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KENDALL TAN | PARTNER, RAJAH & TANN

What are the dispute trends you've noticed in recent years?

In Singapore, it's typically driven by corporate failures – particularly in the oil trading sector. We'd had some fairly large corporate insolvencies. With shipping, financiers would have security over receivables with oil or commodity companies, so that triggers the failures and recovery actions by financiers, which precipitates disputes by ship owners and other traders. Those cases have generated a lot of disputes work in Singapore.

Are there individual cases that have been particularly significant?

It would be related to the big corporate failures. Brightoil Petroleum, a Hong Kong-listed concern with China interests – that was a prominent dispute that started in 2018. We've had some corporate failures linked to allegations of fraud, two examples are Agritrade, the Hontop and ZenRock sagas. Hontop and ZenRock are prominent oil traders.

What made those cases striking?

They've generated so many disputes, so many law firms are involved for interested parties.

Singapore is often lauded as a rising power for dispute resolution – what has it done that has worked?

We shall have to live up to the accolades, frankly. Singapore has gained some traction in attracting companies to choose to arbitrate here, but I do not think the absolute figures are very significant to say we are displacing any of the other traditional jurisdictions. Singapore has done well in innovating to attract disputes and we've been prominent on the world stage in promoting mediation. I don't think that resulted in any drastic change in dynamics compared to London or Hong Kong.

Looking further ahead, where would you expect to see Singapore's standing as a global centre?

Singapore will probably continue to be stable in its global standing. It has traditionally benefited from corporates in South East Asia looking to Singapore as a reliable jurisdiction. That will remain intact for practical reasons, because Singapore is by far the most popular common law jurisdiction in South East Asia. The interesting thing is whether Singapore eventually eclipses Hong Kong as an arbitration centre, because it may be perceived as more neutral, given the current political dynamic in China.

Do you expect Singapore to take work from Hong Kong in the long term?

Perhaps in the near term, it would make a difference – there could be a preference for Singapore on neutrality where there are concerns about a Chinese counterparty. But in the longer-term, with the growing importance of China as an economic power, concerns will probably taper off as commercial parties embrace the reality that if they want to do business with China-centric parties, they will have to accept Hong Kong arbitration or even Chinese jurisdiction.

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Do you see Chinese courts attracting more global work?

I have a high regard for the reliability of the Chinese judicial system – particularly in the more established maritime courts. Certainly, international parties with business links to China will increasingly be comfortable litigating in China.

What kind of disputes are you expecting in the coming years?

If the last five years is anything to go by, we would still be very much focused on insolvencies – companies that are not able to adapt, such as some oil traders and coal traders.

Do you expect Covid-19 to fuel disputes activity?

I have not encountered many Covid-19 disputes – I have perhaps two cases related to outbreaks that affect vessels in a fleet, which then trigger localised problems with authorities and disputes, but I wouldn't say I have encountered significant Covid-related litigation.

The expectation is many disputes will crystalise in the second half of 2021. Do you see that happening in Asia?

There is some potential, because corporates have been buffered by government stimulus, which ran out mostly by the end of 2020. When the financial support gets withdrawn, some companies will struggle and that's when disputes could crystalise, but companies that will be the most drastically affected will not be the big players – it will be the smaller enterprises.

How well are the Singapore courts doing in deploying technology?

Singapore's judiciary has always been progressive, so Covid-19 has seen our courts retool to use remote hearing technology on a large scale. Even prior to Covid, the Singapore courts have been very accustomed to video-link evidence of foreign witnesses – that has been a common practice for the last five-to-seven years – and in implementing paperless or 'paper-lite' litigation. The judges over the last eight-to-10 months have heard many cases via remote hearing. We will definitely see more efficient handling of caseload as a result, certainly for interlocutory applications.

The Singapore Admiralty Court has co-opted a committee of practitioners and industry stakeholders, and the Supreme Court is very interested in innovating best practices also for the admiralty area, such as ship arrests.

Will Chinese law be used outside the PRC more in the years ahead?

Not in the next five years. I have not encountered Chinese law stipulations to govern ordinary commercial contracts.

How should advisers be evolving for the changing demands of dispute resolution?

External legal advisers will have to be more efficient, and that efficiency will probably have to be manifested by adoption of technology to enhance delivery of services in speed and cost. Advisers will have to invest in technology that major clients are already using. The law firms would be very familiar now with invoice payment platforms that a lot of major companies use. The next big thing is going to be increased investment in case management systems.

How much scope do you see for commercial disputes to be radically changed?

I do not think litigation can be commoditised – especially for complex litigation. What I have seen happening is break-away practices from big firms occurring, as smaller practices attempt to offer the client lower costs as a value proposition. It requires us to take notice, because it may affect market share if you are complacent. The challenge to proliferation of boutique practices is the need for significant capital investment in legal tech among major law firms, which is inevitable.

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To find out more about our leading disputes offering, contact:

NOEL CAMPBELL
Global Head of Litigation
T +852 3983 7757
M +44 (0)7774 964184/+852 6113 9280
E noel.campbell@hfw.com

NICOLA GARE
Disputes PSL
T +44 (0)20 7264 8158
M +44 (0)7795 612270
E nicola.gare@hfw.com

DAMIAN HONEY
Head of International Arbitration
T +44 (0)20 7264 8354
M +44 (0)7976 916412
E damian.honey@hfw.com

SEAN TWOMEY
Director of Business Development
T +44 (0)20 7264 8546
M +44 (0)7976 282592
E sean.twomey@hfw.com

Find us on LinkedIn at www.linkedin.com/company/hfw or search for #HFWlitigation.