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Deal Clinching Dispute Resolution Clause

Submitted by: Hong Kong, China



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(Deal Clinching Dispute Resolution Clause)

by Samuel Wong
Barrister-at-law, Chartered Arbitrator



APEC: Members 2 Groups

- (i) common law members
- (ii) non common law members



An effective dispute resolution clause acceptable to both contracting parties is essential



Concern about:

- (a) governing law of the contract
- (b) dispute resolution



The issue revolves knowledge of foreign language and substantive law of another country



About home ground advantage



Differences:

- (a) statute law v. case law
- (b) inquisitorial v. adversarial system of dispute resolution
- (c) evidence based mainly on documents v. oral evidence



- system of law
- arbitral institution
- depends on the bargaining power of the parties
- impasse could become a deal breaker



Suggestion:

Hong Kong as a preferred neutral venue
for arbitration

(i) using HK law as the substantive law
of the contract

(ii) using HK as the seat of arbitration



Hong Kong law (such as contract law)
with case law in English



English language

- used in the drafting in HK legislations
- easily readable and understandable by lawyers



Hong Kong Arbitration Ordinance
Cap 609 ("the Ordinance") is highly
supportive of arbitration: Objective
and Principles (section 3)



Unitary scheme based on UNCITRAL
Model Law



Court of HK is enjoined from
intervening saved as provided for in
the Arbitration Ordinance (sec 12)



Hong Kong is permissive of both ad hoc and institutional arbitration



IBA rules on taking evidence in International Arbitrations



- Tribunal of three generally (party autonomy as to number of arbitrators and nomination/ appointment procedure : sec 23-24)
- Default appointment of the third arbitrator by HKIAC in the absence of agreement of the parties



No requirement in Hong Kong as to qualification of the arbitrator (unless specified in the Arbitration Agreement)



- Fully recognizes party autonomy
- Choice as to the language
(sec 50)
- Parties' choice as to the governing law
of the contract
- Procedural law of the arbitration



Award of a HK seated arbitration
can be enforced in all the signatory
states of the 1958 New York
Convention (156 States)



Costly and time consuming fight
based on complicated civil
procedural rules can be avoided



Envisaged with the “One Belt One
Road” initiative of China: More
transactions and disputes



Multi-lingual lawyers, consultants and specialists in Hong Kong

Geographic Convenience

International City with all necessary facilities



- Needs only a simple widely drafted arbitration clause in writing – for all disputes arising out of and in connection with the agreement to be resolved by arbitration in Hong Kong
- The Provisions of Hong Kong’s Arbitration Ordinance Cap 609 based on UNCITRAL Model Law will fill in all the gaps



~ End ~

