

## **INTERNATIONAL COMMERCIAL ARBITRATION IN THE ASIA PACIFIC: ASIAN VALUES, CULTURE AND CONTEXT\***

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For effective liberalisation of trade and investment in any region, the role of competent dispute settlement mechanisms is vital. Foreign investors' confidence in a host country can be ensured through such mechanisms. No doubt, where there is confidence, there is cooperation. If a foreign investor loses confidence in the host country's dispute settlement mechanisms, it is futile for the host country to expect cooperation in its economic development from such an investor. International commercial arbitration has proved to be very popular with the international business community.<sup>1</sup> Its current role in the expansion of international trade cannot be denied. The third party dispute settlement mechanism, like international commercial arbitration, can make a very positive contribution to the enhancement of closer economic cooperation in the Asia Pacific region. In some recent studies, economists have identified and also emphasised the important role of international commercial arbitration in international market integration.<sup>2</sup> This can be used as an important means of confidence-building among foreign investors and the host countries in the context of economic cooperation at the regional level. This article outlines cultural implications, the current trends and certain key issues in international dispute settlement, especially international commercial arbitration, in the Asia Pacific with special reference to Asia. In the developed partner countries of the Asia Pacific, international commercial arbitration as a dispute settlement mechanism is more or less a well-established phenomenon, but in many developing partner Asian countries, many issues still merit consideration.

### **Current trends in arbitration in the Asia Pacific region**

Examination of some recent statistical data will aid in the understanding of the present state of arbitration in the Asia Pacific. There is no doubt that with the ever-increasing economic activities in the Asia Pacific area in recent years, there has been a concomitant increase in dispute settlement by arbitration and mediation.<sup>3</sup> Asian business people prefer to visit arbitration centres or settle their disputes near their

home countries rather than in the traditional Western hubs of arbitration. The last ten years' statistics of international arbitration show a steady and rapid growth in arbitration in Asian arbitration centres that outshines even their Western counterparts.<sup>4</sup> A comparison of the volume of arbitration cases in the principal Asian and Western arbitration centres is useful at this point. The China International Economic and Trade Arbitration Commission (CIETAC) handled 267 disputes in 1992, and 731 in 2001, an increase of about 274 per cent. The Hong Kong International Arbitration Centre (HKIAC) handled 185 disputes in 1992, and 307 in 2001, an increase of about 166 per cent. The International Chamber of Commerce (ICC) handled 337 disputes in 1992, and 566 in 2001, an increase of about 168 per cent. The American Arbitration Association (AAA) handled 204 disputes in 1992, and 649 in 2001, an increase of a little over 318 per cent. It is also interesting to note that in 1985 CIETAC and HKIAC together handled a total of 46 arbitration cases, and in 2001 that figure jumped to 1,038, an increase of about 1,550 per cent over the 15-year period. Even the Singapore International Arbitration Centre (SIAC) does not lag that far behind the London Court of International Arbitration (LCIA) in terms of the numbers of cases that both organisations handle each year. It is remarkable that in 1999 the SIAC handled 67 cases and the LCIA 56 cases. As already mentioned, of the 566 cases that the ICC handled in 2001, 16 per cent involved Asian parties, and 1 per cent Australasian parties.<sup>5</sup> In 1981, only 5 per cent of ICC arbitration cases came from Asia. This increased to 7.7 per cent in 1992, to 15 per cent in 1997 and to nearly 20 per cent in 1998.<sup>6</sup> The foregoing statistics show clearly the remarkable growth of arbitration in Asia and Asian business parties' continuing choice of international commercial arbitration.

### **Arbitration centres in the region**

Apart from the aforementioned significant arbitration centres in Asia such as the CIETAC,<sup>7</sup> the SIAC<sup>8</sup> and the HKIAC,<sup>9</sup> there has been a proliferation of arbitration centres across the Asia Pacific region in recent years including the:

- Kuala Lumpur Regional Centre for Arbitration (KLRCA), established in 1978 under the auspices of the Asia-African Legal Consultative Committee, administering arbitration under the UNCITRAL Arbitration Rules, with certain modifications;

- Badan Arbitrase Nasional Indonesia (BANI), established in 1977, under the auspices of the Indonesian Chamber of Commerce;
- Australian Centre for International Commercial Arbitration based in Melbourne, and the Australian Commercial Dispute Centre (ACDC), established in 1986, offering a range of dispute resolution services and conducting international arbitration;
- Mongolian International Court of Arbitration (MICA);
- Japan Commercial Arbitration Association (JCAA);
- Korean Commercial Arbitration Board (KCAB);
- Philippine Dispute Resolution Centre (PDRC); and
- Thai Arbitration Institute.

This development across the Asia Pacific shows the steady building of institutions in the field of arbitration. Furthermore, developments in other non-traditional sectors in Asia are noteworthy. Recently, the CIETAC and the HKIAC jointly announced the launch of the Asian Domain Name Dispute Resolution Centre (ADNDRC) to provide dispute resolution services in regard to disputed top level domain names (gTLDs).<sup>10</sup> It is also significant that the HKIAC currently has cooperation agreements with 18 international arbitral and ADR bodies around the world, including all the major international institutional arbitrations such as the ICC, the LCIA and the AAA.<sup>11</sup> Not only that, the same principal Western arbitration centres are now well represented in the region. For example, the ICC has national committees in many countries of the region, and has established an Asia Pacific Arbitration Commission. Very lately, i.e. on 29 November 2002, the ICC opened its new Asian headquarters in Singapore with a view to making its essential services available to business in the Asia Pacific region.<sup>11a</sup> This has spearheaded the ICC's access to such an important economic region where it hopes to muster its influence over time and where there appears to be an ever-growing fervour for arbitration. The new ICC Asia head office has teamed up with the Singapore International Chamber of Commerce in this new venture. The ICC's new head office in Asia plans to foster greater cooperation with such regional economic groupings as the Association of South East Asian Nations (ASEAN) and the Asia Pacific Economic Cooperation (APEC). ICC Asia will also work with