

## Commercial Arbitration in a Tripolar World

### Outline of presentation by Anthony Neoh

#### **The World is not Tripolar:**

##### 1. Trade:

WTO Trade Statistics:

Total World Trade in merchandise US \$17.43 Trillion, top five are:

Exports: China	2.3 Trillion
US	1.3 Trillion
Germany	1.2 Trillion

China/Korea/HK account for US \$3.4 Trillion in trade.

Services: US/UK/Germany: US \$1.4 Trillion out of World's Trade in Services of US \$5.28 Trillion.

##### 2. Direct Investments:

World FDI Flows: US \$1.43 Trillion. Largest recipients are: US (In 343 Billion, out 281 Billion) and China (in 125 Billion Out 196 Billion). Russia (in 36 Billion, out 27 Billion).

##### 3. Capital Markets:

Capital flows in the bond and equity markets of the world far exceed these figures, and sovereign wealth and pensions funds are continuously looking for sustainable investments. ISDA going for commercial arbitration.

4. Infrastructure deficit:

Mckinsey projects that US \$8 Trillion will be spent in Asia for infrastructure projects in the next decade. The Juncker Plan for the European Union requires 2 Trillion Euros. All this excludes Russia, the Middle East, Africa, and the Americas.

**Trends**

5. Disruptive technologies: Robotics, AI, big data, iot, advances in communications, computing and IT networks create new global and domestic industries and networks.

**Continuing need for dispute resolution**

6. All of the above create new human interactions and disputes, and therefore challenge existing modes of dispute resolution. Disputes will cross more borders and jurisdictions, evidence will tend to be in computer servers, disputes could be large scale both in terms of people and in terms of evidence and value, and resolution would be much more time sensitive.

**The Commercial Arbitration Tool Kit needs retooling**

7. It will be necessary to see how the entire set of tools in commercial arbitration can be re-tooled to deal with these developments. For example, in defining disputes, whether artificial intelligence could be used to troll through evidence, identify commonalities and black and white differences which can then be algorithmically resolved, leaving only grey judgmental issues for skilled human resolution. This is being done in medicine and in large scale complaints systems (Alibaba Taobao system for example). Dispute resolution can be done in cyberspace in future. Different dispute resolution tooling could be devised for different types of common

scenarios (for example large scale complaints, capital markets disputes, investments, merchandise and service sales). In projects with distinct life cycles such as infrastructure investments, a different process might be built for each part of the cycle in the design of the contract, for example, pre-establishment issues (how parties can exit and disputes dealt with), construction phase (adjudication rather than full arbitration save in exceptional circumstances), completion phase (PCOAs in addition to Investor State Dispute Settlement).

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