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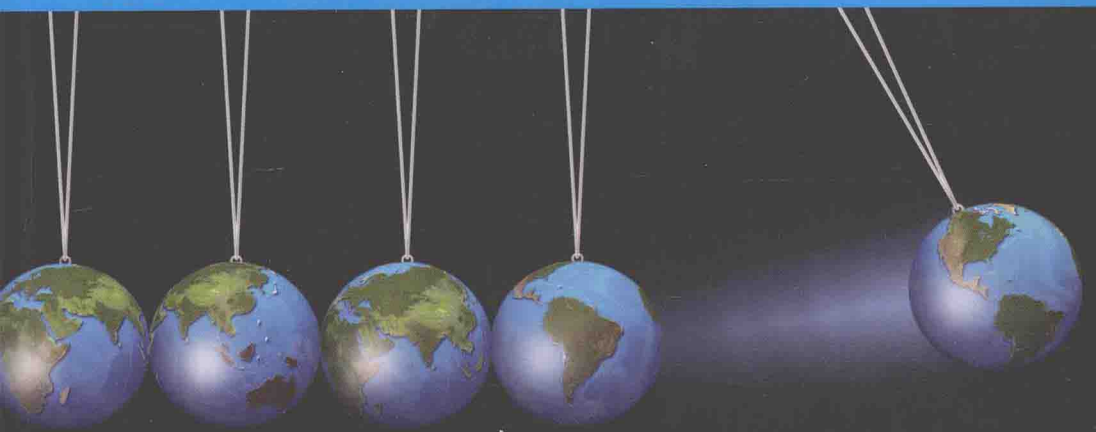

AN ASIA-PACIFIC PERSPECTIVE

Simon Greenberg
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Foreword

It is a great pleasure for me to contribute a foreword to this book. Arbitration in the Asia-Pacific region has been a central interest of mine for over two decades. I have been involved as an arbitrator, teacher and administrator. Furthermore, the three authors are persons well known to me and I have observed the development of their careers in international arbitration with great interest.

There are now many books on international commercial arbitration. What distinguishes this work from others in the field is its regional perspective. The development of international arbitration in Asia has been quite spectacular. Singapore and Hong Kong now rival London, Paris, Geneva and New York as major centres of international commercial arbitration. The number of arbitrations in south Asia, south-east Asia, east Asia and China is rapidly increasing. Thus Asia is developing as a centre for services including dispute resolution services as well as an economic powerhouse.

This book is written primarily for students of international arbitration in Asian universities and for lawyers who have a practice or interest in arbitration in Asia. It presents, within a broad compass, an overview of the principal aspects of international commercial arbitration. True to its focus, each topic is illustrated by reference to arbitration laws, rules, institutions and secondary writings in the region. The book is much more than a brief overview of international commercial arbitration. Each topic is examined in depth and the text is written in a clear and attractive style. While the book has an Asian perspective, it is not written in a parochial way. In addition to references to laws and cases from the region there are also frequent references to well-known materials from outside Asia.

The first chapter presents a panorama of international commercial arbitration, defining arbitration, exploring the history of arbitration and elucidating its development. The principal conventions, laws and rules are noted and there is an overview of the key features of international arbitration. Other matters discussed are arbitral institutions, sources of procedural law and practice and an introduction to international arbitration in the Asia-Pacific region which includes an interesting discussion of Asian social, religious, political and cultural diversity. The following chapters explore the classic aspects of international arbitration including the governing law, the arbitration agreement, jurisdiction, the tribunal, procedure and the award. Although the book deals with international commercial arbitration there is a chapter on investment treaty arbitration. The book is supported by a number of most useful appendices.

The authors themselves, although comparatively young, have accumulated a wealth of experience in international commercial arbitration. Simon Greenberg, now the Deputy Secretary General of the ICC International Court of Arbitration, was an arbitration practitioner in a leading commercial law firm and has experience of international arbitration in Europe as well as the Asia-Pacific region. He was previously the Deputy Secretary General of the Australian Centre for International Commercial Arbitration and the First Secretary to the Asia-Pacific Regional Arbitration Group. His expertise in international commercial arbitration is widely recognised.

Christopher Kee has a strong academic background. He is an adjunct professor at the City University, Hong Kong and is a Senior Researcher at the University of Basel. Previously he taught international arbitration at an Australian law school.

Romesh Weeramantry is Associate Professor at the City University of Hong Kong, teaching international commercial arbitration, investment treaty arbitration and international law. He has had wide international experience at the Iran-United States Claims Tribunal and the United Nations Compensation Commission in Geneva. He has also published widely and is involved with a number of arbitral organisations.

I congratulate the authors on producing an excellent book with a unique focus. It is most informative and well written and will, I am confident, be useful not only to students and practitioners in the region but also to lawyers in other parts of the world who wish to know more about arbitration in Asia.

Michael Pryles
Chairman
Singapore International Arbitration Centre

Preface

International arbitration is firmly established worldwide as a distinct discipline. A major component of its exponential growth in the last 15–20 years emanates from the Asia-Pacific region.[1] In Chapter 1 we describe an Asia-Pacific arbitration craze that includes sharp increases in the case loads of its major arbitral institutions, a raft of important legislative changes, and a flurry of other regionally focussed international arbitration activity.

In its traditional centres (mainly Europe and more recently North America), international arbitration has grown into an important industry for the legal profession and has consequently become an essential subject for university legal studies. Numerous textbooks have emerged in response, but until now none focuses on the Asia-Pacific. There are several practitioners' guides on specific Asia-Pacific jurisdictions, but no book addresses the region in a subject-by-subject textbook style.

When we embarked on this project, we believed there was a need for an Asia-Pacific focused international arbitration textbook. The 2008 financial crisis has reinforced that belief. Adrian Winstanley, writing in *The Asia Pacific Arbitration Review 2009* (a Global Arbitration Review publication), captured the essence of this increased need when he observed:

> We have, then, had the most piercing of wake-up calls, which must surely lead to a new global economic order, at the heart of which will, once again, be the great tiger economies of the Asia-Pacific, which have had not only to rethink economic strategy regarding their export markets and foreign investments, but also to manage the expectations of their huge populations for improvements in their quality of life, while minimising the environmental impact of growing consumer demands. And it is in addressing these twin problems that new industries and services will emerge and grow, and out of which, for better or for worse, another generation of arbitral work will emerge.

Our book does not purport to provide an extensive overview of any individual arbitration law. A practitioner is unlikely to find in it everything he or she wants to know about a particular jurisdiction. Rather, the aim is to spice the teaching of general principles of international arbitration with strongly Asia-Pacific flavours.

1 We principally focus on the following jurisdictions: Australia, China (Mainland), Hong Kong, India, Indonesia, Japan, Korea (Republic of), Malaysia, New Zealand, the Philippines and Singapore. From time to time we also give examples from other jurisdictions.

It is almost trite to observe that private international arbitration is a dynamic discipline. The law and practice of it in the Asia-Pacific evolved dramatically as we wrote this book. We would never have got through the research without assistance from numerous people. Special thanks are due to Karen Allardice, Amrita Biswas, José Caicedo, Rachel Carter, Jacqueline Chang, Rahul Chatterji, Vicky Chung, Romain Dupeyré, Kun Fan, Julien Fouret, Alain Hosang, Sophie Hottlet, Kevin Kee, Winki Lam, Vincent Lee, Ruth Lemaire, Jacky Man, Michael McAllister, Luke Nottage, Brar Harprabdeep Singh, Aurélie de Raphelis Soissan, Tamela Smith, Andrew Sykes, Candy Tang, Hélène van Lith, Claire Wilson, Megan Valsinger-Clark, Sophia Yang and Philip Yang. Professor Wang Guiguo of City University of Hong Kong requires particular mention for providing a research grant. We acknowledge various other institutions, generally our employers, who kindly supported and/or tolerated the project: Basel University, City University of Hong Kong, Deakin University, Dechert LLP, International Chamber of Commerce, and Keelins Lawyers. We are also grateful to the many colleagues with whom we discussed ideas and issues; and to our family and friends for putting up with it all. Finally, we thank all the individuals we worked with at Cambridge University Press.

The end product (with the exception of the index and tables) is our creation and we accept full responsibility for its errors of substance. Any views expressed are personal to us, and cannot be attributed to any of our respective institutions. We should note that at the proof stage of the book, a number of important developments occurred. The revision of the UNCITRAL Arbitration Rules was completed, SIAC launched its 2010 Rules and the IBA released its 2010 Rules on the Taking of Evidence in International Arbitration. We have attempted to refer to these new rules or revisions where possible but time constraints prevented us from including any detailed or considered analyses. We have done our best to ensure accuracy. This was particularly challenging where information was only available in a language none of us understands. At times it was necessary to refer to unofficial translations from public sources. We also acknowledge that we are not specialist practitioners in each jurisdiction covered. Local advice should be sought about the particularities of individual jurisdictions. Finally, we all initially trained as common law lawyers and the influence of that background may well be lurking in the following pages.

We hope that this book proves a useful and informative contribution to the exciting world of international arbitration in the Asia-Pacific.

Simon Greenberg
Christopher Kee
Romesh Weeramantry

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