Kluwer Arbitration Blog

2024 Year in Review: Trends and Developments in East and Central Asia

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This past year brought significant developments in international arbitration across East and Central Asia, shaping the region's dispute resolution landscape. China's latest draft amendment to its Arbitration Law introduced key reforms but was seen by many as representing a conservative shift from earlier proposals. Japan and Azerbaijan modernized their national arbitration laws to align with the 2006 UNCITRAL Model Law. South Korea and Hong Kong strengthened their respective arbitration ecosystems through high-profile conferences and institutional support.

In this post, we review these major legislative, institutional, and jurisprudential developments, highlighting their impact on arbitration users and the broader dispute resolution ecosystem in the region.

People's Republic of China

The draft amendment to the PRC Arbitration Law ("2024 Draft") was released on November 8, 2024—more than three years after the publication of the 2021 draft amendment ("2021 Draft")—marking a long-awaited development in the reform of the PRC Arbitration Law. Our contributor noted that the 2024 Draft proposes several improvements to the current arbitration regime, such as introducing the concept of the seat of arbitration and permitting ad hoc arbitration for a limited scope of international disputes. However, compared to the 2021 Draft, the 2024 Draft represents a conservative retreat from international alignment. Notably, the 2024 Draft does not retain the "competence-competence" doctrine and the tribunal's power to grant interim measures proposed in the 2021 Draft. It also introduces two articles emphasizing "the leadership of the Communist Party of China" and adding an extra layer of administrative control, which depart from international convention and have raised concerns within certain quarters of the arbitration community.

While the seat of arbitration has yet to be incorporated into the PRC Arbitration Law, PRC courts appeared increasingly receptive to using the seat of arbitration as the determining factor for an award's nationality. Our Blog reviewed the Chinese judicial practice after *Brentwood v. Guangdong Fa'anlong* (2020), noting that PRC courts were likely shifting towards the seat

standard in determining an award's nationality and as a result, assuming the supervisory role over China-seated arbitrations administered by foreign arbitration institutions. Notably, on January 16, 2024, the PRC Supreme People's Court included as a typical case of arbitration practice *Daesung Industrial Gases Co., Ltd. and Daesung (Guangzhou) Gases Co, Ltd Praxair (China) Investment Co., Ltd.*, where the court affirmed its supervisory jurisdiction over the underlying arbitration.

Our Blog also explored other significant issues in recent PRC arbitration jurisprudence. With sanctions remaining a pressing issue in international arbitration, our contributor revisited a PRC court decision that addressed this issue in the context of enforcing a foreign award. In this case, the court rejected the argument of the party resisting enforcement that the award was tainted and unfair because the tribunal was chaired by an arbitrator whose chambers were sanctioned by the Chinese government. In addition, our contributors delved into the first PRC case explicitly recognizing the validity of an asymmetrical arbitration agreement under PRC law.

On the institutional side, China International Economic and Trade Arbitration Commission (CIETAC)'s 2024 Rules, effective as from January 1, 2024, introduced new provisions on third-party funding and early dismissal. To address the absence of "competence-competence" in the PRC Arbitration Law, the 2024 Rules also provide that the power to determine jurisdiction shall be delegated to the tribunal after its constitution. Our Blog presented an overview of the key amendments and new updates in the 2024 Rules.

Hong Kong

In June 2024, the Hong Kong International Arbitration Centre ("HKIAC") introduced revised arbitration rules aimed at enhancing procedural efficiency and addressing the evolving needs of users. Key innovations include changes in provisions for expedited procedures, bifurcated proceedings, emergency procedures, and arbitrator challenges. These updates underscore Hong Kong's commitment to maintaining its status as a leading arbitration hub.

The Blog also featured several posts adopting a comparative perspective on arbitration jurisprudence in Hong Kong. One contributor compared the Hong Kong and Singaporean courts' different approaches in considering contracts that reference arbitration centers that either do not exist or are referenced incorrectly. Courts in both jurisdictions have exhibited a pragmatic approach, interpreting the parties' intent to uphold arbitration agreements where possible. However, the contributor noted that the differing procedural rules of each jurisdiction may yield contrasting outcomes that depend on, for example, whether an arbitration proceeding has even commenced.

Our Blog also covered legislative distinctions between Hong Kong and Singapore, emphasizing differences in judicial intervention and appellate procedures. For example, Hong Kong law allows local courts to order interim measures in a wider range of circumstances than in Singapore, but in practice this ability is limited in both jurisdictions once the tribunal has been constituted. While these differences may not always dictate case outcomes, they can influence party preferences and strategies when selecting a seat of arbitration.

Finally, we highlighted divergent judicial responses in Hong Kong, Singapore, and England regarding arbitration clauses in corporate winding-up proceedings. In Hong Kong, the case law was fragmented until the Hong Kong Court of Appeal's judgment in *Re Simplicity & Vogue*

Retailing (HK) Co Limited [2024] HKCA 299 which pronounced that arbitration clauses should generally be given priority over winding-up petitions to the same effect as foreign exclusive jurisdiction clauses.

The Blog also covered two major arbitration events in Hong Kong in 2024. The ICCA Congress in May 2024 explored the theme "International Arbitration: A Human Endeavour" and examined how human behavior shapes arbitration practices. Day One featured a keynote by Professor Bryant G. Garth on ethical foundations in arbitration, followed by panels on cultural sensitivity and biases in decision-making. Day Two addressed advocacy and procedural norms shaped by human creativity and fallibility. Discussions highlighted ethical standards and adapting proceedings to diverse cultural contexts. The final day focused on artificial intelligence ("AI") in arbitration. While AI offers efficiency gains, speakers emphasized the need for ethical safeguards to maintain human judgment.

Hong Kong Arbitration Week in October 2024 showcased cutting-edge topics such as crowd-sourced dispute resolution under Web 3.0 frameworks and AI-driven justice. Panels explored challenges surrounding decentralized platforms, including enforcement issues tied to anonymity and virtual assets. Discussions also addressed AI integration into judicial systems as a support tool rather than a replacement for human judgment. The event reaffirmed Hong Kong's leadership in arbitration innovation while addressing emerging ethical considerations in technology-driven dispute resolution processes.

Japan

2024 saw the continuation of the Japanese government's initiative to enhance Japan's presence in the global alternative dispute resolution market, with a particular emphasis on international arbitration and mediation.

Notably, amendments to Japan's Arbitration Act (Act No. 15 of 2023), which took effect on April 1, 2024, marked the first revisions to the law since its enactment two decades ago. These amendments align the Arbitration Act with the 2006 UNCITRAL Model Law, rather than the 1985 version. One key change clarifies that arbitral tribunals have the authority to issue interim measures, and that Japanese courts may enforce such measures, regardless of whether the arbitration's seat is within Japan.

Last year also marked the inaugural Japan International Arbitration Week ("JIAW"). Our contributors covered the Japan Commercial Arbitration Association ("JCAA") Arbitration Days, which were previously held as a standalone event but were integrated into JIAW. On Day 1, panels focused on the unique aspects of arbitrations and businesses in Japan, including its history with international arbitration, cultural characteristics, and opportunities for Japan to explore other arbitration institutions and seats. On Day 2, the discussions centered on the broader topic of better user experience from regional and global perspectives of the international arbitration market and community.

Korea

Korea hosted the Annual ICC-FIDIC Conference on International Construction Contracts and Dispute Resolution for the first time on October 17 and 18. Held under the auspices of the Ministry of Justice, the event underscores the Korean government's commitment to promoting international arbitration, particularly in construction, given the significant role Korean companies play in the global construction market. Day 1 focused on perspectives from various stakeholders—in-house and outside counsel, experts, and government officials—on the shifting market landscape and the most pressing challenges they face. Panelists also discussed the most effective uses of dispute resolution mechanisms, highlighting the roles of experts and dispute boards. Day 2 of the conference placed more emphasis on the ICC and FIDIC's efforts to proactively address issues of conflict avoidance and dispute resolution in construction projects. Panelists continued their discussions on conflict management and dispute resolution, exploring more effective ways to utilize dispute boards and facilitate settlement even after arbitration proceedings have begun.

Korea also hosted its 10th Seoul ADR Festival under the support of the Korean Commercial Arbitration Board ("KCAB"). The five-day conference, held from October 28 to November 1, 2024, featured a diverse array of events covering a broad spectrum of topics including agricultural arbitration, construction disputes, private equity conflicts, cross-examinations, and the role of technology in arbitration. Our contributor covered a session titled "New and Renewable Energy Landscape in Korea and Beyond," where panelists discussed the renewable energy markets and landscapes in Korea, the Middle East, and Southeast Asia.

Central Asia

The Blog also published several posts reflecting the progress of dispute resolution frameworks in Central Asia.

Our contributor discussed the adoption of Azerbaijan's new Law on Arbitration on December 26, 2023, which replaces the outdated 1999 law and aligns with the 2006 UNCITRAL Model Law incorporating its amendments. The new law regulates both international and domestic arbitration while introducing the concept of "domestic arbitration" for the first time. The new law's key innovations include stricter requirements for arbitrators and domestic arbitration institutions, provisions for interim measures, and a prima facie review standard to limit court intervention. Additionally, arbitrators are granted immunity for actions taken in good faith. These reforms aim to address deficiencies in Azerbaijan's previous framework and enhance its appeal as an arbitral seat.

The Blog also published an interview with Diana Bayzakova and Dr. Islambek Rustambekov, highlighting the evolution of arbitration in Uzbekistan, particularly through the Tashkent International Arbitration Centre ("TIAC"). Since its establishment in 2018, TIAC has handled nearly 70 cases involving parties from Uzbekistan and beyond. It has introduced innovative measures such as zero administrative fees and opt-in cybersecurity protocols to attract users. The interview emphasized TIAC's efforts to train young arbitration professionals through programs that align with Uzbekistan's broader legal reforms, including its adoption of the 2006 UNCITRAL Model Law in 2021. These developments position TIAC as a key player in Uzbekistan's arbitration landscape.

Concluding Remarks

As arbitration continues to evolve across East and Central Asia, various jurisdictions are balancing modernization with local legal and political considerations. While reforms may generally enhance efficiency and global alignment, divergences remain, which our Blog has been at the forefront of covering. The coming years will determine how these changes shape the trajectory of the field in each jurisdiction, influencing party preferences and reinforcing the entire region as a key global arbitration hub.

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