

ROUTLEDGE RESEARCH IN INTERNATIONAL COMMERCIAL
LAW

Jurisdiction and Arbitration Agreements in International Commercial Law

Zheng Sophia Tang



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First published 2014
by Routledge
2 Park Square, Milton Park, Abingdon, Oxon OX14 4RN

and by Routledge
711 Third Avenue, New York, NY 10017

Routledge is an imprint of the Taylor & Francis Group, an informa business

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British Library Cataloguing in Publication Data

A catalogue record for this book is available from the British Library

Library of Congress Cataloging-in-Publication Data

Tang, Zheng Sophia, author.

Jurisdiction and arbitration agreements in international commercial law / Zheng Sophia Tang.

pages cm. – (Routledge research in international commercial law)

Includes bibliographical references and index.

1. Arbitration agreements, Commercial. 2. International commercial arbitration. 3. Jurisdiction. 4. Commercial law. I. Title.

K2400.T356 2014

343.08'7–dc23

2013033349

ISBN: 978-0-415-62554-8 (hbk)

ISBN: 978-0-203-71278-8 (ebk)

Typeset in Baskerville

by Wearset Ltd, Boldon, Tyne and Wear



Printed and bound by CPI Group (UK) Ltd, Croydon, CR0 4YY

Jurisdiction and Arbitration Agreements in International Commercial Law

Arbitration and jurisdiction agreements are frequently used in transnational commercial contracts to reduce risk, gain efficacy and acquire certainty and predictability. Because of the similarities between these two types of procedural autonomy agreements, they are often treated in a similar way by courts and practitioners.

This book offers a comprehensive study of the prerequisites, effectiveness and enforcement of exclusive jurisdiction and arbitration agreements in international dispute resolution. It examines whether jurisdiction and arbitration clauses have identical effects in private international law and whether they have been or should be given the same treatment by most countries in the world. By comparing the treatment of these clauses in the US, China, the UK and the EU, Zheng Sophia Tang demonstrates how, in practice, exclusive jurisdiction and arbitration agreements are enforced. The book considers whether the Hague Convention on Choice of Court Agreements could be treated as a litigating counterpart to the New York Convention, and whether it could work successfully to facilitate judicial cooperation and party autonomy in international commerce.

This book breaks new ground in combining updated materials in EU, US and UK law with unique resources on Chinese law and practice. It will be valuable for academics and practitioners working in the field of private international law and international arbitration.

Dr Zheng Sophia Tang (LLB, LLM, PhD, Barrister, Accredited Mediator) is an Associate Professor in business law at the Centre for Business Law and Practice, University of Leeds. Her research interest lies in the field of private international law, arbitration and commercial corruption. She is the author of *Electronic Consumer Contracts in the Conflict of Laws* (Hart, 2009) and she has published extensively in internationally renowned, peer-reviewed journals.

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Zheng Sophia Tang

Preface

Arbitration and jurisdiction agreements are frequently used in transnational commercial contracts. Sophisticated commercial parties adopt them to reduce risk, gain efficacy and acquire certainty and predictability. Both agreements have specific contractual requirements for their formation, incorporation and validity, have the prorogation effect to make the chosen forum competent and have the derogation power to deprive any otherwise competent fora of their jurisdiction. Both generate complex and interesting questions on the conflict of jurisdiction and interaction with anti-forum shopping measures, such as *lis pendens*, *forum non conveniens*, anti-suit injunction and anti-arbitration injunction. Because of the similarities between the two types of frequently used dispute resolution agreements, they are often treated in a similar way by courts and practitioners.

This book offers a comparative study on the prerequisites, effectiveness and enforcement of exclusive jurisdiction and arbitration agreements in international dispute resolution in order to determine whether the clauses have the identical effects in private international law and whether they have been or should be given the same treatment by most countries in the world. The book compares the treatment of jurisdiction and arbitration clauses in the US, China, the UK and the EU to demonstrate how, in practice, exclusive jurisdiction and arbitration agreements are enforced. In light of all this, the book considers whether the Hague Convention could be treated as a litigating counterpart of the New York Convention and whether it could work successfully to facilitate judicial cooperation and party autonomy in international commerce.

I gave a four-day training course on law relating to procedural autonomy in the EU-Macau Judicial Cooperation/Mutual Trust Programme in Macau during June 2011. This lecture inspired me to do further research on this issue and to compare detailed rules concerning validity, effectiveness and enforcement between jurisdiction and arbitration agreements. I would wish to express my gratitude and appreciation to Professor Paul Beaumont for his recommendation and Macao Law Reform and International Law Bureau for the invitation and organization.

I wish to thank my previous colleague, Dr Christa Roodt, for her stimulating discussions with me, and an anonymous reviewer for his/her positive and constructive comments. I want to thank Professor YongPing Xiao, who provided me with opportunities to do research and to use the resources at the Wuhan University in order to complete the writing on the Chinese law part.

I am grateful to my parents, Yang Cao and ZhuoLiang Tang, and my husband, Roy Rao. Their support and encouragement were important to me in completing this work.

Z.S. Tang
Leeds, 31 July 2013

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