

DEVELOPING MORE EFFECTIVE ARBITRATION ENVIRONMENTS FOR TRADE AND FINANCE: LESSONS FROM WORLD CENTRES

Historically trade has followed a trend for hubbing – in a physical world, places where goods could be exchanged and broken down for further distribution became centers. Those who knew how to do this well have prospered for centuries.

Financial or money flows have taken longer to find natural hubs. But in the case of both, the demands of a center are the same—predictability, transparency, efficiency and cost effective resolution of disputes. For example, research has shown that business predictability is a key ingredient in the decision as to location of a regional headquarters.

Many centers claim to be hubs, but what distinguishes successful hubs? What kind of infrastructure; what level of business expertise make up the elements of their success? As China and India become effective lower cost places for doing business for some key sectors, and differentiators based on greater efficiency, innovation and entrepreneurship come into play, can a well developed arbitration system help maintain and better the position of a hub and contribute to economic growth?

The importance of arbitration systems cannot be underestimated at a time when the WTO and various FTA mandates requiring efficient market practices have made arbitration an essential component of trade law, and in some of these agreements, a mandatory means of dispute resolution. And yet, as between companies involved in trade and finance, as distinct from countries, there is still a lack of awareness of the value of arbitration – most companies still litigate as a first practice, but not necessarily "first choice".

Arbitration is an attractive alternative to litigation and all its strict rules of evidence and formal court procedures particular to different legal systems. In contrast, similarities between arbitral systems offer the benefit of familiarity and less formal procedures with clients often choosing what suits them. The rule of law continues to be an essential ingredient in the success of such systems, as is support from academic institutions, the judiciary, business groups and governments in the development of best practices.

"The dispute resolution mechanisms developed by ICC (London) have been conceived specifically for business disputes in an international context. These disputes pose unique difficulties and challenges. Usually, the parties will be of different nationalities, with different linguistic, legal and cultural backgrounds. They may also have very different expectations about how a dispute can be resolved reasonably and fairly. Distrust may be relatively strong, accompanied by uncertainty or a lack of information about the course to follow. These difficulties may be compounded by distance and the disadvantages one party may face in submitting to a procedure on the other's home ground. For all these reasons, national courts in the country of one of the parties may not appear suitable to the other parties."

This talk by Professor Leon Trakman, Dean of the Law School of the University of New South Wales (UNSW) and an experienced NAFTA arbitrator, will show how a sound and well-promoted arbitration system encourages efficient business practices in established hubs. As in London and New York, world leading centers of arbitration, access to commercially expedient means for resolving disputes has provided certainty and flexibility and in turn helped foster innovation and creativity. Such commercial creativity can be further developed through building university and professional partnerships to facilitate legal and business education and research.

UNSW

The Faculty of Law, University of New South Wales

UNSW is Australia's largest but by no means oldest university. The Faculty of Law at UNSW is one of the leading law schools in Australia, with strong national and international reputations. Places in the Law Faculty are in high demand from school leavers to those continuing their legal education into Masters and Doctorate programmes. Now in its 33rd year, the Faculty of Law has always maintained small group teaching using the Socratic method, along with an emphasis on understanding the tools of law (research, expression and exchange of ideas) and a strong conviction that law is best learned at the undergraduate level in a combined degree (eg BA./LLB, B Com/LLB, BSc/ LLB) environment. Current enrolment is 1,450 in the LLB programme, 375 at masters level and 60 at doctoral level.

The depth and breadth of UNSW Law programmes provide undergraduates and postgraduates with a wide choice of study options. These options are expanded further through the diversity of specialist programmes – eg tax programmes offered by Atax (Australian Taxation Studies Programme) and UNSW's specialist research centres.

This seminar is jointly organised by the Office of Executive Education and the School of Business at the Singapore Management University.