

The Rise of Asia-based International Arbitration

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The 2010 International Arbitration Survey by the School of International Arbitration at Queen Mary College, University of London, represents one of the largest empirical studies ever undertaken of corporate attitudes and practices regarding international arbitration. The focus – key factors influencing corporate decisions on international arbitration.

The 2010 survey sees a much broadened territorial scope to include emerging venues such as Singapore together with the established venues of London, Paris, Switzerland and New York.

The key factors influencing international arbitration identified by the survey are not surprising – governing law, seat of arbitration, choice of arbitral institution, and appointment of an arbitrator.

A. Governing Law

The survey revealed a preference for a company's home jurisdiction as the governing law.

When this was not possible, the next choice was for the widely accepted laws of England, New York, or Switzerland.

B. Seat of Arbitration

The survey identified a clear emphasis by corporates for arbitration seats to have

“formal legal infrastructure”. This included the national arbitration law and a track record in enforcing arbitration agreements and arbitral awards.

Survey results on the preferred seat of arbitration reveal Singapore’s emergence as a regional leader in Asia. Singapore garnered 7% of votes in line with Paris (7%), Tokyo (7%) and New York (6%) but behind the historically well established centres of London (30%) and Geneva (9%).

The survey respondents were also asked to rate the arbitration seats which they had used before. Of these, London, Paris, New York were well regarded while Singapore was the next most commonly referred to seat.

47% of survey respondents rated Singapore as very good or excellent. This certainly reflects well on Singapore’s push in recent years to be a regional hub for arbitration. As the 2010 survey recognised, Singapore is a new entry from the 2006 survey as the most popular Asian seat.

C. Choice of Arbitral Institution

When choosing an arbitral institution, the survey showed that corporations look for neutrality, “internationalism” and a strong reputation. This was important as an institution with broad acceptance increased the likelihood that the counterparty would accept the institution.

This has important practical repercussions – as one survey respondent noted, such institutions would be readily accepted without having to trade-off some other element of the contract negotiation.

The emergence of Singapore as the choice of seat in Asia is also reflected in corporate perceptions of arbitral institutions. In the 2010 survey, the majority of votes for preferred arbitral institutions went to ICC (50%), LCIA (14%) and AAA/ICDR (8%) and SIAC (5%).

D. Singapore Efforts

The survey results are evidence of Singapore’s successful and well documented efforts at positioning itself as an international arbitration centre:

- Singapore offers an attractive “neutral” seat in Asia for impartial resolution of disputes

- As a signatory to the New York Convention, Singapore arbitration awards are enforceable in over 140 countries
- Singapore's International Arbitration Act (which adopts the UNCITRAL Model Law regime,) was revised as recently as 1 January 2010 to remain current with developments in international arbitration;
- Singapore's Courts have designated arbitration judges and are supportive of arbitration;
- Singapore's laws allow foreign lawyers to conduct arbitration in Singapore (including those governed by Singapore Law)
- As reflected in the 2010 International Arbitration Survey, the SIAC is a leading regional arbitral institution. In 2009, the SIAC saw the highest increase in arbitration case-load (60%) among the major arbitral institutions in the world;
- Maxwell Chambers (launched in January 2010) offers parties state-of-the-art dispute resolution complex, with dedicated arbitration hearing rooms and related support facilities. It currently houses the SIAC and leading institutions such as the American Arbitration Association, the Permanent Court of Arbitration, the ICC, the Arbitration and Mediation Centre of the World Intellectual Property Organization and the International Centre for the Settlement of Investment Disputes

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