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INDIA ADR WEEK 2026 – 08 SEP 2026

SESSION 3

THE GLOBAL RACE FOR ARBITRATION SEATS — WHO IS WINNING AND WHY?

SPEAKERS:

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ANUSHKA MANSHARAMANI: Good afternoon everyone. We now move on to our next session for the day hosted by ANB Legal. For Parties entering into an international arbitration agreement, the choice of seat is rarely a procedural decision. The seat can influence the supervisory court, the procedural framework, the enforceability of awards and ultimately the attractiveness of a jurisdiction as a dispute resolution destination. With arbitration centres across the world, competing to position themselves as preferred seats, this question naturally arises as the theme of our next session, "The Global race for Arbitration Seats- Who is Winning and Why?" To moderate today's discussion we have Shreni, Partner of ANB Legal. Joining her are Philipp International Arbitration Partner, Baker and McKenzie Hong Kong, Smitha Menon, Partner WongPartnership LLP, Singapore, Sudharsanan R. Thillainathan, Senior Dispute Resolution Partner, Adnan Sundra & Low, Malaysia and Sara K. Aranjo, Partner, International Arbitration Practice Leader; Disputes Leader (MidEast/Africa), Morgan Lewis. We look forward to hearing perspectives from some of the world's leading arbitration jurisdictions, and I would now request everyone to welcome our moderator and panellist on the stage.

SHRENI SHETTY: Hi, everyone, thank you for coming. Sorry I'm a bit distracted with the snacks on the table. Okay, I'm Shreni Shetty, Partner at ANB Legal. I head the disputes; I had the dispute resolution, okay, somebody outside told me that you are you the one who creates disputes in your firm. So, no, I had the dispute resolution practice at ANB Legal. We have a great panel here today, but before we get into the heavy stuff, I just thought I will just put a bit of context with respect to this panel. Let's... I'm sure you all have seen what has been doing rounds today in the papers with respect to the statistics with Justice Manmohan has given. That is 178 cases to SIAC are from Indian Parties. So, these statistics actually was a surprise to us, but shouldn't have been a surprise, because you know, Indians love to rush to SIAC and Singapore. But that actually picked our interest in what is really the drive that people look at for choosing seats in respect to their international cross-border disputes and arbitrations. So, here's the stats.

Now the race... it has now become a race; that's why the topic. It has now become the race, which is the best seat that Indian Parties or international Parties choose for their arbitration. And according to last year's big global survey, the Queen Mary White Chase International Arbitration Survey, the five most preferred arbitral seats globally are London, which stands at 34%, Singapore standing at 31%, Hong Kong 31% which is neck-to-neck, Beijing 20%, Paris 19%. It's worth saying that this race isn't being run by the old guard anymore. It seems that Asia is picking up pace and it is not just restricted to Europe. So, that's the reason we have a very good, very diverse panel today. And we thought we will keep it interesting because what piqued my interest is, we can see that London has a lot of Indian Party arbitration seated over there, Singapore has obviously the stats, say that that is there. And Hong Kong, obviously is the close next. So, as an Indian arbitration practitioner, I can see that a lot of Indian Parties try to select seats abroad. So, London is winning the race clearly. Then there is Hong Kong, Singapore at the are closely following. Beijing came as a surprise to me, but yes Beijing is there. Now today in the top five and obviously there is Paris. And we have today India which is buying all of the tickets but wondering why it's not getting a seat at the table, pun intended.

So, let's just move on to the to the panel, wonderful panel. We have here. Sitting right next to me is Philipp. Just a trivia before I start, when we were selecting the panel for our arbitration, I'm sort of from a firm where all of the heads of practices are women; so, MCIA team was a bit concerned that there will be a diversity problem in the reverse, but we have two men on the panel please. So, just getting to Philipp, Philipp is a partner at Baker McKenzie, Hong Kong. Over 25 years in arbitration and chambers go to for Chinese corporates and MNCs alike. So, when China and the rest of the world that are at loggerheads, it's Philipp that people go to, I think.

Then there is Sudhar. Let's go with the gents first approach okay, there is Sudhar, Sudharsanan Thillainathan, sorry. We are such close friends now that I call him Sudhar, Partner at Adnan Sundra & Low, Kuala Lumpur and a former President of Malaysian Institute of Arbitrators, nearly 30 years in the trenches and an accredited adjudicator. So, if we overrun today, he's the one who will save us.

Smitha Menon, Partner at Wong Partnership, Singapore, heading restructuring and insolvency and their international arbitration and India practices. She's the youngest and the first female Singapore-based member ever appointed to the ICC International Court of Arbitration. In 2020, she became the first Singapore lawyer to receive International Women's Solvency and Restructuring Confederation's Women of the Year in Restructuring Asia Award, which is proof that Smitha has built an entire career out of walking into a room with chaos and restructuring her way out of it.

Sara, we have Sara Aranjo, Partner at Morgan Lewis. Leading the firm's global arbitration practice and Head of disputes across West Asia and Africa from Dubai. She's argued in Arabic, French and English across 20-plus jurisdiction across West Asia, Europe, Africa, Singapore and Hong Kong, making the rest of us looking geographically lazy. Sara also sits on arbitral courts at the ICC, Swiss Chamber and the Saudi Centre. So, we have four seats, four perspective and when we were putting this panel together we thought why not make this a debate between the four jurisdiction for their own seats. So, let's... I'm sure between the four of them, we have a century of arbitration experience over here, I'm just here to have a fun session. And I'm also sure that nobody has ever lost an argument, so it will be a really fun session. So, I'm just heading on to Philipp. Let's begin with Hong Kong.

PHILIPP HANUSCH: Thank you Shreni. Good afternoon, everyone. I should supplement that I also advise a lot foreign Parties, not just Chinese Parties. Let me pick up maybe from the Queen Mary Survey. One interesting aspect for Hong Kong is that when you only take Respondents based in Asia, Hong Kong was actually the most preferred seat for those Respondents at 45%. That Hong Kong remains a very popular seat for international arbitrations is also underpinned by the HKIAC statistics for 2025, 93% of all administered cases by HKIAC are international in nature and more than 56% involve contracts that were only signed in 2024 or 2025; so, very current. So, why do Parties choose seats like London, Singapore, Hong Kong? They do so because they trust the legal ecosystem at these seats, the legal infrastructure, you know. These seats give Parties the greatest confidence that they can run an arbitration fair, efficiently with an enforceable outcome and not disrupted by the courts.

But let me tell you a bit like why Hong Kong is uniquely positioned as compared to the other seats we've heard. Well, Hong Kong is a part of the PRC, but at the same time, it operates as a separate autonomous jurisdiction with an independent Common Law based legal system. That's important because foreign Parties often think this is all Chinese law and so on; it's not. Hong Kong is also transforming from what we knew as the gateway to China into a super connector; so, it's connecting China with various markets in the world through a network of parallel corridors such as ASEAN, the Middle East, Africa, Belt and Road markets, LATAM and so on. And that again reflects in the HKIAC statistics for last year. So, we have other than the usual Parties, the UAE for the third time in the top ten, Brazil for the first time and Russia for the second time. And there's also an uptick in Africa related activity. So, let me tell you now a bit more about Hong Kong's legal infrastructure.

First of all, Hong Kong has a first class arbitration law under the UNCITRAL Model Law based with enhancement property autonomy. No restrictions as to who can sit as an Arbitrator, free choice of Counsel. So, you can bring your Indian lawyers to run Hong Kong arbitration if you want. The arbitration law is regularly reviewed and revised to reflect international best practice and developments. Due to Hong Kong's unique position, it has judicial arrangements with Mainland China that enhance the effective conduct of arbitration. And one of those arrangements is actually concerns enforcement of awards. Hong Kong has of course, New York Convention status but as between Hong Kong and the Mainland, we're using a separate arrangement and that is highly effective in practice. And I should also say that Hong Kong awards have been enforced in Taiwan based on reciprocity. And also relevant to enforcement is that Hong Kong has a comprehensive and flexible interim measures regime. So, you can get interim measures from Emergency Arbitrators, Tribunals or the courts and the powers are concurrent. And the regime is effective because the courts enforce interim measures whether granted in Hong Kong or outside of Hong Kong. And Hong Kong has a modern and flexible financing regime for arbitration, that is, Hong Kong not only allows third-Party funding, but Hong Kong also allows the lawyers in arbitration to finance the arbitration and that can be by way of conditional fee arrangements where the lawyer gets an uplift on the on their fee but also other models like where the lawyer gets a share of the outcome, a percentage, for example, of a damages award.

Second and very important, Hong Kong has strong support from independent, competent and efficient courts. They respect Party autonomy, so that the support where they can but the only intervene were expressly provided for by the law. And they're very robust in enforcing arbitration agreements. They respect finality, very difficult to set aside an award or resist enforcement and if you are unsuccessful in challenging an award or in resisting enforcement, you must pay the other Party's costs on the indemnity basis. And of course, we have a specialist charge hearing arbitration related cases with strong experience in arbitration. Hong Kong is supported by each flagship institution that's highly recognised globally with more than 40 years' case administration experience and also, with obviously very experienced in as the default appointing authority.

So, now you might think, well, we usually go to Singapore, right? So, why should I go to Hong Kong? Well, that brings me to Hong Kong's key differentiator and that really concerns disputes involving Chinese Parties. That's where Hong Kong can offer a difference and probably arguably the most significant one is on interim measures. What does that mean? There's a mutual arrangement in place. That means if your arbitration is seated in Hong Kong administered by a qualified institution, that can be, for example, the HKIAC or the ICC in Hong Kong, then you can go directly to the Mainland courts and seek an interim measure, most importantly an asset freezing order. That's really relevant for enforcement because you can freeze the assets so that enforcement is secured pending, you know, your obtaining a positive award. And these orders can then be directly enforced in mainland China. So, that can be outcome determinative. HKIAC statistics, that's the only statistics available show that since the arrangement is in effect that's October 2019, it's predominantly been used by foreign Parties and with a high success rate. So, HKIAC alone has processed roughly a bit over 200 applications, it knows about 140 decisions, 96% were successful and 83% of applicants were foreign. Respondents is more evenly, 43% foreign, 57% Mainland, whoever basically has assets in the Mainland and so far, a total value of assets that has been preserved is almost 5 billion. So, that's really a key advantage or differentiator for foreign Parties or any Parties that face Chinese counterparties and assets in China. But of course, if there's a Chinese Party or you have mainland assets, a different seat might be better for you, you know. So, it's no coincidence that a lot of Mainland Parties have started to go and arbitrate in Singapore with SIAC because they want to escape the freezing orders, but Hong Kong is also and remains a popular and relevant seat for non-Mainland related disputes.

An example is that Hong Kong has become the preferred seat for disputes with Russian Parties. Why? Because Hong Kong hasn't adopted Russia sanctions; it's competing in this area mostly with Dubai for this reason, but Hong Kong has received strong endorsement from the Russian Arbitration Association because Hong Kong treats Russian Parties equally and neutrally, and Russian Parties get a fair access to justice in Hong Kong with HKIAC arbitration. Perhaps I'll leave it with that for now.

SHRENI SHETTY: So, Philipp, sorry to be the devil's advocate here and I'm sure everybody has this question over here. So, if Hong Kong's greatest strength is Russia and Chinese arbitration connections, what do you think would happen if the conflict between these two Parties and the rest of the world just intensifies?

PHILIPP HANUSCH: Well, I don't think it's as big a strength as a seat Hong Kong is a strong seat globally. I think it can on the legal compete with anyone but of course, geopolitics matter, but it can't displace the legal reliability of the seat. At the end of the day, to be successful as a seat, you know you've got to be operationally functional when geopolitics change or when you know like when there's disruption. As I've said, Hong Kong as a superconductor connects China with a lot of different markets. So, we're not only talking about Russia. Recently, you know, there's collaboration between HKIAC, for example, and the Tashkent International Arbitration Centre, the course collaborative rules that leads a pathway into Central Asia. We have, you know, the path to Africa, to... to various markets. So, of course, Hong Kong's challenges to remain a neutral seat and that is being chosen regardless of geopolitics, Hong Kong is you know, while it's part of China, it has its own legal system. So, the real challenge for Hong Kong is perception. So, as lawyers in Hong Kong, we have to do a lot of work with foreign users to actually reassure them that, you know, it remains a neutral seat with a judicial independent judiciary and a legally reliable system.

And I should say that applies to the Hong Kong courts too. You know, we have the only evidence points towards the courts treating all Parties wherever they come from equally and fairly. There's no evidence pointing the other way. I can give you cases if you want that that that support what I've just said. So, the key challenge will be to remain resilient to geopolitical turmoil for example, sanctions resilient you know, and stand your ground, evolve continue evolving as a seat and catering, you know, to Parties that where you have something to offer.

SHRENI SHETTY: Yeah, speaking of neutrality, Smitha...

SMITHA MENON: Favourite, it's a testament to what a good advocate Philipp is that, he's so elegantly sidestepped the geopolitical neutrality question I want to come back to that. I fully agree with everything Philipp said about Hong Kong definitely it's for Chinese disputes we would advise our clients as well if you want to enforce your assets in China, it's easier because of the Hong Kong the infrastructure that's in place for mutual assistance. But I think while Hong Kong is tried and tested and proven in a very uncertain world, especially today's the uncertainty that we see today, can you really promise users that in 20 years you will remain how you are now in terms of your the legal systems. I would actually hedge my bets on Hong Kong based on how the courts are currently deciding their decisions because I mean, to me that gives investors more confidence like they were concerned with the okay, the Hong Kong courts, Hong Kong becoming more Chinese, right? I mean, that's essentially the white elephant in the room, right. Let's just tackle it head on. I mean, that's the concern right? Hong Kong becoming more and more Chinese and less and less of its historical international past. But actually looking at the decisions of the courts, there are..., they seem to have continued to uphold its commitment to rule of law and its international market standards requirements. So, actually I while I am not as sure we can confidently say that Hong Kong will remain the system that we are used to seeing, I feel that the new system might actually be quite good, because I feel that the judges that have come on to the Chinese courts, the Hong Kong courts. They are making decisions that are in step with what the international arbitration community expects. And I think that more so than anything else, sends a very powerful signal that even if Hong Kong goes even more back to the motherland, it's not going to change business and business getting done. I don't know if Philipp, you agree with me.

PHILIPP HANUSCH: Yeah, perhaps one thing, I think it's very important to understand. So, Hong Kong the capitalist system is guaranteed to last at least until 2047, but the thing is this, and so far China has repeatedly, you know, emphasised that Hong Kong is only useful for China if it keeps its separate jurisdiction autonomous, its separate legal Common Law based legal system with, you know, free order freedoms in finance, its own currency and so on. As soon as you tear it all down and make Hong Kong a Chinese city like any other, Hong Kong has lost its usefulness to China. There's no reason for China to actually give up what it like the value it has with Hong Kong. And I think it we have seen recently, for example, from President Xi, you know, confirmations that you know how important Hong Kong is the way it is for China as super connected to, you know, to connect China with the rest of the world and I think that's where I take reassurance from. But of course I don't have a crystal ball, but we also don't know what happens to other seats in 20 years I think.

SHRENI SHETTY: Smitha has gone right for the jugular, no? Okay, so I just have one question. Obviously, as I have observed that Singapore keeps on tweaking its arbitration laws, is it confidence or is it is it just something to better themselves from the rest of the world?

SUDHARSANAN R. THILLAINATHAN: I think to begin with, Singapore has the best infrastructure, best ecosystem, best arbitration architecture ecosystem in Asia, it's got geographical proximity to Asia, Africa. It doesn't have geopolitical problems so it's got neutrality. It's got many factors going for it but I'm no from Singapore so it's not for me to make the case for Singapore. I'm from Malaysia and I want you to...

SMITHA MENON: It's for you to make the case against Singapore

SUDHARSANAN R. THILLAINATHAN: No it's not and that's not what I propose to do because at the end of the day I think Malaysia and Singapore are good friends. But what I want to do is to reframe the question because there's a perception that when you talk about the global race, there's only one way of framing that race and that's where the fallacy lies. And that's what I'm going to try and put to all of you now, is the top five race the only right race for every jurisdiction or is there a different one? And I think that is a question India should also be considering. In fact, it's a question that all emerging jurisdictions should be considering. And are the way I propose to reframe the question is not to take the glamour or the limelight away from the top tier jurisdictions, but to find a niche for other jurisdictions. And I don't want to call these other jurisdictions emerging jurisdictions because there's a misconception that emerging jurisdictions are new jurisdictions, when in fact, they are not. Many of the so-called emerging second tier arbitration jurisdictions are where they are for other reasons, but they have got very mature legal architecture. They've got a very supportive court. What they don't have is the case law. What they don't have is the perception advantage. So, what I want to do before I hand the mic back to Shreni is to criticize the scope or the focus of the Queen Mary Survey. Now what the Queen Mary Survey does is, it captures what insiders think of seats; it doesn't capture what people who are not insiders think of seats. So, consider this and then I'll stop. Does the Queen Mary Survey take into account the vast pool of ASEAN and even South Asian commercial disputes that never make it to any arbitral seat because the established seats are too expensive or because the Counsel, including General Counsel advising the Parties have never used any other jurisdiction. So Shreni, back to you, I think.

SMITHA MENON: I'm going to hijack the mic, I'm going to hijack the mic; he hijacked it from me. So, I think that I agree from a global investment perspective and really you know we're looking at disputes in a silo but it's really the back of investment right? Capital flows and where global investment is. Asia cannot be divided into jurisdictions. I mean, we are looking at really mature jurisdictions versus where the capital flows are, are moving where the growth is. Because I mean, when you pick a seat, you obviously want it to be an award that will be recognised and enforced where you actually want to enforce it. And so, for that reason, we cannot divorce where the growth is, where the investment is, where it's moving to. And you're right, I think you mentioned sanctions, neutrality, I think Singapore, Hong Kong, Abu Dhabi are jurisdictions that have shown that they are truly geopolitically neutral when it comes to disputes involving sanctioned entities there's less administrative challenges. I think that was very important for Singapore. So, we all are jurisdictions have managed to deal with, let's say Russian disputes, Iranian disputes, which is really important. But I think the main point I wanted to say for Singapore, because it keeps coming up in every conference, you know, Singapore as a seat versus other countries, and we are very small country, and unlike all the other seats or jurisdictions you see represented here, we don't have a big domestic economy that actually provides the case load for local arbitration work.

So, I would invite you to look at Singapore as Singapore Inc. This is what we call it you know, it's a corporation rather than think of it than... think of it as a jurisdiction. So, because we are a large corporation, effectively. We are truly, truly neutral; we're never going to be a Party to any major arbitration dispute and we're not going to be... the neutrality is there because there's not going to be skin in the game for us to be biased towards any one large Asian bloc or European bloc or American bloc or Middle Eastern bloc over the others. And I think that is the unique factor for Singapore that underpins, because all the other things the other jurisdictions and seats can catch up, the infrastructure, ecosystem. I mean, everyone's going to build up those things laws, institutions, service providers, but I think this is the only thing that won't change and that other countries can't offer, so I would say that is the USP.

SHRENI SHETTY: Taking a cue from your catch up, Sara is sitting very quietly, but it is quietly that Dubai has taken over a lot of Indian arbitrations, I can see. Sara, you have something to say about that?

SARA K. ARANJO: Yes, I mean it's what I would call the silence before the storm in a way. And first of all it's good afternoon to all of you. Extremely delighted and honoured to be here with you in Mumbai. And thank you very much to our friends at ANB Legal for putting this together. So, I was told this is a race. I'm not really sure it's a race, but I think as we will probably see later on from this discussion that it's more or less about a complementarity and what we call, sort of tailormade approach or anything else. I think all of the seats that were mentioned are extremely commendable, but I think just for the sake of discussion and argument, I would beg to respectfully disagree with what was put forward. And I'll tell you why, of course. The reason being, of course, when we look at the modern days of arbitration, especially now, there has been an acceleration over the past decade or so, in seats, in the approach to arbitration itself as being maturing not only from being what we call an "*ad hoc*" alternative, special, some countries would even call it exceptional means of resolving disputes, but actually as arbitration maturing to becoming truly at par in some jurisdictions, particularly the matured ones, at par with the local court as a dispute resolution mechanism, and that is important because currently when we talk about seats, we're not of course, only merely talking about the legal seat itself as in the legal place of the arbitration. And that is defined as to what really makes a good seat is what was alluded to earlier by my learned colleagues on this panel is the ecosystem itself.

And what is ecosystem? How do we define obviously ecosystem? Well, it's framed predominantly into two parts. There is what I would personally call the soft aspect of it and that is obviously, the judicial regulatory system and the infrastructure that is obviously, currently, as I'm sure you know, we are in an extremely fragmented world. There is obviously factors that probably a few years ago did not even play a part. But the important factor as to what is often referenced to as a big umbrella item as the geopolitical neutrality, which is becoming more and more relevant these days with the credibility of arbitration as maintaining its neutrality. And then there is obviously, what we call the "hard criteria" and the hard criteria are everything relating to obviously matters as in where is the seat itself geographically located, the time zone, accessibility, and I'm not talking about accessibility as in judicial accessibility. Let's be honest these days the New York Convention, which has proven to be the most powerful international instrument, has proven itself as a very effective means of passporting and enforcing foreign arbitral awards. So, I think we're quite past that stage. But I think importantly when we talk about logistics is how do we access it? Is it easy? Are flights easily accessible? What is the time zone? What is the infrastructure there? Is internet… These days, we talk a lot about digitalization is internet easily accessible, are there state of the art hearing centres, etc. And when we put all of these different criteria that I mentioned on one hand the soft aspect as in the judicial system, etc. And then the hard system as well in terms of accessibility, geographic location, infrastructure then, you know, obviously the Middle East is extremely well placed. But I also wanted to tell you is of course we're talking about Singapore, Hong Kong, etc. Those are single unique seats. What I would like you to all of you who may be familiar with the Middle East are not really. The Middle East is not a one-size-fits-all, right? You hear a lot about Dubai. Dubai is a great excellent seat there was a lot of effort if you look at the past 15-20 years done at the legislative level, at the court level, at the judicial level. But the Middle East is not a one size fits all. You have Dubai, you have Abu Dhabi, you have the up and coming Riyadh, Qatar, Doha obviously other seats as well. The most traditional ones have always been Lebanon and Cairo in Egypt; those have been back in the 80's at the forefront of developing legal seats at the time pro-arbitration seats.

Currently, I would even say that the Middle East is not a one-sided only. When you go and arbitrate in the Middle East you are actually very much spoiled. And the reason being, if you look at the UAE for example, you have a duality of seats. Some of you might be familiar with this. The UAE is very unique in the sense that it offers Parties, particularly international Parties, access to a Common Law system but also equally access to the prevailing Civil Law system and that is quite unique in itself. Because when you put it on edge as well with the logistical aspect in terms of neutrality and also more importantly, state of the art hearing centres, facilities being located also at the at the crossroad of the East and the West, that really tips the favour and obviously, it's not surprising as well. Then of course, when we talk about Indian Parties as well who play a huge role when it comes to the economy in the Middle East, but more particularly in the Arab Gulf and the UAE, UAE but also other seats in the region become extremely relevant simply because they bring down a very appealing offering when it comes to both those hard cost elements but also soft elements that I've alluded to. But of course, we will talk more about and we will unpack these as we go along, but I just wanted to give out those introductory remarks.

SHRENI SHETTY: Thank you so much, Sara. So, I can see that four jurisdiction have made really well, very good cases for themselves, but then the only missing one is India here. And since I'm the only representative on this panel for India, I would like to say a word about it. So, India is our home team obviously, and we can see a lot of cases go, migrate, like I said in the beginning, migrate out of India. It is not that India does not have the necessary infrastructure. India has one of the greatest infrastructure. It is one of the oldest, one of the earliest countries to sign the arbitration convention, you know the with UNCITRAL. And there is the new Arbitration Act, Amendment Act 2024, which is again making it at par with the international level. I think what and what India lacks is maybe the confidence of its own Parties and maybe no promotion in respect of how good the judgments in India today is… are because if you I know everybody and this is all dinner party discussions of all lawyers today, the ***Nagaraj*** judgment that has been that has been very swiftly, to my own surprise, has said, you know, settled a very transnational issue for us. So, that is where I see India going because our infrastructure is there, and institutions like MCIA and other institutions have seen… because I can see institution MCIA has reported an 80% jump in their caseload in 2025. That is quite impressive because not very long back India had a system of *ad hoc* arbitration only. So, now people are shifting to institutional arbitration. They are restricting themselves to time. So, the race for India is not just one front; it is two front. There are *ad hoc* arbitrations and domestic markets because that in itself is quite huge. I think there must be some 200-odd arbitrations going on as we speak in Mumbai itself. So, domestic market is quite huge for India and international market, India is trying to get to, through the institutions and I think we will probably get there in the next few years, if not few months.

So, coming back to our panel, sorry I have to be a little bit nationalist and talk about India as well. So, coming back to our panel, considering that all of you made a very good case for your respective seats, what is it that today that you are looking at when you're advising your clients, and be honest about it and you can probably challenge each other and disagree with each other about it. But what is the jurisdiction that you will tell your home clients, the clients you are advising, whether it should be the old guard that is all these you know, London, where they have you know, you have these arbitrators who have seen every trick in the book, they are more experienced, they have seen more cases, and it is… law is set over there, at international standards, or would you advise your clients to go for more you know where the… to the jurisdiction where their capital is like, you know, Asia, you know, West Asia, including West Asia, Singapore, India what is it that you would advise? Whoever wants to take it first.

SUDHARSANAN R. THILLAINATHAN: I'm going to go first. I think there's a lack of seat analysis. Too many people make decisions based on habit, based on perception, based on familiarity and that's not fair. That has to change. Because you're missing out. Consumers are missing out. Because if you compare the arbitral jurisdictions across the board, almost all the well, all the jurisdictions represented on this panel, tick the same boxes, satisfy the same prerequisites. So, why does Singapore and Hong Kong and London enjoy an advantage over the other jurisdictions? It goes back to a lack of seat analysis. So, I think it's high time consumers became more sophisticated in the decisions that they make, and they make decisions that are more nuanced. Look at the nature of the dispute. If it is a mid-sized dispute, why go to Singapore, London, Hong Kong? Why not go to some other jurisdiction that's more cost efficient, more proximate? So, this is just to, you know, to show that there is a contrary view to looking at things. I'll stop there Shreni so that others can have a chance to speak.

SMITHA MENON: I mean when you choose a seat, you're really choosing a court, right? So, it's which national court do you want to go to? And you know, Singapore has been a big proponent of the doctrine of transnational issue estoppel. So, basically, our position is that the seat court has primacy. So, if the seat court sets aside the award that really kills the award for all enforcement courts. I mean, that's the ideal that we that transnational issue estoppel tries to sort of like target so, you don't have fragmented, you know, multiple decisions. So, we see that as being really important for arbitration from a user's perspective that there's certainty and finality. So, if that is widely adopted, then the seat court is really relevant to your enforcement so, you want to go to a court that you know will not screw you over when it comes to whether your award is upheld or not. I mean, of course, if you have a lousy case then you can choose the court accordingly.

SHRENI SHETTY: Sara, do you have anything to chime in?

SUDHARSANAN R. THILLAINATHAN: Sara, come on board.

SARA K. ARANJO: No, I think of course, there's a lot of... I would agree to a certain extent that there's a lot of raising of awareness, right? I mean look, if you look at the modern days of arbitration from the ‘19 onward, you already have seats which have been established. London is a very much of an established, mature, tested seat. No one's going to argue that the English courts have not established themselves that for example.

SHRENI SHETTY: Thanks to colonialism.

SARA K. ARANJO: Sorry?

SHRENI SHETTY: Thanks to colonialism.

SARA K. ARANJO: Yeah and equally on the Civil Law front, no one's going to argue as well that the French, the Parisian courts or the Geneva courts as well, the Swiss courts have also established themselves.

SMITHA MENON: Well, I'm going to interrupt there. I think Paris is losing some shine because of its controversial annulment decisions lately on.

SARA K. ARANJO: Yeah, yes, I think what makes it, you know, a creative seat in a way if we look at the philosophy of arbitration and for those of you who are interested, there's a very interesting book. It's not a very large book, but I would all encourage you to read out about it called "The Philosophy of International Arbitration", written by Professor, the late Professor Emmanuel Gaillard, and it talks about obviously the creativity and obviously he's extremely pro-arbitration, it talks about that transnational aspect of arbitration and that it floats even above seats as well. And that is obviously where that creative whether you agree with it or not is interesting, but that creative approach as to enforcing for example, annulled awards. But no one can doubt of course that they have an edge because obviously, you know, even in business these days, whoever starts first has the edge of being the first. Does it mean that they'll be completely undetectable? That doesn't mean the case, but that means obviously that they have that edge, meaning that other emerging countries and jurisdictions have a lot of gap to catch up on, meaning they have to probably double up the race to be able. That's what I call organically internally, but also externally practitioners like us have the onus as well of educating and raising awareness. I can tell you at my firm, we're a global firm of more than 2000 attorneys located in almost 35 jurisdictions and cities. I always get from my corporate colleagues plain vanilla on US transactions for of course, Delaware, New York. Globally, I always get English law with the London seat. This has been ongoing. Even when I talk to clients multinationals, they will tell you our boilerplate Arbitration Agreement provides for London. And then when you ask why, they'll tell you, “we don't know; it's always been like this", right? So, I think there is a lot of interesting part and I fully agree that there's a lot of I would say education, raising and awareness actually. Today's discussion is one of them is to be able to unpack what other very much appealing but maybe less ranked jurisdictions have in part.

SHRENI SHETTY: Yeah, so that has some strong opinions about emerging… KL being emerging. Would you like to give a few words?

SUDHARSANAN R. THILLAINATHAN: Well, no, I recognize that there is a gap, but I think that gap is going to be narrowed. And you see it's interesting. Beijing has entered the top five. Ask yourself why is that? One because the capital flow is coming from Beijing, the major Party is headquartered in Beijing. So, they get to dictate where the seat is. Now Singapore and I mean no disrespect to Singapore, I take my hat off to what Singapore achieved, but I think the challenges that Singapore is going to face is that people are exporting disputes to Singapore, not capital flow to Singapore, exporting disputes to Singapore. Singapore is not getting cheaper. There are other countries that are as proximate, as neutral as Singapore, but that is where Singapore keeps redefining itself. So, I can recognize strengths in other jurisdictions as well, but I think it's high time users started to adopt a more sophisticated analysis in making seat decisions.

SHRENI SHETTY: So basically, branding, isn't it?

SUDHARSANAN R. THILLAINATHAN: It seems so at one level.

SHRENI SHETTY: Yeah Philipp, you have something to add to this?

PHILIPP HANUSCH: Yeah. So, I think the starting point is as a legal advisor, it must be what we call a safe seat, that seats that, you know, tick the boxes of reliable seats. Then of course, the most important thing is what's the best seat for my client in for this specific transaction or generally, if a client wants to adopt a seat policy. You know, that depends who is the counterparty, where are the assets, how do I get an enforceable outcome that is then enforceable where the assets are. You know, that means also, you know, interim relief must be available effectively to secure an enforceable outcome. And as I've said, you know, we have scenarios where a US Party comes, I want with a Chinese counterparty and says I want ICC arbitration in New York and then change his mind and or change arbitration, what's better? And I tell the... you know, I give some comments and then I tell the client, look, there are three things I want you to know about a Chinese counterparty on the other side, and I explain what the differentiator is if you arbitrate in Hong Kong. And in many cases the clients come back and say, in that case I want Hong Kong. What's important is that clients make informed decisions. You lay out what's best for you in my view, and if the client says still don't trust it, yeah, then we go to the next best seat. But also importantly, clients not always get their first choice, right? So, there is a counterparty and sometimes the counterparty is in a better bargaining position and as we've just heard might dictate the seat or at least, doesn't accept the seat my client wants, you know. For Chinese Parties sometimes if they are the bargaining power might be Singapore and then yes, that's also acceptable it's a safe seat and if you can't get Hong Kong, why not, but it's really important.

The other thing is I think when we talk about seat, it's important to bear in mind that two things seats generally have an edge where English is the official language because that's still it is the business language, you know, going to the courts without having to translate everything is a big advantage of course, again, advantage for Hong Kong and China related is that you can also a lot of documents are in Chinese, you don't need to translate them into English, you can just keep them in Chinese. And I think we've heard Beijing in the top five, I mean let's not rely too much on service users don't choose based on surveys, but yeah it's so is probably that have the bargaining power will say I want to arbitrate my where I'm coming from, take it or leave it, like in the old days Western Parties would have said, I want arbitrate in Paris, in Zurich, in Geneva, take it or leave it, and that you know, maybe Stockholm for Chinese. But so, it all depends but I think there is no one single winning seat, there's winning models. And there's a lot of room in Asia for jurisdictions to build a winning model, you know, and cost is also of course, a factor to be taken into account. And at the end of the day it's a combination of many factors. Also governing law, right? What law governs your transaction. I mean, in Hong Kong we see a lot of course Hong Kong law, English law governed but not only US law governed, you can still arbitrate in Hong Kong without combine it but of course, whenever you choose a seat and you have a different governing law brings an additional complexity but it's of course, possible. I think it's many factors, but to go back to my entry point, first choice is what is best for my client. No, no, no, it's not necessarily. I'm not recommending Hong Kong because I'm sitting in Hong Kong and want people to arbitrate in Hong Kong. I'm recommending Hong Kong when I feel it's best for my client. And if I feel Singapore or Dubai or KL is best for my client, I will recommend those seats or whatever other seat it is.

SHRENI SHETTY: It depends on the client.

PHILIPP HANUSCH: European client they're not happy despite what I've said they like to arbitrate in Switzerland under Swiss law, I lay out if there's a Chinese body what do you get. The client says I still want to stick with it. Fair enough, it's your choice there's nothing wrong with choosing, for example, Switzerland as a seat.

SHRENI SHETTY: Yeah, see, that's another thing. I think the Parties when it is being handled by the corporate department, they don't think of is seat is not just where you go for hearing. Seat is a home for your arbitration. So, you go to your regulated your supervised by the courts over there, which I'm sure now TATAs would be learning the hard way but that is...

SARA K. ARANJO: I'm going to tell you something, right. I don't know about you, how many of you are... I mean, please think of it yourselves, but sometimes certain corporate transactional attorneys think of the seat or maybe under client influence, who knows, as a nice place to go and venture out because they still associate the seat with the venue, right? Ten years ago, seat and venue were considered similar, and up until recently we saw now starting in many court decisions in the Singapore court started with it and then shifted over to the Bahraini court. There's a very interesting court decision and I'm a little bit biased because I commented and analysed this decision, maybe five, six years ago. About that dichotomy between seat. It's the Supreme Court of the Kingdom of Bahrain, which has basically said, you know, seat and venue are different. It was a Singapore seated ICC arbitration and you know, people still associated the seat with the venue, right? You can still have a seat. Currently I have a case seated in Asia where we're having the hearings actually in another country out of convenience and it was agreed by the Parties. But I'm going to tell you something, I once saw and Smitha would know as part of my role on the ICC court, I once saw when we were looking at some of the files put before us before the court a seat and Monaco.

SHRENI SHETTY: Oh.

SARA K. ARANJO: And another seat in Hawaii. How nice. I mean, to be very frank with you, we were all looking at it and you know, that's nice, right? A seat in Hawaii.

SHRENI SHETTY: Beaches and mountains or a...

SARA K. ARANJO: Or a seat in Monaco, why not. But I'm going to tell you something to the point that Phillipp made earlier that usually one should be guided. This is why I think it's not a one size fits all. One should be guided as well by the spirit and the essence of the transaction. That seat and Monaco it was kind of interesting. The underlying subject matter of the dispute was actually a Private Well's client issue. So, it was an individual sort of dispute but obviously high end and probably transactional attorneys at the time said, you know what, we want something neutral, ultra-high net worth individuals, Monaco. But have they really thought about that? Probably less so. So, I think this is again goes to the important point that you have made and obviously, the education on the importance, as Smitha has said about the role of the courts, about the history of the courts, about the bench, interventionist, not interventionist and also more and more relevant these days cost and time efficiency as well.

SHRENI SHETTY: Correct, yes, I think that's where India is a bit behind the cost and time efficiency, mostly because maybe the sheer amount of people we have and the cases we have.

SMITHA MENON: Just on what she said about like fun seats, I think the most interesting one I saw was the Vatican City. It wasn't actually put in, but if you think about it, there was a reason. I mean they are a very big landowner, the church and so they wanted. So, the other side said no to Rome and they were like, oh, how about the Vatican City; it's not Rome but it's standalone jurisdiction. I thought that was really interesting.

PHILIPP HANUSCH: I think it's also goes to the point, it's very important in firms to educate the corporate lawyers that, you know these choices, they are risk management and you're managing disputes right, in the contract. You're managing things which you later maybe cannot manage when Parties can't agree anymore. So, it's really crucial in order to make the right choices in the transaction and that usually means to involve a dispute lawyer in the transaction to actually, you know, try to get the best for you for your client.

SHRENI SHETTY: Yeah, true, true. Sudhar?

SUDHARSANAN R. THILLAINATHAN: I think coming back to the cost issue and people don't realise how important cost is going to become going forward because all the other competitive advantages, disadvantages are going to narrow. Now what the Queen Mary Survey again falls short… where the Queen Mary Survey falls short is it only talks about institutional costs, it doesn't talk about total arbitration costs. Now if you really want to get a good sense of how much the arbitration cost is going to be, you need to understand what the total arbitration cost is, not just what the institutional arbitration cost is.

PHILIPP HANUSCH: And I think you're right, I mean, studies show, I think there's a ICC report on costs, for example, that the Arbitrator fees and the institutional fees, they only amount to roughly 15% of the overall costs; all the rest is lawyers, experts and so on. But of course, again, the more a seat or a legal infrastructure allows an arbitration to derail, the higher the cost even though the hourly rates might be lower in the seat but if the arbitration takes three times longer, you know the rates are only half you know you still end up paying more.

SHRENI SHETTY: I have some stats from Dubai DIAC, Sara. For the straight, three years straight it has been crossing 250 cases. Is it mostly international arbitration. Is it your experience that most Asian Parties now prefer Dubai instead of, you know, any other jurisdiction as a seat?

SARA K. ARANJO: So, I can tell you for sure that over the past five to six years, there's been an uptick as well in Asian Parties, of course, opting on an institutional perspective for regional institutions, DIAC being of course, one of them. I've seen as well the Saudi centre as well for commercial arbitration has been also seen, but that has been more sort of geared towards an Asian Party, for example, with the Middle Eastern Party or Saudi Party or Saudi-related government entity. And there has been also a growth as well. If you look at this recent statistics as well of the Dubai International Financial Centre courts. So, this is the Common Law courts located in the offshore Free zone in the Dubai International Financial Centres. Many Indian Parties as well are opting into this jurisdiction as well. And the DIFC courts also have an arbitration division, right? So, it's considered to be one of the, you know, unique in the Gulf to be a dedicated division to arbitration; so, there is indeed an uptake as well. The policy has been obviously that the Gulf and the Middle East more or less has maintained political neutrality, geopolitical neutrality. And one cannot also shy away from the fact of the similarities as well culturally, right? When you arbitrate as well. And when you go to a seat, you also you know, the seat often is tied with the venue. Of course, as I said earlier, not always, but most of the time the seat is also where if you have an application to be made, this is when you're going to ask the court for assistance. And when the hearing is about to take place, if you choose to have it there as well, which is likely to be the case, you want to be in a seat as well where you don't feel abroad. Imagine you're already fighting with someone and you're already fighting with a Party; the last thing you want as well is to go to a place where feels foreign. And let's be honest, when we looked also globally at the Asian culture and more particularly, if you know we're looking at it from the lens of Indian Parties, for example. Let's be very frank. I mean I am Arab, so I can say it. The Arab culture is very similar to the Indian culture, right? I am now you know, it's my first time in Mumbai, but I'm going to be honest with you, I don't feel I'm in a foreign country. I feel very well it's a very similar culture and I think when we go over and above obviously, what I said, the hard criteria and the soft criteria, this is something intangible but to me it's something very precious.

SHRENI SHETTY: Precious yeah, I understand. It is also because I think maybe Indians have taken over Dubai culturally.

SARA K. ARANJO: Maybe. I heard a lot Bollywood actors are coming.

SHRENI SHETTY: Yes. They're buying real estate and investing in real estate and I can, I see that.

SMITHA MENON: I mean given that Singapore relies a lot on India for arbitration cases. I do think that Abu Dhabi is a big competitor for us because I think Abu Dhabi, I mean Indians are as comfortable in Abu Dhabi if not more. I mean the love affair between Indians and the Gulf has gone back like in time since, you know, decades.

SHRENI SHETTY: Sorry I just we're running out of time so I have this...

SUDHARSANAN R. THILLAINATHAN: Don't know whether Sara mentioned this, but the advent of international commercial courts and the confidence that's generating in jurisdictions that have international commercial courts. So, Dubai has an International Financial Court, Qatar has an International Financial Court, Bahrain see...

SARA K. ARANJO: Bahrain is new... Yeah, Bahrain is new and Bahrain has this interesting... Smitha, I'm sure has heard about it. Bahrain has this interesting now new mechanism. And please for those of you who have not considered it, it has now an MOU with the Singapore court meaning that everything at the Court of First Instance before this international court will be done in Bahrain, but then hold on tight, the appeal is done in Singapore.

SHRENI SHETTY: Singapore. Okay, so...

PHILIPP HANUSCH: I can supplement, Hong Kong also gets an internet.

SHRENI SHETTY: Yeah very short, very short. We have 2 minutes 35 seconds, okay? Okay, sorry. So just to wrap up all of this, I just have one quick fire round. Four questions for our four panellists. Sara, in one word, what's the biggest myth about your seat?

SARA K. ARANJO: So maybe you want to repeat it for them. I know the question but for the audience.

SHRENI SHETTY: Okay, in one word, what is the biggest myth about your seat?

SARA K. ARANJO: I think the biggest myth about my seat and I'm talking obviously Middle East, allow me to say two.

SHRENI SHETTY: Okay.

SARA K. ARANJO: One, that it's a one size fits all, it's not a one size fits all. And two, it's not glitzy. People think that the Middle East and the Gulf particularly Dubai etc. is about the glitz and the glamour and there is no substantive knowledge behind it. I beg you not, please. It's a wonderful seat with a purely up and coming and tested now, judicial support and knowledge and expertise in arbitration.

SHRENI SHETTY: So, we get one free. Sudhar, which seat other than your own would you recommend to a client tomorrow?

SUDHARSANAN R. THILLAINATHAN: Well so just to be different why not Australia?

SHRENI SHETTY: Oh.

PHILIPP HANUSCH: Too far.

SHRENI SHETTY: Away anybody from Australia

SUDHARSANAN R. THILLAINATHAN: I mean you've got Russian.

SHRENI SHETTY: Kale is arguing for you going to Hong Kong.

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SUDHARSANAN R. THILLAINATHAN: Just a few more hours to go to Australia.

PHILIPP HANUSCH: Sanctions neutral number one and I think Australia has done a lot to fight to become a seat the geographical position is the biggest challenge I would say I think that's the reason.

SUDHARSANAN R. THILLAINATHAN: Because from my discussions with my Australian counterparts they are not hungry for international work, there's so much domestic work and once they realize that the international work is far more attractive than the domestic work, you'll see Australia recalibrating in the global pecking order.

SMITHA MENON: I don't see Australia being a seat in the short term for two reasons. One, all the Australian arbitration lawyers and arbitrators are outside of Australia for some reason. While there is a very strong pool of Australian arbitration specialists, none of them are practicing in Australia. And two, I think and my second reason is tied to the first, is the Australian courts have traditionally been so strong that there's never been room for arbitration to develop.

SHRENI SHETTY: Okay. Smitha, what do you think is the next Beijing, the surprise new entrant to the top five?

SMITHA MENON: I have a short term and long term answer. I think short term, Vietnam because they have really positioned themselves well for as an export manufacturing base in sort of diversification away from China. So, there's a lot of investment, as an investment destination everything's in Vietnam right now. So, short term, people will keep going there and that's you want the Vietnamese courts to uphold your award. So, I think you that will end up being a short term seat out of necessity for business. Long term, India obviously, and I'm not saying that just to suck up because I'm in India, but seriously, $4 trillion economy, it's projected to multiply eight-fold by 2047. I mean come on, it's the attractiveness of the FDI investment plus the fact that what India is doing now the sector-specific liberalization, the expanding of trade agreements and they've improved them, you've improved the market access frameworks. So, it's FDI that is effective and efficient. So, I think long term it really will be India.

SHRENI SHETTY: Thank you so much. I love you for that. Philipp quickly finish the sentence. In ten years the seat that wins this race will be the one that...

PHILIPP HANUSCH: ... Well, I don't think there will be a winning, there is no winning seat and there will not be a winning seat, there are winning models. And I think the winning models will be those seats that either manage to establish or maintain. The models we have discussed, the legal infrastructure while at the same time, you know, be geopolitically resilient and that that are seats that will give users what they expect, you know. Come meet user confidence in running a fair, efficient, effective arbitration with an enforceable outcome and those will be the winning seats.

SHRENI SHETTY: Thank you so much. Thank you to our panel. From the last, I think 60-odd minutes, 61, I'm sorry 61 minutes, the takeaway that I get is, it isn't a race, it is a model like Philipp said. And we are... India is getting there and it is going to be the next best thing. And in this whole race for seats, I do realize that it is also enabling the entire of Asia if not Europe, entire of Asia coming together to a unified arbitration laws which will not be overturned by any country because it will be similar to each other. So, I think that is the takeaway I'm getting. So, thank you so much Philipp, Smitha, Sudhar, Sara for making the case for your seat so persuasively. And I suspect a few of you have already changed your own advice by the time we finished today. Thank you all for being here. That's really kind of you for taking out the time. I know the trip here is not an easy one.

ANUSHKA MANSHARAMANI: Thank you to our moderator and panellists for the truly global perspective. It is really fascinating to see how different jurisdictions are positioning themselves and what Parties and practitioners increasingly look for when choosing an arbitral seat. We would now request the panel to step down for a group picture, please. And we will now proceed for lunch, which is hosted by Wadia Ghandy & Co. We will resume our sessions at 02:30. Thank you.
