Being able to choose the seat of arbitration is one of the most important advantages of selecting arbitration as the chosen form of dispute resolution in an agreement. The choice of seat determines the law of the arbitration procedure and the process and rights relating to enforcement of the arbitration award. The seat will also determine the extent to which the local court will involve itself in the arbitral process. What are the advantages Hong Kong has to offer as an arbitral seat?

Independence and neutrality of the seat is an important factor when parties to the dispute are of different nationalities. In this regard, Hong Kong has long been recognised as an independent and neutral forum and is therefore a well established seat of arbitration. Although now part of China, Hong Kong’s independence and neutrality remains assured because of its unique status as a special administrative region under the “one country, two systems” doctrine. The central tenant of this doctrine is that Hong Kong has complete autonomy in all areas, aside from matters relating to ‘defence’ and ‘foreign affairs’. One of the consequences is that Hong Kong has a separate and fully independent judiciary from China, another vital factor when selecting the forum for the seat.

Clear evidence of the successful adherence to the “one country, two systems” doctrine lies in the vast differences between the legal systems operating in Hong Kong and on the Mainland. China is a civil law jurisdiction system whereas Hong Kong follows the common law system. Hong Kong’s independent judiciary is crowned by an apex court which comprises both local and international judges, the latter hailing from commonwealth countries such as Canada, the UK and Australia. All of Hong Kong’s judges are independent, professional and efficient and constitute a judiciary known for its knowledge of and support for the arbitration process. The independence of Hong Kong’s judiciary has been highlighted in the recent World Economic Forum ‘Global Competitiveness Report 2013-2014’ which ranked Hong Kong 4th out of 148 countries in respect of judicial independence. This ranking places Hong Kong ahead of jurisdictions such as the USA, the UK, Australia, Singapore and Japan, just to name a few. In a recent case, Shandong Hongri v Petrochina, the Hong Kong Court of Appeal ordered Petrochina, one of the most powerful Chinese State Owned Entities, to pay US$3 million to a subsidiary of a Russian company. This is testament to the independence Hong Kong’s judiciary enjoys vis-a-vis China. As an adjunct to the independence and neutrality of the forum, Hong Kong also operates an open skies policy whereby parties are free to choose lawyers and arbitrators from anywhere in the world to represent them without restriction and provides parties with another attractive feature of their choice of Hong Kong as the seat.

Another key benefit of choosing Hong Kong as a seat is its world-class arbitration law. Known as the Hong Kong Arbitration Ordinance, the law is based on the 2006 version of the UNCITRAL Model Law. Hong Kong is one of
very few jurisdictions worldwide, and the first in Asia, to base its arbitration legislation on the most recent version of the Model Law. Supporting the arbitral process, the Hong Kong Arbitration Ordinance provides explicit assurance of confidentiality of arbitral proceedings, awards and arbitration related court proceedings. It empowers arbitral tribunals seated in Hong Kong to issue a broad range of interim relief including injunctions, orders for the preservation of assets and evidence, security for costs etc. It is also important to bear in mind that, as a territory covered by the New York Convention, awards rendered in Hong Kong are enforceable in more than 150 countries. Committed to strengthening Hong Kong as an international arbitration destination, the Hong Kong Legislative Council amended the Hong Kong Arbitration Ordinance in 2013 to include new provisions expressly permitting courts to enforce urgent interim relief granted by emergency arbitrators, whether they be based in Hong Kong or overseas. This innovative step taken by the Hong Kong Government sees Hong Kong leading the way in terms of best practices in international arbitration.

The attitude of the judiciary towards arbitration and the likely role it may play in supporting proceedings is a crucial consideration when determining the seat of arbitration. A forum is attractive as a seat only if it has a judiciary that is supportive to arbitration. In this regard, Hong Kong stands to gain as arbitration-related cases are heard at first instance by specialist judges and its courts are generally pro-arbitration and take a “hands off” approach with respect to arbitration. The courts follow a pro-enforcement bias and there is an excellent track record of enforcement of awards in Hong Kong, and the Hong Kong courts have not refused to enforce any awards in the last 6 years. To further promote the enforcement of awards, the Hong Kong judiciary has established an indemnity cost rule to prevent parties from resisting arbitral proceedings or awards on unmeritorious grounds. This means that where a party unsuccessfully resists enforcement or challenges an award, or seeks unsuccessfully to reopen through court proceedings, an issue dealt with in an arbitration, it will pay costs on an indemnity basis unless special circumstances exist. This serves as a strong incentive for parties to carefully weigh up the potential cost consequences of launching unfounded challenges to arbitral awards in Hong Kong.

The pool of resources that is readily available to assist the arbitral process is another important determining factor in choosing a seat of arbitration. One of the key advantages Hong Kong offers is an extraordinarily large pool of multilingual professionals that includes 1,286 barristers, 7,893 solicitors, 1,517 registered foreign lawyers, 29,000 engineers, 4,090 architects and 8,880 surveyors. The availability of this large pool of resources within Hong Kong has a positive impact on reducing costs of the arbitration.

The convenience and connectivity of Hong Kong is another attractive consideration when considering which forum to choose as the seat of arbitration. More than 50% of the world’s population live no more than a 5 hour flight from Hong Kong. It is very well connected to most major cities in the world with 150 direct flights daily. Further, Hong Kong’s liberal visa policy allows nationals of more than 170 countries to visit Hong Kong visa-free. This makes it an extremely convenient arbitral seat for travel purposes.

**Advantages of HKIAC as the Administering Institution**

With or without the selection of Hong Kong as the seat, if parties choose institutional arbitration, there are numerous advantages in choosing the HKIAC as the administering institution. The HKIAC was founded in 1985, making it the oldest and most established international arbitral institution in Asia. The Global Arbitration Review Guide to Regional Arbitration (volume 3), 7 October 2014 states that “Regional arbitration pretty much began with the HKIAC. No regional institution has been running for so long. Or with such success”. This makes it one of the most experienced and well established international arbitral institutions in the region that has stood the test of time.

Independence of an arbitral institution is an important consideration when choosing an administering institution. HKIAC meets this criteria as it is an independent and not-for-profit organisation without any ties to the Hong Kong government. It is governed by a 25 member council that comprises local and international members drawn from the legal and business community. The Chairperson is Ms Teresa Cheng SC who is a leading international arbitrator and barrister in Hong Kong. The Vice-Chairman of the HKIAC is Lord Peter Goldsmith QC, formerly the attorney general of the UK. Members of the governing council include amongst others, prominent international arbitration lawyers such as Matthew Gearing QC, the global co-head of Allen & Overy’s international arbitration practice and Justin D’Agostino, the global head of Herbert Smith Freehills’ disputes practice.

The HKIAC Secretariat, responsible for the administration of arbitrations filed with HKIAC, has an international
profile that is in line with user expectations. The staff comprise of individuals from diverse backgrounds that include the United States, Australia, UK, India, Singapore, Philippines, China, South Korea and Hong Kong. They can administer cases in various languages including English, French, Spanish, Hindi, Korean, Mandarin and Cantonese. HKIAC’s international secretariat consisting of staff with arbitration backgrounds and multilingual skills can add tremendous value to the administration of international arbitrations.

In choosing HKIAC as the administering institution, parties can take advantage of its state of the art hearing facilities that were recently ranked by the Global Arbitration Review’s Hearing Centres Survey, October 2014, as among the top four hearing centres in the world. HKIAC’s modern hearing facilities offer a variety of size of hearing rooms, from the large to very large, as well as individual break out and conference rooms, global video-conferencing equipment, an in-house library and wireless internet access throughout all spaces.

An important factor which distinguishes HKIAC from other arbitral institutions is its state of the art administered arbitration rules. HKIAC’s current rules, the 2013 HKIAC Administered Arbitration Rules, came into force on 1 November 2013. In use for just over one year, they are the most modern and comprehensive set of rules on the market, and were nominated as one of the best developments of 2013 by Global Arbitration Review.

A key priority for HKIAC in drafting the 2013 Rules, as well as in the provision of its dispute resolution services generally, is users’ feedback. HKIAC has put great effort into understanding its users’ business and collating feedback from them through one-on-one meetings, seminars, training and surveys. With this information in mind, HKIAC continues to enhance its practices to help parties resolve their disputes effectively and efficiently.

Some key innovations over the past year are highlighted below.

The consolidation mechanism under the 2013 HKIAC Rules

HKIAC has adopted a very practical, expansive and flexible approach to consolidation, compared to other leading arbitral institutions. Pursuant to the consolidation provisions, HKIAC may consolidate several related arbitrations even where the parties to each arbitration are different. This approach properly accommodates the need for consolidation in situations where related contracts are concluded by different parties in respect of the same or a series of transactions, which typically arise in the banking, insurance/reinsurance and construction industries. Many other institutional rules do not allow disputes arising in these situations to be consolidated.

The HKIAC Rules also contain comparatively detailed provisions dealing with the consequences of a consolidation order, the constitution of the tribunal in a consolidated arbitration and so on. Similar provisions are absent in many other institutional rules.

The comprehensive provisions on consolidation, teamed with equally advanced provisions on joinder and the ability to commence claims under multiple contracts in a single proceeding, allow HKIAC to deal effectively and cost efficiently with arbitrations involving multiple parties or multiple contracts.

Parties’ choice to remunerate the arbitral tribunal

The 2013 HKIAC Rules expressly offer the parties a unique choice to remunerate the arbitral tribunal either based on the amount in dispute or on an hourly basis. This allows the parties to effectively strategize costs based on the nature of the claims. If the parties consider that the dispute is a high-value yet straightforward one, they can opt for an hourly arrangement to save costs. The parties can equally choose to determine the tribunal’s fees based on the amount in dispute if they consider that the case is highly complex and would take the arbitral tribunal a considerable amount of time to decide the case. HKIAC has also introduced standard terms of appointment which apply to all arbitrators appointed under the HKIAC Rules. These terms simplify and expedite the appointment process and avoid uncomfortable negotiations between parties and arbitrators on fees. To further assist parties control costs, HKIAC has also introduced a cap on an arbitrator’s hourly rate, currently set at HK $6,500.00. This cap cannot be exceeded unless both parties agree.

This is another feature of HKIAC arbitration which is not available in arbitrations under other institutional rules, which normally provide for only one possible method for paying the tribunal. For this reason, GAR nominated HKIAC’s twin-track fee system as an “innovation by an individual or organization” in 2013.

HKIAC’s new model clause

In August 2014, HKIAC amended its model clause to include specific wording to prompt parties to consider designating an appropriate law to govern their arbitration agreement.
The lack of consistent international jurisprudence in relation to this question demonstrates the importance of expressly including a designation of the law governing the arbitration agreement to avoid uncertainty and unnecessary costs of litigating the question of which law should apply.

**Tribunal Secretary Service**

Recognising the growing market demand for tribunal secretaries and the significant value they can add to the arbitral process, in June 2014 HKIAC introduced its tribunal secretary service, which makes the Secretariat available to perform the function of tribunal secretary in HKIAC and ad hoc arbitrations. HKIAC is one of a comparatively small number of institutions that have provided such service.

HKIAC has also launched its Guidelines on the Use of a Secretary to the Arbitral Tribunal, which can be adopted by parties to arbitrations administered by HKIAC under the HKIAC or UNCITRAL Rules or in other cases. The Guidelines contain guidance on the appointment, challenge, duties and remuneration of tribunal secretaries, which can conveniently be adopted as the terms of appointment of a tribunal secretary. The features of HKIAC arbitration outlined above highlight just some of the ways HKIAC is innovating to remain at the vanguard of international best practices in arbitration. HKIAC will continue to develop its world-class dispute resolution services, providing one-stop-shop services including administration of arbitration, mediation, adjudication and domain name disputes and the associated hearing facilities to assist parties resolve their disputes effectively and efficiently.

**About the Author**

*Ruth is an Australian and UK qualified lawyer working as Managing Counsel of the Hong Kong International Arbitration Centre (HKIAC). She oversees the administration of arbitrations at the HKIAC and works to promote the use of Hong Kong arbitration and other forms of dispute resolution worldwide. She is a frequent speaker on arbitration-related issues as well as the benefits of resolving disputes in Hong Kong.*

Prior to joining the HKIAC, Ruth had six years’ experience in private practice working in international arbitration and dispute resolution for law firms in London, Paris and Sydney advising clients on a wide range of proceedings conducted under many of the most recognised sets of institutional rules of arbitration as well as associated national court proceedings in civil and common law jurisdictions. She also provided advice regarding the formulation and drafting of arbitration and dispute resolution clauses in commercial contracts, including multi-party and multi-contract situations.

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