

International Business Courts: A New Era for Dispute Resolution?

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IBCs: International Business Courts

1. Dubai International Financial Centre Court 2006
2. Qatar International Court & Dispute Resolution Center 2009
3. Abu Dhabi Global Market Courts 2015
4. Singapore International Commercial Court 2015
5. Paris International Commercial Court Feb 2018
6. China International Commercial Court June 2018
7. Frankfurt Chamber for International Commercial Disputes (2018)
8. Netherlands International Commercial Court (2018)
9. Brussels International Business Court

IBCs: Rationale

National Policy

- Expand municipal courts expertise and internationalisation
- Enhance status of the forum

Competition

- Create a regional leadership
- Grow the legal service sector

Cooperation

- With arbitration services (med-arb-med)
- Among IBCs

Models for IBCs?

Commercial Court of England & Wales

- Specialised forum in commercial and arbitration matters
- Most chosen court by international litigants: 60% non-UK litigants (2017-18)
- English law as a global business law
- Case management

International Commercial Arbitration

IBCs Jurisdiction: International Disputes

Article 1(2), 2005 Hague Convention:

“a case is international unless the parties are resident in the same Contracting State and the relationship of the parties and all other elements relevant to the dispute, regardless of the location of the chosen court, are connected only with that State.”

IBCs Jurisdiction: International Disputes

International cases:

- One or more parties are not resident
- Subject matter located outside the country
- Foreign law governs

Offshore cases:

- Action that has *no* substantial connection with Singapore:
 - 1) law of the forum does not apply; or
 - 2) only connection with forum as the chosen law of the chosen forum

IBCs Jurisdiction: Commercial Disputes

- ❑ Article 1, footnote 2, UNCITRAL Model Law IA
- ❑ Derived from the specialisation of merged chambers
- ❑ *Activity-based: “[...] disputes between enterprises, i.e., all persons who pursue a sustainable economic purpose, including public enterprises, an act done in pursuit of that aim [...]” (Art. 18, Bill Doc. Parl. 3072/001 p. 155)*

Jurisdiction: Access to IBCs

Choice of Court Agreement

- 2005 Hague Convention: Art 3 –Art. 5

5 (1) The court or courts of a Contracting State designated in an exclusive choice of court agreement shall have jurisdiction to decide a dispute to which the agreement applies, unless the agreement is null and void under the law of that State.

- Party autonomy enforced by the IBCs rules

Case Referral

- IBC as a specialised chamber within a local court
- Subject to Parties' agreement?

Issues and Challenges Faced by IBCs

Bench: International qualification and composition

- Attractiveness: Creation of a neutral forum?

English: language of international business disputes

Setting international standards to resolve commercial disputes

- Procedural framework: practice rules
- Best practices imported from IA and common law

Innovative Procedural Framework

Parties representation: not limited to local counsel

Case Management Conferences

Taking of Evidence:

- Document production and witness cross-examination
- Use of soft law (IBA rules on the taking of evidence)

English as the language of the Proceedings

- Evidence
- Oral arguments and written pleadings (access to justice issues)
- Court orders and judgment (constitutional issues)

IBCs Judgments Recognition and Enforcement

2005 Hague Convention

- Art 8 to 15: judgments given by a court of a Contracting State designated in an exclusive choice of court agreement
- Art 9: international duty for Contracting States to enforce foreign court decisions, allowing only limited cases for refusal
- Art 8(2): no review of the merits of the case by the enforcing court

Draft Hague Convention on Recognition and Enforcement of Judgments 2018