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International Commercial Alternative Dispute Resolution in Asia

Charting the New Inter-Asian Dynamics

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I INTRODUCTION

Alternative dispute resolution (ADR), which is a process of offering alternatives to traditional court litigation in which an impartial third party, such as an arbitrator and mediator, helps disputing parties reach a settlement, is not a new phenomenon. However, the development of modern-day ADR only dates back to the twentieth century in Western countries,[1] with London and Paris traditionally being the most active players, followed by Geneva, New York, and Stockholm.[2] The adaptation of international commercial ADR in Asia was even more recent, a trend that has its beginnings in colonial ties.[3] Despite the late start, Asia has witnessed explosive growth in the ADR field, leveling the international playing field. For example, in terms of international commercial arbitration institutions, the Singapore International Arbitration Centre (SIAC) and the Hong Kong International Arbitration Centre (HKIAC) are consistently ranked among the leading institutions in the world.[4] With Singapore and Hong Kong as the current leaders, several other centers in Asia (Seoul, Tokyo, Kuala Lumpur, Abu Dhabi, Dubai, Beijing, and Shanghai, among others) are actively trying to draw more attention from contracting parties.[5] The success of the first-tier Asian cities (e.g., Singapore and Hong Kong)

[1] Katie Shonk, "What Is Alternative Dispute Resolution?" (Program on Negotiation at Harvard Law School, April 4, 2024), www.pon.harvard.edu/daily/dispute-resolution/what-is-alternative-dispute-resolution/, accessed May 15, 2024; Ronán Feehily, *International Commercial Mediation: Law and Regulation in Comparative Context* (Cambridge University Press 2022) 6.

[2] Piyush Prasad, "Arbitration in Singapore and Hong Kong" (2017) 83 International Immersion Program Papers 1, 4.

[3] Gary B Born, *International Commercial Arbitration* (2nd edn, Kluwer Law International 2014) 58.

[4] Queen Mary University of London Survey, "2021 International Arbitration Survey: Adapting Arbitration to a Changing World" (2021) 10.

[5] Gary L Benton, "The Whispered Conversation: Hong Kong v. Singapore" (*Kluwer Arbitration Blog*, January 2, 2009), https://arbitrationblog.kluwerarbitration.com/2019/01/02/whispered-conversation-hong-kong-v-singapore/, accessed May 15, 2024.

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and the growth of the second-tier cities (e.g., Seoul, Tokyo, etc.) and the relationship between and among them suggest a new era of Inter-Asian ADR.

This chapter approaches Inter-Asian ADR from two categories: arbitration and mediation. Arbitration is currently Asia's most popular type of ADR and therefore deserves a thorough exploration. Mediation, however, is noteworthy given the strong cultural aspects of the practice, particularly as such aspects are most pronounced in Asia. These cultural practices include a greater emphasis on consensus than in Western countries, as evidenced by, for instance, the preference for mediation and conciliation or the incorporation of amicability into arbitration procedures.[6] Although mediation has yet to receive as much activity as arbitration, its presence has undoubtedly caused significant reforms across Asia. Other types of ADR include adjudication, dispute review boards, and domain name dispute resolution (DNDR). While Asian jurisdictions have also grown these ADR fields, there has, to date, been less written about them. Nonetheless, the prevalence of these other types of ADR gives further credence to the idea of Inter-Asian ADR. Starting from the first two dragons Singapore and Hong Kong, the fever for ADR now spreads wide and deep in Asia. Today, Asia is causing the center of the world's ADR market to shift eastward, and, despite some challenges on the horizon, this trend will only likely continue.

II THE RACE BETWEEN SINGAPORE AND HONG KONG

A. *Singapore's Status*

Background

Singapore's history as a hub for international commerce is closely linked to its colonial past. When British governor Stamford Raffles secured the port that would become modern-day Singapore in 1810 and later established it as a colony in 1824, he laid the foundations for a thriving trading post.[7] Unlike Hong Kong, which serves as a gateway to China, Singapore's strategic position as a crossroads of busy sea lanes has uniquely positioned it to become a premier arbitration hub in Asia.[8] Despite its small area, less than a third of the size of Hong Kong, Singapore boasts three-quarters of Hong Kong's population, resulting in a higher population density.[9]

Building on its colonial roots, Singapore's evolution into a major trading hub has continually fueled the demand for ADR. The flow of trade through Singapore,

[6] Born (n 3) 59.

[7] Matthew S Erie, "The New Legal Hubs: The Emergent Landscape of International Commercial Dispute Resolution" (2020) 60 Va J Int'l L 225, 262.

[8] Prasad (n 2) 4.

[9] "Country comparison: Hong Kong vs Singapore" (World Data, 2023), www.worlddata.info/country-comparison.php?country1=HKG&country2=SGP, accessed May 15, 2024.

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initiated during its colonial era, has only intensified over the years. This historical trend set the stage for the development of sophisticated ADR mechanisms to address the commercial disputes arising from the bustling trade activity. The culmination of this growth was marked by Singapore's independence in 1965, which further solidified its status as a leading center for international commercial arbitration in the region.

Singapore's attempt to promote ADR started in the 1980s when it began internationalizing its commercial dispute resolution system.[10] Singapore acceded to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) in 1986, set up SIAC in 1991 and the Singapore Mediation Centre in 1997, and consolidated the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration in its International Arbitration Act in 2002. Many policy reforms have been implemented over the years, such as the 2004 amendment of the Legal Profession Act to allow anyone to represent a party in an arbitration seated in Singapore and perform work that was previously reserved for advocates and solicitors.[11] Singapore aimed to be the number one forum for international commercial arbitration in Asia and, achieving that, has subsequently sought to be a leading center in the world.[12] Pursuant to the Queen Mary Survey on international commercial arbitration in 2021, Singapore has now proven successful in making it to the top.[13]

Singapore's Establishment

ADR Promotion Strategy – Specializing and Networking: Instead of promoting all models of international commercial ADR, Singapore tends to focus on two models: arbitration and mediation. Singapore is known for its wide variety of service offerings within those models. With the availability of the trio of SIAC (est. 1991), Singapore International Mediation Centre (SIMC, est. 2014), and Singapore International Commercial Court (SICC, est. 2015), Singapore has proven it has the institutional capacity to meet international parties' dispute resolution needs. Firstly, in collaboration with SIMC, SIAC offers an Arbitration–Mediation–Arbitration (AMA) procedure, which allows parties to utilize the strengths of each method. The parties can attempt mediation after initiating arbitration proceedings and return to arbitration if the mediation does not result in a settlement. In other cases, a mediated settlement agreement can be turned into an award through arbitration. The mediated settlement is then referred to the arbitrator for approval, and the arbitrator then assesses the consent terms and makes an award, thereby converting the mediated agreement

[10] Erie (n 7).
[11] Prasad (n 2) 10.
[12] Erie (n 7).
[13] Queen Mary Survey 2021 (n 4) 6.

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into an arbitration award. The arbitration award is, therefore, enforceable under the New York Convention to enhance its recognition and enforcement in member jurisdictions.

Another collaborative service is the SICC–SIMC Litigation–Mediation–Litigation, whereby parties can refer to SIMC for mediation after the disputes commence SICC. In recent years, the commercial attitude toward mediation has been getting more positive; for example, the inclusion of SIMC into SICC has earned positive feedback from the business community. Secondly, SIAC collaborated with SICC to publish a model clause, allowing parties to select the SICC as the supervisory court rather than the default General Division of the Singapore High Court.[14] With this model, parties can make a more compelling decision by benefiting from SIAC's renowned arbitration mechanism[15] and SICC's extensive expertise.[16] Thirdly, Singapore also connects ADR services providers, professional standards bodies, and research institutions to exchange information and offer well-rounded regulations, as evidenced by the different rules for different entities participating in third-party funding (TPF).[17] The multiple connections among institutions in Singapore can further reinforce the impression of an ecosystem made from dispute resolution networks rather than individual institutions. These linkages make it possible for one to combine many of the ADR services that may be available in order to improve the capability of dispute resolution. They can also contribute to creating trust and credibility among international actors in the event such an ecosystem is provided, which demonstrates that all actors are committed to high standards and best practices. Moreover, the consolidation of sources within this network may encourage practices for resource sharing and collaboration, which might enhance the methods used and boost dependability and forecasting. This interconnectedness could promote Singapore as taking a more expansive role in the international dispute resolution system.

State-of-the-art Institutions and Infrastructure: The *SMU SIDRA Report 2022* pointed out six major factors influencing the choice of venue: efficiency, administrative support, in-person hearing facilities, virtual hearing facilities,

[14] "Singapore International Commercial Court Launches Initiative to Hear Arbitration Matters with Support from Singapore International Arbitration Centre" (SG Courts, January 12, 2023), www.judiciary.gov.sg/news-and-resources/news/news-details/joint-media-release-singapore-international-commercial-court-launches-initiative-to-hear-arbitration-matters-with-support-from-singapore-international-arbitration-centre, accessed May 15, 2023.

[15] Pamela K Bookman and Matthew S Erie, "Experimenting with International Commercial Dispute Resolution" (2021) 115 AJIL Unbound 5.

[16] Prasad (n 2) 12.

[17] For example, Singapore established SIAC and SIMC as service providers, SIArb and the Singapore International Mediation Institute as the professional bodies, and SIDRA as the research institution. See Eunice Chua, "The Singapore Convention on Mediation – A Brighter Future for Asian Dispute Resolution" (2019) 9 AsianJIL 195, 204.

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additional facilities, and convenience of location.[18] Singapore knew this early on[19] and has worked to not only meet but also excel in each criterion through the development of the Maxwell Chambers arbitration complex since 2010.[20] The Maxwell Chambers hosts most major Singapore institutions and several international ones while featuring a corresponding number of rooms of various sizes, allowing both on-site conferences and virtual hearings. Thus, despite Singapore's small area, it manages to "enable a certain degree of cross-institutional coordination."[21] Furthermore, as the leader in international commercial ADR infrastructure, Singapore continuously renovates the Maxwell Chambers in terms of advanced technology and infrastructure, as shown by the 2018 "SMART Maxwell" program. This program established an app that allows parties to do a variety of functions, from gaining access to hearing rooms to tracking expenditures for a more efficient finance and administrative process.[22] The program's effectiveness can be evidenced by the sharp increase in the caseload of SIAC in 2020,[23] as well as the preference of parties to resolve disputes at Maxwell Chambers.[24]

Recent Development – TPF: Singapore has taken one step after another to liberalize the legal industry and promote the city as a preferred arbitration venue. A recent example is passing new legislation such as the Civil Law (Third-Party Funding) Regulations 2017, to allow parties to seek TPF.[25] This legislation also marked Singapore's abandonment of the common law doctrines of maintenance and champerty. These doctrines are legal rules of decision originating from English common law, which has forbidden third parties from funding legal actions. Maintenance is concerned with preventing a third party from assisting in a litigation case in which they have no professional or personal interest, while champerty is supporting a case for a share of the litigants' gains.

[18] Singapore International Dispute Resolution Academy, "SIDRA International Dispute Resolution Survey: 2022 Final Report" (SMU SIDRA Report 2022) 19.

[19] In 2015, the Legal Services Working Group of the Economic Review Committee put emphasis on "good infrastructure and facilities" in making Singapore an ADR spotlight in Asia. See Legal Business, "Singapore v Hong Kong: The Arbitration Battle Intensifies" *Thomson Reuters* (November 30, 2011), www.legalbusinessonline.com/features/singapore-v-hong-kongthe-arbitration-battle-intensifies/57638, accessed May 15, 2023.

[20] Prasad (n 2) 5.

[21] Erie (n 7) 265.

[22] Ilyda Chua, "Maxwell Chambers to be world's first smart hearing facility" *The Strait Times* (April 4, 2018), www.straitstimes.com/singapore/courts-crime/maxwell-chambers-to-be-worlds-first-smart-hearing-facility, accessed June 15, 2024.

[23] "2021 Singapore International Arbitration Centre Statistics Return to Pre-Pandemic Trends" (*Conventus Law*, July 7, 2022), https://conventuslaw.com/report/2021-singapore-international-arbitration-centre-statistics-return-to-pre-pandemic-trends/, accessed June 15, 2024.

[24] "SMU SIDRA Report 2022" (n 18) 20.

[25] "Third-Party Funding to Be Permitted for More Categories of Legal Proceedings in Singapore", www.mlaw.gov.sg/news/press-releases/2021-06-21-third-party-funding-framework-permitted-for-more-categories-of-legal-preceedings-in-singapore/, accessed June 15, 2024.

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These doctrines sought to reduce the chances of filing baseless cases and manipulation of the court process. At first, Singapore initially applied TPF only to international arbitration and related court procedures, but TPF has been subsequently officially embraced for domestic arbitration and other procedures. Notably, Singapore also gives parties freedom by not limiting the amount funded and paid. Non-binding regulations on TPF are present as well, specifically (i) SIAC Practice Note 31/3/2017; (ii) The Law Society of Singapore Guidance Note 10.1.1 on Third-party Funding; and (iii) the Singapore Institute of Arbitrators (SIArb) Guidelines for Third Party Funders. These regulations act as guidelines for the best practices of lawyers and funders, respectively. In short, what has distinguished Singapore's TPF regulations from other competitors are: (i) the underlying supportive and detailed legislation, (ii) the funded parties' protection from malpractice, using guidelines regulating lawyers and funders, and (iii) the absence of limitations on the amount funded and paid, which has greatly increased the use of TPF.[26]

National Endeavor – Neutral, Incorruptible, and Binding System: Singapore is often considered a neutral arbitration seat. But what makes a seat "neutral" and why is Singapore considered one? A forum is considered neutral when none of the parties is at an actual or perceived disadvantageous jurisdiction.[27] Singapore satisfied this requirement when it established a reputation for having accessible and impartial justice.[28] Singapore is also known for its fight against corruption, which is supported by the country's consistently high ranking in anti-corruption indices.[29] Recently, pursuant to its anti-corruption efforts, Singapore ranked fifth globally and first among Asian countries in the Corruption Perceptions Index 2022.[30]

Furthermore, the enforceability of foreign and domestic awards in Singapore is almost guaranteed. Since Singapore is a party to both the New York Convention and the United Nations Convention on International Settlement Agreements resulting from Mediation (Singapore Convention),[31] its arbitration awards and mediation agreements are widely enforceable in other member states. Likewise, the national

[26] Lianjun Li and others, "Implementation of ORFS in Hong Kong: A Comparative Look at Mainland China and Singapore" (*Reed Smith*, January 5, 2023), www.reedsmith.com/en/perspectives/2023/01/implementation-of-orfs-in-hong-kong, accessed March 15, 2024.

[27] Andrea K Bjorklund, "Chapter 7: Enforcement" in Thomas Schultz and Federico Ortino (eds), *The Oxford Handbook of International Arbitration* (OUP 2020) 190.

[28] Sreenivasan Narayanan, Raja Bose and Henry Kim, "International Arbitration and the Singapore International Arbitration Centre" (*Lexology*, June 7, 2022), www.lexology.com/library/detail.aspx?g=c6c23bc6-1369-47aa-8bc8-fe95b596bc7c, accessed March 15, 2023.

[29] Prasad (n 2) 5.

[30] "Corruption Perceptions Index: Singapore" (*Transparency International*, 2023), www.transparency.org/en/cpi/2022/index/sgp, accessed July 15, 2024.

[31] The Singapore Convention on Mediation is named so to commemorate the fact that it was adopted and opened for signing in Singapore in August 2019 as part of showcasing Singapore's commitment to international ADR. This naming brings to focus the role of Singapore as an initiator in present-era facilitation techniques and consolidates its position as a significant contributor and mediator in the sunrise field of international commercial mediation.

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courts of Singapore have shown their support for the arbitration procedure, stating that their function is to support the procedure, not to replace it.[32]

Thus, Singapore's strength comes primarily from its achievements – both the government's success in establishing Singapore's status as a neutral seat and the private sector's achievements in creating new facilities and services.

B. *Hong Kong's Status*

Background

Hong Kong's story started in 1842 when Britain established it as a colony.[33] Because of its connection to two jurisdictions China and Britain, Hong Kong is often regarded as an important "gateway" to mainland China.[34] As a gateway, Hong Kong's strength lies in having access to an enormous market – China.[35] Moreover, Hong Kong has both a common law legal system and friendliness toward the English language, which attracts an enormous source of investors including from the United States (US) and United Kingdom (UK).[36] Hong Kong's status as a colony terminated in 1997, when it was handed over to the People's Republic of China (PRC) and established its status as a "special administrative region" (SAR). This did not remove Hong Kong's status as the gateway connecting China and the rest of the world since the common law legal system of Hong Kong would be expected to last at least fifty years after the handover.[37] Furthermore, the handover allowed trade to flow both ways, as Hong Kong now also serves Chinese outbound investment, including that related to the recent Belt and Road Initiative (BRI), providing international banking and financial services.[38]

As a legal hub, Hong Kong is considered "organic" thanks to existing trade activities, rather than needing to build its hub reputation from the ground up – or "artificial" like Shanghai or Dubai.[39] In terms of regulations, Hong Kong offers its own signature common law, which has the advantage of being the "middleman" since it has both Chinese and Western influence.[40] Hong Kong is also unique for being the only venue outside China that allows parties to seek interim measures

[32] Prasad (n 2) 5.
[33] Erie (n 7) 253.
[34] Ibid.
[35] Benton (n 5).
[36] Erie (n 7) 254. Hong Kong has the "Basic Law," which is their mini-constitution, and while the judicial system operates in a common law manner, Hong Kong is only a special administrative region (SAR) and the PRC legal system (a civil law system) has various points of oversight over Hong Kong SAR – the "one country two systems" approach.
[37] Jan K Schaefer, "Leaving the Colonial Arbitration Laws Behind: Southeast Asia's Move Into the International Arbitration Arena" (2000) 16 Arb. Int'l 297, 300–301.
[38] Erie (n 7) 255.
[39] Ibid 261.
[40] Ibid 256.

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from mainland courts and is thus more favorable than other jurisdictions when seeking mainland enforcement.[41] Thanks to its strong background, talented legal community, and modern arbitration institutions, Hong Kong is a solid contestant for Asia Pacific-based international arbitration.[42]

Hong Kong's Establishments

ADR Promotion Strategy – Centralizing, Diversifying, and Pioneering: Unlike Singapore, Hong Kong incorporates different types of international commercial ADR into one institution – HKIAC, which was established in 1985.[43] The Hong Kong International Arbitration Centre offers several ADRs, including arbitration, mediation, DNDR, and adjudication.[44] Mediation at HKIAC is administered by the Hong Kong Mediation Centre (HKMC) division, which was set up in 1999.[45] Domain name dispute resolution is administered by the Asian Domain Name Dispute Resolution Centre (ADNDRC), which HKIAC jointly established with the China International Economic and Trade Arbitration Commission (CIETAC) in 2002. This remained the only institution in Asia to resolve disputes under the Uniform Domain Name Dispute Resolution Policy (UDRP) until 2013.[46]

While adopting a centralist approach, Hong Kong has sought inspiration from other jurisdictions in terms of innovating its ADR offerings. These adaptations are emblematic of Hong Kong's role as a centripetal force for borrowing ADR innovations from other systems. For example, the expedited procedure was first the product of the Geneva Chamber of Commerce and Industry (CCIG) in 1992[47] before being adopted by HKIAC in 2008. Other leading Asian institutions, such as SIAC or the Asian International Arbitration Centre (AIAC), have only adopted the expedited procedure since 2010. Similarly, consolidation of arbitration upon the party's request, introduced by the International Criminal Court (ICC) in 2012, has been adopted by HKIAC and AIAC since 2013, and SIAC since 2016. Thus, Hong Kong can be seen as not only a geographical gateway to China but also a gateway for ADR services and regulations – connecting Asia with Western countries.

Transparency and Technological Innovation: As a gateway, Hong Kong consistently introduces new innovations to Asia. Most recently, in 2021, HKIAC introduced

[41] Arrangement Concerning Mutual Enforcement of Arbitral Awards.

[42] Benton (n 5).

[43] Herbert Smith Freehills, "ADR in Asia Pacific: Spotlight on Mediation in Hong Kong" (Issue 1, Herbert Smith Freehills 2015) 2–4.

[44] See HKIAC Arbitration Rules 2018, HKIAC Mediation Rules, HKIAC Adjudication Rules, and The Guide to HKIAC Domain Name Dispute Resolution 2022.

[45] HKIAC "HKIAC Mediation Rules", www.hkiac.org/mediation/rules/hkiac-mediation-rules, accessed May 15, 2023.

[46] In 2013, the Arab Center for Dispute Resolution became the second institution in Asia to resolve disputes under the UDRP.

[47] Joséphine Hage Chahine, "Fast Track Arbitration: A Time-Efficient Procedure That Could Hinder the Award?" (*Jus Mundi*, May 29, 2020), https://blog.jusmundi.com/fast-track-arbitration-a-time-efficient-procedure-that-could-hinder-the-award/, accessed May 16, 2023.

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two new services: HKIAC Case Digest and HKIAC Case Connect. The first service, HKIAC Case Digest, is a database for redacted and summarized past arbitration awards, which only subscribers can access. This follows the movement of arbitration centers around the world to improve the consistency and predictability of the arbitral process by using precedents.[48] However, compared to other institutions' corresponding services, the awards published by HKIAC Case Digest are more limited, shown only partially and to subscribers only. Nonetheless, HKIAC earned the Best Innovation award at the 12th annual Global Arbitration Review (GAR) Awards ceremony in 2022 for this service, thus, proving its effectiveness.[49]

The second innovation – HKIAC Case Connect – is a secure and convenient platform allowing parties to manage all their documents and communicate more efficiently.[50] This is another huge success for HKIAC since it inspired not only Asian but also international institutions (i.e., ICC, with 2022 ICC Case Connect) to build an online case management platform).[51] With these innovations, Hong Kong proved itself to be an innovator in the field of international commercial ADR.

Recent Development – TPF: Similar to Singapore, TPF was traditionally prohibited in Hong Kong due to the common law doctrine of maintenance and champerty. However, in 2017, Hong Kong legalized TPF in international arbitration, making Hong Kong a TPF-friendly jurisdiction.[52] In 2021, the Hong Kong Law Reform Commission published a report on Outcome Related Fee Structures for Arbitration (ORFS) recommending further legalizing lawyer fee structures. In December 2022, the regime became effective, allowing lawyers to arrange conditional fee agreements, damages-based agreements, and hybrid damages-based agreements.[53] Therefore, Hong Kong's legal framework on TPF

[48] Noah Rubins, Ezequiel Vetulli, and Rohit Bhat , "Drive Towards Greater Transparency" (Freshfields 2023), www.freshfields.com/en-gb/our-thinking/campaigns/international-arbitration-in-2023/drive-towards-greater-transparency/, accessed May 10, 2024.

[49] "HKIAC Case Digest Wins GAR Award for Best Innovation" (*HKIAC*, April 6, 2022), www.hkiac.org/news/hkiac-case-digest-wins-gar-award-best-innovation, accessed May 10, 2023. HKIAC also previously won 2015 GAR Awards for inclusion of a choice of law provision in its model clauses and the introduction of a tribunal secretary service. See "And the GAR Innovation Award goes to . . . HKIAC" (*HKIAC*, February 27, 2015), www.hkiac.org/news/and-gar-innovation-award-goes-%E2%80%A6-hkiac, accessed May 10, 2023.

[50] "HKIAC Launches HKIAC Case Connect" (*HKIAC*, November 1, 2021), www.hkiac.org/news/hkiac-launches-hkiac-case-connect, accessed May 10, 2022.

[51] Marc Labgold and Megan Labgold, "Arbitration Tech Toolbox: ICC Case Connect – A User Perspective" (*Kluwer Arbitration Blog*, February 21, 2023), https://arbitrationblog.kluwerarbitration.com/2023/02/21/arbitration-tech-toolbox-icc-case-connect-a-user-perspective/, accessed April 15, 2024.

[52] See Arbitration and Mediation Legislation (Third Party Funding) (Amendment) Ordinance 2017 of Hong Kong.

[53] Hiroko Yamamoto and others, "2022 Year in Review: Key Developments in East and Central Asia" (*Kluwer Arbitration Blog*, January 4, 2023), https://arbitrationblog.kluwerarbitration.com/2023/01/04/2022-year-in-review-key-developments-in-east-and-central-asia/, accessed May 10, 2024.

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provides a broader variety of services than Singapore's despite being more limited in terms of the amount funded.[54]

National Endeavor – Perseverance through Crisis: Despite all the above, Hong Kong is not without problems. Hong Kong's proximity to China has been both a blessing and a curse since Western-based parties can be nervous about getting too close to China.[55] In 2020, this fear turned into a crisis when China enacted the new National Security Law[56] to safeguard China's security and protect the "one party, two systems" policy of Hong Kong by enforcing sanctions on offenders.[57] Reacting to this situation, the US announced that it would terminate Hong Kong's special trading status, effectively treating Hong Kong similarly to mainland China.[58] These events have caused international companies to avoid choosing Hong Kong as the seat of arbitration and resort to rival hubs like Singapore, fearing China's increasing influence in Hong Kong would erode trust in its legal system.[59] Amidst the chaos, Hong Kong authorities have sought to offer assurances that these developments have had only minor effects on trade and ADR.[60] The main argument is that the Chief Executive's ability to select judges in litigation does not affect arbitration or other ADR systems since parties or the institution makes appointments or nominations.[61] While Hong Kong has held onto its status as a dominant seat of arbitration[62], its position remains less certain than earlier.

To summarize, Hong Kong's strength originates mainly from its status as a geographical and jurisdictional gateway to mainland China and as a gateway for international commercial ADR services in Asia. Hong Kong's strong, established legal culture also continues to attract ADR activities. Despite facing a crisis in terms

[54] Li (n 26).

[55] Legal Business (n 19).

[56] In full, the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region (National Security Law). See Adrian Wong and Kelvin Poon, "Are Arbitrations Shifting Away from Hong Kong and Towards Singapore? Impact of the Hong Kong National Security Law" (*Lexology*, October 29, 2020), www.lexology.com/library/detail.aspx?g=3cfc2411-fd99-4d64-93ce-a8976c764b3b, accessed May 10, 2023.

[57] Ibid.

[58] Denise Tsang, "United States Ending Hong Kong's Special Trading Status Will Hurt US Firms, City's American Chamber of Commerce Says" *South China Morning Post* (July 17, 2020), www.scmp.com/news/hong-kong/hong-kong-economy/article/3093573/united-states-ending-hong-kongs-special-trading, accessed May 15, 2023.

[59] Erie (n 7).

[60] Elizabeth Law, "Chinese President Xi Signs Hong Kong National Security Law Into Effect" *The Strait Times* (June 30, 2020), www.straitstimes.com/asia/east-asia/beijing-passes-hong-kong-national-security-law-government-adviser, accessed May 12, 2023.

[61] Wong and Poon (n 56).

[62] In 2022, 344 arbitration cases were submitted to HKIAC, a 24.2 percent increase from 2021. This number is even higher than it was before the National Security Law (i.e., 2019, 2020). See "2022 Statistics" (HKIAC, 2023), www.hkiac.org/about-us/statistics, accessed May 10, 2024.

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of its reputation in the business community for impartial dispute resolution services, Hong Kong will likely continue to contribute to the ADR ecosystem of Asia.

C. *Inter-Asian Comparisons*

Starting Point Revisited

In comparing Singapore and Hong Kong, while, broadly, the two city-states have similarities, Hong Kong historically came out on top due to its market access to China. In terms of their core similarities, both are former British colonies and with legal systems based on English common law.[63] There was a separate legal regime for international and national arbitration under both systems, which is paradoxical considering English law does not make such a distinction.[64] Since both are city economies with limited internal markets and with finance as the main sector,[65] they also share the tendency to formulate international centers rather than national ones.[66] Despite being Asian institutions, SIAC and HKIAC pay great attention to the Western principle of party autonomy,[67] where parties can agree on the appointment of arbitrators and how the proceedings are carried out (i.e., using rules from other institutions) if so requested by the parties. However, because mainland China's court provided Hong Kong with a better chance of award recognition and enforcement for matters related to China, it was Hong Kong where parties who do business in China chose to arbitrate in the beginning.[68] In what follows, I trace the inter-Asian rivalry between Hong Kong and Singapore.

The Road Traveled

Beginning in the early 2000s, while Hong Kong was the first Asian jurisdiction to obtain international renown as a center for international commercial ADR, Singapore has been catching up. By 2000, Singapore had already established all the necessary requirements for an attractive seat of arbitration, including signing the New York Convention (1986), consolidating the Model Law (2002), setting up institutions, increasing the court's familiarity with the arbitration procedure, holding arbitration events, and publishing modern legislations on arbitration.[69] Singapore also drew its strength externally, thanks to the rise of up-and-coming economies like India and other Southeast Asian neighbors. Meanwhile, Hong Kong has obtained

[63] Schaefer (n 37) 300.
[64] Ibid 306.
[65] Erie (n 7) 255.
[66] Schaefer (n 37) 319–320.
[67] Kun Fan, "International Dispute Resolution Trends in Asia" (2013) 10 Transnat'l Dispute Manag 8.
[68] Legal Business (n 19).
[69] Singapore Ministry of Law, "Background Brief on International Arbitration in Singapore", www.mlaw.gov.sg/files/news/press-releases/2009/07/linkclickf8e7.pdf, accessed May 16, 2023.

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an advantage in terms of other types of international commercial ADRs (even if under a centralized model). With HKMC and ADNDRC, Hong Kong made ADR in Asia much livelier. Nonetheless, by 2010, Singapore had become a formidable challenger to Hong Kong for the crown, as shown by the Queen Mary International Arbitration Survey.[70]

It appears that Singapore's efforts have given Hong Kong an incentive to hold onto the crown. Since 2008, Hong Kong redoubled its efforts, starting with adopting new arbitration rules on expedited procedures or consolidation of arbitration. Hong Kong also unified legal regimes for domestic and international arbitration with the Arbitration Ordinance 2011.[71] In 2014, Hong Kong introduced the Advisory Committee on the Promotion of Arbitration to advise the Department of Justice in promoting arbitration. For its part, Singapore has improved its institutions apace. The institution of the Maxwell Chambers in 2010 quickly boosted Singapore's reputation not only as a reliable seat but also as a modern venue of arbitration. Mediation in Singapore also received more attention with the establishment of SIMC in 2014. The result of the rivalry between the two jurisdictions during this time favored Hong Kong, as evidenced by another Queen Mary International Arbitration Survey: HKIAC took the lead as the third-best institution worldwide and the most improved seat, while SIAC followed as the fourth-best institution and second-most improved.[72]

Since 2015, the battle has intensified as each jurisdiction has put maximum effort into improving its respective international commercial ADR. Notably, both Singapore and Hong Kong adopted monumental regulations on TPF at approximately the same time to attract more activities in ADR. On Singapore's part, collaborative hybrid procedures and other networks have been created during this period. Online dispute resolution infrastructure was also developed by Maxwell Chambers, resulting in SIAC's symbolic achievement of the 1,000-cases milestone in 2020. In Hong Kong, the 2020 National Security Law had serious implications for the city-state's reputation and allowed Singapore to leap ahead. Hong Kong authorities have downplayed investor concerns, and Hong Kong's institutions have continued to innovate, including the HKIAC Case Digest and HKIAC Case Connect. Still, these efforts may not be enough to counter the widespread perception that Hong Kong's judicial integrity has been compromised by Chinese national security. Meanwhile, Singapore continues to create new paradigms for international

[70] Queen Mary University of London Survey, "2010 International Arbitration Survey: Choices in International Arbitration" (2010) 19, 23.

[71] David Holloway and others, "Strengthening Hong Kong's Position as an Arbitration Hub in the Belt and Road Initiative" (2018) Research Centre for Sustainable Hong Kong Policy Paper 8, 2, www.cityu.edu.hk/cshk/files/PolicyPapers/CSHK%20Policy%20Paper%208.pdf, accessed May 10, 2023.

[72] Queen Mary University of London Survey, "2015 International Arbitration Survey: Improvements and Innovations in International Arbitration" (2015) 12, 17.

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commercial ADR, including, for example, the 2018 Singapore Convention. Singapore, as one of the first parties to this Convention, is taking the lead with SIMC and does so through the networks that it has established across the world.[73] A surging Singapore's status is reflected in the Queen Mary International Arbitration Survey 2018 and 2022, wherein Singapore unsurprisingly holds the crown.

After reviewing the race between Singapore and Hong Kong, one may ask what exactly "the crown" is. In terms of which jurisdiction is the preferred seat of arbitration or has more attractive institutions, "Singapore" may be the immediate answer. However, there is more to the role of a state and its institutions than just satisfying customers. From the perspective of practitioners and academics, Hong Kong comes out on top as it plays a vital role in implementing innovations, which lay the ground for the rest of Asia to follow, including Singapore. For example, in 2009, Singapore followed Hong Kong's example in adopting Option 1 of the 2006 UNCITRAL Model Law.[74] Singapore and Hong Kong should be viewed as complementary[75] because they offer different alternatives to suit parties' needs. The constant competitiveness between Hong Kong and Singapore thus only results in a net positive for Asia,[76] making a more exciting battle of ADR Asia versus the rest of the world.[77]

III THE IMPLICATIONS OF SINGAPORE'S AND HONG KONG'S MOVEMENTS FOR ASIA

A. *Across Asia*

In theory, to enhance international commercial ADR attractiveness, six aspects should be covered: (i) accession to the international treaties (i.e., the New York Convention, Singapore Convention); (ii) adoption of UNCITRAL Model Law (on Arbitration or Mediation); (iii) establishment of institutions with up-to-date practices; (iv) courts' support of arbitration and familiarity with recognition and enforcement process; (v) activities (e.g., training and seminars); and (vi) competent and attractive legislation.[78] In practice, I find that the presence of leading international

[73] SIMC is preferred by 61 percent of respondents, while HKIMC and HKIAC received 11 percent and 6 percent, respectively. See (n 18) 33.

[74] Darius Chan, "Singapore's International Arbitration Act 2012 vs Hong Kong's Arbitration Ordinance 2011" (*Kluwer Arbitration Blog*, April 5, 2012), https://arbitrationblog.kluwerarbitration.com/2012/04/05/singapores-international-arbitration-act-2012-vs-hong-kongs-arbitration-ordinance-2011/, accessed May 15, 2023.

[75] Legal Business (n 19).

[76] Erie (n 7) 245.

[77] Legal Business (n 19).

[78] Anselmo Reyes and Weixia Gu, "Introduction: Towards a Model of Arbitration Reform in the Asia Pacific" in Anselmo Reyes and Weixia Gu (eds), *The Developing World of Arbitration: A Comparative Study of Arbitration Reform in the Asia Pacific* (Hart Publishing 2018) 3.

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commercial ADR hubs in Singapore and Hong Kong has inspired changes in Asia mostly on the third, fifth, and sixth counts. In particular, in this section, I first examine general patterns of convergence across Asia in regard to international commercial ADR and the Singapore–Hong Kong competition in particular, then examine Singapore's influence in Vietnam, and lastly, conjecture some possible future outcomes of the mixture of competition and convergence in inter-Asian international commercial ADR.

Rules

In the past few decades, changes have been made to international commercial ADR across Asia in terms of rules. The UAE, or more specifically, Dubai, is the most potent example. In 2021, Dubai abolished the Dubai International Financial Centre (DIFC)–London Court of International Arbitration Centre and breathed new life into the Dubai International Arbitration Centre (DIAC). Following the event, DIAC also established the new Arbitration Rules of 2022, allowing procedures to be done electronically and adopting provisions on joinder and consolidation, emergency arbitration, expedited procedure, and TPF.[79] DIAC's supervisory court is the DIFC Courts, which operate independently from its domestic judiciary system.[80] This is similar to the SIAC–SICC relationship since DIFC is also an international commercial court with arbitration expertise; however, the difference is that the DIAC–DIFC Courts relationship does not require parties' agreement. This movement has shown Dubai's determination to become the leading legal hub in the Middle East.

In addition to development in Dubai, several new ADR institutions have been set up across Asia to follow the rise of SIAC and HKIAC. India recently established the International Arbitration and Mediation Centre in 2021. It includes Med-Arb, emergency arbitration, and online dispute resolution among its services to compete with leading institutions. Some other institutions chose to update existing rules, drawing inspiration from HKIAC and SIAC. The Korean Commercial Arbitration Board (KCAB) has been influenced by SIAC and HKIAC in developing the 2016 International Arbitration Rules. Aside from the popular provisions, KCAB now also allows the nomination of arbitrators (as opposed to appointment), which is a method used by SIAC,[81] and mandates arbitrators who accept an

[79] Soraya Corm-Bakhos, "DIAC 2022 Rules of Arbitration: A Modernised Set of Rules for a New Era" (*Kluwer Arbitration Blog*, March 21, 2022), https://arbitrationblog.kluwerarbitration.com/2022/03/21/diac-2022-rules-of-arbitration-a-modernised-set-of-rules-for-a-new-era/, accessed May 10, 2024.

[80] Silvana Cinari, "The Emergence of International Commercial Courts: The Rationale and Key Features" (2022) 9 S Eur LJ 82, 93.

[81] Jae-Hyun Kim and Bryan E. Hopkins, "Recent Changes to the Korean Arbitration Act and Its Comparison with Singapore: Korea's Potential to Become an Arbitration Hub" (2016) 26 J Arb Stud 27, 36.

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appointment or nomination to sign and submit a Statement of Acceptance and a Statement of Impartiality and Independence, which is a requirement provided by HKIAC.[82]

Notably, Singapore's institutions also make an impact by offering collaborative services with foreign institutions. For example, in 2021, SIMC collaborated with India's Centre for Advanced Mediation Practice (CAMP) and the Japan International Mediation Centre (JIMC)[83] to offer more economical, efficient, and effective mediation during COVID-19. The JIMC–SIMC Joint COVID-19 Protocol also allows each institution to appoint a co-mediator, which is well-received by both customers and mediators.[84] Furthermore, in 2022, SIMC and the Shenzhen Court of International Arbitration (SCIA) established the Mediation–Arbitration Protocol, which allows parties to utilize SIMC mediation while increasing the enforceability of SIMC mediation outcomes in China.[85] Last but not least, in 2024, Singapore and Bahrain signed a bilateral treaty to establish the Bahrain International Commercial Court (BICC) and allow appeals from this new institution to be heard by SICC. This collaboration builds on the previous Memorandum of Understanding on Cooperation and Memorandum of Guidance as to the Enforcement of Money Judgments by the Singapore and Bahrain judiciaries in May 2023. The BICC aims to leverage Bahrain's regional growth, while the SICC's involvement offers a transnational dispute resolution mechanism.[86] Not only do these protocols offer better quality services to customers, but they also bring Asian institutions closer together and share any expertise along the way.

The eastward shift of international commercial ADR also prompts Asian institutions to take bold steps in an attempt to break through in a field historically dominated by European centers. For example, the Japan Commercial Arbitration Association (JCAA) established the new Interactive Arbitration Rules 2019, where the tribunal and parties took a more active role in swiftly resolving disputes.[87] This new procedure is based on dialogues among all participants rather than traditional one-way communication. Parties share their views on each of the matters and comment on each other's views, while arbitrators can elaborate their own opinions.[88] Due to

[82] Ibid.

[83] See SIMC–CAMP Joint Covid-19 Protocol and JIMC–SIMC Joint Covid-19 Protocol.

[84] Yoshihiro Takatori, "Online Practice and Activation of ADR – Further Progress of Arb. Med. Arb." (2022) 3 Japan Comm Arb 64, 66.

[85] "Med-Arb" (SIMC 2022), https://simc.com.sg/dispute-resolution/med-arb/, accessed May 10, 2024.

[86] "Singapore and Bahrain Sign Bilateral Treaty on Appeals from the Bahrain International Commercial Court", www.mlaw.gov.sg/news/press-releases/singapore-bahrain-sign-treaty-on-appeals-from-bicc/, accessed May 10, 2024.

[87] Douglas K Freeman, "The New JCAA Arbitration Rules – Japan's Attempt in Innovative Dispute Resolution" (2020) 1 Japan Comm Arb J 4, 7.

[88] Masato Dogauchi, Shinji Ogawa and Jieying Peng, "New Style of Arbitration – The First Case under JCAA Interactive Arbitration Rules" (2022) 3 Japan Comm Arb 7, 8.

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how parties communicate, they are more likely to gain mutual information, resulting in a higher chance of negotiation, saving time and costs, and, most importantly, fulfilling certain Japanese disputants' expectations of amicability. While this idea is unique to Japan, it shows that the playground for new ideas is no longer exclusive to Singapore and Hong Kong. With the rise of mediation after the Singapore Convention, consensual procedures like interactive arbitration can inspire other countries to adopt the same approach.

Supplementary Activities

Since 2016, SIAC has been actively signing memoranda of understanding (MoUs) with institutions around the world to collaborate on organizing conferences, seminars, and workshops; providing marketing support for each other's international arbitration events; and granting complimentary admission to each other's paid or members-only events, training courses, and workshops.[89] Currently, there are at least twenty-seven MoUs between SIAC and Asian institutions from ten jurisdictions, including Cambodia, China, India, Japan, Korea, Malaysia, Russia, Thailand, Timor-Leste, and the UAE. For comparison, HKIAC has only signed a handful of cooperation agreements with Asian centers. The overwhelming number of SIAC's MoUs secure its place as the leading hub in Asia.

Outside SIAC's influence, Asian institutions have been more active than ever in conferences, workshops, and seminars, especially during the COVID-19 pandemic. Furthermore, Asian institutions are now publishing their own journals. A few years back, SIAC's *Asian International Arbitration Journal* (est. 2005) and HKIAC's *Asian Dispute Review* (est. 1999) were the two journals in Asia that major arbitration institutions published. However, the picture has evolved recently, with the introduction of KCAB's *Korean Arbitration Review* in 2010, JCAA's *Japan Commercial Arbitration Journal* in 2020, and AIAC's *Alternative Dispute Resolution Journal* in 2022. The new journals bring more extensive research to both ADR in individual countries and the view on Asian ADR practice from different perspectives. This undeniably enriches the conversations on arbitration, makes knowledge more accessible, and encourages Asian institutions to collaborate and innovate further.

National Legislations

To ensure a vibrant ecosystem for international commercial ADR, countries must have a solid legal framework. In recent years, Asia has witnessed constantly changing laws on ADR in an attempt to keep regulations up to date. India stands out as an example of amending laws, as India has passed three Amendments to the Arbitration

[89] Alvin Yeo, Chou Sean Yu and Lim Wei Lee, "Singapore: Latest Arbitration Developments" in David Samuels (ed), *The Asia-Pacific Arbitration Review 2023* (Global Arbitration Review 2022) 279–280.

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and Conciliation Act in 2015, 2019, and 2021.[90] By tackling the lengthy procedures and fixing several issues, such as time extensions and substitution of arbitrators, India has shown its endeavor to establish an arbitration hub.[91] However, the 2021 amendment is unlikely to be the last,[92] as academics are anticipating further revision because some issues have yet to be resolved.[93]

Aside from "typical" ADR regulations (Arbitration Act, Mediation Act, etc.), Japan and Korea also have unconventional legislation promoting ADR. Specifically, Japan passed the Act on Promotion of the Use of Alternative Dispute Resolution, which came into effect in 2007, while Korea enacted the new Arbitration Industry Promotion Act in 2017.[94] Japan's Act focuses on establishing general provisions applicable to all ADRs, such as requirements for ADR services or obligations of ADR institutions. This is comparable to Hong Kong's approach to ADR since Hong Kong also tries to incorporate all forms of ADR. On the contrary, the Korea Arbitration Industry Promotion Act took a more Singaporean approach, focusing on only one form of ADR – arbitration. Furthermore, the Arbitration Industry Promotion Act established how Korea deals with matters contributing to the growth of arbitration, such as funding for the arbitration industry and training arbitrators.

Regarding substantive law, one of Singapore and Hong Kong's most significant impacts on Asian regulations is TPF. This trend has sparked a lot of conversation among academics. However, depending on each country's legal system (or rather, the presence of the common law doctrine of maintenance and champerty), the impact of TPF can be different. For common law and mixed legal system countries like India and Malaysia, respectively, they first have had to draw a line between illegal acts of champerty and legal TPF, similar to how Singapore and Hong Kong dealt with the problem. For civil law countries like Korea and Japan, the legislators instead only have to consider clarifying the status of TPF, whether such conducts are legal or prohibited. Japan, for example, also

[90] Ashish Dholakia, Ketan Gaur and Kaustub Narendran, "India's Arbitration and Conciliation (Amendment) Act, 2021: A Wolf in Sheep's Clothing?" (*Kluwer Arbitration Blog*, May 23, 2021), https://arbitrationblog.kluwerarbitration.com/2021/05/23/indias-arbitration-and-conciliation-amendment-act-2021-a-wolf-in-sheeps-clothing/, accessed May 10, 2023.

[91] Satyendra Wankhade, "India Closer Than Ever to Becoming an International Arbitration Hub: Former UK Attorney General Lord Peter Goldsmith" (*Bar and Bench*, February 17, 2023), www-barandbench-com.cdn.ampproject.org/c/s/www.barandbench.com/amp/story/news/india-closer-than-ever-to-becoming-an-international-arbitration-hub-lord-peter-goldsmith, accessed May 15, 2024.

[92] Dholakia, Gaur and Narendran (n 90).

[93] Akash Gupta and Tarazi Mohammed Sheikh, "Legal Challenges of ADR in India and Bangladesh: A Comparison" *The Daily Star* (February 19, 2023), www.thedailystar.net/law-our-rights/news/legal-challenges-adr-india-and-bangladesh-comparison-3249936, accessed June 10, 2024.

[94] Takatori (n 84).

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intends to clarify the status of TPF, following the trend set by Singapore and Hong Kong.[95]

B. *Case Study: Vietnam*

Background

Vietnam presents one case study of how a second-tier Asian jurisdiction's international commercial ADR has been influenced by a first-tier jurisdiction, in this instance, that of Singapore. Vietnam's modern arbitration history began in 1994, with the Government's release of Decree No. 116-CP on the organization and activities of economic arbitration. This laid the ground for Vietnam's accession to the New York Convention in 1995. In 2003, Vietnam established the Ordinance on Commercial Arbitration to fulfill Vietnam's obligations as a member state – marking the first time Vietnam regulated commercial arbitration by law. This was soon replaced by the Law on Commercial Arbitration of 2010, which has not been amended since. Despite certain compatibility with the Model Law, Vietnam is not considered a Model Law jurisdiction.[96]

Vietnam's Development

Among jurisdictions, Vietnam most turns to trends in, firstly, Singapore and, secondarily, Hong Kong, in terms of studying the cutting edge of international commercial ADR. This applies to several aspects, such as (i) whether or not Vietnam should base its legislation on the UNCITRAL Arbitration Model Law,[97] (ii) recognizing emergency arbitration in Vietnam,[98] or (iii) whether Vietnam should focus on arbitration and mediation instead of ADR all-around. On these points, Vietnam frequently looks to Singapore. For example, on the issue of the scope of international commercial ADR, Vietnam has followed Singapore in focusing on arbitration and mediation. Dispute boards (DBs) and DNDRs are mostly not used in Vietnam. In fact, it was not until 2017 that the first legislation on commercial ADR besides arbitration was established, Decree No.22/2017/ND-CP on Commercial Mediation ("Decree 22"), which is based mainly on the UNCITRAL

[95] Theresa Tseung and Hiroko Yamamoto, "2021 Year in Review: Key Developments in East and Central Asia" (*Kluwer Arbitration Blog*, January 20, 2022), https://arbitrationblog.kluwerarbitration.com/2022/01/20/2021-year-in-review-key-developments-in-east-and-central-asia/, accessed May 10, 2023.

[96] Van Dai Do, "Amending the Law on Commercial Arbitration So That Vietnam Become a Country Under the Model Law" (2021) 140 Vietnamese J. Legal Sci 26.

[97] Ibid.

[98] Huynh Quang Thuan and Tran Hoang Tu Linh, "The Possibility of Recognizing Emergency Arbitration in National Laws of Countries with Developing Commercial Arbitration: Experience from Vietnam" (2021) 14 Contemp Asia Arb J 185.

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Model Law on Mediation.[99] Although Vietnam has had a history of importing regulations from China,[100] this is not the case here since the PRC has yet to enact any legislation on commercial mediation.[101]

From the institutional point of view, the traces from Singapore are visible. First, the Vietnam International Arbitration Centre (VIAC) Rules tend to internalize the norms set by SIAC to make arbitration at VIAC more attractive. Most recently, the 2017 version of the VIAC Rules made the following changes: (i) allowing parties to bring claims relating to more than one contract in a single request; (ii) allowing the consolidation of arbitrations; (iii) enabling the new expedited procedure.[102] Correspondingly, these are also the significant changes the SIAC made in 2016 to Rules 6, 8, and 5 of its Arbitration Rules, respectively.[103] However, these transplantations are partial since the VIAC only sets out general rules, contrasting with the comprehensive SIAC rules. Despite that, the VIAC still managed to administer cases according to these new rules (e.g., in 2018, the VIAC administered twenty-three multiple contract cases).[104] This transplant method can benefit the VIAC since the Vietnamese courts are more likely to interfere with the recognition and enforcement procedure.[105] By regulating lightly, the VIAC keeps its procedural rules simple and can better maintain the enforceability of its award, avoiding any denial based on due process.

Secondly, the VIAC offers hybrid dispute resolutions in a manner similar to SIAC. Following the publication of Decree 22 in 2018, the Vietnam Mediation Centre (VMC) was established. In 2020, the VIAC and VMC collaborated and introduced the first hybrid procedures in Vietnam, Med-Arb/Arb-Med and the Arb-Med-Arb Protocol. These procedures mirror Singapore's establishment of SIMC in 2014 and the introduction of collaborative SIAC-SIMC Arb-Med-Arb the following year. The difference between Vietnam and Singapore lies in the independence of SIMC from the SIAC since VMC remains a division of the VIAC. Thus, institutions

[99] Nguyen Manh Dzung and Dang Vu Minh Ha, "Enforcement of Mediated Settlement Agreements in Vietnam: A Step Forward the International Trend?" (*Vietnam Mediation Centre*, January 3, 2020), www.vmc.org.vn/en/mediation/enforcement-of-mediated-settlement-agreements-in-vietnam-a-step-forward-the-international-trend-a118.html, accessed May 10, 2022.

[100] Matthew S Erie and Do Hai Ha, "Law and Development Minus Legal Transplants: The Example of China in Vietnam" (2021) 8 AsianJLS 372, 383.

[101] Guodong Du, "A Decade of Rise: How Commercial Mediation in China Evolved in the 2010s" (*China Justice Observer*, February 19, 2023), www.chinajusticeobserver.com/a/a-decade-of-rise-how-commercial-mediation-in-china-evolved-in-the-2010s, accessed May 10, 2024.

[102] See Article 6, 15 and 37 of VIAC Rule 2017, respectively.

[103] Alastair Henderson, Daniel Waldek and Emmanuel Chua, "Singapore International Arbitration Centre Arbitration Rules 2016: Key Changes and Potential Impact" (Herbert Smith Freehills, July 13, 2016), https://hsfnotes.com/arbitration/2016/07/13/singapore-international-arbitration-centre-arbitration-rules-2016-key-changes-and-potential-impact/, accessed June 16, 2024.

[104] Vietnam International Arbitration Centre, "Annual Report 2018" (2019) 5.

[105] Erie and Hai Ha (n 100).

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in Vietnam have been learning from Singapore's experience to enhance the efficiency of dispute resolution and attract more parties.

Concerning the structure of institutions, Vietnam shows some degree of similarity with the Hong Kong-style approach. Similar to how HKIAC established several divisions to deal with specific matters (HKMC for mediation, ADNDRC for domain name disputes), the VIAC also established VMC for mediation and the Vietnam Institute for Arbitration Research and Training for researching and training in ADR fields.

These observations raise the question as to why Singapore has mostly been the jurisdiction of choice for Vietnam to study in the field of international commercial ADR. In other areas of law, China is generally the best fit due to being adjacent to Vietnam, sharing similar cultural values, and having a frequent trade relationship.[106] To answer that question, it should be noted that transplantation from a jurisdiction can take two (or more) forms: direct exportation from one institution or (city-)state to another or socialization of practices among the users (in this case, of international commercial ADR centers).[107] Both of these conditions are present to a higher degree in the Singapore–Vietnam ADR relationship. Singapore has been known as one of the leaders in arbitration and, recently, mediation, and thus, the implications could, as noted above, go beyond its borders, affecting Asian countries and even beyond.

However, what truly creates the trend of studying Singapore in Vietnam is the reciprocal socialization of users of international commercial ADR into both systems. Singapore ranked second among foreign users at VIAC in 2020 and 2021,[108] while Vietnam ranked 6th and 8th among SIAC foreign users in 2021 and 2022, respectively.[109] In contrast, Vietnam is not among the top ten users of ICC, HKIAC, or CIETAC.[110] Singapore attracts Vietnamese parties more than Hong Kong, likely due to Singapore being a fellow Association of Southeast Asian Nations state and a more neutral seat.

C. *The Future of ADR Centers*

The Emerging Asian Landscape: Over-Concentration or Decentralization?

As Singapore and Hong Kong charge forward, it begs the question: Will other Asian jurisdictions have any chance of making their name? Currently, other than

[106] Ibid.
[107] Kun Fan, "Glocalization of Arbitration: Transnational Standards Struggling with Local Norms through the Lens of Arbitration Transplantation in China" (2013) 18 Harv Negot L Rev 175, 218.
[108] Vietnam International Arbitration Centre, "Annual Report 2021" (2022) 11.
[109] Singapore International Arbitration Centre, "Annual Report 2022" (2023) 25.
[110] China International Economic and Trade Arbitration Commission, "Annual Report on International Commercial Arbitration in China (2020~2021)" (Wolters Kluwer China (tr), 2021) 16–17.

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Singapore and Hong Kong, the attention paid to other Asian seats of arbitration is relatively insignificant.[111] Over-concentration of capacity and cases in one or two centers may become a serious issue if the gap between the first-tier cities of Singapore and Hong Kong and the rest of Asia continues to grow. Asia is known for its cultural diversity. The region of Southeast Asia alone contributed significantly to this diversity due to the vast differences in religions, languages, and histories. Thus, if over-concentration happens, ADR in Asia may become a one-size-fits-all model, which can damage both the businesses in the region and Asia's competitive edge.

So, is over-concentration real in this case? The good news is that it is unlikely to come to pass. In the recent Queen Mary Survey, several interviewees suggested they might be willing to use the new or emerging lesser-known institutions instead of the well-established ones, SIAC and HKIAC.[112] Interestingly, the reasoning behind such a choice is that they acknowledged the risk of over-concentration. They are willing to discount the established names of the leading institutions and seek underlying quality to help institutions receive the reputation they deserve.[113] The numbers also partially support this idea, as the *Singapore International Dispute Resolution Academy International Dispute Resolution Survey: 2022 Final Report (SMU SIDRA Report 2022)* introduced several new competitors to the favored arbitration institutions, including the Philippines Dispute Resolution Centre, JCAA, SCIA, Beijing Arbitration Commission, and VIAC.[114] This signals a slight decentralization in the ADR market, which, from a normative view, is desirable. Furthermore, as the history of Singapore and Hong Kong has proven, the crown is not permanent. Therefore, although there remains a gap between Singapore and Hong Kong, on the one hand, and the rest of Asia, on the other, it is too soon to predict which will bear the crown ten years from now.

Singapore and Hong Kong: What Can Be Expected?

Since Singapore and Hong Kong are currently the two leaders in international commercial ADR in Asia, the question is, what should we expect from them? First, since they attract ADR activities at the international level, the initial answer would be that they should maintain their flexible procedure so that both Asian and Western parties can find common ground.[115] Furthermore, it has long been predicted that Singapore and Hong Kong would soon witness new challengers coming onto the

[111] See Queen Mary Survey 2021 (n 4) 6; "SMU SIDRA Report 2022" (n 18) 34. The only other seats are Beijing, Shanghai, and Dubai, but the former two are related to China and thus, related to Hong Kong.

[112] "Queen Mary Survey 2021" (n 4) 11–12.

[113] Ibid.

[114] "SMU SIDRA Report 2022" (n 18) 18. See also Singapore Management University, Singapore International Dispute Resolution Academy International Dispute Resolution Survey: 2022 Final Report (SMU SIDRA Report 2020), 39.

[115] Benton (n 5).

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stage (e.g., Korea, Japan, Malaysia, and mainland China). Now that these second-tier jurisdictions are waiting for their chance to break through, Singapore and Hong Kong must establish their competitive advantage – consolidating their ability to bridge East–West divides, markets, and politics.

Secondly, on Hong Kong's part, the short-term answer would be dealing with the crisis caused by the National Security Law and, more broadly, the increasing presence of mainland PRC governance in Hong Kong. To date, there is no concrete evidence that parties are opting out of Hong Kong and using Singapore because of the former's political situation, even if there are general concerns about such a shift happening. With the BRI, HKIAC can still grow in terms of its number of cases, even if there may be cases of a certain threshold amount. Hong Kong will, in the foreseeable future, remain more attractive to China-related disputes than mainland PRC.[116] In the long run, on the other hand, Hong Kong should establish modern dedicated hearing venues as, according to the SMU SIDRA 2022 report, the quality of hearing facilities is one of the top factors affecting the choice of venue of arbitration to satisfy the needs of businesses. Currently, the HKIAC office doubles as the hearing venue for arbitration, but that leaves plenty of room for improvement.[117] Other ADR systems in the region, like Singapore, Korea, Japan, or Dubai, have specialized state-of-the-art hearing centers. By establishing a dedicated, high-quality arbitration venue, Hong Kong can also increase its appeal as a seat of arbitration.

Thirdly, for Singapore, the problem lies in the very crown it is holding. Now that Singapore is widely known as a reliable seat of arbitration, it has to live up to its name. Singapore cannot stop innovating or risk being overthrown by emerging competitors. The answer for Singapore in this situation would be to continue growing its network with other providers in Asia. Only by continuing to grow a larger and deeper network can SIAC maintain its relevance and irreplaceability.[118] Even when other competitors rise to the challenge, Singapore still has an advantage in knowledge and experience.

IV CONCLUSION

If the significance of international commercial ADR is measured as the outcome of a race between Asian jurisdictions, the lead is currently in favor of Singapore. Thanks to its constant development in infrastructure, services, and regulations, Singapore has secured its place as the most preferred seat of arbitration not only in Asia but also in the world. If, however, one measures a jurisdiction's significance by its contribution to Asian ADR culture, both Singapore and Hong Kong can be

[116] Benton (n 5).
[117] "SMU SIDRA Report 2022" does not show HKIAC among the most favored hearing facilities.
[118] Benton (n 5).

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considered to be influential. While Singapore functions as a blueprint for the future development of other countries, exemplified by Vietnam adopting Singaporean ADR practices, Hong Kong functions like a test drive to see if a service is compatible with the Asian culture. Singapore and Hong Kong's success with international commercial ADR has encouraged new contestants such as Korea, Japan, Malaysia, UAE, and Vietnam to break through. By diversifying ADR providers, businesses will benefit more from the competition, getting to choose whichever suits them most. Furthermore, with the rise of mediation, parties worldwide will turn to Asia – where consensual culture resonates. Thus, Asia would likely continue to develop a healthy ecosystem of international commercial ADR.

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