International Arbitration Update No. 2
Choosing Where To Arbitrate: Arbitral Seats and Institutions

Introduction
When a company enters into a cross-border business agreement with a company from another country, the agreement commonly will contain an arbitration clause. As a result, our clients often ask us for our view about various “seats” of arbitration and arbitration institutions.

The “seat” is the legal place of arbitration, which determines where the award is deemed to have been issued and which courts have supervisory jurisdiction over the arbitration. This concept differs from the “venue of arbitration,” which is the physical place where a hearing or other procedural step occurs (thus, a hearing may be held elsewhere than the seat of arbitration).

Arbitral institutions are bodies that administer arbitrations. The seat of arbitration and arbitral institution are entirely distinct from one another; parties may choose a seat of arbitration in one jurisdiction and an institution to administer the arbitration in a completely different jurisdiction.

Factors to consider when selecting a seat
When choosing a seat of arbitration the main factors to consider include whether the jurisdiction where the seat is located is a signatory to the New York Convention, has a modern arbitration law, and has a court system that is supportive of arbitrations. Additional considerations that parties may take into account, if it is expected that the hearing or any other procedural step will be held in the arbitral seat, include the proximity of the seat to parties’ offices and the state of the facilities available for the arbitration (e.g., purpose-built arbitration facilities or other suitable meeting facilities with nearby hotels, competent local support staff, and foreign lawyer and visa systems that permit short-term visits for the purpose of conducting an arbitral hearing).

Seats of Arbitration
The seats discussed below are all in jurisdictions that are signatories to the New York Convention and meet all the other preconditions as a seat.

London
A popular seat, London is a global financial center and legal hub with courts that are well regarded and supportive of arbitration. Many contracts are

1 Countries that are signatories to the New York Convention recognize and enforce arbitral awards rendered in other countries that are signatories to the New York Convention, which provides only limited grounds for resisting recognition and enforcement. Currently, 156 countries are signatories to the New York Convention. See ‘Status Convention on the Recognition and Enforcement of Foreign Arbitral Awards,’ at http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/NYConvention_status.html (last visited October 26, 2015).
governed by English law, which may lead parties to assume that arbitration should be seated in London (although this is not necessary).

New York

New York also is a popular seat, not only for US-related arbitrations, but also for disputes arising from contracts with a Latin American or Canadian element. Like London, New York is a financial center and its federal courts are supportive of arbitration.

Paris

Paris is a well-established seat of arbitration. Its courts have a long history of supporting international arbitration and enforcing arbitral awards. Furthermore, French arbitration law encourages minimal intervention by courts in arbitral proceedings.

Hong Kong

Hong Kong is a leading seat of arbitration in Asia, especially for China-related disputes. Hong Kong has a modern arbitration law and courts that support arbitration, and it is a convenient location for parties across Asia (over 50% of the world's population live no more than a five-hour flight from Hong Kong).2

Singapore

Singapore also is a leading arbitral seat in Asia, particularly arbitrations related to South and Southeast Asia, as well as Australasia. Singapore has a modern arbitration law and courts that are very supportive of arbitration.

Tokyo

While less widely used than the jurisdictions above, Japan has modern arbitration legislation. Although Japanese courts are less familiar with international arbitration than courts in jurisdictions discussed previously, their decisions generally reflect support for arbitration.

Arbitral Institutions

There are various factors to consider when selecting an arbitral institution, such as whether the institution has well-established rules, trained staff, and a good reputation, as well as the services the institution provides and costs. Other considerations (similar to those for the seat) include the proximity of the institution to the parties’ offices and the quality of the facilities.

ICC

The International Chamber of Commerce (“ICC”) was established in 1923. A major global arbitral institution, the ICC is headquartered in Paris with branch offices in Hong Kong and New York. In 2014, 791 requests for arbitration in 57 different countries were filed under the ICC rules.3

LCIA

The London Court of International Arbitration (“LCIA”) was established in 1892 and also is a global institution; more than 80% of the cases referred to the LCIA involve non-UK parties. In addition to its headquarters in London, the LCIA has branch offices in India, Dubai and Mauritius.

AAA-ICDR
The American Arbitration Association-International Centre for Dispute Resolution ("AAA-ICDR") was established in 1996. In addition to its headquarters in New York, it has various branches throughout the US and international branch offices in Mexico City, Singapore and Bahrain.

HKIAC
The Hong Kong International Arbitration Centre ("HKIAC") was established in 1985. In addition to its head office in Hong Kong, which has state-of-the-art arbitration facilities, it has a newly established office in Seoul. Approximately 65% of all HKIAC's arbitrations involve international disputes.

SIAC
Established in 1991, the Singapore International Arbitration Centre ("SIAC") is headquartered in Singapore and it has a branch office in Mumbai. In 2014, the SIAC received 222 cases, many of which involved international disputes. The SIAC is housed in a state-of-the-art arbitration center.

JCAA
The Japan Commercial Arbitration Association ("JCAA") was established in 1953 and is the leading arbitration institution in Japan. Through its branch offices in both Tokyo and Osaka, the JCAA administers both domestic and international arbitrations.

The cost of institutional arbitration is an important consideration that parties take into account when deciding to arbitrate. Certain institutions may have somewhat higher costs, but also may offer more services. For example, the ICC scrutinizes all awards to help ensure that the awards will be enforced. In addition, parties with "major and complex" disputes may feel more comfortable resolving those disputes at more established arbitral institutions.