

# THE DEVELOPMENT OF ARBITRAL INSTITUTIONS IN ASIA

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## I. INTRODUCTION

International arbitration continues to increase in popularity throughout Asia as a mechanism to resolve commercial disputes. This increased popularity is evident in the burgeoning number of arbitral institutions in Asia—all of which feature their own institutional rules, fee schedules and administrative infrastructures—and the growing sizes of their respective caseloads. This article is intended as a brief survey of some of the key institutions and their caseloads, with a view to providing a picture of the arbitral landscape in Asia today.

Arbitral institutions with a strong foothold in Asia may be roughly categorized by their geographic reach. For the sake of convenience, we have devised four (admittedly non-scientific) categories. *First*, there are two global players in international commercial arbitration: the International Chamber of Commerce Court of Arbitration and the London Court of International Arbitration. *Second*, there are two major regional players: the Singapore International Arbitration Centre and the Hong Kong International Arbitration Centre. *Third*, there is the dominant institution in the People's Republic of China: the China International Economic and Trade Arbitration Commission. *Fourth*, there is the suite of arbitral institutions which has a smaller geographic reach, but now exists in almost every major Asian economy and serves as important regional players in their own right. These include, for example, the Japan Commercial Arbitration Association, the Korean Commercial Arbitration Board,

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and the newly rebranded Asian International Arbitration Centre (formerly known as the Kuala Lumpur Regional Centre for Arbitration).<sup>1</sup>

## II. GLOBAL PLAYERS IN INTERNATIONAL ARBITRATION: ICC AND LCIA

### A. The ICC International Court of Arbitration (the “ICC”)

The ICC was established in 1923.<sup>2</sup> It was founded to help resolve difficulties in international commercial disputes, with a view to supporting trade and investment in the aftermath of World War I.<sup>3</sup> Since that time, ICC arbitration has become one of the most widely used forms of dispute resolution for international commercial disputes. In the authors’ experience, it is a very popular choice of dispute resolution for commercial parties doing business in Asia. This may owe to the institution’s long and established history in administering arbitration, and the leading role played by the ICC in the development of arbitral rules. It may also be due to the scrutiny of draft final awards conducted by the ICC Court, which is a service not offered by every arbitral institution.<sup>4</sup>

The 2016 ICC Dispute Resolution statistics bear witness to the ICC’s popularity. In 2016, 966 new arbitrations were filed with the

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<sup>1</sup> ASIAN INTERNATIONAL ARBITRATION CENTRE, *Asian International Arbitration Centre (AIAC) to Spearhead Alternative Dispute Resolution Community in 2018 (KLRCA Undergoes Rebranding to Signify a New Era of Expansion)*, ANNOUNCEMENT DETAILS (Feb. 7, 2018), <https://www.klrca.org/announcements-announcements-details.php?id=178> [<https://perma.cc/YEY3-YDGH>].

<sup>2</sup> INTERNATIONAL CHAMBER OF COMMERCE, *History*, <https://iccwbo.org/about-us/who-we-are/history/> [<https://perma.cc/G59G-J5NM>].

<sup>3</sup> *Id.* See also, INTERNATIONAL CHAMBER OF COMMERCE, *ICC International Court of Arbitration*, <https://iccwbo.org/dispute-resolution-services/arbitration/icc-international-court-arbitration/> [<https://perma.cc/TSZ8-9RA5>].

<sup>4</sup> *ICC Court of Arbitration Procedure*, INTERNATIONAL CHAMBER OF COMMERCE, <https://iccwbo.org/dispute-resolution-services/arbitration/procedure/> [<https://perma.cc/T32E-R9RG>] (“Scrutiny is a distinctive feature of ICC Arbitration. No arbitral award is issued without the Court’s approval.”).

ICC, involving 3,099 parties.<sup>5</sup> Four out of every five cases involved parties from different countries; indeed, two-thirds of the arbitrations filed in 2016 involved parties from different regions.<sup>6</sup> Of the 3,099 parties involved in the 2016 filings, 519 or 16.7% came from Asia and the Pacific region.<sup>7</sup> The largest number of Asian and Pacific parties came from South Korea, China (including Hong Kong), and India.<sup>8</sup> Parties chose arbitral seats in 106 different countries.<sup>9</sup> The most popular seat in Asia for ICC arbitration was Singapore.<sup>10</sup>

These statistics confirm the ICC's global reach and strong foothold in Asia. Recognizing the growth of ICC arbitration in Asia, the ICC announced in June 2017 that it would open a case management office in Singapore.<sup>11</sup> This is the fourth overseas case management office opened by the ICC, and the second opened by the ICC in Asia, after Hong Kong.<sup>12</sup> It remains to be seen whether the ICC's office in Singapore will impact competition for arbitrations in Singapore. Given that ICC arbitration with a Singapore seat is already a well-known and popular choice in Asia,<sup>13</sup> and that arbitration administered by the Singapore International Arbitration Centre is also an existing, popular choice for parties who want to have locally administered arbitration in Singapore, there is no obvious reason why the presence of a new ICC office in Singapore would necessarily alter the demand for arbitration administered by the Singapore International Arbitration Centre. But the ICC's

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<sup>5</sup> *2016 ICC Dispute Resolution Statistics*, ICC DISPUTE RESOLUTION BULLETIN—ISSUE 2, 2017, at 106.

<sup>6</sup> *Id.* at 108.

<sup>7</sup> *Id.* at 107-08.

<sup>8</sup> *Id.* at 107-08.

<sup>9</sup> *Id.* at 111.

<sup>10</sup> *Id.*

<sup>11</sup> *Singapore Ministry of Law and ICC sign MOU to Boost Arbitration*, INTERNATIONAL CHAMBER OF COMMERCE, (Jun. 28, 2017), <https://iccwbo.org/media-wall/news-speeches/singapore-ministry-law-international-chamber-commerce-sign-mou-boost-arbitration/> [<https://perma.cc/2NN7-4QVT>].

<sup>12</sup> *Id.*

<sup>13</sup> *2016 ICC Dispute Resolution Statistics*, *supra* note 5 at 111.

increased focus on Singapore may well have the effect of further increasing, as an absolute matter, the attractiveness of arbitration generally in Singapore and throughout South-East Asia. In other words, the ICC's Singapore gambit could have the effect of increasing the overall size of the arbitral pie in Singapore and the surrounding region, creating more work for all without significantly altering the competitive landscape as between institutions.

### **B. The London Court of International Arbitration (the "LCIA")**

The London Court of International Arbitration recently celebrated its 125<sup>th</sup> anniversary, with a history dating back to the late nineteenth century.<sup>14</sup> The LCIA, therefore, predates the ICC. In 1893, at the inauguration of the institution that would later become the LCIA, Edward Manson wrote that the institution "is to have all of the virtues which the law lacks. It is to be expeditious where the law is slow, cheap where the law is costly, simple where the law is technical, a peacemaker instead of a stirrer-up of strife."<sup>15</sup> He went on to write "at all events, the result of the experiment will be awaited with interest."<sup>16</sup> Apart from the pioneering nature of Manson's early vision of the role to be played by arbitral institutions, what can be said specifically about the LCIA is that since 1893, the geographic reach of the LCIA has become global, and that, for many commercial parties in Asia, the experiment has been a success.

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<sup>14</sup>*History*, LONDON COURT OF INTERNATIONAL ARBITRATION, <http://www.lcia.org/LCIA/history.aspx> [<https://perma.cc/WA77-EW2S>]; Alison Ross, *Nudging its way into a new era—LCIA celebrates 125 years*, GLOBAL ARBITRATION REVIEW (Feb. 9, 2018), <https://globalarbitrationreview.com/article/1153548/nudging-its-way-into-a-new-era-%E2%80%93-lcia-celebrates-125-years> [<https://perma.cc/6GUH-35A2>].

<sup>15</sup> Edward Manson, *The City of London Chamber of Arbitration*, 9 L. Q. REV. 86, 86 (1893).

<sup>16</sup> *Id.*

In 2016, 303 arbitrations were referred to the LCIA.<sup>17</sup> More than 80% of the parties involved in these arbitrations did not come from the United Kingdom.<sup>18</sup> Approximately 26.5% of the parties came from Asia (excluding Russia), the Pacific or the Middle East.<sup>19</sup> By far, the most popular seat of arbitration was London.<sup>20</sup> Although very few LCIA arbitrations were seated in Asia,<sup>21</sup> based on the number of Asian parties involved, LCIA arbitration appears to remain a reasonably popular choice in disputes involving Asian parties.

Unlike the ICC, which expanded its case management capacity in Asia initially by opening a case management office in Hong Kong, and which now plans to open a second such office in Singapore, the LCIA set about expanding in Asia by attempting to capture the Indian administered arbitration market. In 2009, the LCIA decided to launch an independent subsidiary, LCIA India.<sup>22</sup> This included the launch of a distinct set of rules, the LCIA India Rules, which were specifically designed to address problems thought to be associated with *ad hoc* arbitration in India.<sup>23</sup> Insufficient adoption of LCIA India arbitration clauses and a willingness of parties seeking LCIA arbitration to rely on the LCIA rules (rather than the LCIA India Rules), however, led the LCIA to close LCIA India in 2016.<sup>24</sup>

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<sup>17</sup> London Court of International Arbitration, *Facts and Figures 2016: A Robust Caseload*, at 5, <http://www.lcia.org/News/lcia-facts-and-figures-2016-a-robust-caseload.aspx> [<https://perma.cc/MB9L-E76Y>].

<sup>18</sup> *Id.* at 3.

<sup>19</sup> *Id.* at 9.

<sup>20</sup> *Id.* at 17.

<sup>21</sup> *Id.*

<sup>22</sup> Alison Ross, *LCIA India closes its doors*, GLOBAL ARB. REV., (Jan. 15, 2016), <https://globalarbitrationreview.com/article/1035055/lcia-india-closes-its-doors> [<https://perma.cc/5BCS-YJ7P>].

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

### III. TWO MAJOR REGIONAL COMPETITORS: SIAC AND HKIAC

#### A. Singapore International Arbitration Centre (“SIAC”)

SIAC commenced operations in 1991.<sup>25</sup> In 2016, a total of 343 new arbitration cases were filed with the SIAC.<sup>26</sup> That represented a substantial increase from the 271 new cases filed in 2015, and the 222 cases filed in 2014.<sup>27</sup> SIAC characterized 80% of the cases filed in 2016 as “international in nature”.<sup>28</sup>

With regard to parties, 42% of cases did not involve Singaporean parties.<sup>29</sup> The top foreign users were from India, followed by users from mainland China and the United States. Significant increases were also noted in the numbers of parties from Indonesia, Malaysia, the Netherlands and the United Kingdom.<sup>30</sup>

SIAC’s 2016 statistics do not specify the most commonly used seats of arbitration. They do, however, include information about the governing law of contracts giving rise to SIAC arbitrations. Of all cases filed in 2016, 49% of the underlying contracts chose Singaporean law, 19% chose English law, 9% chose Indian law, 11% chose another body of law, and 12% did not include a choice of law clause.<sup>31</sup>

Historically, Singapore has been a popular seat for arbitrations involving Indian parties, a result presumably of a shared language

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<sup>25</sup> *About Us*, SINGAPORE INTERNATIONAL ARBITRATION CENTRE, <http://www.siac.org.sg/2014-11-03-13-33-43/about-us> [<https://perma.cc/CS4D-T54N>].

<sup>26</sup> *Statistics*, SINGAPORE INTERNATIONAL ARBITRATION CENTRE, <http://www.siac.org.sg/2014-11-03-13-33-43/facts-figures/statistics> [<http://perma.cc/EW9W-AEL7>].

<sup>27</sup> *Id.*

<sup>28</sup> SINGAPORE INTERNATIONAL ARBITRATION CENTRE, ANNUAL REPORT, 14 (2016).

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

and common law legal system, as well as cultural ties and geographic proximity.<sup>32</sup> The most recent characteristics of the 2016 SIAC caseload seem to support the conclusion that SIAC continues to be a popular choice for India-related arbitration taking place outside of India. It will be interesting to see whether a relatively new entrant into the Indian arbitration market, the Mumbai Centre for International Arbitration, will have an effect on SIAC's India-related caseload.<sup>33</sup>

### **B. Hong Kong International Arbitration Centre (“HKIAC”)**

The HKIAC was established in 1985.<sup>34</sup> In 2016, a total of 262 new arbitration cases were filed with the HKIAC.<sup>35</sup> The HKIAC characterized 87.2% of these cases as “international”.<sup>36</sup> Of these 262 arbitrations, 94 or approximately 36% were arbitrations administered under the HKIAC Administered Arbitration Rules or the UNCITRAL Rules.<sup>37</sup>

The most common types of dispute were corporate and finance (29.3%), maritime (21.6%) and construction (19.2%).<sup>38</sup> This profile is not radically distinct from the profile of claims filed at SIAC in 2016, where the most common types were corporate and

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<sup>32</sup> See generally, Jawad Ahmad and Andre Yeap, *Arbitration in Asia*, THE ASIA-PACIFIC ARBITRATION REV. 2014 (Sept. 3, 2013), <https://globalarbitrationreview.com/insight/the-asia-pacific-arbitration-review-2014/1036763/arbitration-in-asia> [<https://perma.cc/VGT9-VFVD>] (describing popularity of arbitrations seated in Singapore or administered by SIAC with Indian parties).

<sup>33</sup> See further, *About*, MUMBAI CENTRE FOR INTERNATIONAL ARBITRATION, <http://mcia.org.in/about/> [<https://perma.cc/GE2S-K9PB>]; Alison Ross, *Home-grown Centre to Launch in Mumbai*, GLOBAL ARBITRATION REV. (2016), <https://globalarbitrationreview.com/article/1035436/home-grown-centre-to-launch-in-mumbai> [<https://perma.cc/TF9Q-7B4B>].

<sup>34</sup> *About HKIAC*, HONG KONG INTERNATIONAL ARBITRATION CENTRE, <http://www.hkiac.org/about-us> [<https://perma.cc/Q2LF-ZWQR>].

<sup>35</sup> HONG KONG INTERNATIONAL ARBITRATION CENTRE, ANNUAL REPORT, 10 (2016).

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

commercial (40%), maritime/shipping (19%), and construction/engineering (16%).<sup>39</sup>

Although the greatest number of parties were domiciled in Hong Kong, nearly half of all cases (49.1%) had parties with no connection to Hong Kong. The vast majority of cases (93.4%), however, involved a party from Asia.<sup>40</sup> Interestingly, after Hong Kong, the most common domiciles for parties were mainland China, the British Virgin Islands (a popular jurisdiction for the incorporation of investment companies and special purpose vehicles in Greater China), and Singapore. In terms of seat, Hong Kong was the most common seat for HKIAC arbitration, with Singapore coming in second.<sup>41</sup> As to governing law, Hong Kong law was most popular, followed by English and Chinese law.<sup>42</sup>

Taken together, these statistics suggest that the ongoing attraction of HKIAC as an administering institution is for international arbitrations with a connection to Hong Kong or Greater China. In the authors' view, that observation is not surprising. Over the years, Hong Kong has developed a well-deserved reputation as a reliable seat for international arbitration, including arbitration involving Chinese parties. Given that the HKIAC has also evolved as a reliable regional institution, it is not at all surprising that it would continue to attract a significant number of these cases.

### C. SIAC and HKIAC Liaison Offices

Both SIAC and HKIAC have attempted to capture broader shares of the institutional arbitration market in Asia. One strategy for doing so has been through the opening of liaison offices in different Asian markets.<sup>43</sup>

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<sup>39</sup> Singapore International Arbitration Centre, Annual Report 2016, 15.

<sup>40</sup> Hong Kong International Arbitration Centre, Annual Report 2016, 10.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> It should also be noted that, although not discussed above, the ICC has over the years also opened "liaison" offices (that is, regional offices not offering case



SIAC opened its first liaison office in Mumbai, India in 2013.<sup>44</sup> SIAC did so to reflect the fact that the number of cases involving Indian parties had grown tenfold from 2001 to 2012.<sup>45</sup> This was arguably a bold move given the limited uptake the LCIA had experienced from Indian parties through LCIA India, which had operated in India since 2009. The strategy to continue to attract cases involving Indian parties, however, must be delivering results, given that SIAC opened its fourth overseas office in Gujarat in 2017.<sup>46</sup> SIAC has not attempted to introduce specialized rules for Indian parties, as LCIA India attempted to do.

SIAC's second and third liaison offices were opened in Seoul, South Korea and Shanghai, People's Republic of China, in 2013 and 2016 respectively.<sup>47</sup> The reasons provided for opening these offices were largely the same: SIAC witnessed an increasing number of arbitrations involving Korean and Chinese parties in previous years.<sup>48</sup>

HKIAC opened an office in Seoul, South Korea in 2013.<sup>49</sup> Again, this was to reflect the growing demand for HKIAC arbitration by

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management services but which aim to promote ICC dispute resolution services) in Asia, including in Singapore and Shanghai. *See* International Chamber of Commerce, *New Shanghai office lays groundwork for ICC Asia developments* (Feb. 24, 2016), <https://iccwbo.org/media-wall/news-speeches/new-shanghai-office-lays-groundwork-for-icc-asia-developments/> [<https://perma.cc/S7KL-CH49>] (referring to the opening of ICC offices in Singapore and Shanghai each headed by a Director of ICC Arbitration and ADR).

<sup>44</sup> Singapore International Arbitration Centre, *SIAC India Representative Offices*, <http://www.siac.org.sg/2014-11-03-13-33-43/about-us/siac-india-representative-offices> [<https://perma.cc/7DG3-LHUM>].

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> Singapore International Arbitration Centre, *SIAC Seoul Office*, <http://www.siac.org.sg/2014-11-03-13-33-43/about-us/siac-seoul-office> [<https://perma.cc/2ME8-EYBK>]; Singapore International Arbitration Centre, *SIAC Shanghai Office*, <http://www.siac.org.sg/2014-11-03-13-33-43/about-us/siac-shanghai-office> [<https://perma.cc/E7BX-WZH2>].

<sup>48</sup> *Id.*

<sup>49</sup> Hong Kong International Arbitration Centre, *HKIAC Seoul Office*, <http://www.hkiac.org/contact-us/hkiac-seoul-office-hkiac->

Korean companies and counsel.<sup>50</sup> Then, in 2015, the HKIAC opened an office in Shanghai, becoming the first international institution to open a liaison office in mainland China.<sup>51</sup>

To take this broader regional push even one step further, the latest version of the SIAC Rules<sup>52</sup> provides that the parties may agree on the seat and, if the parties have failed to agree, that the Tribunal shall determine the seat.<sup>53</sup> This means that Singapore is no longer the default seat for arbitrations conducted under the SIAC Rules—although, of course, the selection of the SIAC Rules may be indicative of an implied choice by the parties to seat the arbitration in Singapore. The HKIAC still maintains the position that in the absence of agreement by the parties, Hong Kong will be the seat unless the Tribunal otherwise determines another seat is more appropriate.<sup>54</sup>

#### IV. THE SHIFTING LANDSCAPE IN CHINA: CIETAC

The China International Economic and Trade Arbitration Commission (“CIETAC”) has long been the dominant arbitral institution in the People’s Republic of China. CIETAC was founded in April 1956, originally as the Foreign Trade Arbitration

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<https://perma.cc/ZS49-LA2V>.

<sup>50</sup> *Id.*

<sup>51</sup> Hong Kong International Arbitration Centre, *HKIAC Achieves Breakthrough by Launching Office in Mainland China* (Nov. 20, 2015), <http://www.hkiac.org/news/hkiac-achieves-breakthrough-launching-office-mainland-china> [<https://perma.cc/3K7K-GG5N>].

<sup>52</sup> References to the “SIAC Rules” are references to the international commercial arbitration rules of the Singapore International Arbitration Centre published on August 1, 2016, and not the Investment Arbitration Rules of the Singapore International Arbitration Centre published on January 1, 2017.

<sup>53</sup> SIAC Rules 2016, Art. 21.1 (“The parties may agree on the seat of the arbitration. Failing such an agreement, the seat of the arbitration shall be determined by the Tribunal, having regard to all the circumstances of the case.”).

<sup>54</sup> Hong Kong Administered Arbitration Rules 2013, Art. 14.1 (“The parties may agree on the seat of arbitration. Where there is no agreement as to seat the seat of arbitration shall be Hong Kong, unless the arbitral tribunal determines, having regard to the circumstances of the case, that another seat is more appropriate.”).

Commission.<sup>55</sup> The Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the “**New York Convention**”) did not enter into force in the People’s Republic of China until April 22, 1987.<sup>56</sup> Thus, CIETAC operated for over thirty years prior to the commencement of the New York Convention in China.

In the decades since, CIETAC’s caseload has grown immensely. In 1987, when the New York Convention entered into force, CIETAC administered 129 arbitrations, comprising both “foreign-related” and domestic arbitrations.<sup>57</sup> By 2016, this number had soared to 2,183 foreign-related and domestic arbitrations.<sup>58</sup> Of these 2,183 arbitrations, CIETAC considers 485 of them to be foreign-related.<sup>59</sup> Thus, the bulk of CIETAC’s caseload is comprised of domestic arbitrations. In each of the ten years from 2007 to 2016, CIETAC administered at least 1,100 arbitrations.<sup>60</sup> By any metric, CIETAC’s caseload is hugely substantial and places CIETAC among the largest arbitral institutions in the world in absolute terms of cases administered.

Despite its meteoric rise, it has not always been smooth sailing for CIETAC. On August 28, 2012, the Shanghai Sub-Commission and the South-China Sub-Commission of CIETAC both declared

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<sup>55</sup> China International Economic and Trade Arbitration Commission, *Introduction*, <http://www.cietac.org/index.php?m=Page&a=index&id=34&l=en> [<https://perma.cc/TU5X-H6L9>].

<sup>56</sup> UNCITRAL, *Status of Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958)*, [http://www.uncitral.org/uncitral/en/uncitral\\_texts/arbitration/NYConvention\\_status.html](http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/NYConvention_status.html) [<https://perma.cc/N6ZP-FSVF>].

<sup>57</sup> China International Economic and Trade Arbitration Commission, *Statistics*, <http://www.cietac.org/index.php?m=Page&a=index&id=40&l=en> [<https://perma.cc/54S4-LHCU>].

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

themselves as independent arbitral institutions.<sup>61</sup> The sub-commissions later became known as the Shanghai International Arbitration Centre (“SHIAC”) and the Shenzhen Court of International Arbitration (“SCIA”) respectively. The impetus for these declarations of independence was understood to be CIETAC’s introduction in 2012 of new arbitration rules.<sup>62</sup> Prior to those rules, parties could choose to refer disputes to particular sub-commissions of CIETAC. The 2012 rules permitted the sub-commissions to accept and administer arbitrations only after approval by CIETAC headquarters in Beijing.

In a number of cases, the split raised interesting jurisdictional questions. Specifically, a question arose as to whether an arbitration pursuant to an agreement referring to the CIETAC Shanghai Sub-Commission or the CIETAC South-China Sub-Commission should be administered by CIETAC or the newer, independent institutions. This question was resolved on July 15, 2015 by an opinion of the Supreme People’s Court.<sup>63</sup> In essence, the Court determined that the issue would be resolved based on when the arbitration agreement was decided in conjunction with the renaming. Where the parties agreed to submit their dispute to the “CIETAC Shanghai Sub-Commission” or the “CIETAC South China Sub-Commission”:

1. If the arbitration agreement was entered into *prior* to the renaming, the independent institutions (SCIA or SHIAC) will have jurisdiction over the dispute.

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<sup>61</sup> Barry Fletcher, *China International Economic and Trade Arbitration Commission* (Sept. 2, 2013), <http://blogs.lexisnexis.co.uk/dr/china-international-economic-and-trade-arbitration-commission/> [<https://perma.cc/V92E-RZTP>].

<sup>62</sup> *Id.*

<sup>63</sup> Melvin Sng and Shanshan Huang, *Supreme People’s Court of the People’s Republic of China Clarifies Uncertainties Arising from the Split of the China International Economic and Trade Arbitration Commission*, Kluwer Arbitration Blog, (August 11, 2015), <http://arbitrationblog.kluwerarbitration.com/2015/08/11/supreme-peoples-court-of-the-peoples-republic-of-china-clarifies-uncertainties-arising-from-the-split-of-the-china-international-economic-and-trade-arbitration-commission/> [<https://perma.cc/Z8PP-JY YA>].

2. If the arbitration agreement was entered into *after* the renaming, but *before* the judgment of the Supreme People's Court took effect on July 17, 2015, CIETAC will have jurisdiction over the dispute. However, where the claimant applies to SCIA or SHIAC for it to administer the dispute and the respondent does not raise a jurisdictional objection, neither party can later seek to challenge an award on the basis that SCIA or SHIAC lacked jurisdiction.
3. If the arbitration agreement was entered into on or after the judgment of the Supreme People's Court took effect, CIETAC will have jurisdiction over the dispute.<sup>64</sup>

In addition to competing with SCIA and SHIAC, CIETAC competes with other mainland arbitral institutions, such as the Beijing Arbitration Commission. The Beijing Arbitration Commission is also known as the Beijing International Arbitration Center. The Beijing Arbitration Commission was established in September 1995.<sup>65</sup> In 2016, the Beijing Arbitration Commission accepted 3,012 arbitrations.<sup>66</sup> Of these, 2.29% or 69 arbitrations were international commercial disputes. The remainder were domestic arbitrations. Like CIETAC, these statistics reveal that the bulk of the Beijing Arbitration Commission's caseload is comprised of domestic arbitrations. They also indicate, together with CIETAC's statistics, the vast amount of cases being submitted domestically for arbitral resolution in China.

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<sup>64</sup> See, further, Reply of the Supreme People's Court at the Request of the Shanghai and other High People's Courts for Instructions on Cases Involving the Judicial Review of Arbitral Awards Made by the CIETAC and its Former Sub-Commissions (July 15, 2015), reproduced by CIETAC, <http://www.cietac.org/index.php?m=Article&a=show&id=2517&l=en> [<https://perma.cc/774K-QY3Y>].

<sup>65</sup> Beijing Arbitration Commission, *Introduction*, [http://www.bjac.org.cn/english/page/gybh/introduce\\_index.html](http://www.bjac.org.cn/english/page/gybh/introduce_index.html) [<https://perma.cc/6YVA-GVN5>].

<sup>66</sup> Beijing Arbitration Commission, *Annual Report 2016*, <http://www.bjac.org.cn/news/view?id=3091> [<https://perma.cc/NMZ8-WHPF>].

Finally, and perhaps unsurprisingly, CIETAC in recent years has made a small foray into Hong Kong, opening the CIETAC Hong Kong Arbitration Center in 2012. The CIETAC Hong Kong Arbitration Center is intended to function as another sub-commission of CIETAC, accepting both foreign-related and domestic disputes to be administered in Hong Kong under the CIETAC Arbitration Rules.<sup>67</sup> To date, the CIETAC Hong Kong Arbitration Center has had a relatively small impact on the Hong Kong arbitration scene, reporting four cases (all foreign-related) in 2016, and five (also all foreign-related) in 2015.<sup>68</sup>

## V. OTHER ARBITRAL INSTITUTIONS IN ASIA

Across Asia, there has been a surge in the number of arbitral institutions offering international arbitration services. This institutional “proliferation” has been observed for some time.<sup>69</sup> In almost every major Asian economy, there is an arbitral institution. We will focus on three institutions: (i) the Japan Commercial Arbitration Association; (ii) the Korean Commercial Arbitration Board; and (iii) the Asian International Arbitration Centre (formerly known as the Kuala Lumpur Regional Centre for Arbitration).

### A. Japan Commercial Arbitration Association (“JCAA”)

The JCAA was established in 1950, originally as the International Commercial Arbitration Committee within the Japan Chamber of

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<sup>67</sup> China International Economic and Trade Arbitration Commission Hong Kong Arbitration Center, *Scope of Application*, [http://www.cietachk.org/portal/mainPage.do?pagePath=\en\\_US\arbitration](http://www.cietachk.org/portal/mainPage.do?pagePath=\en_US\arbitration) [<https://perma.cc/9KFW-5PAE>].

<sup>68</sup> China International Economic and Trade Arbitration Commission, *Statistics*, <http://www.cietac.org/index.php?m=Page&a=index&id=40&l=en> [<https://perma.cc/9WR2-4M3R>].

<sup>69</sup> Chong Yee Leong & Qin Zhiqian, *The Rise of Arbitral Institutes in Asia*, THE ASIA PACIFIC ARBITRATION REV. 2011, Global Arbitration Review (November 10, 2010), <https://globalarbitrationreview.com/insight/the-asia-pacific-arbitration-review-2011/1036651/the-rise-of-arbitral-institutes-in-asia> [<https://perma.cc/RG8Y-D6C5>].

Commerce and Industry.<sup>70</sup> By 1953, the committee was reorganized as the JCAA to become independent from the Japan Chamber of Commerce.<sup>71</sup> Thus, the JCAA came into existence prior to the entry into force of the New York Convention in Japan, which occurred on September 18, 1961.<sup>72</sup>

According to the JCAA Annual Report in 2016, there were sixteen new requests for arbitration filed (compared to twenty-one in 2015, fourteen in 2014, and twenty-six in 2013).<sup>73</sup> Given that these figures are objectively low, it may at first glance be surprising that in the 2010 international arbitration survey conducted by Queen Mary University of London and White & Case, 7% of corporate respondents selected Tokyo as their preferred seat of arbitration, putting Tokyo on par with Paris and Singapore, and ahead of New York (6%).<sup>74</sup> One hypothesis perhaps to explain this discrepancy may be that, even where arbitrations are seated in Tokyo, parties may be selecting institutions other than the JCAA to administer those arbitrations. Another possibility could be that while Tokyo may be a popular choice of seat in the abstract, or even when arbitration clauses are drafted into contracts, relatively few arbitrations that mature into actual filed proceedings take place in Tokyo. This is reflected in the Queen Mary/White & Case 2010 survey results concerning seats most commonly used (as opposed to “preferred” seats)—in response to this question, Tokyo fell behind London, Paris, New York, Geneva and Singapore.<sup>75</sup> Notably, when another Queen Mary/White & Case survey was conducted in

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<sup>70</sup> Japan Commercial Arbitration Association, *History*, <http://www.jcaa.or.jp/e/jcaa/history.html> [<https://perma.cc/Z7F9-6XUH>].

<sup>71</sup> *Id.*

<sup>72</sup> UNCITRAL, *Status of Convention on the Recognition and Enforcement of Foreign Arbitral Awards* (New York, 1958), [http://www.uncitral.org/uncitral/en/uncitral\\_texts/arbitration/NYConvention\\_status.html](http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/NYConvention_status.html) [<https://perma.cc/WPK4-88QD>].

<sup>73</sup> Hiroyuki Tezuka, Azusa Saito, & Motonori Ezaki, *Arbitration Procedures and Practice in Japan* (Dec. 1, 2017), Thomson Reuters Practical Law.

<sup>74</sup> Queen Mary University of London, *2010 International Arbitration Survey: Choices in International Arbitration*, 19.

<sup>75</sup> *Id.*, at 19-20.

2015—five years later—Tokyo was not mentioned within the top seven “most used” or “most preferred” seats.<sup>76</sup>

One could speculate as to the reasons why so few arbitrations are administered by the JCAA.<sup>77</sup> At least some of those reasons may have to do with misconception. Prior to 1996, strict restrictions on the practice of law in Japan by foreign lawyers may have contributed to the relatively small number of international arbitrations administered by the JCAA. The law was amended in 1996 to remove the requirement for local counsel to act in international arbitrations seated in Japan,<sup>78</sup> but there may still have been a misconception regarding the ability of foreign counsel to act in Japan-seated international arbitrations. This may accord with the observation made elsewhere that the JCAA “*struggles to shake off a reputation abroad as being Japan-focused.*”<sup>79</sup>

## B. The Korean Commercial Arbitration Board (“KCAB”)

The KCAB was established as an independent arbitration institution in March 1970, originally known as the Korean Commercial Arbitration Association.<sup>80</sup> In 2015, a total of 413 cases were filed at the KCAB, of which 74 were described as “*international*.”<sup>81</sup> The vast majority of cases involved Korean parties, with only 4% of

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<sup>76</sup> Queen Mary University of London, *2015 International Arbitration Survey: Improvements and Innovations in International Arbitration*, 12.

<sup>77</sup> See further, Mark Goodrich, *Japanese Arbitration: Green Tea and Sympathy?* 2(2) *TURKISH COMMERCIAL L. REV.* 167 (describing Japanese arbitration).

<sup>78</sup> Law No. 65 of 1996, as amended by Law No. 60 of 1998 (Japan).

<sup>79</sup> Luke Nottage & James Claxton, “*Japan is Back*”—for *International Dispute Resolution Services?*, *Kluwer Arbitration Blog* (Jan. 29, 2018), <http://arbitrationblog.kluwerarbitration.com/2018/01/29/japan-back-international-dispute-resolution-services/> [<https://perma.cc/YU68-7JAS>].

<sup>80</sup> Korean Commercial Arbitration Board, *History of the Korean Arbitration System*, [http://www.kcab.or.kr/jsp/kcab\\_eng/kcab/kcab\\_112\\_ex.jsp](http://www.kcab.or.kr/jsp/kcab_eng/kcab/kcab_112_ex.jsp) [<https://perma.cc/KB65-9UF8>].

<sup>81</sup> Korean Commercial Arbitration Board, *Annual Report 2015*, 7, [http://www.kcab.or.kr/jsp/comm\\_jsp/BasicDownload.jsp?FilePath=marketing/f\\_0.83413551785897241463617259521&orgName=Annual%20Report\\_2015.pdf](http://www.kcab.or.kr/jsp/comm_jsp/BasicDownload.jsp?FilePath=marketing/f_0.83413551785897241463617259521&orgName=Annual%20Report_2015.pdf) [<https://perma.cc/98HY-HEAQ>].



cases involving only non-Korean parties.<sup>82</sup> The largest number of non-Korean parties came from the United States, followed by China and Vietnam.<sup>83</sup>

Comparatively, it is worth noting the substantial disparity in the caseloads of the JCAA and the KCAB, especially in light of the fact that the JCAA has operated for longer than the KCAB. In part, this may be due to more successful policies by Korean governments to support international arbitration in South Korea. For example, the recent enactment of the Arbitration Industry Promotion Act, which took effect on August 28, 2017, focuses itself on promoting the “arbitration industry” within South Korea.<sup>84</sup> That kind of national government support for the institutional arbitration sector undoubtedly has promoted the success of other institutions, such as SIAC and HKIAC. Those institutions have continued to flourish in part because of government support and legislative currency in international arbitration.

### C. The Asian International Arbitration Centre

The Asian-African Legal Consultative Organization (“AALCO”) was established on November 15, 1956.<sup>85</sup> It is comprised of forty-seven member states from Asia and Africa.<sup>86</sup> In 1978, AALCO launched its Integrated Scheme for Settlement of Disputes in the Economic and Commercial Transactions.<sup>87</sup> As part of the scheme, AALCO decided to establish regional arbitration centers under its

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<sup>82</sup> *Id.* at 6.

<sup>83</sup> *Id.* at 9.

<sup>84</sup> Hoonjoong (Paul) Kim & Sejin Kim, *Korean Government’s Vigorous Move to Nurture Arbitration “Industry”*, Kluwer Arbitration Blog (Dec. 17, 2017), <http://arbitrationblog.kluwerarbitration.com/2017/12/17/korean-governments-vigorous-move-nurture-arbitration-industry/> [<https://perma.cc/2AG5-6DCF>].

<sup>85</sup> Asian-African legal Consultative Organization, *About AALCO*, <http://www.aalco.int/scripts/view-posting.asp?recordid=1> [<https://perma.cc/2UTL-YWLS>].

<sup>86</sup> Asian-African legal Consultative Organization *Member States*, <http://www.aalco.int/scripts/view-posting.asp?recordid=3> [<https://perma.cc/B4SN-XCAP>].

<sup>87</sup> Asian-African legal Consultative Organization, *supra* note 85.

auspices to promote international commercial arbitration in the Asian and African regions.<sup>88</sup> This was designed to address the need to make international commercial arbitration more accessible in these regions at a time when the main alternatives for administered arbitration were institutions headquartered in Europe.<sup>89</sup> Two of the five regional centers to have been established are the Cairo Regional Center for International Commercial Arbitration and the Kuala Lumpur Regional Centre for Arbitration (“**KLRCA**”).

In 2016, a total of sixty-two arbitrations were registered by the KLRCA.<sup>90</sup> Of these, seven were defined as “*international*.”<sup>91</sup> The clear majority of overall arbitration cases (61%) arose from the construction sector.<sup>92</sup> The statistics released by the KLRCA in its 2016 Annual Report do not deal with the nationality of parties or the seats of arbitration.

In absolute terms, the number of international arbitrations administered by the KLRCA is low. This is not surprising given the dominance in the region of the ICC, SIAC and HKIAC. Presumably to broaden its appeal, the KLRCA recently has pushed to innovate and remain up to date with international best practice. As an example, in 2012, the KLRCA introduced the KLRCA i-Arbitration Rules to facilitate the arbitration of disputes arising from commercial transactions based on Islamic principles, which was a pioneering product.<sup>93</sup>

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<sup>88</sup> Asian-African legal Consultative Organization, *supra* note 85.

<sup>89</sup> See further, Mohamed Abdel Raouf, *Emergence of New Arbitral Centres in Asia and Africa: Competition, Cooperation and Contribution to the Rule of Law*, Chapter 19 in *The Evolution and Future of International Arbitration*, ¶ 19.10-19.14 (Brekoulakis, Lew and Mistelis eds., 2016).

<sup>90</sup> Kuala Lumpur Regional Center for Arbitration, *2016 Annual Report: The Multi-Service Global Hub for ADR*, 16, <https://klrca.org/annualreport/2016annual/PDF.pdf> [<https://perma.cc/74GQ-QKFH>].

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> Asian International Arbitration Centre, *i-Arbitration*, <https://www.klrca.org/Arbitration-i-Arbitration> [<https://perma.cc/7GDV-RRRT5>].

A desire to increase the number of international cases is at least one driver in the recent decision of the KLRCA to rebrand itself as the Asian International Arbitration Centre (“AIAC”).<sup>94</sup> It will be interesting to see whether the rebranding strategy, coupled with innovative and up-to-date product offerings, will be successful in attracting more international cases to the AIAC.

## VI. CONCLUSION

It is apparent that commercial parties have a wide range of options when it comes to arbitral institutions in Asia. Consistent with the broader proliferation of arbitration in Asia, we have witnessed increases both in the number of arbitral institutions and the sizes of their respective caseloads. There are myriad reasons why parties concluding an arbitration agreement may choose one institution instead of another. Suffice to say, parties contemplating arbitration in Asia do not want for options.

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*See also*, Asian International Arbitration Centre, *KLRCA Embarks on International Roadshow to Promote its Islamic Arbitration Rules* (Mar. 6, 2013), <https://klrca.org/announcements-announcements-details.php?id=48> [<https://perma.cc/U4X4-JL26>] (describing the promotion of i-Arbitration).

<sup>94</sup> Asian International Arbitration Centre, *Asian International Arbitration Centre (AIAC) to Spearhead Alternative Dispute Resolution Community in 2018 (KLRCA Undergoes Rebranding to Signify a New Era of Expansion)* (Feb. 7, 2018), <https://www.klrca.org/announcements-announcements-details.php?id=178> [<https://perma.cc/FX6E-V9SQ>] (“The name change is part of a larger rebranding for the Centre, which aims to further strengthen its regional footprint and presence globally.”).