Recent developments in Hong Kong arbitration

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Hong Kong

the key seat for China-related arbitrations… and beyond.
New Arbitration Ordinance

• Came into effect 1 June 2011

• A significant revision: replaces dual domestic and international regimes with a unified regime

• Based on UNCITRAL Model Law
  + Jurisdiction-specific amendments

• Stand-alone legislation

New Arbitration Ordinance

• Revisions include:
  ◦ New codified obligation of confidentiality
  ◦ Expanded provisions on interim measures
  ◦ New provisions promoting mediation
  ◦ Assessment and taxation of costs / review of fees and expenses by courts

• Enhances Hong Kong’s status as a leading regional seat of arbitration, particularly as a good “compromise seat” for disputes involving Chinese and non-Chinese parties
Key institutions

- HKIAC
  - ADR services include: arbitration (ad hoc/administered), mediation, adjudication, domain name disputes
  - New premises opening October 2012
  - Rules under revision

- ICC
  - Asia HQ in Hong Kong

- CIETAC
  - Hong Kong sub-commission opening autumn 2012
  - Only sub-commission outside the PRC

Arb-med

Promotion of med-arb / arb-med in line with Hong Kong policy

- Med-arb
  - HKIAC to appoint a mediator in default of third party appointment required by an arbitration agreement

- Arb-med
  - Provided the parties consent in writing, an arbitrator may act as a mediator
  - Arbitration proceedings must be stayed to facilitate mediation proceedings

- No challenge to appointment or conduct of an arbitrator solely because he acted as mediator
Sovereign and crown immunity

Sovereign and crown immunity

• Important new Hong Kong case law on sovereign and crown immunity:
  ° Democratic Republic of the Congo v. FG Hemisphere Associates (Court of Final Appeal) – sovereign immunity.
  ° Intraline Resources v. The Owners of the Ship or Vessel "Hua Tian Long" (High Court) – crown immunity.

• Should not affect choice of Hong Kong as a leading seat of arbitration when contracting with sovereign States and State entities.

• Potentially significant implications for enforcement against the assets located in Hong Kong of State counterparties.

• Essentially an issue of business risk.
India

• Hong Kong and China “gazetted” in 2012

• India will apply the New York Convention to awards made in Hong Kong

• Hong Kong is now an ideal place to arbitrate India-related disputes

Hong Kong

*Pacific China Holdings Ltd v Grand Pacific Holdings Ltd CACV 136/2011*

• June 2011: Court of First Instance set aside an ICC award for violations of Art. 34(2)(a)(ii) and (iv) of the Model Law (PCH denied opportunity to present case and procedure not in accordance with parties’ agreement)

• May 2012: Court of Appeal reversed: no breaches of Art.34(2). Tribunal’s conduct must be “serious” or “egregious” to establish breach

• PCH to appeal