The World's Courtroom

By one count, there are more than 260 arbitration institutes worldwide. None is more trusted or popular in the Asia-Pacific region than the Singapore International Arbitration Centre. Brunswick speaks with its CEO, **GLORIA LIM.**

"Litigation is the basic legal right which guarantees every corporation its decade in court," David Porter, a former British MP, is credited with saying. The line cheekily hints at why a growing number of legal disputes are being settled via arbitration rather than litigation—to oversimplify, arbitration tends to be more private than battling it out in court, and more efficient. An important aspect of arbitration is choosing where it takes place—"Let's go (forum) shopping," was the title of a 2016 *Brunswick Review* article on the subject. The International Council for Commercial Arbitration lists more than 260 leading arbitral institutes spread across more than 100 countries.

When a 2021 survey by Queen Mary University of London/White & Case asked respondents to name their most-preferred arbitration seat globally, a new name appeared atop the list: Singapore, which tied with perennial list-topper London. It was quite a rise for a city-state that, in the 2010 edition of that same survey, was listed as the preferred arbitration seat by 7% of respondents.

Interwoven with Singapore's broader success as an arbitration hub is its flagship arbitral institution, the Singapore International Arbitration Centre (SIAC). In that same 2021 survey, the SIAC was listed as the most-preferred arbitral institution in Asia-Pacific and second most worldwide, behind the International Chamber of Commerce's Court of Arbitration.

Like the city where it's headquartered, the SIAC's ascent has been speedy. Founded in 1991 as a nonprofit organization, the SIAC saw fewer than 10 cases in its first year. As 2022 ended, the SIAC had handled cases originating from 65 jurisdictions—and, over the previous 10 years, had handled more than 4,300 cases.

Leading the SIAC as CEO is Gloria Lim, a Harvard Law LLM graduate who spent 24 years in Singapore's Ministry of Law.

Lim spoke with Brunswick Partners Praveen Randhawa and Joanna Donne about how Singapore has emerged as an arbitration hub, and explained why companies doing business in Southeast Asia shouldn't wait until the last minute to start thinking about the "midnight clause."

You've been involved in developing Singapore's legal industry and in establishing the country's strong dispute resolution. Why was this such a priority for the country?

I spent more than two decades in public service, taking on various legal industry and policy roles at Singapore's Ministry of Law. My personal involvement in developing the legal services and international dispute resolution framework came in the late 2000s. At that time, I was responsible for supporting the formulation and development of policies related to the broader legal industry. Among these was the planning and development of Singapore in the field of international dispute resolution, which had become quite a key focus as it is tied to Singapore's status as a hub for financial and business services.

What was key at that time was to ensure that the legal framework and business conditions were conducive to international arbitration. The government took a lot of care to listen to experts in the industry, the users of international arbitration, and was very active to take on their feedback and put in place important changes to support international arbitration activity here.

What factors drove Singapore to being ranked alongside London as the most-preferred seat for arbitration globally?

Both macro and micro factors contributed. What parties really want is a trusted location—a predictable and neutral international seat to resolve their cross-border disputes. This is essential to trade, commerce and investor trust. Singapore is a completely open regime for international arbitration. Parties that engage in arbitration in Singapore can engage any lawyers of any nationality and choose any governing law. We have a huge base of international firms in Singapore as well as international institutions located here in Maxwell Chambers. In addition, our law schools and research centers are very supportive of arbitration and have arbitration courses. These are essentially all part of the ingredients that support trade and commerce.

In terms of the macro factors, I'd highlight just a few. Singapore's strong rule of law and its

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sociopolitical stability are important—so too its very business-friendly environment and skilled, multilingual workforce. Its extensive network of free trade agreements and double tax agreements also play a role. Our manpower policies are very welcoming of foreign workers and talent and our tax regime is competitive. And then there are physical factors like connectivity—Singapore is within a seven-hour flight of many major cities in this part of the world. You combine all that with being an international financial business center, and it makes Singapore a very welcoming place for multinational corporations to headquarter, to do their regional, financial and transactional work.

"WHAT PARTIES REALLY WANT IS A TRUSTED LOCATION."

The micro factors get quite specific to international dispute resolution—we have a judiciary known for its deep expertise in international arbitration, for example. We also have a strong base of institutions, some locally grown like the SIAC and the Singapore International Mediation Center (SIMC) and the Singapore International Commercial Court (SICC). We're home to a number of international

institutions and dispute practices. Such infrastructure has enabled Singapore to become a kind of hub for this activity.

Singapore Inc. is perceived internationally as taking a geopolitically neutral stance. How important do you think that is in terms of Singapore's success as an arbitration center?

Parties look for a trusted, neutral seat for international dispute resolution that both sides can accept. This naturally plays to Singapore's strengths as a jurisdiction and it serves to ensure that parties have a forum that is trusted. In addition, they are also looking for an institution that supports their case management and this is one of our value propositions.

How important are the concepts of brand, communication and reputation to positioning organizations such as SIAC as arbitral forums internationally?

They're extremely important. There is both the Singapore brand, from which we benefit, but SIAC is also known to our users globally who entrust their cases with us because they know the brand, they can trust SIAC's case management service, there is a strong enforcement record and also because the people that we have in the institution are renowned experts. The international board is chaired by Davinder Singh, Senior Counsel. We have an international court chaired by Lucy Reed [an arbitrator based in New York with a stellar 40-plus-year career in international law], while our Registrar is Kevin Nash [a Canadian-born lawyer who's been written about as a "rock star of arbitration"]. We also have rules which have been used by parties who have benefited from the mechanisms and processes to support the arbitration process.

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What are some of the key trends you are seeing?

Typically, there is a three- to five-year period between the signing of a contract and issues arising out of that. From our data, the trends have been fairly consistent to the trade activity in the region. Our top users have been parties in the US, China and India. In Asian parties, particularly in ASEAN, we see this as reflective of the kind of trade and commerce taking place in this part of the world. Technology disputes such as blockchain and cryptocurrency are an emerging area.

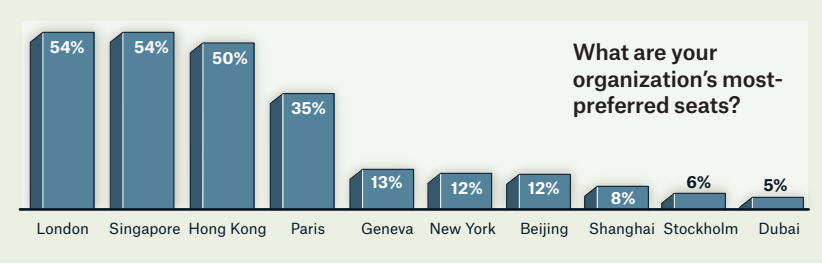
Southeast Asia is a complex operating environment. What should companies be mindful of when doing business within the region?

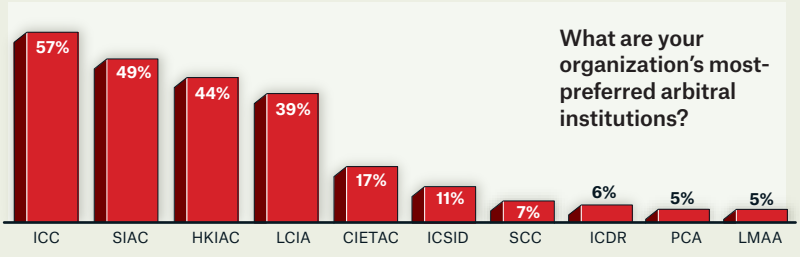
The dispute resolution clause is typically not the first thing you think about when entering into a contract—that's why it's often referred to as the "midnight clause." It's important for parties to understand the options that they have chosen in terms of dispute resolution, because if anything goes awry, that will be the mechanism that they will be using to get the resolution of the dispute. Things like the choice of seat of arbitration, choice of the institutional rules that they wish to apply, the law they wish to govern the contract and details like that. If they are well advised from their counsel and have a well-crafted dispute resolution clause tailored to the sector and potential texture of the dispute, that gives them a mechanism that they can use to resolve any issues that may arise.

Are you seeing companies sort these things out at the point of contracting?

Arbitration has become a lot more prevalent compared to a decade or two ago. In most international contracts now, arbitration is a preferred solution because of its international enforceability under the New York Convention [passed in 1958, and also known as the Convention on the Recognition and Enforcement of Foreign Arbitral Awards]. With 172 or so countries signed on to the convention, it makes arbitration a good option for resolving cross-border

THE WORLD'S PREFERRED ARBITRATION HUBS





ICC- International Chamber of Commerce
SIAC- Singapore International Arbitration Centre
HKIAC- Hong Kong International Arbitration Centre
LCIA- London Court of International Arbitration
CIETAC- China International Economic and Trade Arbitration Commission
ICSID- International Centre for Settlement of Investment Disputes
SCC- Stockholm Chamber of Commerce
ICDR- International Centre for Dispute Resolution
PCA- Permanent Court of Arbitration
LMAA- London Maritime Arbitrators Association

Source: Queen Mary University of London and White & Case International Arbitration Survey, 2021

CHARTS: PETER HOEY

disputes involving parties in different places. Arbitration also enables enforcement outside of their jurisdiction, and allows for recognition and enforcement of the award, which is a lot easier than going through the domestic court processes. Increasingly, parties are more aware, sophisticated and familiar with arbitration in terms of their choices. We are definitely seeing arbitration proliferate all over the region and globally as well.

Litigation is data heavy. To what extent do you think that new technology—like machine learning—can be harnessed for dispute resolution?

For SIAC, digital transformation and the use of technology and adaptation are a must—especially since international arbitration is meant to be efficient, flexible. Artificial intelligence and machine learning are relevant right now to areas like translation, transcription, legal research and discovery. However, a lot of this will depend on the data that is available.

Personally, I do not at this point see AI and machine learning replacing elements of human judgment, experience, assessment of new factual matrices and situations. You still need the human professional to be making some of these judgments, because they cannot be captured by an algorithm. I see technology like AI and machine learning as complementary to the human, as a tool that will help make things easier, faster and more convenient.

Yet there are challenges. To name only a few: inequality of access between parties, justice considerations, due-process concerns and, of course, the protection of personal data.

It really goes back to how we leverage the technology and ensure that we stick to the fundamental tenets of why we're using it, preserving party autonomy in the arbitral process, ensuring considerable flexibility, ensuring there's due process.

Could technology shorten the time it takes to resolve disputes?

It will depend on the nature of the dispute and also the willingness of parties to adopt the technology and leverage that to achieve those kinds of efficiencies. So, for example, if you were in a tech dispute, would the parties resort to the use of smart contracts to resolve a particular dispute? This is a very different way of resolving disputes. In terms of process, the parties would agree to a technology-aided way of calculating certain sums that were to be paid to each other, but it is really a function of the parties' choices and willingness to adopt the technological solution.

"THE DISPUTE RESOLUTION CLAUSE IS TYPICALLY NOT THE FIRST THING YOU THINK ABOUT WHEN ENTERING INTO CONTRACT IN DIFFERENT COUNTRIES."

PRAVEEN RANDHAWA and **JOANNA DONNE** are Brunswick Partners. Praveen is based in Singapore; Joanna, who spent 12 years working in Asia, is based in London.

Arbitration traditionally has been a popular choice because parties often agree to keep it private and confidential. Do you see the arbitration process becoming more public?

Different institutions take different approaches. Some are pushing to make more information available as a resource to users of international arbitration, such as redacted awards, to enrich jurisprudence. In areas such as investment arbitration, there are some calls for more transparency because of public policy. At times there is interest in a particular case. The landscape is evolving to find the right balance between transparency and confidentiality.

Confidentiality for our users is of paramount importance, and we have the safeguards built into our rules. Unless agreed by the parties, the arbitrators and all parties involved have to treat the matters in each of the disputes and the award as confidential. Under the Singapore International Arbitration Act, unless the parties agree otherwise, the arbitration proceedings usually are heard in private. Arbitration is very much a user-driven process. If all parties and proceedings prefer to make the case public, of course it is their prerogative, but generally, we would preserve confidentiality.

What is your vision for SIAC's role in international commercial dispute resolution five to 10 years from now, and Singapore's role more broadly?

For SIAC, my vision is that it continues to grow as an organization and remain a global leader in international arbitration. There is always room for improvement and innovation. Our users and clients are key to us. We want to continue to listen and remain agile, to make sure we provide users with accessible, expedient, state-of-the-art case management services. It is also important to ensure that even with growth and development in technology, we maintain a high level of human touch. We will be very mindful of maintaining that.

Singapore as a jurisdiction will continue to play a pivotal role as an international dispute resolution hub—this goes hand in hand with how Singapore is developing as an international hub for financial services, trade and commerce. The international dispute resolution ecosystem here is quite a unique interplay of all the macro and micro elements I mentioned. This makes Singapore such a valuable proposition to commercial parties, and it's why Singapore has been a popular, trusted jurisdiction.

It will take continued hard work to sustain the conditions that have made Singapore what it is today. If we do sustain them, the future will be bright. ◆