

Third Annual ICC Asia-Pacific Conference:

# International Arbitration Trends in the Asia-Pacific Region

March 8-10, 2012

## Venue

The Palace Hotel  
2 Montgomery Street  
San Francisco, CA 94105

## Objective

The Third Annual ICC Asia-Pacific Conference will examine cutting-edge topics relating to international arbitration that are rising in importance to parties in the Asia-Pacific Region. Notable issues include: electronic document production, third party funding, sovereign immunity, intellectual property arbitration, combined mediation-arbitration proceedings, natural resource arbitration, and arbitrator selection procedures. The aim of this two-day conference is to spark a spirited debate among panelists and participants regarding the trajectory of international norms relating to these and other emerging practices. Join scholars, practitioners, and corporate counsel from both sides of the Pacific as they discuss and debate these trends in international arbitration practice in the Asia-Pacific Region.

## Who should attend

Arbitrators, legal practitioners, in-house counsel, and academics who wish to know more about developments in arbitration in the Asia-Pacific Region.

With the support of:

# Program

## Thursday March 8, 2012

6:30-8:00 p.m.

**Welcome Reception**

## Friday March 9, 2012

8:00 a.m.

**Registration and Continental Breakfast**

9:00-9:30 a.m.

**Introduction**

9:30-11:00 a.m.

**Institutional Arbitration in the Asia-Pacific Region: The Corporate Counsel Perspective**

There is little doubt that international arbitration is proliferating throughout the Asia-Pacific Region. As such, companies have choices to make when a dispute arises: Is it more advantageous to choose institutional arbitration or ad-hoc arbitration? Which institution is best suited for each type of dispute? Are there specific idiosyncrasies in certain jurisdictions that affect the course an arbitration can take? We will hear from corporate counsel from around the Asia-Pacific Region on their perspectives on these and other matters, as well as their thoughts on where arbitration is headed in the future.

**Discussion**

11:00-11:20 a.m.

**Coffee Break**

11:20-12:50 p.m.

**How Much Information is Too Much Information? Managing Electronic Document Production**

Perhaps nothing invokes as much emotion in the field of international arbitration as the topic of document production...except perhaps the topic of *electronic* document production. Some legal jurisdictions take electronic document production in stride, while others refuse to acknowledge it has a role in arbitration at all. The ICC Commission on Arbitration responded to this subject by forming the Task Force on Electronic Discovery in International Arbitration to study the issues surrounding electronic document production and provide suggestions and guidance to users to better navigate this process. This panel will discuss real world examples of the successes and failures of electronic document production in the Asia-Pacific Region and beyond.

**Discussion**

## Third Annual ICC Asia-Pacific Conference

12:50-2:10 p.m.

### Lunch

2:10-3:40 p.m.

### Handle with Care: The Arbitrability of Intellectual Property Disputes

Some legal specialties are particularly suited to benefit from disputes handled through arbitration rather than litigation, and intellectual property is certainly one of them. Even where state court judges are well versed in IP law, as is the case in Northern California for instance, parties can still benefit greatly from utilizing specialized arbitrators. IP disputes are almost always highly technical, extremely contentious, and involve expansive discovery, all of which skilled arbitrators are equipped to handle. This panel of seasoned IP specialists will discuss the various features of the arbitration and litigation forums that handle IP disputes and explain why these types of cases should be handled with care.

### Discussion

3:40-4:00 p.m.

### Coffee Break

4:00-5:30 p.m.

### The Value of Talking: Mediation in Asian Business Disputes

Given that disputes in business arrangements are not uncommon, parties are often prepared to resort to a variety of dispute resolution methods. Some jurisdictions in Asia are especially open to utilizing mediation to resolve their differences. In China, for example, “med-arb,” where arbitrators play the role of both arbitrator and mediator in the same case, is fairly common. While the outcome of mediation is not binding on the parties, the results are often quicker, more cost-effective and more apt to preserve the business relationship. The panelists will offer their expertise and guidance on this popular tool for dispute resolution and discuss the good and the bad of “med-arb.”

### Discussion

7:00-9:00 p.m.

### Dinner

# Program

## Saturday March 10, 2012

8:30 a.m.

### Continental Breakfast

9:00-10:30 a.m.

### Like it or Not, Third Party Funding is Here to Stay! (But For How Long?)

Third party funding of international arbitrations has increased substantially in recent years. Arbitration practitioners are split on whether this system benefits or hurts the arbitration process. Does third party funding encourage disputes where there may otherwise be none, or does it help less lucrative parties enforce their contractual rights? And who really benefits the most from such an arrangement? This panel will explore all the various sides to the controversy and compare the state of third party funding in North America and Asia.

### Discussion

10:30-10:50 a.m.

### Coffee Break

10:50-12:20 p.m.

### Who Decides Who Should Decide? Arbitrator Selection in North America and in Asia

Arbitrator selection is of paramount importance to parties, whether they hail from the Western or Eastern hemisphere. Increasingly, parties have called for more transparency in arbitrator availability, which has in turn led to some controversy in the arbitration world. Parties have also expressed a desire for greater autonomy in the selection process and the opportunity to review arbitrators' performances at the end of the proceeding. This panel will address the merits of these requests and how they would impact the arbitration selection process.

### Discussion

12:20-1:40 p.m.

### Lunch

## Third Annual ICC Asia-Pacific Conference

1:40-3:10 p.m.

### **Arbitration of Natural Resource Development Disputes**

The countries of the Asia-Pacific Region are both significant sources and consumers of natural resources. The development of these resources involves local and international players from industries such as mining, energy, and forestry, as well as host states and their related entities. Underlying every resource development project is a string of international contractual relationships, each of which can give rise to disputes that must be resolved through arbitration. There is also the potential for investment treaty arbitrations. This panel will discuss some of the special issues that commonly arise in these arbitrations and techniques that can be used by the parties and the tribunal to make the process effective.

#### **Discussion**

3:10-3:30 p.m.

#### **Coffee Break**

3:30-5:00 p.m.

### **Sovereign Immunity in Asia: Lessons from the Congo Case**

A recent case brought before Hong Kong courts dealt with an issue that has some parties concerned about the enforceability of their awards: sovereign immunity and the ability to waive it in contractual agreements. "The Congo case," as it has become known, dealt with a third party arbitration funder who attempted to secure assets of the Democratic Republic of Congo in Hong Kong courts. They failed to do so under the doctrine of sovereign immunity and in turn, highlighted a concern about enforceability that resonates throughout Asia. The panelists will discuss the types of cases, actions and situations to which sovereign immunity applies. They will also give relevant examples of the law in specific jurisdictions, such as Singapore and Malaysia, and highlight any differences practitioners should be aware of. Finally, the panel will offer practical advice on how to draft arbitration agreements so a barrier to enforcement of this nature can be navigated properly.

#### **Discussion**

5:00-5:10 p.m.

#### **Closing Remarks**

## Speakers

- **Simeon Baum**, President, Resolve Mediation Services, Inc., *New York*
- **Mark Beckett**, Partner, Latham & Watkins LLP, *New York*
- **John Beechey**, President, International Court of Arbitration®, *Paris*
- **Fred Bennett**, Partner, Quinn, Emanuel, Urquhart, & Sullivan, LLP, *Los Angeles*
- **Andrea Bjorklund**, Professor, University of California-Davis School of Law, *Davis*
- **Cedric Chao**, Partner, Morrison & Foerster LLP, *San Francisco*
- **Maria Chedid**, Counsel, Arnold & Porter LLP, *San Francisco*
- **Tai-Heng Cheng**, Senior Legal Advisor, Hoguet Newman Regal & Kenney LLP, Professor of Law, New York Law School, *New York*
- **Tina Cicchetti**, Associate, Fasken Martineau Dumoulin LLP, *Vancouver*
- **Mary Comeau**, Partner, Norton Rose Canada, *Calgary*
- **Charles Correll**, Partner, King & Spalding, *San Francisco*
- **Justin D'Agostino**, Partner, Herbert Smith LLP, *Hong Kong*
- **Jeffrey Dasteel**, Arbitrator and Adjunct Professor, UCLA Law School, *Los Angeles*
- **Kanaga Dharmananda SC**, Francis Burt Chambers, Fellow, UWA Law School, *Perth*
- **Gerald Ghikas**, Partner, Borden Ladner Gervais LLP, *Vancouver*
- **Brenda Horrigan**, Partner, Salans, *Shanghai*
- **Joon Kim**, Partner, Cleary Gottlieb LLP, *New York*
- **Andy Leck**, Principal, Baker & McKenzie, *Singapore*
- **Randall Lewis**, Associate General Counsel, Danone, *Shanghai*
- **Mark Morril**, Senior Vice President and Deputy General Counsel, Viacom, *New York*
- **Kim Kit Ow**, Director, ICC Arbitration & ADR, Asia, *Singapore*
- **Robert Pé**, Partner, Orrick, Herrington & Sutcliffe LLP, *Hong Kong*
- **Elliot Polebaum**, Partner, Fried, Frank, Harris, Shriver & Jacobson LLP, *Washington, D.C.*
- **Lucy Reed**, Partner, Freshfields Bruckhaus Deringer LLP, *New York*
- **John Roesser**, Partner, Winston & Strawn LLP, *New York*
- **James Schurz**, Partner, Morrison & Foerster LLP, *San Francisco*
- **Selvyn Seidel**, Chairman, Fulbrook Management LLC, *New York*
- **Helen Shi**, Partner, Fangda Partners, *Shanghai*
- **Josefa Sicard-Mirabal**, Director, Arbitration & ADR North America, International Court of Arbitration®, *New York*
- **Laurence Shore**, Partner, Gibson Dunn LLP, *New York*
- **Robert Smit**, Partner, Simpson Thacher & Bartlett LLP, *New York*
- **Steven Smith**, Partner, O'Melveny & Myers LLP, *San Francisco*
- **Maya Steinitz**, Professor of Law, University of Iowa College of Law, *Iowa City*
- **Nancy Thevenin**, Special Counsel, Baker & McKenzie LLP, *New York*
- **Suzanne Ulicny**, Deputy Director, Arbitration & ADR North America, International Court of Arbitration®, *New York*
- **Meg Utterback**, Partner, King & Wood, *Shanghai*
- **Baiju Vasani**, Partner, Crowell & Moring LLP, *Washington, D.C.*

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## Logistical and Registration Information

### Venue:

The Palace Hotel  
2 Montgomery Street  
San Francisco, CA 94105

### How to register:

Please complete and return the registration form indicating method of payment to:

**Email:** [aay@iccwbo.org](mailto:aay@iccwbo.org)

**Post:** **ICC North America**  
**c/o United States Council for International Business**  
**1212 Avenue of the Americas, 21<sup>st</sup> Floor**  
**New York, NY 10036**  
**USA**

**Tel:** +1 212 703 5044

**Fax:** +1 212 575 0327

**Website:** [www.iccnorthamerica.org](http://www.iccnorthamerica.org)

*Registration will be confirmed upon receipt of registration form and payment.*

### Registration fee:

**Until February 10, 2012:**

**After February 10, 2012**

**“Early bird special”**

☐ US \$900

☐ For ICC members: US \$1000

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☐ For non-members: US \$1100

### Registration Fee for Academics, Corporate Counsel, and Sole Practitioners:

☐ US \$675

*The fee includes working papers, continental breakfast refreshments, lunch, dinner and reception.*

### Travel and accommodation:

Travel and hotel expenses are not included. Participants are responsible for making their own travel arrangements and hotel reservations. We have two negotiated rates at the Palace Hotel: (1) \$229 per night for a double room; and (2) \$269 per night for a triple room excluding taxes and other charges. Please mention “ICC Asia-Pacific Conference” when making your reservations. Additionally, please note that room availability is limited and only valid with reservations made on or before February 15, 2012.

### Cancellation charge:

50% of the contribution to costs will be refunded if notice of cancellation is received in writing before February 10, 2012. Cancellations after this date are not refundable. However, registration may be transferred to another person from the same company or organization at no extra charge, provided that notice is sent to [aay@iccwbo.org](mailto:aay@iccwbo.org) prior to the conference.

# Third Annual ICC Asia-Pacific Conference

## Registration Form

### Participant information:

Title (Mr/Dr/Mrs/etc.): \_\_\_\_\_

Last name: \_\_\_\_\_

First name: \_\_\_\_\_

Position: \_\_\_\_\_ Company: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

City/state: \_\_\_\_\_ Zip/postal code: \_\_\_\_\_

Country: \_\_\_\_\_ Email: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

### Registration fee: *(Please check the appropriate box.)*

Until February 10, 2012:

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#### “Early bird special”

US \$900

For ICC members: US \$1000

For non-members: US \$1100

For Academics, Corporate Counsel, and Sole Practitioners: US \$675

### Method of payment:

#### By credit card:

American Express

MasterCard

Visa

Card number: \_\_\_\_\_

Expiry date:     /     / \_\_\_\_\_

Name of cardholder: \_\_\_\_\_

Date:     /     /     Signature: \_\_\_\_\_

The details you provide on this form will be used for registration purposes. They will be stored in ICC's databases for the sole use of ICC (International Chamber of Commerce) and USCIB (United States Council for International Business). You may have access to these details and request deletions and corrections at any time by contacting **Alexandra Akerly** at **212-703-5044**. The details you provide may be used by ICC and USCIB to keep you informed of developments in your area of activity through publications, subscriptions, events and other commercial offers.

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