

BRIEFING NOTE

The COVID-19 Virus and Post-Pandemic Arbitrations – Resolving Disputes via Arbitration Proceedings Cost and Time Efficiently

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Introduction

As we emerge from our lockdown, it has been predicted that national courts may be overwhelmed by a “tsunami of disputes”. Such prediction has been made on two bases:

- Courts have been in lockdown with only limited hearings for essential and urgent matters. This has led to a backlog of proceedings to be heard upon full re-opening.
- Legal disputes have been simmering as commercial obligations are breached during these uncertain times. These disputes will surface as we emerge from the pandemic.

When judicial caseloads increase, the adjudication of disputes may be delayed. Disputing parties may be left in limbo over their contractual rights and remedies. To facilitate the timely resolution of disputes, parties may agree to refer their disputes to arbitration. In this briefing note, we will share how arbitration may be an efficient alternative post-pandemic.

Opting for Arbitration

Arbitration, unlike court litigation, is a consensual process requiring the consent of all disputing parties. Typically, this consent is evident from arbitration clauses incorporated in commercial contracts. Even if there is no such arbitration clause, parties can still refer their disputes to arbitration if all parties execute a separate arbitration agreement:

“[The Parties] hereby agree to submit all disputes arising out of or in connection with [the contract] to arbitration administered by the [arbitral institution] in accordance with the [arbitration rules] for the time being in force, which rules are deemed to be incorporated by reference in this clause.

The seat of the arbitration shall be _____ . The Tribunal shall consist of [one/three] arbitrators. The language of the arbitration shall be [English]. The governing law of this arbitration agreement is _____ .”

Arbitration can be more cost and time efficient than court litigation. Not only are there more arbitrators than judges to hear disputes, there are also procedures in place to hear disputes expeditiously. Notably, for most disputes (where the amount in dispute is less than US\$ 5 million), expedited arbitration procedures are available to facilitate the timely resolution of disputes at a cost which is proportional to the amount in dispute.

Cost Efficient and Expedited Arbitrations

Some arbitral institutions already have rules and procedures in place for expedited arbitrations. For ease of reference, we have prepared a comparison table below:

Arbitral Institution	International Chamber of Commerce ("ICC")	Hong Kong International Arbitration Centre ("HKIAC")	Singapore International Arbitration Centre ("SIAC")	Beihai Asia International Arbitration Centre ("BAIAC")
Quantum	Not exceeding US\$ 2 million	Not exceeding US\$ 3.25 million	Not exceeding US\$ 4.25 million	Not exceeding US\$ 4.25 million
Arbitrator(s)	Usually sole arbitrator			
Proceedings	Arbitrator may disallow document production request, as well as limit the number, length and scope of written submissions and written witness evidence	HKIAC may abbreviate the time limits provided in the HKIAC rules	SIAC may abbreviate the time limits provided in the SIAC rules	Arbitrator may limit the extent of document production, as well as the number, length and scope of written submissions and written witness evidence
Hearing	Dispute may be decided based on only written submissions			
Award	Around six (6) months of the arbitrator receiving the case file	Within six (6) months of constitution of arbitral tribunal		Around five (5) months of the arbitrator receiving the case file
		May contain reasons in summary form (or no reasons if parties so agree)		May contain reasons in abbreviated or summary form
Fees	Reduced scale of fees	Standard scale of fees		

Other arbitral institutions, such as the Dubai International Arbitration Centre, have considered the introduction of similar expedited arbitration procedures. Whilst not yet implemented, it is anticipated that such provisions will be rolled out soon.

Next Steps

As we await the full re-opening of national courts, parties contemplating disputes are encouraged to review the dispute resolution provisions within their commercial contracts.

- If provisions do not provide for dispute resolution via arbitration, and to avoid waiting in line before national courts, parties are encouraged to engage in discussions with their respective counterparties to agree on referring their disputes to arbitration.
- If the amounts in dispute are less than US\$ 5 million, and to encourage efficient resolution of disputes, parties are encouraged to refer their disputes to arbitration before arbitral institutions with clearly established expedited arbitration rules.

As arbitration specialists, we have acted as lead counsel in numerous arbitrations. At all times, we focus on achieving a cost effective result that advances our client's commercial objectives. To find out how we may assist with the process of referring disputes to arbitration, or the arbitration process itself, feel free to contact any member of our team.

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