



A.J. de Roo and
R.W. Jagtenberg
editors

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A.J. de Roo and R.W. Jagtenberg

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YEARBOOK LAW & LEGAL PRACTICE IN EAST ASIA

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FOREWORD

by

Andreas van Agt

East Asia, as a region, has attained a leading position in the world economy. The pace of economic development in Japan, mainland China and the newly industrialised countries has been unprecedented, and the growth potential is still enormous. This development has definitely left its mark on the nature and volume of trade relations between East Asia and those other two leading economic regions in the world today: North America and Western Europe.

As commercial transactions are increasingly moulded by law, it is entirely apt to dedicate a new series to the laws and legal practices in East Asia.

The particular European-Asian perspective adopted in this series deserves a warm welcome, if only because of the historical linkages between many East Asian legal systems and the legal traditions of continental Europe.

I am confident that this series will prove to be a most helpful source of information for lawyers already handling legal work involving Asia. I do hope that the series will equally stimulate the interest amongst non-specialised lawyers in Asia and its legal framework for investment.

European business has come to realise that East Asia cannot be ignored. Their legal advisors should follow suit.

Andreas A.M. van Agt

former Prime Minister and Minister of Foreign Affairs of the Netherlands

former Head of Delegation of the European Commission in Tokyo and in Washington DC

FOREWORD

by

Kohken Tsuchiya

The present era is one of on-going internationalisation. Economic activities in particular have come to exceed national boundaries. As a consequence, a huge task is set before those lawyers who are called upon to advise on such cross-frontier transactions. Their expertise should no longer be confined to their home jurisdiction. A basic insight into relevant areas of foreign law and foreign legal culture is equally required, in order to avoid the risk of problems arising from the diversity of legal systems involved later on.

The time seems right to strive for a better mutual understanding of foreign legal practice. Such an effort may be particularly worthwhile in a Euro-Asian perspective, in view of the regional integration processes in both Western Europe and East and Southeast Asia.

This Yearbook, marking the launch of a series of Yearbooks providing regular and up-to-date information on the laws of the Far East to European lawyers (and presumably Asian lawyers alike), will undoubtedly contribute to such a mutual understanding.

It is interesting to note that the initiative for this series of Yearbooks, "Law and legal practice in East Asia" originated from an international student-trainee programme carrying the same name.

Since 1989, this programme enables Dutch law students to spend some months in a law firm in Asia during their final year of study. I am pleased that a number of Japanese law firms are co-operating in this scheme. I believe that a programme such as this will help to increase the awareness of the problems *and* opportunities involved in transnational legal practice among intending lawyers. At the same time, a programme of this kind is instrumental in establishing long-lasting friendly relationships between young legal professionals in the Netherlands and Japan, and in Europe and Asia.

From a long term perspective, it may be more important that young lawyers from many countries establish friendly relations through legal training in foreign countries, than having well established lawyers attending international conferences all around the world.

I am confident that this series of Yearbooks will prove to be as germinal as the underlying ideas about international legal co-operation.

Kohken Tsuchiya

President of the Japan Federation of Bar Associations

PREFACE

This is the first volume in a series of Yearbooks addressing the legal systems of East Asia. The *Yearbook Law & Legal Practice in East Asia* aims to provide the business community and the legal profession with accessible, up to date information and insight into some of the most topical legal issues arising in this key geographical area.

Though the overall focus of the series is on the legal aspects of doing business in East Asia, legal issues of a more general nature will also be covered from time to time, where these are relevant for a better understanding of the particular legal culture concerned.

The idea of this new series of Yearbooks originates from a Euro-Asian traineeship programme *Law & Legal Practice in East Asia*. The year 1994 marked the first *lustrum* of this programme, and the completion of five years of successful co-operation between law firms and universities in Japan, China and Hongkeng, and Erasmus University in Rotterdam, the Netherlands. Thus far, more than 50 law students from Rotterdam studied and served traineeships in the Far East. In exchange, we had the pleasure of welcoming ten distinguished practitioners and university colleagues from the Far East in Rotterdam.

The formula and the rationale for the *Law & Legal Practice in East Asia* programme have proved to be valuable and convincing. We are delighted that one of the leading publishing houses, Kluwer Law International, has confirmed our view that legal developments in East Asia deserve global attention, by agreeing with us to launch the *Yearbook on Law & Legal Practice in East Asia* for worldwide distribution.

It is envisaged that the vast majority of the contributions will come from locally based expert practitioners and scholars. It is equally contemplated, however, that the current *East Asia* programme will leave its mark in this venture, in that a small number of talented former participants in the programme, usually young law graduates, will also be allowed to contribute each year.

The editorial structure for the series has been designed to monitor the quality standard of each volume, to guarantee an adequate input from the national legal systems concerned, and to optimise communications. We consider ourselves fortunate as, already at the launch of this series, an impressive number of leading authorities, representing various legal systems in East Asia, have been willing to join the Editorial Board or the Advisory Editorial Committee. We are also delighted that some European experts have been willing to accede to the Committee, to underscore

the Euro-Asian perspective on which the Yearbook and the originating programme are grounded.

This first volume is a special, introductory volume, commemorating the first *lustrum* of the *Law & Legal Practice in East Asia* programme. It starts out with a description of the programme by one of its founders, Annie de Roo. With one exception, the subsequent contributions concern one of the three legal systems covered thus far in the programme: Japan, the Peoples Republic of China and Hongkong.

As to China, headlines such as "the giant awakes", have been in common usage for some time. The giant seems to be quite awake now, with a vast and still growing amount of legislation *in situ*, seeking to regulate and facilitate foreign investment. Dale Fischer and Michiel Sträter provide a general overview of the various methods of direct investment, and their legal intricacies. Robert van der Hum complements this overview through an analysis of the opportunities that China's special economic zone policy has to offer. The staffing of a foreign investment enterprise still tends to create particular problems. Lin Feng analyses what changes China's new employment legislation bring us. The investment in shares issued by Chinese companies constitutes a different approach to investing in China. Michiel Sträter considers the stock markets in Shanghai and Shenzhen. An even more recent and exciting development is the transformation of state owned enterprises into joint stock companies, with shares listed outside China. Tang Lizhi and Dong Lisheng give a first hand account of this development.

Perhaps Japan is the country likely to cause most confusion for western investors. Their first impression of a western type of highly advanced free market economy is often followed by frustrations over unexpected and misapprehended entry barriers. This may be particularly true in the area of mergers and acquisitions. Minouke Sonnevile and Rob Jagtenberg clarify the past and point to future perspectives. The issue of liberalisation in the services area is covered by Cees Vellekoop, focusing on the legal profession in Japan. From the lawyers to the courts is a small step, or perhaps not; Akira Ishikawa reviews the multi-faceted practice of alternative dispute resolution (ADR), an area which has recently moved to the centre of debate in western Europe, with the Woolf commission about to report. Marion Jansen describes the Japanese system of industrial relations, where ADR is the rule rather than the exception.

Hongkong's free market economy constitutes an interesting background for analysing economic torts, protecting a person's business or commercial interests. Dhirendra Srivastava and Tenne Tennekone provide a solid and lucid overview.

Two issues of a more constitutional nature are dealt with by Tom Topp and Nadja Houben. The Japanese views on peace keeping and peace enforcing operations, and the status of the International Covenant on Civil and Political Rights in Hongkong after 1997, have caused a great deal of controversy and for that reason can be viewed as essential background information on the legal and political culture in Japan and Hongkong.

The contribution by Frank van Sluis stands out as an exception, in that the geographical area covered is Vietnam. This overview of legal aspects of investment however fits in perfectly with this Yearbook, and in view of Vietnam's economic potential it seems almost inevitable that further aspects of Vietnamese law will be dealt with in the Yearbook volumes still to come.

A.J. de Roo and R.W. Jagtenberg

ACKNOWLEDGMENTS

Many persons and institutions have inspired and encouraged us to go all the way from establishing a scheme of traineeships for European law students in East Asia, to the launch of a Yearbook, providing broad annual coverage of legal developments in the Far East.

First and foremost, we are deeply grateful to Mr Andreas van Agt and to Mr Kohken Tsuchiya for their kind and encouraging words at the outset of this very first volume.

Chronologically, we must start out paying tribute to those, who have stimulated us to embark on a traineeship project in East Asia. This programme provided the regional network, which now sustains the series of Yearbooks. We are indebted to Dan Fenno Henderson for his encouragement, both in Rotterdam and in Seattle. We intend to engineer the Euro-Asian perspective further in this series. Next, we must record our debts of gratitude to all those private companies, government institutions, foundations and associations which have enabled us to operate our programme, either through their direct financial support, or by making accommodation available at especially favourable terms. In the period antedating the traineeship programme, the *Koninklijke Nederlandse Academie van Wetenschappen* and the Chinese Academy of Social Sciences enabled us to visit China. We are most grateful to the Dutch Ministry of Education and the Netherlands University Foundation for International Co-operation (NUFFIC) for their generous support as from 'day one'. The active involvement of the Van Beek Fonds covers the same period, and on behalf of all beneficiaries we like to express our gratitude to the governors, and Mr. F. Stapels in particular.

Our thanks are equally due to the Tokai Bank Nederland, and to Mitsui O.S.K. Lines, Mr. N. Haga of the Japan - Netherlands Society of the Kansai and the Urayasu International Friendship Association for their much appreciated support. We also thank Ms. Joyce Wong of the Hongkong Law Society and professor Xie Shu-sen in Shanghai for their continual readiness to help.

It is the genuine commitment of individuals which makes projects work. Many colleagues, indeed friends, made the traineeship programme work and the Yearbook project possible. While pleading guilty of incompleteness, we like to mention two colleagues who have been particularly helpful and supportive at all times: professor Akira Ishikawa and professor Dharendra Srivastava. We hope that our co-operation may be continued for many more years.

Finally, at our home university, we like to thank the head of our comparative law department, professor Esin Örüçü, for her help and her patience. The importance of East Asia for comparative lawyers is evidenced by the contributions in this work.

A.J. de Roo and R.W. Jagtenberg
Rotterdam, 1995

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LIST OF ABBREVIATIONS

ADCOM	Administrative Committee for the Special Economic Zones of Guangdong Province
ADR	Alternative Dispute Resolution
AML	The Anti-Monopoly Law
AWACS	Airborne Warning and Control System
BCC	Business Co-operation Contract
BOC	Bank of China
BOT	Build Operate Transfer Contract
CDU	Christlich Demokratische Union
CIC	Christian Industrial Committee
CIETAC	China International Economic and Trade Arbitration Commission
CITIC	China International Trust and Investment Corporation
CJV	Co-operative Joint Venture
CMSN	China Merchants's Steam Navigation Co.
CPC	Communist Party of China
CSCE	Conference on Security Co-operation Europe
CSU	Christlich Soziale Union
EJV	Equity Joint Venture
ETDZ	Economic and Technological Development Zone
FDP	Freie Demokratische Partei
FEFTCL	Foreign Exchange and Foreign Trade Control Law
FIL	Foreign Investment Law
FTC	Fair Trade Commission
FTU	Federation of Trade Unions
GATT	General Agreement on Tariffs and Trade
GG	Grundgesetz
GJB	Gaikokuho Jimu Bengoshi
GNP	Gross National Product
HKIAC	Hong Kong International Arbitration Centre
HKSAR	Hong Kong Special Administrative Region
ICCPR	International Covenant on Civil and Political Rights
ICESR	International Covenant on Economic and Social Rights
ILO	International Labour Organisation
IMO	International Maritime Organisation
ITC	Investment Transaction Centre
JETRO	Japan External Trade Organisation
JLG	Joint Liaison Group
JVE	Joint Venture Enterprise
LAC	Legislative Affairs Commission
LDP	Liberal Democratic Party
LL	Linke Liste
M & A's	Mergers and Acquisitions

MITI	Ministry of International Trade and Industry
MOF	Ministry of Finance
MOFERT	Ministry of Foreign Economic Relations and Trade
MOFTEC	Ministry of Foreign Trade and Economic Co-operation
NATO	North Atlantic Treaty Organisation
NICs	Newly Industrialising Countries
NUFFIC	Nederlandse Organisatie voor Internationale Samenwerking in het Hoger Onderwijs
NPC	National People's Congress
NPR	National Police Reserve
OECD	Organisation for Economic Development and Corporation
PDS	Partei für den demokratischen Sozialismus
PEO	Peace Enforcing Operations
PKO	Peace Keeping Operations
PRC	People's Republic of China
RMB	Renminbi
SAEC	State Administration for Exchange Control
SAR	Special Administrative Region
SASOA	State Administration of State Owned Assets
SBV	State Bank of Vietnam
SCAP	Supreme Commander for the Allied Powers
SCCI	State Committee for Co-operation and Investment
SDF	Self-Defense Forces
SEC	Securities and Exchange Commission
SEL	Securities and Exchange Law
SEZ	Special Economic Zone
SHSE	Shanghai Securities Exchange
SOE	State Owned Enterprise
SPD	Sozialdemokratische Partei Deutschlands
STIR	Stimuleringfondsen voor Internationalisering
SZSE	Shenzhen Stock Exchange
TOB	Tender Offer Bid
TUC	Trade Union Council
UCC	Uniform Commercial Code
UK	United Kingdom
UN	United Nations
UNCITRAL	United Nations Conference on International Trade Law
UNIDO	United Nations Industrial Development Organisation
UNOSOM II	United Nation Operation in Somalia II
US	United States of America
WFOE	Wholly Foreign Owned Enterprise
WMO	World Meteorological Organisation
WTO	World Trade Organisation

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