
ASIA ARBITRATION HANDBOOK

EDITED BY
MICHAEL J. MOSER
JOHN CHOONG

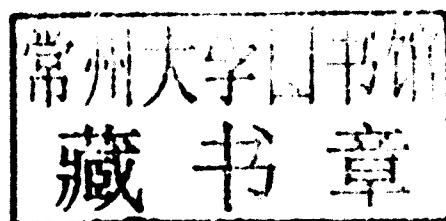


OXFORD

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ASIA ARBITRATION HANDBOOK

FOREWORD

by John Beechey

Asia's emergence as an economic powerhouse and the readiness with which governments, public and private sector enterprises, managers, and entrepreneurs in Asia have risen to the opportunities and challenges of globalization rank among the most significant developments in world trade in recent years.

As that engagement in international trade continues to burgeon, recourse to arbitration, for centuries a preferred option for the resolution of commercial disputes in the West, has seen a dramatic increase in Asia. Some Asian jurisdictions have long provided for arbitration: it is part of the legislative fabric. In others, the use of arbitration is either restricted or still regarded with a degree of ambivalence.

Arbitral institutions around the world have seen workloads grow to an extent unimaginable even 20 years ago. Many of them can attribute at least part of that growth to cases from the Asia-Pacific region. Among the institutions which have seen the greatest increases in such referrals are those located in, or close to, these vibrant and emerging markets. Some are new, some are long established, but, new or old, they need to be able to demonstrate that users might safely put their confidence in arbitration as an effective means of resolving both commercial and investor-State disputes. The better users and potential users of arbitration are informed about, and the more they are engaged in, the process, the more likely it is that parties who ultimately resort to arbitration will consider that they have had a proper opportunity to be heard as and when the time comes.

In that regard, the publication of the *Asia Arbitration Handbook* is a timely and important contribution to the process of making users aware of the advantages, the peculiarities, and the pitfalls of arbitration in Asia. The editors have identified some 24 jurisdictions in the region as appropriate subjects for informed and perceptive commentary. That is an ambitious exercise and it is one in which they have succeeded: the *Asia Arbitration Handbook* brings together contributions from writers with first-hand knowledge and experience of what arbitration is about in each of these diverse jurisdictions. They explain in clear and authoritative terms what might be expected.

It is with great pleasure, therefore, that I take the opportunity to write these few words of introduction and to congratulate the editors, Michael Moser, John Choong, and their team for their initiative in producing this book.

John Beechey
Chairman, ICC International Court of Arbitration
Paris

FOREWORD

by Neil Kaplan CBE QC SBS

There is no shortage of books on arbitration and hardly a week goes by without a new release. Arbitration in Asia has seen a veritable explosion during the last 25 years and thus it is no surprise that books on arbitration in the wider Asia-Pacific region are needed and are of wide interest.

Michael Moser and John Choong have put together a stellar cast of contributors to encapsulate in one work all that is needed to know about international arbitration in no less than 24 different jurisdictions in the region with a bonus chapter on the ICC. The ICC has seen a significant growth in its Asia-Pacific workload as have the other major centres in the region.

The advantage of this book is that it contains all the information in one volume on a country-by-country basis—all predicated on the same template for ease of reference. It is a very comprehensive list of jurisdictions. Each author or group of authors is well known and knowledgeable in the law of their jurisdiction. The 24 countries are a *mélange* of common law and civil law backgrounds. Each chapter introduces the legal system, discusses the history of arbitration, and comments on present and future trends. There follows a discussion of the relevant law on arbitration, local institutions, the role of the court in support of arbitration, the procedures adopted during an arbitration, and of course the vexed question of challenges and enforcement. Each chapter has a strong focus on the actual practice of arbitration and the attitude of the courts to arbitration. A user-friendly venue requires a supportive judiciary so it is very helpful to be forewarned!

What makes this work stand out is that it also devotes a section to investor-State arbitration which, it is assumed, will become increasingly relevant in this region.

As the law and practice of arbitration develops in these jurisdictions it is hoped that the publishers will find a convenient way of tracking these developments through regular updates before the need for a second edition becomes apparent.

All the authors are to be congratulated on giving up their valuable time to share the knowledge that each has accumulated through their respective practices.

As the late Lord Bingham purposely and presciently misquoted from Arthur Hugh Clough in Lord Bingham's Preface to one of the first books on Hong Kong arbitration 'But eastward look, the land is bright'.

Neil Kaplan
London and Hong Kong

PREFACE

In recent years, Asia has come to play a major role in world trade and investment. Not surprisingly, one consequence of this development has been a dramatic rise in the number of arbitrations in Asia. This has been matched by a proliferation of arbitral institutions, the modernization of arbitral laws, and a growing adherence to international arbitration conventions throughout the region.

This volume is intended to provide a handy yet comprehensive reference to the law and practice of international arbitration in Asia. The book covers 24 Asian jurisdictions, each of which is dealt with in a separate chapter. A special chapter is included on ICC arbitration in Asia. In 2008 the ICC Court of Arbitration established the first ever branch of its Paris-based Secretariat in Hong Kong.

Each of the jurisdiction chapters in the book adheres to a common structure and format. This not only allows for ease of navigation but ensures, to the extent possible, that all of the same topical issues are covered in each of the jurisdictions surveyed.

One of the principal aims of this book has been to address both international commercial arbitration and investor-State arbitration in each of the major Asian jurisdictions. The latter topic has recently begun to capture attention in Asia and is likely to be of increasing importance in the years ahead.

Our hope is that this book will prove to be a valuable resource for practitioners, scholars, students, and business persons alike.

In compiling this book, we owe a large debt of gratitude to the many contributors who have generously taken time off from their busy schedules, to share their knowledge, experience, and unique perspectives on arbitration. We are also particularly grateful for the deference which they have shown to our several rounds of editorial changes.

We would like to acknowledge the extraordinary support we have received from the team at OUP, and in particular, from Vicky Pittman, Amanda George, Jessica Huntley, Fiona Stables, and Joy Ruskin-Tompkins. This book would not have made the publication deadline, without their professionalism and enthusiasm throughout the process.

Lastly, given the ambitious scope of the present undertaking, and the volume and range of material covered, there will no doubt be room for further improvement. This will have to await a future edition of the book. In the meantime, we look forward to receiving suggestions or clarifications on any of the material, which can be addressed to us and sent through the publishers.

Michael J Moser and John Choong
Hong Kong
July 2011

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Mr Moser is Honorary Chairman of the Hong Kong International Arbitration Centre, a Court Member of the LCIA, Board Member of the SCC Stockholm Arbitration Institute, Vice President of the Asia Pacific Regional Arbitration Group, Co-Chair of the China International Arbitration Club, International Advisory Board Member of the SIAC, and a Commission Member of CIETAC. He is a Chartered Arbitrator, a Fellow of the CIArb and a panel member of the leading arbitration institutions. He is also General Editor of the *Journal of International Arbitration*.

Mr Moser is a graduate of the Harvard Law School and holds a PhD (With Distinction) from Columbia University.

Mr Moser is a member of 20 Essex Street Chambers in London and maintains offices in Singapore and Hong Kong.

John Choong is based in the Hong Kong office of Freshfields Bruckhaus Deringer, specializing in Asia-related cross-border disputes, especially arbitration.

Mr Choong has over ten years of disputes experience in both Hong Kong and Singapore, and has been involved in some of the most important international commercial and treaty arbitrations in Asia, including several billion-dollar arbitrations. His matters have involved arbitrations under the major rules, in a broad range of industries in much of Asia (including Hong Kong, the PRC, Singapore, India, Indonesia, the Philippines, Malaysia, Taiwan, Japan, Vietnam, Brunei, and Mongolia), and in litigations up to the UK Privy Council.

He is a Fellow of the Chartered Institute, and the Hong Kong and Singapore Institute of Arbitrators, and has been listed as a leading individual for dispute resolution in Chambers Global.

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