: Defying Convention and Breaking New Ground

Meg Utterback (King & Wood Mallesons) · Saturday, November 2nd, 2024

On the third day of Hong Kong Arbitration Week, [the ADR in Asia Conference](#) took place, featuring a morning panel on *China's Inbound and Outbound Investment: Impact on Disputes*. Panelists provided regional insights into the evolving landscape of international investment disputes. The panelists shared their regional perspectives on the evolving landscape of international investment. [Meg Utterback](#) of King & Wood Mallesons (KWM) moderated the panel, which included experts from diverse regions. [Cristián Conejero Roos](#), Partner and Head Global Arbitration Practice Cuatrecasas, addressed developments in Latin American, while [Lingzhi Fu](#), Deputy Head of the Legal Department at the Silk Road Fund, discussed China's outbound investments. [Professor Dorothy Ufot](#), Managing partner, Dorothy Ufot & Co., addressed the perspective from Nigeria and Africa, and [Dr. Mahmood Hussain](#), Founding Partner – M&CO Legal, provided insights on the Middle East.

Chinese Investments: Regional Insights and Key Sectors

The discussion began with an overview of Chinese investment in each region, which has been extensive across all jurisdictions. Cristián Conejero highlighted significant growth and diversification in Latin America, particularly in sectors such as electricity, renewable energy, minerals (primarily copper), metals (including lithium), chemical products, agroindustry, ports, desalination plants, technology, and the automotive industry. In Africa, Professor Ufot reported substantial investment driven by China's Belt and Road Initiative, particularly in infrastructure, energy and natural resources, manufacturing, textiles, mining, cement, and technology.

Dr. Hussain noted that Chinese investment in the Middle East has doubled over the past decade, emphasizing projects in energy, oil and gas, mining, and telecommunications. He also mentioned China's role in developing smart cities throughout the region.

Lingzhi Fu discussed China's outbound investment from the Fund's perspective as an equity investor in major projects. The Silk Road Fund has deployed \$40 billion in capital, with \$23 billion invested in 80 projects across over 70 countries. These Belt and Road investments include:

- Europe: Greenfield projects focused on batteries and electric vehicles (EVs) in Hungary and Germany.

- Southeast Asia: Investments in supply chain hubs in Vietnam, Indonesia, and Thailand.
- Africa: Focus on infrastructure, digital networks, and green and social projects.
- Latin America: A \$500 million platform for energy and infrastructure, with key projects in Brazil.
- Middle East: A shift from oil to renewable energy, including solar and wind projects.

Common Dispute Resolution Mechanisms

In the Middle East, parties often favor local arbitration centers for dispute resolution, though international options such as the ICC, SIAC, and others are also considered, alongside the DIFC. Some disputes may be seated in Hong Kong, but this typically depends on the leverage of the parties in the contract. Like their Chinese counterparts, parties in the Middle East place a high value on relationships, making negotiated settlements and mediation key components of dispute resolution, as they help preserve commercial relationships.

Lingzhi Fu echoed this preference for negotiated resolutions. When settlements fail, arbitration is pursued in various venues depending on the contract and project type:

- Cayman/BVI funds: Cayman law, ICC/LCIA.
- Project financing: English/New York law, ICC/LCIA.
- Asia-Pacific M&A: Hong Kong/Singapore law, HKIAC/SIAC.
- Europe, Africa, Latin America M&A: ICC.
- Middle East M&A: DIAC/SCCA.

In Africa, arbitration may involve institutions such as the ICC, LCIA, ICDR, or the Lagos Court of Arbitration, while mediation is handled by CCPIT, NMCC, or private mediators. Nigerian courts are typically the preferred option for local projects.

In Latin America, arbitration is the primary mechanism, though intermediate ADR options like Dispute Adjudication Boards (DAB) and mediation are also utilized. While HKIAC and SIAC clauses are becoming more common, the ICC and other US, European, and local arbitral institutions still dominate the landscape.

Tribunal Composition

Panelists from all regions reported notable improvements in the diversity of arbitration tribunals, particularly regarding gender and nationality. However, they agreed that local arbitrators are often preferred, as they bring a better understanding of the cultural and legal context of the dispute. There was shared concern that international arbitrators, particularly from Europe and the US, are frequently appointed globally, while arbitrators from their own regions are often limited to regional disputes. The panelists emphasized the need for greater diversity not only within their regions but also in the global appointment of arbitrators from diverse regions. Broadening such opportunities would allow arbitrators to serve internationally and learn from each other's experiences, benefiting the arbitration community as a whole.

Cultural Sensitivities

Each panel member highlighted cultural nuances within their jurisdiction that arbitrators should consider. In the Middle East, Dr. Hussain emphasized the importance of tone and deference. Professor Ufot echoed this, noting that Nigerian counsel may appear forceful compared to the more reserved demeanor of Chinese witnesses and counsel, particularly during cross-examination, where cultural differences can significantly impact perceptions.

Cristián Conejero stressed the importance of setting aside bias in the arbitration forum. He observed that Latin American witnesses are often misunderstood; their manner of responding to cross-examination is sometimes misinterpreted as evasive or dishonest, when that is not the case.

Lingzhi Fu added that Chinese parties find international arbitration unfamiliar and often struggle with the common law-style proceedings, especially in expressing their narratives during cross-examination.

Conclusion

Chinese investment across the Belt and Road is fueling a rise in global disputes. This trend may, over time, contribute to a more diverse composition of arbitration panels both regionally and internationally. Regardless of the arbitration seat, success as counsel or arbitrator in these cases requires a deep appreciation for the regional and cultural contexts essential to effectively resolving disputes involving Chinese parties.

This article is part of our “live” coverage of Hong Kong Arbitration Week. More coverage from the week is available [here](#).

To make sure you do not miss out on regular updates from the Kluwer Arbitration Blog, please subscribe [here](#). To submit a proposal for a blog post, please consult our [Editorial Guidelines](#).

This entry was posted on Saturday, November 2nd, 2024 at 8:56 am and is filed under [China](#), [HK Arbitration Week](#), [HKIAC](#), [Hong Kong](#), [Uncategorized](#)

You can follow any responses to this entry through the [Comments \(RSS\)](#) feed. You can leave a response, or [trackback](#) from your own site.

