

AN ASIAN REGIONAL MARKET?

The stock of contracts that name somewhere in Asia as seat or venue is growing. David Samuels looks at the implications for local and international players

Asia's economic surge has been one of the stories of 2006. Even Japan is economically back on track. Booms are usually followed by a backwash of commercial disputes. If Asia's current boom produces a surge in disputes in say 2010, will the arbitration world be ready?

Your answer depends a bit on how you feel about the status quo. If the disputes follow the traditional path, then yes, all is ready. The traditional path leads to Western Europe, where they would be staffed and sorted out by specialists, most of whom are at or are alumni of the international arbitration brand name houses.

But what if the next generation of disputes go ... elsewhere? There is good reason to suppose that a high percentage of Asian contract arbitrations will stay 'local'. And that raises interesting questions about where the billable hours will go.

Although figures from the two arbitral institutions (the Hong Kong International Arbitration Centre and the Singapore International Arbitration Centre) look steady on previous years, according to local sources Singapore and Hong Kong are being written as the venue. One local practitioner at an international firm says: "Hong Kong, Singapore or even China now feature in the arbitration clause 90 per cent of the time. At least in the contracts I'm seeing." Another says: "From my experience recently, I'd say you won't see intra-Asian disputes going to London much longer." Those are only two perspectives, granted, from lawyers who deal with a specific type of contract. But the point remains: clauses name Asian seats and venues.

There are four reasons, in fact, to expect a relocation of 'Asian' disputes: (i) maturity, (ii) the emergence of China, (iii) intra-Asian trade (Japan with China, for instance), and (iv) that it is boom time and nobody is giving divorce much thought.

'Maturity' here means on the part of the region's institutions. The Hong Kong and Singapore facilities respectively date from 1985 and 1991, so fears that they might fold are no longer possible. Many investors committing to the region now have a previous Asian arbitration experience logged that will dispose them to accept another one. If they weren't the party in the case, then they monitored the arbitration

in question at one remove – because it was important within their industry. They will have seen, as one partner at an international firm put it, that "Singapore and Hong Kong are just as good as the LCIA and ICC, there's really no daylight between them now. In fact there's a lot to be said for preferring Asian institutions because they are cheaper." Hong Kong and Singapore have suffered the odd court-related blip in the support for arbitration, in common with many emerging arbitration seats. Unlike some seats, they've corrected those slips fast.

The emergence of China refers to bargaining power. More of the deals on the table in this era connect to China. Chinese parties dislike long haul arbitration destinations, because of the cost and the clearances required to spend time in them. They have the luxury of bargaining power too. Behind every Western investor that is prepared to draw a line in the sand on, for example, the dispute resolution clause, there is a queue of 10 who will be more tractable. Comments one US-trained lawyer working in Shanghai: "In China at the moment, you tend to get the deal you're given."

Clauses tied to Asia arise from an interaction of all of these. Investors have more confidence in Asia-based arbitration should it be proposed. And it is being proposed more often.

And, last, these are boom times, so everybody is in a flexible frame of mind anyway. Nobody is thinking about pre-nuptial agreements or divorce. Says one lawyer practising internationally with a firm of Texan origin: "Clients are a little cavalier towards contracts in Asia right now. They see only good times ahead, and aren't all that fussed about taking precautions. I personally think they'll rue that, in some cases." The result: a pool of contracts with the situs in Asia.

One can already find examples of large Asian matters being arbitrated 'locally'. In the *American Lawyer's* last 'Arbitration Scorecard' on contract disputes, 15 with an Asian angle were included (one Asia side). Of these, four were seated in the region. The seats were Singapore (three times) and Bangkok. A recent survey, by PricewaterhouseCoopers and the International School of Arbitration at Queen Mary's, of client attitudes towards arbitration gave an increased approval rating to 'regional' centres. It mentioned

'familiarity', 'convenience' and 'cost' as elements that regional arbitration has in its favour.

At a certain point, these clauses will start to express themselves. In the past, when serious disputes have arisen, Asian clients have tended to brief from Europe. Dezalay and Garth note in *Dealing With Virtue* (page 276, University of Chicago press, 1996): "For very large arbitrations in Hong Kong, the arbitrators and counsel tend to come from London. Other big cases tend to be handled in New York or London, where there is much more choice for arbitrators."

Asian market reviewed

In the future? Who knows. International arbitration has never had a regional sub-market (US domestic cases aside). Asia might be the first. Specialists working in the heartlands such as London and Paris like to think that cases will find them, because of their extra arbitration skills. But it can make sense to brief a case and appoint arbitrators locally. There are limits to how far from its point of origin it makes sense to move a case. To neutral territory, certainly. But more than that ... well, if the cases were really elastic to their point of origin then Hawaii would be a highly popular venue. Appointing local arbitrators makes sense for a number of reasons: no long-haul overheads; professional services outside the grand cities are cheaper, as is board and lodging; and one is more likely to find Asian language and document services in Asia. Likewise, there is greater empathy for how business is conducted and the nuances of power in organisations. In addition, an Asian client might feel it will command more respect, as a customer, in its own pond than it would in say London or Paris where it might be less confident of receiving its law firm's A-game. If the necessary skills exist in Asia, it makes sense to use them.

But do those skills exist in Asia? They are starting to.

The current edition of *The International Who's Who of Commercial Arbitration* lists 44 lawyers living and working from the region and who meet the standard for inclusion. That isn't particularly impressive; Paris, in contrast, has 36. But it is more than many suppose exist.

Of those, the top 10, by number of 'votes' received during research appear in graphic A.

GRAPHIC A: TOP 25 ASIAN ARBITRATORS

1	Michael Hwang SC Michael Hwang SC (Singapore)
2	Michael Moser O'Melveny & Myers (China)
3	Sally Harpole Sally Harpole & Co (Hong Kong)
4	Louise Barrington City University Hong Kong (Hong Kong)
5	Cecil Abraham Shearn Delamore & Co (Malaysia)
6	Peter Scott Caldwell Caldwell (Hong Kong)
7	Teresa Cheng SC Des Voeux Chambers (Hong Kong)
8=	Christopher Lau SC Alban Tay Mahtani & de Silva (Singapore)
8=	John Savage Shearman & Sterling (Singapore)
10	Mark Lloyd-Williams Herbert Smith (Hong Kong)
11	Lawrence Boo The Arbitration Chambers (Singapore)
12=	Toshio Sawada Sawada (Japan)
12=	Robin Peard Johnson Stokes & Master (Hong Kong)
14	Karen Mills KarimSyah (Indonesia)
15	Philip Nunn Simmons & Simmons (Hong Kong)
16=	Philip Yang Philip Yang & Co (Hong Kong)
16=	Yasuhei Taniguchi Matsuo & Kosugi (Japan)
16=	Anthony Houghton Des Voeux Chambers (Hong Kong)
16=	David Sandborg City University of Hong Kong (Hong Kong)
16=	Kamal Hossain Dr Kamal Hossain & Associates (Bangladesh)
21	Vinayak Pradhan Skrine (Malaysia)
22=	Timothy Hill Lovells (Hong Kong)
22=	David Bateson Mallesons Stephen Jaques (Hong Kong)
24	Paul Starr Mallesons Stephen Jaques (Hong Kong)
25	Dean Lewis Masons (Hong Kong)

Notes

- Order reflects the number of nominations received during research for *The International Who's Who of Commercial Arbitration*.
- Australian and New Zealand practitioners omitted.

Korean firms such as Kim & Chang have large dockets of international disputes, sources say. Singapore, too, is developing a distinct

community of arbitrators: one of its sets of barristers' chambers is Arbitration Chambers. Perhaps Asia's arbitration strength is under appreciated because the populations are diffuse. Of the 44, only seven work within what one might call 'international arbitration brand name firms'. And no one city predominates yet.

That said, it is clear that there are far fewer 'true' specialists working at firms across Asia.

Global Arbitration Review also looked at which international firms have arbitration specialists in the region. Those with the largest pools appear in graphic B. We looked at 40 firms' websites to establish this information and included only partners in the totals. To count an individual, they had to mention 'international arbitration' expressly in their CV as a competence, and include a reference either to particular cases or at least institutional rules that they have experience with. (Please note, we are using firms' own websites to derive these figures. The information gives no indication of how specialised someone is in the field, whether it accounts for 1 per cent or 100 per cent of their time. As for 'peer review' material, we used *Global Arbitration Review's* '45 Under 45' and our sister publication, *The International Who's Who of Commercial Arbitration*.)

For a quick summary of size and peer review performance, see graphic B. The biggest network of arbitration 'assets' belongs to Baker & McKenzie, which can call on 21 partners (a figure that includes some in Australian offices). The firm has offices in China, Hong Kong, Singapore, Japan, Thailand, the Philippines, Australia, Taiwan, Indonesia and Vietnam. Graeme Halford, in Hong Kong, is reasonably well known outside the region, we were told. Although the firm has a large population of self-denoted specialists, it has none who feature in either of the publications we used for peer review.

The second biggest is DLA Piper Rudnick Gray Cary. It has two specialists who live and work in China, four in Hong Kong, two in Singapore, and one who splits time between Thailand and Singapore. Several of these have joined from other firms. For example, Jingzhou Tao (in Beijing) was head of Coudert's Chinese practice; Mike Melwood-Smith (in Singapore) was at Richards Butler in the region; Justyn Jagger (also in Singapore) was with Herbert Smith; and Gordon Smith (Singapore - Thailand) was with Baker & McKenzie. This firm's Asian disputes team includes one peer review approved figure - Jingzhou Tao. He is on *Global Arbitration Review's* editorial board, and is included in the current edition of *International Who's Who of Commercial Arbitration*. Jagger and Tao joined within the past 20 months. It is also one of three firms that appear to be investing in its contentious practices.

The third biggest is Herbert Smith. It has seven partners in the region whose online professional biographies state a competence in international arbitration. They are Graeme

Johnston (China), Mark Lloyd-Williams (Hong Kong, head of construction arbitration regionally), Craig Shepherd (Hong Kong, head of Hong Kong construction arbitration), Maurice Burke (Singapore), Peter Godwin and Dominic Roughton (Tokyo), and Alastair Henderson (Thailand). Furthermore, Alastair Henderson and Mark Lloyd-Williams are in the current edition of *The Who's Who of International Commercial Arbitration*. Henderson was a 'runner up' in *Global Arbitration Review's* '45 Under 45'.

Herbert Smith appears to be one of the few firms putting its chips firmly on Asia.

To that end it has encouraged Dominic Roughton to move to Tokyo and take partnership early; it has moved Graeme Johnston, a young partner with provenance from time working with Julian Lew QC, from Hong Kong to mainland China; it is now seconding associates who are deemed partner material to the region; and it has given its specialists there the ability to recruit locally where necessary. Johnston recently recruited former China International Economic Trade Arbitration Commission official Steve Kou, who was with the commission for more than a decade. In addition, a senior associate, Meef Moh, has been recruited in Singapore.

Johnston, Henderson and the other leaders of the regional practice group are also being placed at the front of the firm's alliance network, which comprises Stibbe and Gleiss Lutz.

Says Laurence Shore, head of international arbitration at Herbert Smith: "My remit when I took over the group was to decide where we put our resources. I had complete leeway. Do we have US presence? Do we focus on the middle East? I concluded the value for money option, for us, was Asia."

The fourth biggest are Shearman & Sterling LLP, Johnson Stokes & Master and Jones Day.

Shearman & Sterling says it has 11 full-time specialist arbitration lawyers now working in the region. According to John Savage who leads the practice, these are "bona fide full-time international arbitration practitioners". He says the practice's recent growth has been impressive. "We were about five or six specialists two years ago."

Because Shearman & Sterling has an all-equity partnership, Savage is the only 'partner'. But three senior associates have been counted as partner for the purpose of this research, because in other organisations they would very likely be partners by now; Shearman & Sterling has an all-equity model.

Savage, himself, probably has the greatest credibility with the wider world of international arbitration. Savage features in the current edition of the *The International Who's Who of Commercial Arbitration*, and in *Global Arbitration Review's* '45 Under 45' survey; he is the only person mentioned in this article who appears in both peer review publications we consulted. The most recent *American Lawyer* contract arbitration

scorecard showed Savage as counsel on two cases with more than US\$300 million at stake, that had an Asian party on one side. The combination of two peer review surveys and two public record items places Savage and his team near the top of this pile. Alastair Henderson of Herbert Smith is the only person who comes close on the peer review front.

Johnson Stokes & Master has Terence Tung (Hong Kong and China), Menachem Hasofer (Hong Kong), John Hickin, Mark Fraser and Paul Graham (Thailand) who each mention international arbitration as a competence. Robin Peard, a consultant to the Hong Kong office, is a well known figure in the field. He is excluded from the head count because he is a consultant; but it should be noted that he figures in the current edition of our sister publication.

Jones Day has Peter Wang (Shanghai), Ian Seow (Hong Kong), Yee Long Chong (Singapore), Victor Chang (Taipei) and Marianne Chao (Taipei).

Heller Ehrman and Clyde & Co are the fifth biggest, each with four self-identifying specialists.

Heller Ehrman has Ing Loon Yang (Beijing), Hong Zhi Yang (Hong Kong), Jonathan Palmer and Martin Downey (Hong Kong). Two consultants to the Hong Kong office also assert this area of work is a specialisation. Palmer is a US litigator who moved to become managing partner in Asia in 2005. Loon Yang was a lateral hire from a Singapore firm in 2005. Zhi Yang joined in 2004 from Denton Wilde Sapte. Zhi Yang is a former Chinese official working at CCPIT and has been an intern at the International Chamber of Commerce.

Clyde & Co has Simon Baker (Hong Kong), Ik Wei Chong (Hong Kong and China), Michael Pilkington (Hong Kong) and Andrew Bricknell (Singapore).

A group of firms has three specialists apiece. They are Allen & Overy, Lovells, O'Melveny & Myers, Simmons & Simmons, and Richards Butler (as was).

Allen & Overy has Peter Thorp (China), Andrew Jeffries (Hong Kong) and Andy Bautista (Philippines and Hong Kong). Thorp is an interesting piece on the arbitration chessboard, should Allen & Overy choose to play. He had a profile for commercial arbitration when living in London. This has remained and he has subsequently been a runner up in *GAR's* '45 Under 45' selection earlier this year, even though his caseload has reduced substantially since moving to Asia and assuming management responsibilities. Thorp is a member of *Global Arbitration Review's* editorial board and is also managing partner of Allen & Overy's China practice.

Lovells also has someone regarded as a 'real' specialist by people outside the region: Timothy Hill, the London Court of International Arbitration's Hong Kong representative. He won inclusion in the current edition of *The*

International Who's Who of Commercial Arbitration. Lovells also has Mark Liin (Hong Kong) and Rupert Sydenham (Hong Kong).

O'Melveny & Myers is now home to Michael Moser (Hong Kong and China). Moser is a member of *Global Arbitration Review's* editorial board. He is well known in the region for his work in international arbitration and is in the current edition of *The International Who's Who of Commercial Arbitration*. Moser joined O'Melveny & Myers in early 2006 from Freshfields Bruckhaus Deringer. Since then, he has recruited two associates in the 31 to 34 age range, one from Freshfields Bruckhaus Deringer and one from Shearman & Sterling LLP. These associates indicated in interviews with *Global Arbitration Review* that they expect to concentrate on arbitration-related work. O'Melveny joins the select few firms that are adding assets so they can handle more international dispute-related work from Asia; the others are Herbert Smith and DLA Piper Rudnick Gray Cary.

Richards Butler has William Barber, Chris Howse and Nanette Kwong (Hong Kong), who all expressly mention competence in international arbitration in their professional notices.

Simmons & Simmons has Gareth Hughes, Philip Nunn and Huen Wong (Hong Kong) asserting a specialisation. Nunn is listed in the current edition of *The International Who's Who of Commercial Arbitration*.

Freshfields Bruckhaus Deringer, Watson Farley Williams, Norton Rose, and Orrick have two specialist partners apiece living in the region.

Freshfields Bruckhaus Deringer is, of course, formidable in other parts of the world. In Asia it seems prepared to let people leave – as Moser did last year, followed later by an associate. This has left Freshfields with two self-identified specialists working in the region: Richard Chalk and Patrick Swain, who both work from Hong Kong. Freshfields' Japanese office asserts dispute resolution as a practice area but gives no further details or key contacts.

Watson Farley Williams has Raja Bose (Singapore) and Steven Burkill (Thailand) who mention international arbitration as a competence. Norton Rose has Jim James (China) and Guy Spooner (Singapore). Orrick has Adrian Yip (China) and Masami Totani (Japan).

Of course, numbers are only half the story. A couple of individuals working in the region have above-average profiles. Two especially stand out. One is James Zimmerman at Squire Sanders LLP (China). Zimmerman is listed in the current edition of our sister publication.

Kim Rooney at White & Case LLP (Hong Kong) also has an impressive presentation of arbitration cases in her online biography. She is mentioned as working on a US\$300 million case in the *American Lawyer's* last scorecard.

Last, the snapshot of those active in the region should encompass Stephen York of Kilpatrick Stockton (he moved recently from

Vinson & Elkins). York is no longer living in the region, but did in large part from 1984 until recently. York is the other specialist one can observe on two Asia-related cases in the *American Lawyer's* contract arbitration scorecard.

Ranking

It is premature to break the Asian market into an actual ranking, since it is still inchoate. The most one might do, at this stage, is to offer a view that certain firms seem to have more commitment, or momentum, beyond their Asian arbitration assets.

The candidates are more apparent if one uses lenses to filter the bunch a bit. We used three: size, peer review approval and recent activity.

These lenses make Herbert Smith, Shearman & Sterling LLP, DLA Piper Rudnick Gray Cary and O'Melveny & Myers LLP stand out.

Herbert Smith emerges because it is visible through all three – it has scale, it has peer reviewed figures, and it has been 'active' in the sense of recruiting a support layer of lawyers, and moving partners to the region. Shearman & Sterling shows up because John Savage features in two peer review surveys and the *American Lawyer's* contract arbitration scorecard research and has scale too. DLA Piper Rudnick Gray Cary and O'Melveny & Myers do well because each has recruited a figure with a large personal portfolio of cases, and, in O'Melveny's case, has recruited additional support level lawyers. Jones Day is also regarded by players such as Herbert Smith and Shearman & Sterling as a potential rival.

What the future holds

The two populations of specialists in the region – those at international firms and those at domestic – will compete hard to keep future work in the region. Will they succeed? Objectively one might say they have a lower grade of specialisation to sell to clients. On the other hand, they have the advantages mentioned earlier. Clients may take the view that arbitration is a simple field based on a few core principles, and a lawyer with general contentious experience will be adequate for their needs.

Domestic firms may be the biggest threat to the franchises of the global arbitration players, at least initially. They have routes into the biggest clients in the region. They can also bend a little more on fee rates. Asian clients often regard international rates as excessive; one source told *Global Arbitration Review* that when they look at "high-priced sophisticated legal services they see the high price but not the sophistication".

Says Friven Yeoh, associate at O'Melveny & Myers in Beijing: "Asia is ripe to develop its own cases and specialists. There ought not to be a need to brief cases out of London or Paris."

Says John Savage, partner at Shearman & Sterling: "I can understand the in-house lawyer at a company with links to, for example, the Singapore government, being happy to go to the head of litigation at Drew & Napier for an

GRAPHIC B

Firm	Peer review	Size
Baker & McKenzie	-	21
DLA Piper Rudnick Gray Cary	1	10
Herbert Smith	3	7
Shearman & Sterling	2	4*
Johnson Stokes & Master	-	4
Jones Day	-	4
Heller Ehrman	-	4
Clyde & Co	-	3
Allen & Overy	1	3
Lovells	1	3
O'Melveny & Myers	1	3
Richards Butler	1	3
Simmons & Simmons	1	3
Mallesons Stephen Jaques	2	3
Freshfields Bruckhaus Deringer	-	2
Watson Farley Williams	-	2
Norton Rose	-	2
Orrick	1	2
Squire Sanders	1	1
White & Case	-	1
Clifford Chance	-	1
Allens Arthur Robinson	-	1

Peer review: we used two sources, *The International Who's Who of Commercial Arbitration* and *Global Arbitration Review's '45 Under 45'*. If a member of the firm from Asia was included, the firm received a point. Runners up earned points (in the '45'). Consultants and of counsel were excluded.

Size: see explanation in the main text. Figures are derived from partners' biographies on websites. Consultants and of counsel were excluded.

* The Shearman & Sterling figure has been adjusted from the website number to reflect local feedback on relative size.

international arbitration matter. An arbitration-savvy client would be more likely to seek a specialist arbitration practice such as ours."

Savage continues: "I think the same process will take place in Asia over the next five to 10 years as has happened elsewhere. The market will move towards specialised arbitration practices that pick up the big cases, and boutiques of arbitrators will form."

Savage says some of the biggest specialist arbitration practices are missing from graphic B: "Two of the most significant groups of specialists in the region are at Bae, Kim & Lee, and Kim & Chang in Seoul." *Global Arbitration Review* will look at domestic Asian groups another time.

Furthermore, domestic firms that receive an inquiry about a big matter would have no obligation to pass it up the chain. An outpost of one of the larger arbitration groups can face pressure to render unto Caesar that which is Caesar's. That is, to pass the case back to the mothership, in Paris, London or New York. An apocryphal story tells of a recent claim relating to the Philippines that went into one (very well known) international firm's Hong Kong offices – on a referral. Although the referral was to Hong

Kong and the office had arbitration assets, the case was manned ultimately from Europe. Hong Kong was marginalised. How much this owed to a client's conservatism and how much to internal firm politics is hard to say. It illustrates a point.

And what of the grand 'global' arbitration groups? How will they feel if local players encroach onto their territory? On the one hand, they will probably be pleased as it means the universe of cases is expanding, and suggests a new business line to explore. On the other, developing such a line will be difficult. How would one go about it? There is little point in investing before the tap of work is open. The only option while work is thin on the ground is a lateral hire with a stand-alone practice. Few of these exist; two of the more obvious ones, Moser and Tao, moved only recently. The groups we've labelled as 'investing' in the region, such as Herbert Smith, are arguably less investing as much as noticing a pre-existing state of affairs and enhancing it. Their investments have been cautious, for example, associates to support partners, the blessing for more marketing activity etc. So whatever the global players do will probably be a case of buttressing pre-existing assets, or trying to sell the message that it pays to use 'real' specialists to local corporations.

This is probably the best that can be done, for now. International arbitration groups are small businesses sitting inside much larger ones. As with any small business, the strategic planning tends to occur in the gaps between more interesting work. These small profit centres also carry limited clout with the wider organisation. Investment needs to be supported by a clear business case.

Comments a partner at the office of a well-known London firm: "Asia is a microcosm of the wider international arbitration market. There are lots of peripheral players trying to break in. The challenge for the firms able to boast a global reputation is to keep that brand, while working flat out. It's hard. It's bad if other firms appear more eager than us. We're eager. But we're also busy."

Second, the science of transferring the glitter of an arbitration brand from one office to another is far from exact. Many groups have struggled to develop more than one 'centre of gravity'. Paris frequently lags London, or vice versa. So the idea of trying to sprinkle some of the same magic pixie dust in Asia will fail to thrill some. The last thing that some want is their Asian offices competing with London offices for work.

Furthermore, if any choose to go down the Asian path, they will need a personal commitment from the European 'stars'. Much as presidents have to visit candidates in marginal seats, so they would have to be seen giving their personal votes of confidence to the anointed Asian partners or specialists. That requires energy and time.

Third, it would leave the partners sponsoring

the scheme exposed should the investment fail. International firms have had enough difficulty holding their rates on the corporate side. Few will relish the prospect of taking a risk with arbitration.

All in all, anticipating a market before it 'exists' poses too many risks. Firms that don't have Asian assets will sit pretty. Those that do have assets may attempt to draw those to wider attention. If a good lateral came on the market, someone would look at them.

There has been hype about Asian arbitration before, in a slightly different form.

About three years ago, a school of thought predicted that mainland China might, in arbitration terms, be the goose that lays golden eggs. The theory looked quite sound. Trade with China was increasing; foreign companies are easily trapped in a domestic arbitration system, etc. Potentially, there appeared to be a large domestic arbitration market. Unfortunately, work has failed to materialise.

A firm that dipped a toe in the Chinese market told *Global Arbitration Review* the project never developed as expected. "Frankly we're scrabbling for scraps," says a source familiar with the Chinese arbitration desk. This seemed to be a general view. No source interviewed about mainland Chinese work could point to more than a couple of cases per year. "The predicted explosion hasn't happened yet," comments one source.

Foreign firms opening mainland arbitration desks encountered two problems. First, clients have a high pain threshold in China at the moment – they feel no need to explore their full legal remedies. Comments one: "If they make even a third of what they'd hoped they are still extremely happy." Where problems have developed into disputes at China's International Economic Arbitration Commission and local commissions, Chinese lawyers have scooped the cases. They have undercut international rates, often by working for contingency fees. They have also had a boost from the Ministry of Justice, which passed a regulation forbidding foreign counsel in arbitrations from addressing Chinese law. The best that international players can do, then, is offer a 'mixed double' – their lawyer plus a Chinese professor. Not really a competitive package. With the bulk of the appointed arbitrators being Chinese, rather than international luminaries (because of the low rates paid to arbitrators), the deck is stacked against the non-Chinese players. The lesson of mainland arbitration was: assume nothing, wait and see. And yet, in the future, Chinese companies will have disputes in parts of Africa or Latin America. They too will need arbitration specialists. The question is: 'How long until then?'

Arbitrators, as a group, are famed for their powers of judgement. Asia as a region may test that to the full.