21世纪法学系列教材

简明国际商事仲裁法律与实践英文教程

A CONCISE ENGLISH TEXTBOOK ON LAW AND PRACTICE OF INTERNATIONAL COMMERCIAL ARBITRATION

石现明　吕　涛　编著

双语系列

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A Concise English Textbook on Law and Practice of International Commercial Arbitration

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Lv Tao

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出 版 说 明

法律出版社作为中国历史最悠久、品牌积淀最深厚的法律专业出版社，素来重视法学教育图书之出版。

原“21 世纪法学规划教材”系列作为本社法学教育出版的重心，延续至今已有十余年。该系列一直以打造新世纪新经典教材为己任，遍揽名家新秀，因其卓越品质而颇受瞩目并广受肯定。当前，根据法学教育发展变化的客观需要，本社将原有教材系列调整重组，形成新编“21 世纪法学系列教材”，以便更好地为法学师生服务。

中国的法学教育正面临深刻变革，未来的法学教育势必以培养高素质法律人才为目标，以知识教育与应用教育相结合、职业教育与素质教育相结合、精英教育与大众教育相结合为导向，法学教育图书的编写与出版也将由此进入变革与创新的时代。

为顺应未来法学教育的改革方向和发展趋势，本社将应时而动，为不同学科、不同层次、不同阶段、不同需求的法学师生量身打造法学教材及教学辅助用书。在教材方面，将推出课堂教学系列、实训课程系列、通识课程系列、简明本系列、双语教学系列等；在教学辅助用书方面，将推出案例教程系列、法规教程系列、练习与测验系列、法学讲座系列、专业培训系列等。或革新，或全新，以厚基础、宽口径、多元化、开放性为基调，力求从品种、内容和形式上呈现崭新风采，为法学师生提供更好教本与读本，同享规划教材之盛。

“好书，同好老师和好学生分享”。本社在法学教育图书出版上必将继往开来，以精益求精的专业态度，打造全新“21 世纪法学系列教材”，传播法学知识，传承法学理念，辅拂法律教育事业，积累法律教育财富，服务于万千法学师生和明日法治英才。

法律出版社

About the authors

Mr. Shi Xianming Obtained a bachelor's degree in major of English language and culture at Sichuan International Studies University, a master's degree in major of jurisprudence and a doctor's degree in major of international law at Southwest University of Political Science and Law, and was once an academic visitor (from May 2010 to May 2011) in the Faculty of Law at the University of Oxford. Mr. Shi is now a professor at law and the chairman of Professors' Committee of the Law School of Yunnan University of Finance and Economics. He is specialized in legal methodology and international law, especially in international commercial arbitration, and has published two academic treatises and nearly thirty academic essays on international commercial arbitration in Chinese or English languages.

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作者简介

石现明 先后获四川外国语大学英语语言文化专业学士学位、西南政法大学法理学专业硕士学位和国际法学专业博士学位，并曾在牛津大学法学院作访问学者(2010年5月~2011年5月)。现为云南财经大学法学院教授、教授委员会主任，主要从事法律方法论和国际法，特别是国际商事仲裁法的教学与研究，已出版国际商事仲裁学术专著2部，发表中英文国际商事仲裁学术论文近30篇。

吕 涛 先后获吉林大学法律专业学士学位和云南大学民商法专业硕士学位。现为云南财经大学法学院副教授，主要从事商法、国际商法和国际商事仲裁法的教学与研究，已在多个领域出版专著多部，发表学术论文约20篇。

Forewords

With the development of economic globalization and the enhancement of comprehensive strength, the economic connection of China with other countries and areas is getting closer and closer. In 2014, the total value of import and export of China reached 26.43 trillion RMB, direct investment actually made in China by foreign investors reached 119.6 billion USD, and direct investment made in foreign countries and areas by Chinese investors reached 102.9 billion USD. All these have made China the most active and important participant in world economy. With such a circumstance, it is beyond doubt that the demand for foreign-related legal talents will increase considerably.

To foster qualified foreign-related legal talents, it is essential that foreign-related legal courses be taught in foreign languages. As early as in 2001, the Ministry of Education required that 5 – 10 percent of courses in major of finance, law and the like, should be taught in English or other foreign languages. Since then, many law schools in China offered some bilingual or English legal courses. In our teaching practice, we have perceived the unsuitability of using original English textbooks in Chinese classes. So we have long been planning to edit and publish our own English textbooks on international or foreign-related legal subjects, and this textbook is the first one.

Arbitration is the best and most frequently used method to resolve international commercial disputes, and international commercial arbitration is one of the most internationalized legal branches. In the past two decades, many jurisdictions reformed their arbitration legislation based upon the Model Law, which reflects the modern trend of the practice of international commercial arbitration, and in accordance with the requirements of the New York Convention. This textbook generalizes the common practices of modern international commercial arbitration, with references to the New York Convention, the Model Law, the newest arbitration legislation of major jurisdictions, the newest arbitration rules of leading international arbitration institutions and many up-dated academic literatures, and especially with Chinese laws and practice on foreign-related arbitration being compared.

To cater for various demands of different schools and students at different levels, this textbook focuses on introducing the fundamental legal rules and general practice of international commercial arbitration, instead of discussing pure theoretical issues. The

structure of this textbook is simplified and thus very concise, but is logically complete, covering every aspect of international commercial arbitration, including arbitration agreements, arbitrators and arbitral tribunals, arbitral proceedings, arbitral awards, challenge to arbitral awards, and recognition and enforcement of foreign arbitral awards. This textbook can, therefore, be used either in law schools which are the training bases of outstanding foreign-related legal talents approved by the Ministry of Education or in other law schools, either for undergraduate students or for postgraduate students.

Because of limitation of the ability and proficiency of the authors, there must be some mistakes and errors in this textbook. We sincerely hope that the users and readers would be generous enough to feedback us with any comments, suggestions and corrections, which will be highly appreciated.

Professor Shi Xianming
December, 2015

Abbreviations

AAA	American Arbitration Association
ACCP	Algerian Code of Civil Procedure
AIAA	Australian International Arbitration Act
AZPO	Austrian Code of Civil Procedure
BAL	Brazilian Arbitration Law
BJC	Belgium Judicial Code
CIETAC	the China International Economic and Trade Arbitration Commission
CMAC	China Maritime Arbitration Commission
DAA	Danish Arbitration Act
DIS	German Institution of Arbitration (Deutsche Institution für Schiedsgerichtsbarkeit)
EAA	the English Arbitration Act
EAL	Egyptian Arbitration Law
EULA	the European Uniform Law on Arbitration
FAA	the U. S. Federal Arbitration Act
FNCCP	French New Code of Civil Procedures
GZPO	German Code of Civil Procedures
HKAO	Hong Kong Arbitration Ordinance
HKIAC	Hong Kong International Arbitration Centre
IACA	Indian Arbitration and Conciliation Act
IBA	International Bar Association
ICC	the International Chamber of Commerce
ICC Court	the International Court of Arbitration of ICC
ICCP	Italian Code of Civil Procedures
ICDR	International Centre for Dispute Resolution of AAA
JAL	Japanese Arbitration Law
KLRCA	the Kuala Lumpur Regional Centre for Arbitration
LCIA	the London Court of International Arbitration
NAI	Netherlands Arbitration Institute

NCCP	Netherlands Code of Civil Procedures
NZAA	New Zealand Arbitration Act
PCA	Paris Court of Arbitration
PVAL	Portuguese Voluntary Arbitration Law
RICAL	the Law of the Russian Federation on International Commercial Arbitration
SCC	Swiss Chambers of Commerce
SCC Institute	the Arbitration Institute of the Stockholm Chamber of Commerce
SDAA	Singapore Arbitration Act
SIAA	Singapore International Arbitration Act
SIAC	the Singapore International Arbitration Centre
SKAA	Arbitration Act of South Korea
SPAA	Spanish Arbitration Act
SPILA	Swiss Private International Law Act
SWAA	Swedish Arbitration Act
TUAA	Tunisian Arbitration Act
the Model Law	the UNCITRAL Model Law on International Commercial Arbitration
the UNCITRAL Rules	the Arbitration Rules of the United Nations Commission on International Trade Law
UAA	the U. S. Uniform Arbitration Act
UNCITRAL	the United Nations Commission on International Trade Law
VIAC	Vienna International Arbitration Center

Contents

Chapter Ⅰ An Overview of International Commercial Arbitration

中文导读：

本章为国际商事仲裁概述，首先论述了仲裁的含义与特征，介绍了关于仲裁的法律性质的不同理论，以及仲裁的不同分类；然后重点阐述了什么是国际商事仲裁和国际商事仲裁的优点；最后介绍了国际商事仲裁的法律渊源和国内外主要的常设国际商事仲裁机构。

Section 1 Arbitration in General

Arbitration is a private dispute resolution whereby the parties reach to an agreement to submit their dispute to a private and neutral third party and that third party makes final decisions binding upon all parties concerned. In accordance with different criteria, arbitration can be either institutional or ad hoc, either domestic or international.

1. Definition and features of arbitration

1.1 *Definition of arbitration*

Because of its neutrality and world-wide enforceability of the award,[1] arbitration has become the most frequently used method and a highly institutionalized mechanism to resolve international commercial disputes. Some commentators even repute arbitration as the only best method to resolve international commercial disputes. However, most national arbitration laws and all international arbitration conventions do not give a clear definition of arbitration.

Shorter Oxford English Dictionary defines arbitration as "the settlement of a question at issue by one to whom the parties agree to refer their claims in order to obtain an equitable decision." Wikipedia describes arbitration as "a form of alternative dispute resolution (ADR), a technique for the resolution of disputes outside the courts, where

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[1] See section 2(2) of this Chapter of this textbook.

the parties to a dispute refer it to one or more persons (the 'arbitrators' or 'arbitral tribunal'), by whose decision (the 'award') they agree to be bound."

Numerous scholars have sought to define what arbitration is. For examples, Rene David defines arbitration as "a device whereby the settlement of a question, which is of interest for two or more persons, is entrusted to one or more other persons (the arbitrator or arbitrators) who derive their powers from a private agreement, not from the authorities of a state, and who are to proceed and decide the case on the basis of such an agreement."[1] According to Alan Redfern and Martin Hunter, arbitration is "Parties who are in dispute agree to submit their disagreement to a person whose expertise or judgment they trust. They each put their respective cases to this person (this private individual, this arbitrator) who listens, considers the facts and the arguments, and then makes a decision."[2]

In brief words, arbitration may be defined as a private dispute resolution whereby the parties, before or after the arising of a dispute, reach to an agreement to submit the dispute to a private and neutral third party, who hears the case and makes final decisions binding upon all parties to the dispute.

1.2 *Features of arbitration*

Compared with litigation in national courts and any other dispute resolutions, arbitration has the following characteristics:

(1) Arbitration is an alternative dispute resolution (ADR). Arbitration is alternative to litigation in national courts. The most obvious forum for all disputes is national court. National courts are sponsored and maintained by the state to provide dispute settlement service for the public, either foreigners or nationals. It is a manifestation of state power and the responsibility of the state to ensure that courts exist, qualified judges are appointed and there are procedural rules to regulate the basis of jurisdiction and the conduct of cases before the court. If the parties have not reached to an agreement to resolve their dispute through other means, the dispute must be submitted to a relevant national court. But if the parties do not want to go to national courts, they can reach to an arbitration agreement. If there exists a valid arbitration agreement between the parties, the dispute shall be submitted to arbitration, and any national court shall have no jurisdiction.

(2) Arbitration is a creature of party autonomy. The principal characteristic of arbitration is that it is chosen by the parties, and the parties have ultimate control over the whole process of arbitration. The parties have the ultimate power to determine the form,

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[1] See Rene David, Arbitration in International Trade, Kluwer Law and Taxation Publishers, 1985, p. 5.

[2] See Nigel Blackaby, Constantine Partasides, Alan Redfern and Martin Hunter, Redfern and Hunter on International Arbitration, Oxford University Press, 2009, p. 1.