



The Asia-Pacific Arbitration Review

2024

**Beyond the comfort of home:
operation of arbitral institutions'
overseas offices and their changed
role for the future**

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Beyond the comfort of home: operation of arbitral institutions' overseas offices and their changed role for the future

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KCAB INTERNATIONAL

Summary

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IN SUMMARY

This article provides an overview of the changed roles of arbitral institutions in the post-covid-19 era. It also discusses the establishment and operation of arbitral institutions' overseas offices, the ensuing challenges and the institutions' changed role in the fast-moving global market.

DISCUSSION POINTS

- Background of the operation of arbitral institutions' overseas offices
 - The role of arbitral institutions' overseas offices
 - Arbitral institutions' roles in the future
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- International Chamber of Commerce
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The covid-19 pandemic produced a number of challenges in all areas of the global economy and introduced different business paradigms (eg, usage of digital technology to replace in-person meetings, platform business technology) that created an unforeseen business environment for many of us. For arbitral institutions, trying to address these challenges – let alone catching up to the ever-changing nature of the business environment – has been interesting, to say the least. For most arbitral institutions, setting up and operating overseas offices has become a necessity as relying purely on the domestic or home market is no longer sufficient. Many institutions have embarked on the journey of leaving the comfort of their homes to expand their footprints in the global market.

In a sense, setting up and operating overseas offices would be highly unlikely for an arbitral institution handling predominantly domestic cases. However, arbitral institutions that are heavily involved in international arbitration or that aim to promote the practice of international arbitration cannot overlook the benefits of the publicity gained from establishing and operating overseas offices. The arbitration industry in Asia has been growing faster than anywhere else in the world and the growth of arbitral institutions based in Asia has also been phenomenal. It is thus undeniable that the establishment and operation of overseas offices have significantly contributed to their growth. However, operating an overseas office that may not generate substantial profits in the short term could be burdensome for arbitral institutions that are non-profit corporations; rather, arbitral institutions may need to focus more on enhancing brand recognition in their respective regions, thereby becoming more competitive in the global arbitration market. In addition, the changed nature of the global economy, the presence of geopolitical tensions and disputes, and the emergence of new

technologies require arbitral institutions to take on different stances and roles to adapt to the ebb and flow of the global tide. This article provides an overview of the establishment and operation of arbitral institutions' overseas offices, as well as their particular features, current challenges and future prospects.

HONG KONG

The International Chamber of Commerce (ICC) was one of the first institutions to launch an overseas office and one of the first non-Asian arbitral institutions to have a foothold in Asia with the opening of its Hong Kong office (the ICC Hong Kong) in 2008.^[1] The ICC Hong Kong is, in fact, only the third international arbitral institution in Hong Kong, along with the Hong Kong International Arbitration Centre (HKIAC) and the China International Economic and Trade Arbitration Commission (CIETAC). In 2019, the ICC Hong Kong was recognised as an authorised arbitral institution in Hong Kong by the Supreme Court of the People's Republic of China and the Hong Kong government, thereby enabling parties involved with ICC Hong Kong arbitrations to apply to Hong Kong courts for interim measures.^[2] Hitherto, only parties engaged with arbitral institutions recognised as authorised arbitral institutions in Hong Kong could seek such remedies. This recognition has boosted the ICC's desirability for its Chinese parties.^[3]

Further, as Hong Kong-related cases ranked second in the total number of cases administered by the CIETAC, this institution opened an office in Hong Kong in 2013, its first outside mainland China.^[4]

NEW YORK, MUMBAI, SEOUL

Following its entry into Asia, the ICC continued its geographical expansion by opening a representative office in New York – ICC SICANA (the ICC New York) – in 2013. With a growing number of North American parties involved in ICC arbitrations, the ICC New York allows its American parties the convenience of administering their arbitrations in New York.^[5]

The Singapore International Arbitration Centre (SIAC) and the HKIAC also expanded their operations in Asia in 2013. The SIAC opened representative offices in Seoul and Mumbai (the SIAC Seoul and the SIAC Mumbai, respectively). The SIAC Mumbai is the SIAC's first representative office outside Singapore. In fact, the SIAC is currently the only international arbitral institution with a representative office in India. Considering that Indian parties have consecutively ranked among the SIAC's top five foreign users since 2013, the SIAC Mumbai functions to promote the SIAC as the most desirable international arbitral institution, catering to the complex arbitration demands of Indian investors and businesses. The SIAC Seoul largely endorses international arbitration as a practice and imparts academic training in international arbitration in Seoul. The SIAC has been increasing its activities in South Korea as it has also remained an important market for the institution.

However, both the SIAC Mumbai and the SIAC Seoul currently do not administer any arbitrations, and parties must approach the SIAC Secretariat in Singapore for this. Along with the SIAC, the HKIAC also opened a representative office in Seoul (the HKIAC Seoul). The HKIAC Seoul is the HKIAC's first representative office outside China and caters to its growing caseload involving South Korean parties. It also promotes the HKIAC's visibility in South Korea.^[6] Although not an arbitral institution, the Singapore International Mediation Centre also leases office space within the Seoul International Dispute Resolution Centre and operates it when necessary. The Singapore International Mediation Centre has goals of

raising its visibility in South Korea as well as promoting cross-border dispute resolution via mediation, or in the form of hybrid arb-med or med-arb processes.

SHANGHAI, LOS ANGELES, BRAZIL, GUJARAT

In 2015, 2016 and 2017, there was an increased focus on mainland China and a new entrant in Los Angeles.

The HKIAC opened a representative office in Shanghai in 2015 (the HKIAC Shanghai). With the launch of the HKIAC Shanghai, the HKIAC was the first international arbitral institution to have a representative office in mainland China.^[7] The HKIAC Shanghai promotes the HKIAC's visibility and a pro-arbitration policy in mainland China,^[8] however, it does not currently administer HKIAC arbitrations and parties must approach the HKIAC Secretariat in Hong Kong for this.

The SIAC and the ICC opened representative offices in Shanghai in 2016 (the SIAC Shanghai and the ICC Shanghai, respectively). As Chinese parties have ranked among the SIAC's top five foreign users since 2013, the SIAC Shanghai assists as a strong regional base to promote the SIAC in mainland China. However, similar to its operations in Mumbai and Seoul, the SIAC Shanghai does not administer arbitrations. The ICC Shanghai caters to the ICC's increasing caseload involving Chinese parties and continues to strengthen the expansion of ICC operations across Asia.^[9]

As Los Angeles has the largest population of Koreans outside South Korea and the United States has one of the largest international arbitration markets, KCAB INTERNATIONAL opened its first overseas representative office in Los Angeles in 2016 (the KCAB LA). Aside from promoting arbitration for members of the Korean business population who are actively engaged in cross-border deals, the KCAB LA has focused on raising, and will continue to make concerted efforts to raise, its brand profile in the United States. This is particularly important as some US states have made significant strides towards becoming major international arbitration hubs (eg, California Arbitration Week on the west coast) and New York has long been considered one of the most important arbitration markets. Thereafter, widening its international footprint, KCAB International opened its second overseas representative office in Shanghai in 2017 (the KCAB Shanghai). China comprises one of KCAB International's largest client segments, so it made sense for KCAB Shanghai to open to further promote KCAB International's arbitration services as well as the usage of arbitration in general.

Further, in 2017, the ICC opened its first office in Latin America in Brazil – the SCIAB Ltda – that further strengthened its overall presence in the Americas. This was in response to the ICC's 2016 statistics that ranked Brazil third in the ICC's list of top 10 countries involved in ICC-administered arbitrations.^[10]

Around the same time, the SIAC opened its second representative office in Gujarat, expanding its business and promotional activities in India.

SINGAPORE, VANCOUVER, VIENNA

The ICC opened its Singapore office (the ICC Singapore) in 2018. This was in response to 2017 ICC statistics, which featured Singapore as the choice of seat, Singaporean law as the choice of applicable law and the appointment of Singaporean arbitrators in a substantial percentage of ICC administered arbitrations.^[11] The ICC Singapore provides a strong base for ICC arbitrations involving Southeast Asian parties and contributes to further solidifying

the ICC's Asian presence as its third representative office in Asia. The CIETAC also opened offices in Vancouver and Vienna in 2018, making it the only Asian arbitral institution to have offices in Canada and Europe.^[12]

HANOI, ABU DHABI, NEW YORK

In 2019, further expanding its global outreach, KCAB International became the first foreign international arbitral institution to open its overseas representative office in Hanoi.^[13] This is KCAB International's third overseas expansion in four years and is indicative of its strong commitment to cater to the growing demands of international cross-border disputes and promote its services globally. Vietnam, as with the United States, China and other key jurisdictions, remains one of KCAB International's top five client segments and has become an area of growth for the international arbitration market in Southeast Asia. A number of major Korean conglomerates are actively operating in Vietnam and contribute to Vietnam's national and regional economy. KCAB International plans to actively engage Vietnamese clients and firms to enhance its visibility in the market as well as to demonstrate the benefits of alternative dispute resolution mechanisms.

Following a substantial presence in Europe, Asia and the United States, the ICC expanded into the Middle East in 2020 with the ICC Abu Dhabi. The ICC Abu Dhabi is the ICC's sixth representative office and commenced case-management operations in 2021.^[14]

The SIAC also opened its fifth representative office in New York in 2020, which is its first venture outside Asia (the SIAC New York). This also makes SIAC the first Asian arbitral institution to have opened an office in New York. Since US parties ranked as the SIAC's top foreign users in 2018 and continue to rank among the top five foreign users, the SIAC New York serves to promote the SIAC in the United States.

CURRENT OVERSEAS OFFICES AND THE CHANGED ROLE OF ARBITRAL INSTITUTIONS POST-COVID-19

The statistics above reveal that most of the world's leading arbitral institutions are operating overseas offices. It is also evident that the arbitral institutions based in Asia are taking the lead in operating and expanding overseas offices. The ICC, which is recognised as an international arbitral institution with a long-standing history, is also active in establishing and operating overseas offices, even though it has been handling cases involving multi-jurisdictional parties with the help of its local chambers of commerce around the world.

The SIAC operates the largest number of overseas offices with its presence in Seoul, Mumbai, Gujarat, Shanghai and New York. The Korean Commercial Arbitration Board (KCAB) has offices in Los Angeles, Shanghai and Hanoi. Although arbitral institutions such as the ICC and the London Court of International Arbitration in Europe were largely recognised as the major international arbitral institutions in the past, the recent economic growth in Asia and the increased preference for selecting Asia as the seat of arbitration has significantly boosted the recognition and promotion of arbitral institutions in the region, which continues to attract other global arbitral institutions. The growth of Asia is likely to serve as a stimulus for institutions to establish additional overseas offices in Asia in the future.

Currently, overseas offices of major international arbitral institutions are concentrated in Asia. Except for New York, all regions where two or more overseas offices are situated (Seoul, Hong Kong and Shanghai) are in Asia. Hong Kong is recognised as an arbitration

hub in East Asia despite its relatively short history and it is an excellent option for parties wishing to benefit from its ties with China. Shanghai offers institutions the opportunity to interact with its Chinese clients directly; additionally, in 2019, it came top in a list of cities in China most favoured by foreign professionals.^[15] Among the cities in civil law countries, Seoul is characterised for having a pro-arbitration environment and additionally for leading on the development of arbitration infrastructure. The fact that South Korean companies prefer international arbitration as a mode for dispute resolution over most other Asian corporations also seems to be the reason for attracting a large number of overseas offices in Seoul.

The move to Asia, along with the changes brought across the spectrum of the business operation environment, both the business community and its supporting infrastructure (such as dispute resolution centres) are trying to ride the wave of changes without falling behind. With the introduction of new platforms, technologies and business models that were not available as recently as 10 years ago, KCAB International has taken an active role in providing practical information to its client segments in fields such as artificial intelligence, blockchain technology and other new business models that are shaping the current global market.

As disputes are considered part of the back end of business deals, jumping into the front end of transactions may sound inconsistent with the rest of the services provided by arbitral institutions. However, all of us recognise that, at some point, there will be points of disagreement and parties not seeing eye-to-eye on various issues (eg, artificial intelligence or blockchain technologies). Hence, it makes sense for institutions to be early adopters and to identify potential disputes before they arise, and prepare accordingly. In addition, it would help institutions to take on a new image of being information centres for newly developing trends or technologies, as many arbitral institutions have close ties with experts and companies that are on the front line of new business model creation.

CHARACTERISTICS AND ISSUES OF OVERSEAS OFFICES

The operations of overseas offices differ from place to place, and the offices' objectives vary depending on the region. While some offices are staffed with regular personnel, some operate without stationed representatives, with the staff from the head office making frequent business trips to the overseas office. For each of these representative offices, it can be quite challenging to effectively promote the merits of its head office to local clients. Therefore, in-depth comprehension of arbitration and competency in public relations and business development are necessary skills for the representative staff. Additionally, the full-time employees in these representative offices, which often function as one-person offices, should demonstrate a high level of conscientiousness and an ability to speak the local language well. However, for most arbitral institutions that function as non-profit corporations, it is difficult to meet the desired salary level for such highly competent representatives. For this reason, even though overseas offices are often set up with a great line-up of representatives for their operation, generally the head office eventually takes on direct control. Accordingly, this will be a delicate balancing act for many institutions when operating overseas offices. In broad terms, it may be necessary to focus more on brand development for the target region rather than recouping the financial investment in the overseas offices.

Moreover, some jurisdictions require special licences or permits to set up offices overseas. Depending upon these licences and permits, some offices are limited to public relations while others are allowed to handle local cases. The clients based in a country where the overseas office is located naturally expect the office to receive and manage cases, which is convenient

because all payments for fees can be made in their local currency and proceedings can be conducted in their local language. However, these expectations do not always work out. The laws and regulations associated with establishing foreign institutions are often different across different regions and the tax implications after the payment of arbitration fees also pose severe challenges. As a result, many overseas offices are primarily conducting public relations and business development-oriented operations in the form of liaison offices.

Despite this, many institutions are investing time and resources to broaden their presence outside their main seats. While certain regions still present challenges, we are seeing more of these regions relaxing certain requirements to invite institutions to set up international offices where history indicates that a presence from global arbitral institutions has helped the local economy and enabled that particular region to present itself as being arbitration friendly.

Overseas Offices Of KCAB International

The overseas offices of KCAB International have several key characteristics.

The first is that each office represents a significant proportion of its international users. Since its establishment in 1966, foreign parties from the United States and China have accounted for the KCAB's top clients. Given this background, KCAB International opened overseas offices in Los Angeles in 2016 and Shanghai in 2017. In the case of Vietnam, as South Korea leads the ranks for international investments in Vietnam and as many South Korean companies have been entering Vietnam for business, the number of disputes involving South Korean and Vietnamese parties has increased rapidly. Currently, Vietnamese parties rank third, after parties from the United States and China, in employing KCAB International's rules. Thus, to respond to the increasing demands of South Korean and Vietnamese companies, KCAB International opened its overseas office in Hanoi at the end of 2019. Of all international arbitration cases received by KCAB International in 2021, those involving parties from these three countries accounted for 41.2 per cent.

Second, all three cities hosting KCAB International's overseas offices witness a large number of South Korean companies engaging in businesses with the local companies in these cities. For example, in the case of Shanghai, about 2,500 Korean companies have entered the region^[16] and 35,000 to 40,000 South Koreans reside in the city.^[17] Hanoi hosts 2,400 South Korean companies in the city,^[18] with the number of South Korean residents being close to 200,000.^[19] Further, given that there are about 1.5 million South Koreans and Korean Americans living on the west coast of the United States, including California, the number of commercial disputes related to South Korea is considerable in Los Angeles.

As well as serving the Korean communities in these jurisdictions, KCAB International's intent is to target global companies so that they have a better understanding of KCAB International's global capability and standing, presenting Seoul as a truly international seat for arbitration (as is already the case for New York, London and Paris).

Third, in situations involving disputes between South Korean parties at one of the locations where KCAB International has its overseas offices, the South Korean parties may bring their disputes before the KCAB's overseas office. When disputes arise between South Korean companies in a foreign country, there might be a reluctance to bring such cases before the local courts or local arbitral institutions. Even if both companies are established under other local laws, the company's representatives may be South Korean, with the relevant contracts drafted in Korean. Since the KCAB's domestic arbitration rules operate separately from its

international arbitration rules, and the domestic rules are similar to Korean court litigation, parties that wish to settle disputes in the Korean language through domestic arbitration rules can use this system relatively conveniently even when they are not present in Seoul. In such situations, the KCAB's overseas offices would serve as a convenient forum away from home. To this end, KCAB International has recently hired new directors for each of its overseas office.

FUTURE OF OVERSEAS OFFICES

The current situation indicates that while some overseas offices of international arbitral institutions have been successful, some have been relatively lethargic in their approach. With this in mind, what can be anticipated for the future of overseas offices of arbitral institutions in light of the aftermath of covid-19 as well as new geopolitical disputes and tensions? How should such offices address concerns about the global economic slowdown? While these are questions and challenges that do not have an immediate and clear answer, we believe that, when the global environment is uncertain and challenging, arbitral institutions need to move forward with more vigour rather than pulling back.

First, by using overseas offices, arbitral institutions can regularly and frequently meet clients that are difficult to connect with and expand their operations. For example, the KCAB opened its office in Hanoi in December 2019, and is recognised as the first international arbitral institution to enter Vietnam. As a result, it has become more widely recognised, not only among South Korean companies but also among Vietnamese companies. Moreover, other foreign companies doing business in Vietnam are encouraged by the fact that they could receive a more neutral decision through the KCAB rather than a Vietnamese court or arbitral institution in disputes with a Vietnamese company. Since its launch, the KCAB Hanoi office has provided diverse dispute resolution solutions to local entrepreneurs through continuous counselling. In some cases, there have been recommendations for settlements, which has expedited the disputes. As one of its greatest achievements, according to the statistical data of the Vietnamese courts, all KCAB awards have been executed in Vietnam.

Second, at a time where opportunities for overseas business post-covid-19 has been challenging, a new set of opportunities have emerged through the usage of technology and the creation of new business paradigms. As such, overseas offices actively participating in various local events has become more important than ever, particularly because the business community is eager to return to in-person business meetings and events. To accommodate this, it is important for overseas offices' representatives to be omnipresent in the business community.

Third, with arbitration-friendly policies being implemented in multiple jurisdictions, including China, major cities, especially those in Asia, are becoming more arbitration-friendly and are expected to participate vigorously in attracting overseas offices in the future. In 2015, China allowed foreign arbitral institutions to set up representative offices in Shanghai, and in 2019 and 2020, it allowed offices to be established for case management in specific administrative areas of Shanghai and Beijing. Additionally, the amendment to the Chinese Arbitration Act that was announced in July 2021 clarifies the legal status of foreign arbitral institutions. We are already seeing a trend of more Chinese regional governments contacting us to be involved in their market development plans for international arbitration users. This series of changes in China's policies and arbitration climate demonstrates China's strong will to elevate its arbitration environment to match international standards. In fact, following Shanghai, many major cities, such as Shenzhen, have also adopted more international

arbitration-friendly policies. As Japan is also currently striving to promote international arbitration, it may be contemplating its strategy to attract overseas offices.

In conclusion, even though international arbitral institutions seek different objectives for expansion, and such expansion does not occur uniformly across institutions and regions, the future definitely has room for an increase in the same. With this trend continuing, more parties globally will have the opportunity to experience the services of all leading international arbitral institutions. New business platforms and paradigms will provide additional opportunities and reasons for arbitral institutions to consider overseas expansion. Challenges will always exist whether the global economy is growing or not; the more important factor will be whether arbitral institutions are willing to re-examine their roles and go beyond being case management centres by identifying ways to reach market segments that desire effective cross-border dispute resolution yet lack the resources or knowledge to do so. As such, all institutions will need to do their homework and be up to date on the latest technology and issues that may affect the global business economy, as well as the disputes that may eventually arise from such trends.

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