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***A Harmonised System of
International Commercial Arbitration
within the AEC and Beyond ?***

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Overview

- State of play
- Opportunities
- Possible instruments
- Some limitations on harmonization

State of Play

- International commercial arbitration laws and procedures
- Cross-border enforcement of commercial arbitration awards



Opportunities

Examples

- ASEAN
- Regional Comprehensive Economic Partnership Agreement (RCEP) negotiating countries
- Future: FTAAP - APEC countries?

Possible Instruments

- UNCITRAL Model Law on International Commercial Arbitration (1985, 2006 amendments)
 - Within ASEAN - Brunei, Cambodia, Malaysia, Philippines, Singapore, Thailand
 - Outside ASEAN - major trade partners of ASEAN, e.g. China, Korea, Japan, UK, US

Possible Instruments

- Free trade agreement and bilateral investment agreement negotiations
 - the current ‘template’
 - non-linkage of commercial arbitration laws and processes with important trade facilitation aspirations
 - investment arbitration (i.e. investor-State) provisions and investment arbitration ‘case law’
- The role of arbitration centres (e.g. BANI, HKIAC, KLRCA, SIAC) and international commercial courts (e.g. the Singapore International Commercial Court)
 - Procedural rules

Possible Instruments

- Enforcement of **commercial arbitration awards** across borders
 - New York Convention
 - Success in participation rate
- Promotion of enforcement in other contexts, e.g.
 - the Hague Convention on Choice of Court Agreements (for the cross-border enforcement of **judgments**);
 - negotiations for a UNCITRAL Convention on Enforceability of **Conciliated Settlements** from International Commercial Mediation
- Dealing with domestic registration formalities/hurdles e.g. *exequatur*

The “?”: Some Limitations on Harmonization

- Non-uniform adoption of useful instruments
- Interpretations of Model Law provisions
- Inherent issues within Model Law provisions
- Enforcement – domestic interpretations of exceptions
e.g. public policy
- Common regional platform to negotiate the use of
harmonizing instruments?
- Domestic hurdles and differences in practices