

Essentials of the Laws of the Belt and Road Countries Australia, UK, USA

Edited by

Guiguo WANG

Alan Yuk-Lun LEE

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Introduction to the International Academy of the Belt and Road

Founded in January 2016, the International Academy of the Belt and Road (IABR) is the first research institution concerning the Belt and Road Initiative in Hong Kong, China, and is committed to setting up an international platform for academic and professional communication. Experts of countries along the Belt and Road from various areas, such as law, economics, finance, investment, politics and international relations, are invited to share their views and conduct research on relevant issues in the implementation of the Belt and Road Initiative. The IABR has held several international forums on the Belt and Road, and compiled *Essentials of the Laws of the Belt and Road Countries* series and *Dispute Resolution Mechanism for the Belt and Road Initiative*. The IABR aims at providing expert services to corporations and institutions involved in the Belt and Road Initiative.

Professor Guiguo Wang serves as the President of the Academy, while Dr Alan Yuk-Lun Lee and Dr Priscilla Mei-Fun Leung serve as Vice Presidents. The IABR has an International Advisory Board with 26 experts and scholars, 42 fellows and 7 associate fellows from all over the world. The IABR endeavours to contribute to education and training of specialists so that Hong Kong could take full advantage of its unique position to develop international economy and keep world peace.

Preface

The Belt and Road (“B & R”) Initiative, since it was officially announced by the Chinese Government in 2013, has generated much excitement not only within China but also internationally. The “Belt” refers to a transnational economic cooperation initiative among the countries along the ancient Silk Road from central China to central Asia and then to Western Europe with Amsterdam as the finishing point—the “Silk Road Economic Belt”; the “Road” indicates an economic cooperation initiative among countries along a new maritime Silk Road from China, Southeast Asia, India, Sri Lanka, Yemen, Egypt, Greece, Italy to the Netherlands (Amsterdam)—the “21st-Century Maritime Silk Road”. As such, the B & R Initiative mainly focuses on the connectivity and cooperation among countries in Eurasia and some African countries. The National Development and Reform Commission, Ministry of Foreign Affairs and Ministry of Commerce of China with the authorisation of the State Council of China released the official document “Vision and Actions on Jointly Building Silk Road Economic Belt and 21st-Century Maritime Silk Road” in March 2015, which outlines the direction and rough contents of the B & R Initiative. An official B & R Initiative website was launched in March 2017. Yet, none of these official documentations indicates what specific countries are covered under the B & R Initiative, which implies that the B & R Initiative is an open-ended concept. Having said that, it is clear that the B & R Initiative aims at promoting economic cooperation among the countries concerned. It is equally clear that with or without a precise coverage, the B & R Initiative includes a large number of countries with different cultures, history, traditions, religions, and political and legal systems.

By its nature, implementation of the B & R Initiative involves cross-border movement of people, goods and services, capital and technology, a process which unavoidably entails interactions among the concerned countries. What norms should be observed in transacting business in these countries? Do as the Romans do,

according to Western culture. As for the traditional Chinese culture such as the *Book of Rites* (*Liji Quli I*), “When crossing the boundaries (of a state), one should ask what its prohibitory norms are; having fairly entered it, one should ask about its customs; before entering a house, one should ask about the names to be avoided whilst in it.” Knowing the prohibitory norms, customs and names to be avoided of each country along the B & R is of utmost importance for the successful implementation of the initiative. It is precisely for this reason that this book series—Essentials of the Laws of the Belt and Road Countries—has been prepared.

This book series had its origin in a workshop that was held by the International Academy of the Belt and Road in Hong Kong, China, where some of its authors were present. The consensus of the workshop was that mutual understanding among the B & R countries over their legal traditions, constitutional and governance frameworks, laws on trade transactions and other immediately relevant areas such as financial regulation, employment law and environmental law was crucially important for implementing the B & R Initiative. It is only through a proper understanding of commonalities and differences between these nations that we could develop a meaningful framework for carrying out the related trade, investment and other activities.

The authors were provided with terms of reference for the chapter construction. Each country study would begin with an overview of its legal system relating to cross-border commercial transactions. The substantive parts of each chapter deal with customs system, foreign trade law, law on foreign direct investment, monetary and banking law, laws relating to construction of infrastructure, labour management and treatment, environment and dispute resolution—both judicial and non-judicial (ADR).

It is also part of the terms of reference that the authors should focus not only on the black letters of the laws but also on how these laws in fact operate in the market place. The authors were given a fair amount of leeway in examining each of these aspects in order that they could highlight those areas where their own nations would have a particular interest. The result is a happy blend of not only different writing styles but also different aspects of law in action.

A distinctive feature of this highly globalised world is coexistence of multilateral and bilateral economic cooperative schemes. As a result, trade and investment barriers have been removed or reduced with the development of both multilateral and bilateral cooperative programmes. These schemes not only regulate trade, investment and finance and banking at the international level but also directly impact on law-making and law enforcement at the national level. For this reason, we decided to have chapters devoted to two such associations—the European Union (EU) and the Association of Southeast Asian Nations (ASEAN). These chapters provide support to the study of countries belonging to these associations and explain the interrelations that exist in terms of laws and legal processes between the central authorities and member states. A study of how EU and ASEAN authorities guide, coordinate and encourage a unified legal order for the promotion of trade and economic cooperation is also critical to the B & R Initiative which can learn from relative successes and lessons of the existing regional organisations.

When the B & R Initiative was first introduced, the United States and Japan were not among the B & R countries. Yet, as they are important countries for international economic cooperation, the B & R Initiative is an open concept and there are signs that the two countries may eventually take part in the B & R Initiative, we decided to include them in this book series.

We believe that, by providing an overview of the laws and legal structures that shape business relationships of the countries along the B & R, this book series will contribute in a meaningful way to the implementation of the B & R Initiative.

Guiguo WANG

Alan Yuk-Lun LEE

Priscilla Mei-Fun LEUNG

18 April 2017

About the Editors

Guiguo Wang is University Professor and Scholar of “1000 Talents”, Zhejiang University, in Hangzhou, China; Eason-Weinmann Chair of International and Comparative Law, School of Law, Tulane University, in New Orleans, USA; President of the International Academy of the Belt and Road, in Hong Kong, China; Chairman of the Hong Kong WTO Research Institute; Chairman of the National Committee (Hong Kong, China) and Titular Member of the International Academy of Comparative Law; former Dean of School of Law, City University of Hong Kong, in Hong Kong, China and former Director of the Centre for Judicial Education and Research, City University of Hong Kong, in Hong Kong, China; and Vice President of the Chinese Society of International Economic Law.

Professor Wang has an arbitration experience for more than 20 years. He is now President of Hangzhou International Arbitration Court and is an arbitrator of China International Economic and Trade Arbitration Commission, Beijing Arbitration Commission, Hong Kong International Arbitration Centre, Panel of Arbitrators of Korean Commercial Arbitration Board and Chinese Arbitration Association of Taiwan, China.

Professor Wang, holder of the JSD degree from Yale Law School and LLM degree from Columbia Law School, is the first person from the Chinese mainland to obtain the JSD degree from Yale Law School since 1949. Having obtained the JSD degree from Yale, he worked in several world-renowned law firms in countries and regions such as the United States, Canada and Hong Kong of China.

Professor Wang used to be an official at the Department of Law and Treaties, Ministry of Foreign Affairs of China. At the recommendation of the Ministry of Foreign Affairs, he became the first Chinese recipient of the United Nations Institute for Training and Research fellowship which enabled him to participate in the seminars

offered by the International Court of Justice and to study at The Hague Academy of International Law, the United Nations and the World Bank in 1980.

In the summer of 2010, Professor Wang served as a special lecturer at The Hague Academy of International Law and gave a series of lectures on “Radiating Impact of WTO on Its Members’ Legal System: The Chinese Perspective”.

Professor Wang has published more than 20 books and over 100 journal articles in established journals in China and other countries. His *Legal Order of International Trade* published by the Law Press in 1987 is one of the earliest treatises on the GATT. Professor Wang’s main works include: *Sino-American Economic Exchanges: The Legal Contributions* (1984); *International Banking and Financial Law* (1988); *Contemporary Legal Prescriptions for International Investment* (1988); *China’s Investment Law: The New Directions* (1988); *International Economic Law* (1992); *Wang’s Business Law of China* (4th ed., 2003); *The Law of the WTO* (2003); *International Trade Law* (2004); *The Law of the WTO: China and the Future of Free Trade* (2005); *International Monetary and Financial Law* (3rd ed., 2007); *International Investment Law* (2nd ed., 2008); “Radiating Impact of WTO on Its Members’ Legal System: The Chinese Perspective”, *Collected Courses of The Hague Academy of International Law*, vol. 349 (2010); *International Investment Law: A Chinese Perspective* (in English) (2015); *International Law Perspective of the Belt and Road Initiative* (co-ed.) (2016); *Dispute Resolution Mechanism for the Belt and Road Initiative* (co-ed.) (2017).

Dr Yuk-Lun Lee is a Justice of the Peace. He graduated from Lincoln University, USA in 2009 with an honorary doctorate of Management, and was elected as the academician of Canadian Chartered Institute of Business Administration (CCIBA). In 2014, he obtained his Master of Business Administration at the University of Wales Newport, UK. Now, Dr Lee is studying for the collaborative PhD degree programme with Fudan University (APRU) and Stanford University.

Dr Lee is also keen on charity affairs, and is Chairman (2017/2018) of Tung Wah Group of Hospitals, Founding Chairman of Phoenix Charitable Foundation, Honorary Permanent President of Hong Kong Commerce and Industry Associations, China. He also serves as Chairman of Pico Zeman Asset Management Limited and Volk Favor Food Company Limited, Vice President of the International Academy of the Belt and Road, committee member of All-China Federation of Returned Overseas Chinese, committee member of CPPCC Beijing Committee, Director of China Overseas Friendship Association and member of Board of New Asia College of the Chinese University of Hong Kong, China.

Dr Priscilla Mei-Fun Leung has taught at the School of Law, City University of Hong Kong for 24 years and is specialised in Chinese Law, Hong Kong Basic Law and conflicts of law amongst the Chinese mainland, Hong Kong and Taiwan.

Dr Leung is the Chairman of the Judicial and Legal Affairs Committee of the Legislative Council in Hong Kong, China. She is Associate Professor at the School of Law, City University of Hong Kong, China; Barrister-at-Law; and Arbitrator (CIETAC). She received the Ten Outstanding Young Persons Award of the Year 2000.

Dr Leung has published different articles and books on the above areas both in English and Chinese, including the China Law Reports series (in English), the China International Economic and Trade Arbitration Commission Awards series (in English) and *Hong Kong Basic Law: Hybrid of Chinese Law and Common Law* (published in 2007 in English). Her publications also include *Comparative Studies of Family Law between Chinese Mainland, Taiwan and Hong Kong* published by the Joint Publishing House in June 2003 (in Chinese) and *Legal Reform of China* (co-ed.) in 1994.

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Australia

About the Authors

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Ms Christina Platz is Dr Rajesh Sharma's assistant.

Introduction

Australia has a resilient economy and provides excellent business and investment opportunities. It is currently in its 25th year of uninterrupted annual growth supported by high productivity levels, with 15 out of 20 industries rating above the global average.^① The Australian economy is rated AAA by all three global rating agencies and is forecast to realise average annual real GDP growth of 2.9 percent between 2016 and 2020.^② Australia is home to the largest pool of funds under management in the Asian region and therefore serves as an important contributor to five sectors expected to drive future global growth: agribusiness, education, tourism, mining and wealth management. Australia therefore provides both a safe, low-risk economic environment in which to do business.^③

Australia has one of the most well-regulated business environments in the world. Together with political stability and a predictable regulatory framework, Australia offers investors both confidence and security.^④ To have a better knowledge of how the business environment is regulated, we must firstly acquire a better understanding of the Australian legal system.

Legal System

The Commonwealth of Australia prides itself on having a robust and stable economy with a federal system of government based on the United Kingdom's Westminster system which is comprised of a three-tiered government^⑤:

- Federal government: The Commonwealth of Australia bears responsibility for national matters, including trade, foreign policy and taxation.

① <http://www.austrade.gov.au/>.

② Ibid.

③ Ibid.

④ Ibid.

⑤ Lambiris and Griffin, *First Principles of Business Law* (2016), 9th Edition, p.8; http://www.aph.gov.au/About_Parliament/House_of_Representatives/Powers_practice_and_procedure/00_-_Infosheets/Infosheet_20_-_The_Australian_system_of_government.