



**Asia-Pacific  
Economic Cooperation**

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**2016/SOM1/EC/WKSP1/014**

Session 13

## **Investor-State Arbitration in Asia**

Submitted by: Hong Kong, China




**Workshop on Dispute Resolution  
Lima, Peru  
26 February 2016**


 HKIAC 香港國際仲裁中心



**Investor -State Arbitration in Asia**  
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**Investment Arbitration - Introduction** 

- A forum for foreign investors to pursue claims against host states
- Investment arbitration is similar to international commercial arbitration:
  - Consent; decisions by arbitrators selected by the parties
  - Typically conducted either according to specialised institutional rules (e.g., ICSID) or institutional rules (e.g., ICC) or UNCITRAL Arbitration Rules
- **Unique elements of investment arbitration:**
  - At least one of the parties is a state
  - Often level of confidentiality is reduced



2

## BITs & Investment Arbitration



- Investment Arbitration as a means of Dispute Resolution in Bilateral Investment Treaties (BITs)
  - Investment Arbitration favorable to litigation
- BITs are established forms of investment treaties that typically contain investment arbitration clauses



3

## Growth of Asian Investment Arbitration



- Asian countries have embraced BITs to promote foreign direct investment :
  - **A total of 17 countries in East Asia have entered into BITs**
  - **Growing economies** such as Indonesia, Malaysia and Vietnam have each concluded **over 50 BITs**
  - **China** has concluded **129 BITs**; second only to Germany's 135
  - **Hong Kong** has concluded **17 BITs**

Asian countries are also strengthening and extending the protections granted by investment arbitration to **safeguard cross border investments**



## Focus on BITs with China



- China BITs have existed since before the 1990s
  - First-generation BITs that were concluded up until 2000 offer limited foreign investor protection and arbitrability of disputes (with Norway, Austria, Singapore etc.)
- China has since ushered in a new generation of BITs including revamped investment arbitration clauses
  - Second Generation of BITs afford foreign investors protections akin to international standards (with Canada, Switzerland, France etc.)



5

## Emergence of Cases from Asia



- Asian States involved: China, Malaysia, Vietnam, Laos, Thailand , Myanmar, Philippines, South Korea, Indonesia
- Investor counterparties were from: India, Netherlands, UK, Australia, Singapore, Malaysia, South Korea, France, USA, Macao, Belgium, Germany, Switzerland, Iran, Luxembourg, Saudi Arabia
- First case was in 1994 and most recent was in 2015
- Significant increase in the number of cases from 2010 onwards



6

## Emergence of Cases from Asia



- Asian investors from: China, Malaysia, South Korea, Japan, Singapore, Hong Kong, Macao
- Counterparty states involved: Yemen, Belgium, Mongolia, Peru, China, Ghana, Chile, Oman, Kyrgyzstan, Indonesia, Spain, Australia, Laos, Myanmar
- First case in 2001 most recent was in 2015
- Significant increase in the number of cases from 2010 onwards
- Asian parties are increasingly involved in investor state arbitrations and trend likely to continue



7

## HK & HKIAC Supportive



### Host Country Agreement between Hong Kong and the PCA

- Signed on 4 January 2015, effective immediately
- Facilitates PCA's conduct of arbitral proceedings in Hong Kong
  - Secures the provision of facilities and services
- Privileges and immunities accorded by China to adjudicators and participants
- Establishes a legal framework within which PCA-administered proceedings can be conducted on an ad hoc basis under conditions similar to those guaranteed by PCA's Headquarters Agreement with Netherlands

8

## HKIAC and PCA Cooperation Agreement



### Cooperation Agreement between PCA and HKIAC

- Signed on 19 November 2010
- The agreement aims to strengthen existing ties between HKIAC and PCA
- Each institution will be able to hold hearings and meetings at the other's premises and will assist with the arrangement of local support services
- PCA and HKIAC will also cooperate in the organisation of conferences and seminars and the exchange of information and expertise in areas of mutual interest

9

## First PCA administered Case at HKIAC



### *Michael McKenzie v. Vietnam :*

US\$3.75 billion dispute between a US investor and Vietnam over an abandoned project to develop a tourism resort

- In 2013, HKIAC provided its facilities for a dispute governed by UNCITRAL Rules and administered by the PCA
- This was the first hearing at HKIAC under the HKIAC-PCA Cooperation Agreement
- Tribunal consisted of arbitrators, including Neil Kaplan CBE QC SBS, Prof Campbell McLachlan and Prof John Gotanda

10

## HKIAC: A Venue for Investment Arbitration



- Founded in 1985, HKIAC is one of the **oldest & most experienced** international arbitration institutions in Asia-Pacific
- HKIAC is among the **top 4 hearing centres** in the world
- HKIAC offers **tribunal secretary service** (only institution in the Asia-Pacific region that provides this service)
- HKIAC is **optimally located** in Asia
- **Global Presence**
  - Offices in Hong Kong, Shanghai and Seoul



Thank You



Asia's Prime Location for Dispute Resolution Services

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