Transformation and Expansion of Arbitral Institutional Roles amidst the Rise of Regionalism

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Introduction:

Arbitration has a vital role to play in running the wheels of commerce and industry.

Arbitral institutions in the Asia-Pacific region have become trendsetters.

Arbitral institutions in the Asia-Pacific maintain a balance between domestic development, and regionalism and internationalization.
Expansion and Transformation of Arbitral Institutions in Asia

• Legislative changes stipulating the best practices have enhanced the attractiveness of international arbitration in this region. The development of an international arbitration infrastructure catering to both domestic and international markets, have made the Asia Pacific an arbitration hotspot.

• Long tradition of institutional arbitration in the region. Commenced with the establishment of the KLRCA in 1978, followed by the Hong Kong International Arbitration Centre in 1985.

Expansion and Transformation of Arbitral Institutions in Asia

• Arbitral institutions enjoy excellent reputation, such as the SIAC, KLRCA and CIETAC. Further, there are arbitration hubs in the region (Singapore, Hong Kong or Kuala Lumpur)

• As tigers do not have the same stripes, arbitral institutions understood very early that it was crucial to differentiate themselves and propose forward-thinking innovations and offer different services to the users.
Expansion and Transformation of Arbitral Institutions in Asia

- The majority of South East Asian jurisdictions mirrored the text of the Model Law to elaborate their arbitration laws, bringing security to the legal framework.
- Region maintains a balance between regional interests and international harmonization. It is a success the managing of regional interests while ensuring harmonization.

Expansion and Transformation of Arbitral Institutions in Asia

Problems

1) The prospect of a multiplicity of proceedings leading to inordinate delays in ongoing matters
2) Escalating costs
3) Proliferation of arbitral centres that may constitute mere duplicates of one another
4) Possibility of increased competition both between and amongst established and emergent institutions
Innovations in the region

Innovation is the cornerstone

- Emergency arbitrator
- Scrutiny of Awards
- Model Arbitration Clause with a choice of law provision
- Highest concentration of UNCITRAL Model Law countries

Emergency arbitrator: Sophisticated mechanism, launched by the ICC and later adapted by the Stockholm Chamber of Commerce. The KLRCA has also incorporated a fairly sophisticated emergency arbitrator mechanism.

Scrutiny of awards: Aims to enhance the quality of awards rendered under the administration of the centre and to prevent setbacks that could arise from a flawed arbitration award. Review and correction of the relevant administrative body.
Innovations in the region

**Model Arbitration Clause:** Revision of the clause to include a choice of law provision. This revision aims to foster the efficiency of the proceedings and to prevent uncertainty thorough the arbitration.

**Highest concentration of UNCITRAL Model Law countries:** However, the way in which the Model Law has been utilized in these countries varies considerably.

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Diversity of products and localization

- Reflects the variety of services, beyond the recognized standards and practices
- Balance the notion of internationalization along with the needs of the domestic market

Under the KLRCA

- **I-Arbitration Rules** (Sharia compliant arbitration rules)
- **Adjudication** (settle payment claim disputes in construction)
Diversity of products and localization

Rise of hybrid ADR mechanisms such as Med-Arb

- Med-Arb is growing throughout the continent
- Institutions in the region have begun to offer med-arb and other hybrid variety of ADR dispute resolution
- Hybrid ADR processes were introduced in arbitration venues, such as China, some time ago
- Arbitral institutions have recognized the importance of Alternate dispute resolution
- Multi-tiered dispute resolution mechanisms and other innovations are becoming also very popular
- The UNCITRAL Working Group on Arbitration and Conciliation is working on a convention on the international enforcement of commercial settlements

Diversity of products and localization

Positive developments in the different regions of the world

In the Arab world, arbitration practices are evolving positively. There is confidence of the Arab world in the system of arbitration. It is closely connected to its historical roots

Sanction policies may force the affected countries to look to Asia as an alternative arbitration spot

Progress in the practice of arbitration, backed up by the use of technology and the international connection of institutions across the world.
Analysis of Recent Trends and Future Outlook of Arbitration

• The role of arbitral institutions is crucial in not just enabling regionalism but also promoting the delicate balance of harmonization

• No one jurisdiction has a dominant position in international arbitration law – different jurisdictions have no choice but to compete actively to attract international arbitration business

• The legal services sector in the region has been liberalized, since barriers to foreign law firms have been removed. The import of legal services have increased arbitration destinations.

• Governments in the region promote arbitration within their jurisdictions (safe seat principles)

Analysis of Recent Trends and Future Outlook of Arbitration in Asia

• The next trend is to preserve regionalism through regional consistency.

• Australia ties to Asia and has a robust economic, political and legal environment.

• The role of arbitral institutions is evolving. They will provide the parties the possibility of bringing the dispute to a neighbor institution.

• Capacity building of the institutions is key, since the knowledge needs to be spread and physical infrastructure is also required to deal with the caseload.
Internationalization & Innovations

Asian institutions move towards cooperation and transformation to maintain distinctiveness

Local policies have supported the growth of arbitral institutions, fostering regionalization

Institutions are modern, less bureaucratic and can operate at a higher level of efficiency

Growing caseload in Asia brings more legal talent into the region, fostering a culture of innovation

Conclusion

1. Innovation, coupled with regionalism should be seen as one of the sustainable solutions for growth.

2. Rise and acceptance of innovative regional arbitral institutions that provide the best of both worlds.

3. There is a move away from a monopoly on international arbitration

4. Along with a growth in regionalism, will arise an era of regional integration.
THANK YOU

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