Kluwer Arbitration Blog

2024 in Review: Southeast Asia

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The year 2024 witnessed notable advancements in the Southeast Asian arbitration and dispute resolution landscape. Key developments included legislative reforms, initiatives to strengthen arbitration and legal frameworks, and landmark judicial decisions. Here's a closer look at last year's highlights.

Significant Advancements in Dispute Resolution Frameworks

Southeast Asian countries launched modernised arbitration laws and innovative court projects, reflecting the region's efforts to enhance arbitration accessibility, transparency, and efficiency.

Timor-Leste became a contracting party to the Permanent Court of Arbitration following its accession to the 1907 Hague Convention for the Pacific Settlement of International Disputes. This accession marked a milestone in the country's integration into the international dispute resolution framework. Vietnam likewise affirmed the role of arbitration in its updated Land Law, which clarified that commercial arbitration is a permissible mechanism for settling land disputes. By integrating arbitration into its land law framework, Vietnam seeks to promote an investor-friendly environment and enhance confidence in its legal system.

Several jurisdictions also developed their judicial frameworks and processes in ways that may complement or compete with arbitration. Cambodia announced the establishment of its first-ever commercial court, a development aimed at improving transparency and efficiency for foreign investors. The commercial court will specialise in handling trade and investment-related disputes at its court in Phnom Penh. Singapore passed a bill to establish an International Committee of the Singapore International Commercial Court ("SICC") to hear certain civil appeals and related proceedings from prescribed foreign jurisdictions. With this development, Singapore aims to enhance its position as a dispute resolution hub, enabling the SICC to expand its influence and facilitate cross-border commercial dispute resolution in Southeast Asia and beyond. The Thai Arbitration Institute introduced a pilot project for in-court arbitration, streamlining arbitration proceedings within Thailand's judiciary. This innovative program aims to expedite dispute resolution by combining the efficiency of arbitration with the enforceability of court judgments for civil disputes that require legal or factual expertise.

Malaysia revised its Arbitration Act in 2024. Key changes include clearer provisions for interim measures, regulation of third-party funding, recognition of emergency arbitration, and improved mechanisms for the enforcement of arbitral awards. The amendments also mirrored the restructuring of the Asian International Arbitration Centre ("AIAC"), which is striving to establish the inaugural AIAC Court of Arbitration. The year ended with the release of the 7th Edition of the Arbitration Rules of the Singapore International Arbitration Centre ("SIAC") which introduced innovations such as the Streamlined Procedure and protective preliminary order applications in emergency arbitration.

Developments in Case Law

The Blog also received numerous contributions regarding a variety of developments in arbitration-related jurisprudence.

Enforceability of Arbitration Agreements

A recurring issue that came up for discussion was the enforcement of arbitration agreements in respect of claims that are also subject to insolvency proceedings. Contributors raised the need for an international consensus on the approach taken by the courts on this issue, following a comparison of the approaches taken by the courts in Singapore, the United Kingdom ("UK"), and India. Another contributor evaluated the impact of the recent judgments issued by the Hong Kong Court of Appeal and the UK Privy Council, by comparing the latest approaches promulgated in those seminal judgments with that taken in Singapore. These posts will surely not be the last that this Blog will receive on this issue, as we ponder how the law in Singapore and other Southeast Asian jurisdictions may develop in response to the latest decisions from Hong Kong and the UK.

Another controversial topic that received attention was the enforceability of arbitration agreements by and against non-parties to the arbitration agreement. In this regard, the Blog covered analysis regarding the approach taken by the Indonesian courts towards attempts by claimants to enforce arbitration agreements against non-signatories. Contributors also weighed in on a decision of the Singapore High Court ("SGHC") in a representative action brought by two claimants on behalf of themselves and 375 other individuals. Pertinently, while the court dismissed the application by the defendants for a stay in favour of arbitration as one of the defendants had taken steps in the court proceedings amounting to submission to the court's jurisdiction, the court delivered insightful *obiter* remarks on the enforceability of arbitration agreements against representative claimants in class action suits. Relatedly, the Singapore Court of Appeal ("SGCA") arguably adopted the same approach towards non-parties, albeit in a slightly different context, by refusing to grant anti-suit injunctions ("ASIs") preventing court proceedings against non-parties to an arbitration agreement.

Post-Award Challenges

The Blog covered discussion regarding the SGHC decision that addressed the novel question of whether an applicant may seek a case management stay of its own application to set aside an arbitral award in favour of a pending parallel arbitration.

ASIs at the post-award stage were also the subject of scrutiny before the SICC, particularly in a dispute where the SICC issued two noteworthy judgements: first, to uphold its decision to grant an interim post-award ASI pending the hearing and determination of the claimant's application for a permanent ASI, and secondly, to grant the claimant's application for a permanent post-award ASI. These decisions are notable for being the first known judgments by the SICC in which post-award ASIs have been granted.

Elsewhere in the region, the Philippines Supreme Court issued a highly anticipated decision, dismissing the application by CJH Development Corporation ("CJH") to set aside an arbitral award in which the tribunal had allowed the Philippine government's application to recover from CJH a 247-hectare plot of land in the John Hay Special Economic Zone (a redeveloped former U.S. military reservation).

Finally, the Blog also covered developments at the enforcement stage of two long-running transnational dispute sagas. One contributor discussed a decision by the SGCA in the *Deutsche Telekom v India* dispute to uphold the enforcement of an arbitral award obtained by Deutsche Telekom against India, on the grounds of transnational issue estoppel and the "primacy" principle, in circumstances where India had previously failed in its attempts to set aside the award before the Swiss courts and contest enforcement before the German courts. Another set of contributors discussed the decision of the SGHC in relation to the enforcement of a provisional award issued in an arbitration conducted pursuant to the Dubai International Arbitration Centre Rules, even though the arbitration agreement provided for arbitrations to be administered by the now-defunct DIFC-LCIA arbitration centre.

Best Practices for Arbitrators

Instructively, several decisions issued in the past year, some of which were discussed on the Blog, provided critical lessons for arbitrators on accountability and procedural diligence in arbitral proceedings.

In *Voltas Ltd v York International Pte Ltd* [2024] SGCA 12, the issue of when an arbitral award is considered "final" was brought to the fore. The case emphasised the need for arbitrators to define the finality of their awards clearly as a lack of clarity can lead to unnecessary post-award litigation, delaying enforcement and increasing costs for parties. One contributor observed how this case serves as a reminder for arbitrators to draft awards meticulously, clearly identifying their scope and finality.

In *DJO v DJP and others* [2024] SGHC(I) 24, there were three arbitrations—two in India and one in Singapore—which had similar factual and legal issues. All three cases were also presided over by the very same arbitrator. It was revealed that the Singapore arbitral tribunal copied a substantial number of paragraphs from the Indian awards in the process of drafting its own award. The Singapore arbitral award was eventually set aside due to a breach of natural justice as arbitrators must ensure their decisions reflect independent analysis, demonstrating accountability and fairness to all parties involved. One contributor queried whether the names of arbitrators, whose awards have been set aside due to a breach of natural justice, should be published, in order to deter such egregious lapses in professional conduct by arbitrators.

In *Vietnam Oil and Gas Group v Joint Stock Company (Power Machines – ZTL, LMZ, Electrosila*

Energomachexport) [2024] SGHC 244, the SGHC, instead of setting aside the arbitral award, decided to remit a question of liability to the tribunal due to a breach of natural justice. The arbitrators' reasoning on termination was found to lack any nexus to the parties' pleaded cases.

On a more reassuring note, *Swire Shipping Pte Ltd v Ace Exim Pte Ltd* [2024] SGHC 211 underscored the high bar that must be overcome in order to set aside an award in Singapore. That an arbitral award was "very difficult to read and understand" was not enough for it to be set aside, as courts should read awards in a "reasonable and commercial manner . . . instead of destroying it."

Events

The Blog covered several meaningful events in 2024 which illustrated the ever-growing prominence of Southeast Asia in international arbitration. We provided full coverage of SIAC's flagship event, the SIAC Symposium, which was held on 26 August 2024. The conference covered a range of important topics, with the morning sessions discussing the challenges posed by artificial intelligence, climate change, and trade disruption, and the afternoon sessions covering plenary panel discussions that addressed various core issues shaping the future of arbitration. Further afield, we provided coverage of the conference co-organised by the European Chinese Arbitrators Association and the Asian European Arbitration Centre in Düsseldorf, which discussed whether we are experiencing "A New Dawn of Arbitration in Asia."

Looking Forward

In light of the wealth of developments across the region in 2024, 2025 promises to be yet another exciting year of progress and growth in the international arbitration field across Southeast Asia. We look forward to facilitating more insightful analysis and discourse from our network, and keeping our readership abreast of the latest developments in 2025.

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