

CHINA: SCC in China

In late February, the SCC and Vinge put on two events in mainland China. **Hans Bagner** (partner) of Vinge reports

Recently the Arbitration Institute of the Stockholm Chamber of Commerce (SCC), in collaboration with Vinge, hosted arbitration seminars in Beijing (27 February) and Shanghai (2 March) on various topics related to arbitration in Sweden.

Marie Öhrström, deputy secretary general of the SCC, spoke about SCC procedures and its experience in cases featuring Chinese parties; your writer spoke on the efforts of SCC and other arbitral institutions to reduce the length and cost of arbitration; Finn Madsen, of our firm's Malmö office, covered recent developments in Swedish arbitration; and Paolo Fohlin, who is our partner in Hong Kong gave a comparison of arbitration in Sweden and arbitration in mainland China and Hong Kong.

Audience response

Both seminars drew a large number of Chinese and international lawyers who practise in Beijing and Shanghai, who in turn raised many questions. A couple of recurring topics were the possibility of arranging hearings in China while having the seat of the arbitration in Stockholm and about the enforcement of awards rendered by an SCC tribunal.

From the tenor of the audience's questions, it seemed Stockholm is probably the first alternative for a Chinese party that knows it will not succeed in having the arbitration seated in China. The SCC's figures show over the years it administered more than 100 arbitration cases with at least one Chinese party. The programme included a segment by Professor Christina Ramberg, a consultant with Vinge, presenting comparative aspects of contract law in China and Sweden. This showed that in many respects the laws of the two countries are similar – a fact that seemed to give comfort to many Chinese lawyers who might agree not only to arbitrate in Sweden under the SCC Rules, but also that Swedish law should govern the contract.

GERMANY: The Seventh Petersberg Arbitration Day

This year's Petersberg event focused on in-house management of disputes. **Ulrike Gantenberg** (partner) of Heuking Kühn Lüer Wojtek in Düsseldorf reports

At the end of February, members of the German-speaking arbitration community gathered in the historic location of Petersberg near Bonn for the seventh Petersberg Arbitration Day. This year's topic was "The Conflict Manager – Active Conflict Management in Enterprises". Panels explored the proactive role of in-house counsel in managing, structuring or even preventing disputes in their companies.

At the welcome reception and pre-conference dinner, Jochen Weise, a member of the board of the energy firm E.ON Ruhrgas AG was the speaker. His account of how enterprises manage disputes every day set the tone for the event, and introduced in particular the user's perspective on dispute mechanisms.

The panels

The next day, the eminent arbitrator Karl-Heinz Böckstiegel, a member of the board of DIS (German Institution of Arbitration), opened proceedings. He introduced a series of panels featuring, on the one hand in-house counsel such as Christian Stubbe (Siemens AG), Ulrich Hagel (Bombardier Transportation) and Jochen Akleben (E.ON Ruhrgas AG), and on the other arbitrators with an academic background such as Klaus-Peter Berger (professor at the University

of Cologne), Renate Dendorfer (professor at the University of Munich) and Lars Kirchhoff (professor at the University of Frankfurt (Oder)), who were moderated by Markus Wirth (partner at Homburger in Zurich). They discussed the modalities of planning and structuring daily business with an aim of reducing disputes. As is typical at the Petersberg Arbitration Day, there was active exchange and dialogue throughout.

Topics of debate

The discussion shifted from the academic to the in-house perspective throughout, as you'd expect with panels of this composition. The concept of an "ADR pledge" – a general statement of policy from a company that it will consider alternatives to litigation (or arbitration) when disputes arise – has been a recent topic of discussion. Indeed pledges have even been initiated by some organisations (for instance, CPR in New York) as a "self-regulating" mechanism to avoid litigation and arbitration becoming too costly and time-consuming. Although the discussion revealed diverging opinions on the efficiency and effect of such policy statements, the consensus was that they had a role to play, like the cherry on a cake.

For companies trying to reduce litigation or arbitration proceedings, for whatever reason (and it needn't only be for cost and time reasons), their aim is to settle disputes early and without any (arbitral) tribunal's involvement. For them, the standard ADR toolbox is not always equipped to meet all of the challenges they face in practice. In particular long-term international project contracts with multiple parties can require quick solutions for disputes or imminent disputes, and a mechanism to provide these solutions must be tailored in accordance with the particulars of the respective business. In those settings, proactive conflict and contract management is required from the in-house counsel to ensure early involvement of all the relevant parties, including those responsible for the project such as technicians, and a detailed analysis gets made of any potential dispute. If those steps are taken, then much can be resolved without needing a tribunal.

An in-house prevention system must be combined with corresponding contractual arrangements. Several speakers suggested that the "classic" three-step dispute resolution mechanism with which parties aim to solve disputes out of court by agreeing to negotiation as a first step, initiation of an adequate ADR tool as a second step if that fails, and arbitration or litigation only as a last recourse is often insufficient. Contract clauses that leave it to the parties to choose between proceedings focused on consent and those focused on decision rarely have sufficiently precise wording to regulate all of the different types of later disputes, they said. To avoid uncertainty, some companies now install a "conciliation board" to choose or propose the mechanism applicable to solving a dispute once one arises, including the person(s) who shall act as a neutral third party and in which function they will act (adjudicator, mediator, etc). Other companies, for instance in large construction projects, often further arrange a permanent dispute board to be installed for the term of the contract. This (usually three-member) board then decides directly, as an adjudication board, on any conflict arising during execution of the contract, should settlement talks fail. This reduces time exposure to the greatest extent possible and provides its members with full insight into the project and its development. As Christian Stubbe of Siemens AG pointed out: "There is no instrument which fits each conflict, but a suitable instrument for – almost – every conflict."