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With SB 776, California Becomes an Attractive Seat for International Arbitrations

The bill clarifies that foreign lawyers who are not members of the California bar may appear in international arbitrations seated in California without local counsel.

By Yi-Chin Ho, Javier Rubinstein and Nathaniel Haas

Senate Bill 776, signed into law by Gov. Jerry Brown on July 18 of this year and effective on Jan. 1, 2019, clarifies that foreign lawyers who are not members of the California bar may appear in international arbitrations seated in California without local counsel. This reflects the value state lawmakers and practitioners place on having arbitrations seated in California, particularly in regards to cross-border disputes. SB 776 is a timely, crucial step towards allowing cross-borders partners to feel more in control of the dispute resolution process, and capitalizing on California's unique position to cater to arbitration of disputes, particularly those arising out of Asia and the Pacific Rim, a region where arbitration is quickly becoming the preferred method of dispute resolution.

SB 776 remedies a problem created by a 1998 California Supreme Court decision, *Birbrower v. Superior Court of Santa Clara County*, which found that an attorney from New York had engaged in the unauthorized practice of law through various arbitration-related activities on a case in California. Even though the restriction was later repealed for lawyers admitted to the bar in other states, until SB 776, California prohibited any foreign lawyers from practicing international arbitrations within the state without local counsel.

SB 776 states that a foreign lawyer is qualified to work on an international arbitration in California if they are (1) admitted to practice law in a state or territory of the United States, or a member of a recognized legal profession in a foreign jurisdiction; (2) subject to effective regulation and discipline by a duly constituted professional body or public authority of that jurisdiction; and (3) in good standing in every jurisdiction in which they are admitted or authorized to practice. In short, the law paves the way for international lawyers to include language in arbitration clauses seating their clients' arbitrations in California with the assurance that they will be able to appear on their behalf.

This law brings California into the fold of pro-arbitration states like New York, Florida, Illinois and Texas, which have no restrictions on out-of-state lawyers practicing international arbitration and thus have seen their major cities expand their role as arbitration seats. The law also brings California up to speed with the desire to be more efficient and cost-effective in resolving cross-border disputes by utilizing arbitration instead of courtroom litigation. In a 2018 Queen Mary University of London survey, 92 percent of responding lawyers stated that they preferred international arbitration above any other means for resolving cross-border matters.

Asian companies, for example, increasingly are looking towards arbitration to solve their cross-border disputes. The Queen Mary survey found that as of 2015, Singapore and Hong Kong were ranked in the top five most preferred and widely used arbitration seats. According to Global Arbitration Review, country-specific developments also show a clear trend: for instance, the average rate of recognizing foreign arbitral awards by Chinese courts in the past five years increased from 68 percent in 2005-2015 to 86.4 percent in the four year period from 2011-2015. Moreover, pro-third party funding legislation in both Singapore and Hong Kong signals the increasing popularity of arbitrations in these seats and their desire to attract even more cases.

Because California possesses many of the necessary attributes that parties look for when selecting the seat of an international dispute, SB 776 is of fundamental importance in bringing California in line with these pro-arbitration trends and putting the state on the map to compete with established seats like Hong Kong and Singapore. California is home to numerous world-class cities and transportation hubs that have the potential to offer the most efficient access, infrastructure, and resources for hosting international disputes. Of all the companies listed in the 2017 Fortune 500, 53 were headquartered in California, the second-highest total of any state except New York. Many of these companies are the technology giants located in Silicon Valley, who increasingly are using international arbitration to resolve high stakes intellectual property disputes. SB 766 is an important step in advancing intellectual property arbitration in California specifically. Especially in Asia, which saw Tokyo, Japan open the continent's first patent arbitration hub earlier this year, clients are looking for creative ways to lighten the load of expensive intellectual property litigation in the national courts.

Moreover, a significant number of companies located throughout Asia and the Pacific Rim have their corporate headquarters in California. A survey by the U.S. Census

Bureau found California had the second-highest percentage of Asian-owned businesses in the country behind Hawaii. If California were a country, its 2017 GDP would make it the fifth largest economy in the world, behind the U.S, China, Japan and Germany, and ahead of countries like Great Britain. Many companies which are headquartered in California but have their ownership in the Pacific Rim end up choosing seats in Asia for their arbitrations; SB 766 is a clear attempt to bring their dispute resolution business back to the Golden State. As a result of the legislation, California companies have additional bargaining leverage when negotiating dispute resolution provisions in their contracts, and this law allows them to take further advantage of that by making it easier for foreign lawyers to practice here.

Finally, California is geographically convenient for companies in Asia and the Pacific Rim. This is reflected by the above-average role that Asian-owned businesses play in the state's economy compared to other U.S. states. An analysis by the UC Riverside School of Business Administration Center for Economic Forecasting and Development shed new light on the role that Asian-owned companies play in California. Between 2007 and 2012, revenues grew by nearly 30 percent at Asian-owned businesses in California. Moreover, those revenues make up 15.1 percent of the State's total business revenue, compared to just a 5.8 percent share nationwide. Asian-owned businesses employ 15.1 percent of California's workforce, compared to just 6.3 percent of the nation-wide workforce. And, the analysis found the number of Asian-owned businesses grew at a faster rate than any other category.

Taken together, SB 766 seeks to marshal the tremendous resources, infrastructure, and geographic convenience California offers to multinational Asian companies seeking to resolve their cross-border disputes. As more companies take advantage of this new legislation, cities like Los Angeles and San Francisco will soon be considered equal with Hong Kong, Singapore, and Geneva as the global epicenters of international arbitration.

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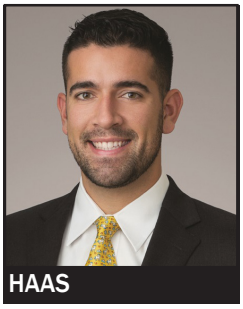
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