

Singapore - Hub for Construction and Infrastructure Arbitrations



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With the worst of the global downturn now seemingly behind us and many countries in Asia turning their attention to the more difficult challenge of sustaining growth over the medium to long term, infrastructure development is once again becoming a key area of focus. Indeed, there is every indication that the construction and infrastructure market in Asia could be headed for a strong recovery and a period of sustained growth ahead. This note suggests why Singapore will play an increasingly important role as a leading hub for arbitrations arising out of construction and infrastructure projects being carried out in the region.

Outlook for the construction and infrastructure market in Asia

According to a recent report on the global construction market¹, it has been estimated that construction activity in the key developing markets in China, India, Asia Pacific, Middle East, Africa, parts of East Europe and South America will grow at a staggering 110% (representing over 55% of global construction activity) over the next 10 years. This will create a US\$7 trillion market between the developing economies. In Asia alone, given the current lack of basic infrastructure in many countries, the total infrastructure spend necessary to support targeted growth rates over the next five years has been estimated at US\$132 billion for China, US\$250 billion for India and US\$178 billion for countries in the East Asia and Pacific regions². Clearly, infrastructure development on such a massive scale and within such short time-scales will likely bring with it the perennial 'boom-time' problems such as lack of appropriate funding, shortage of construction resources and materials, and construction quality and safety issues. Nevertheless, given rapid population growth and urbanisation in many countries in Asia, infrastructure development remains a pressing issue that will need to be addressed head-on.

Importance of selecting a suitable framework for dispute resolution

Against this backdrop, it is crucial for parties who are considering or undertaking any construction or infrastructure project to select a suitable legal framework to govern their respective legal rights and obligations and also, the resolution of disputes that will inevitably arise. This is especially important given that construction and infrastructure projects are known to be particularly susceptible to disputes and major projects have tended to result in poor financial outcomes³.

In terms of dispute resolution procedure, many international construction and infrastructure contracts now commonly adopt a 'multi-tiered' process utilising a combination of negotiation, mediation and/or dispute board procedures, which culminates in final resolution by arbitration.

The preferred option, although this does not happen in every instance, is usually for the arbitration to be conducted:

- under internationally recognised institutional arbitral rules such as for example, the Singapore International Arbitration Centre ("SIAC") Arbitration Rules, the Rules of Arbitration of the International Chamber of Commerce ("ICC"), the Arbitration Rules of the London Court of International Arbitration ("LCIA") and the International Arbitration Rules of the International Centre for Dispute Resolution ("ICDR"); and
- in a "seat" or country which is a signatory to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("New York Convention"). This is of crucial importance as only then can the resulting arbitration award be recognised and enforced internationally in the other New York Convention signatory countries. As a corollary requirement, the Courts of the country that is designated as the "seat" must be supportive of arbitration.

Singapore as a leading arbitration hub

Some of the key factors which have contributed to Singapore's attractiveness and emergence as a leading arbitration hub include:

- Singapore offers a neutral "seat" and provides a convenient and less expensive location in Asia for parties to arbitrate their disputes;
- Singapore is a signatory to the New York Convention and arbitration awards made in Singapore are recognised and can be enforced in over 140 countries around the world;
- Singapore's international arbitration law, which adopts the UNCITRAL Model Law regime, was revised as recently as 1 January 2010 to bring it in line with international best practices;
- the Singapore Courts are highly supportive of arbitration and they are now empowered under statute to grant interim orders to support all international arbitrations, including those which are "seated" in Singapore and those which are not⁴;
- the SIAC has established itself as a leading arbitral institution. In 2009, the SIAC saw the highest increase in arbitration case-load (60%) among the major arbitral institutions in the world; and
- Maxwell Chambers was launched in January 2010 and it provides parties with a state-of-the-art and world-class dispute resolution complex. It currently houses the SIAC and leading institutions such as the American Arbitration Association, the Permanent Court of Arbitration, the ICC, the Arbitration and Mediation Centre of the World Intellectual Property Organization and the International Centre for the Settlement of Investment Disputes ("ICSID").

Singapore as a leading hub for construction and infrastructure arbitrations

In addition to the above, it is suggested that the following factors will enable Singapore to play an increasingly important role as a leading hub for arbitrations arising out of construction and infrastructure projects being carried out in the region:

Volume and scales of projects

- as mentioned above, there will likely be an increasing number of significant construction and infrastructure projects being carried out in and around Singapore, including in South East Asia (especially Indonesia and Vietnam), India and China. Many of these projects will have an 'international' element (for example, the main contractor may not be from the country in which the project is carried out), and hence it would be desirable for disputes to be referred to arbitration in a neutral third country;

Regional construction law and disputes expertise

- there is a ready pool of experienced arbitrators, adjudicators, mediators, lawyers, engineers, architects, quantity surveyors and other construction professionals (including programming, quantum and other technical experts), who are based in and around Singapore. Many of these professionals belong to firms or companies that have offices across Asia and around the globe. Given that international construction and infrastructure projects invariably have a cross-border element, whether from the transactional or dispute resolution perspective, this is becoming an increasingly important consideration for parties when choosing their lawyers and technical consultants;

Investment treaty protection

- the consensus seems to be that more and more parties are becoming increasingly aware of their rights and remedies under the numerous Investment Treaties which have been signed in recent years. Accordingly, Investment Treaty protection will likely take on greater significance and feature more prominently for parties considering or undertaking international construction and infrastructure projects. That ICSID has now set up offices in Singapore is a positive development on this front; and

'Fast track' arbitral procedures

- the SIAC Arbitration Rules were recently amended on 1 July 2010. One of the key changes made was to introduce 'Fast Track' arbitration via "Expedited Procedures" that parties can apply for in cases where the amounts in dispute do not exceed S\$5 million, the parties so agree or in cases of exceptional urgency⁵. This is another welcome development that provides a useful avenue for parties undertaking construction and infrastructure projects to arbitrate disputes involving smaller claim amounts and/or discrete issues in a faster and less costly way.

Conclusion

The robust revival of the construction and infrastructure market in Asia, together with the continuing push to grow Singapore into a leading arbitration hub, will ensure that Singapore plays an increasingly important role as a leading hub for arbitrations arising out of construction and infrastructure projects being carried out in the region.

1 See: Global Construction 2020, published by Global Construction Perspectives and Oxford Economics, November 2009.

2 See: The global infrastructure gap - projected infrastructure investment needs, Deloitte, 2008.

3 See: Survival of the unfittest: why the worst infrastructure gets built - and what we can do about it, Bent Flyvbjerg, Oxford Review of Economic Policy, Vol. 25, No. 3, 2009, pp. 344-367.

4 See: section 12A of the Singapore International Arbitration Act, Cap. 143A.

5 See: Section 5 of the SIAC Arbitration Rules, 4th Edition, July 2010.