UNIQUE ATTRIBUTES OF INTERNATIONAL ARBITRATION CULTURE IN ASEAN

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Peace is not the absence of conflict, but the ability to cope with it.

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FACTS ABOUT ASIAN ARBITRATION MARKET:
- Quick adoption of Model Law in the highest concentration in the world
- Ability to retain and accommodate regional needs and influence in the process of modernisation
- Establishment of a number of jurisdictions as safe seats: 10 Centenary CIArb Principles
- Innovation and integration: institutions constantly release new rules and modern procedures
- Institutions have been instrumental in promoting adjudication (KLRCA, SMC) and arbitration (KLRCA, SIAC, VIAC)
- 2015 most improved arbitral seats: ASIA-PACIFIC REGION
(International Arbitration Survey, p. 15, School of International Arbitration at Queen Mary University of London)
LEGAL FRAMEWORK IN ASEAN:

- The 1971 Declaration on the Zone of Peace, Freedom and Neutrality (PP3): recognized peaceful settlement of international disputes

- The 1976 Declaration of ASEAN Concord: member states “rely exclusively on peaceful processes in the settlement of intra-regional differences”;

SUBSEQUENT DOCUMENTS:

- The 1976 Treaty of Amity and Cooperation (TAC);

- The 1996 Protocol on Dispute Settlement Mechanism;

1. **Arbitral institutions in ASEAN maintain**
   **UNIQUE BALANCE**
   between domestic development and international trends

**GLOCALISATION**
– a process of transnational arbitration development, which reflects the combined impact of the globalization of both law and local culture and traditions

**ASIANISATION**
– influence of Asia in International Arbitration
Examples of unique dispute resolution mechanisms in ASEAN:

- **MALAYSIA**: (i) KLRCA i-Arbitration Rules
  (ii) development of sector specific rules (adjudication, sports arbitration, etc.)

- **CAMBODIA**: active employment of negotiations, p. 8 of the 2015 Cambodia Investment Climate Statement by the U.S. Department of State:
  “most commercial disputes are currently resolved through negotiations facilitated by the Ministry of Commerce, the Council for the Development of Cambodia, the Cambodian Chamber of Commerce, or other concerned institutions.”

- **LAO PDR**: Article 15 of the Law on the Resolution of Economic Disputes provides only two possible dispute resolution mechanisms: mediation and arbitration.
- **MYANMAR**: Arbitration Act enacted on 5 January 2016:
  
  (i) minimal curial intervention;
  
  (ii) Immunity of arbitrator provided that he carries out his mandate with “reasonable care” (Section 20);
  
  (iii) In a foreign arbitration, a request to appoint can be made to the Chief Justice of the Republic of the Union of Myanmar (Section 13).

- **VIETNAM**: Finance & Banking Commercial Arbitration Centre (VIFIBAR) and Finance Commercial Arbitration Centre (FCCA) were established in 2012;

- **THAILAND**:
  
  (i) Insurance arbitration (Office of Insurance Commission)

  *2014 Annual Report*: 2,327 complaints; 2,053 – resolved

  (ii) The Stock Exchange of Thailand
2. Arbitration institutions actively COLLABORATE to develop innovative and diverse features

Signing Ceremony of the Collaboration Agreement between the KLRCA and BANI
3. MULTI-TIER DISPUTE RESOLUTION PROCESSES

- the Parties must first submit disputes to conciliation/negotiations/mediation before being able to commence arbitration (cultural background of preferring consensual dispute resolution to confrontational conflicts).

- **BRUNEI Arbitration Order (28 July 2009), Section 63:**

  “If all parties to any arbitral proceedings consent in writing and for so long as no party has withdrawn his consent in writing, an arbitrator may act as a mediator.”

- **ASEAN CHARTER, Article 22(1) “General principles”:**

  “Member States shall endeavor to resolve peacefully all disputes in a timely manner through dialogue, consultation and negotiation.”
4. FREE TRADE AGREEMENTS

– KLRCA is the key regional arbitration centre named in the ASEAN Comprehensive Investment Agreement (ACIA)
THANK YOU

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