

# Essentials of the Laws of the Belt and Road Countries

## Austria, Belgium, Czech Republic

Edited by

Guiguo WANG

Alan Yuk-Lun LEE

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ZHEJIANG UNIVERSITY PRESS

浙江大学出版社

## 图书在版编目(CIP)数据

“一带一路”沿线国法律精要:奥地利、比利时、捷克卷 = Essentials of the Laws of the Belt and Road Countries; Austria, Belgium, Czech Republic: 英文/王贵国, 李臻麟, 梁美芬主编. —杭州: 浙江大学出版社, 2017. 8  
ISBN 978-7-308-17230-1

I. ①一… II. ①王…②李…③梁… III. ①法律—研究—奥地利—英文②法律—研究—比利时—英文③法律—研究—捷克—英文 IV. ①D910.4

中国版本图书馆 CIP 数据核字(2017)第 187558 号

“一带一路”沿线国法律精要:奥地利、比利时、捷克卷(英文版)  
Essentials of the Laws of the Belt and Road Countries; Austria, Belgium, Czech Republic  
王贵国 李臻麟 梁美芬 主编

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出品人	鲁东明
总编辑	袁亚春
丛书主持	陈佩钰 张琛
责任编辑	陈佩钰(yukin_chen@zju.edu.cn)
文字编辑	祁潇
责任校对	董唯
封面设计	城色设计
出版发行	浙江大学出版社 (杭州市天目山路148号 邮政编码310007) (网址: <a href="http://www.zjupress.com">http://www.zjupress.com</a> )
排版	浙江时代出版服务有限公司
印刷	虎彩印艺股份有限公司
开本	710mm×1000mm 1/16
印张	21
字数	500千
版印次	2017年8月第1版 2017年8月第1次印刷
书号	ISBN 978-7-308-17230-1
定价	88.00元

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浙江大学出版社发行中心联系方式 (0571)88925591; <http://zjdxcsb.tmall.com>

# Introduction to International Academy of the Belt and Road

Founded in January 2016, International Academy of the Belt and Road (IABR) is the first research institution concerning the Belt and Road Initiative in Hong Kong, and is committed to setting up an international platform for academic and professional communication. Experts of countries along the Belt and Road Initiative from various areas, such as law, economics, finance, investment, politics and international relations, are invited to share their views and conduct research on relevant issues in the implementation of the Belt and Road Initiative. The IABR has held several international forums on the Belt and Road, and compiled *Essentials of the Laws of the Belt and Road Countries Series* and *Dispute Resolution Mechanism for the Belt and Road Initiative*. The IABR aims at providing expert services to corporations and institutions involved in the Belt and Road Initiative.

Professor Guiguo Wang serves as the President of the Academy, while Dr Alan Yuk-Lun Lee and Dr Priscilla Mei-Fun Leung serve as Vice Presidents. The IABR has an International Advisory Board with 26 experts and scholars, 42 fellows and 7 associate fellows from all over the world. The IABR endeavours to contribute to education and training of specialists so that Hong Kong could take full advantage of its unique position to develop international economy and keep world peace.

## Preface

The Belt and Road (“B&R”) Initiative, since it was officially announced by the Chinese Government in 2013, has generated much excitement not only within China but also internationally. The “Belt” refers to a transnational economic cooperation initiative among the countries along the ancient Silk Road from central China to central Asia and then to Western Europe with Amsterdam as the finishing point—the “Silk Road Economic Belt”; the “Road” indicates an economic cooperation initiative among countries along a new maritime Silk Road from China, South-east Asia, India, Sri Lanka, Yemen, Egypt, Greece, Italy to the Netherlands (Amsterdam)—the “Maritime Silk Road”. As such, the B&R Initiative mainly focuses on the connectivity and cooperation among countries in Eurasia and some African countries. The National Development and Reform Commission, Ministry of Foreign Affairs and Ministry of Commerce of China with the authorisation of the State Council of China released the official document “Vision and Actions on Jointly Building Silk Road Economic Belt and 21st-Century Maritime Silk Road” in March 2015, which outlines the direction and rough contents of the B&R Initiative. An official B&R Initiative website was launched in March 2017. Yet, none of these official documentations indicates what specific countries are covered under the B&R Initiative, which implies that the B&R Initiative is an open-ended concept. Having said that, it is clear that the B&R Initiative aims at promoting economic cooperation among the countries concerned. It is equally clear that with or without a precise coverage, the B&R Initiative includes a large number of countries with different cultures, history, traditions, religions, and political and legal systems.

By its nature, implementation of the B&R Initiative involves cross-border movement of people, goods and services, capital and technology, a process which unavoidably entails interactions among the concerned countries. What norms should be observed in transacting business in these countries? Do as the Romans do, according to Western culture. As for the traditional Chinese culture such as the *Book*

of Rites(*Liji Quli I*), “When crossing the boundaries (of a state), one should ask what its prohibitory norms are; having fairly entered it, one should ask about its customs; before entering a house, one should ask about the names to be avoided whilst in it.” Knowing the prohibitory norms, customs and names to be avoided of each country along the B&R is of utmost importance for the successful implementation of the initiative. It is precisely for this reason that this book series—*Essentials of the Laws of the Belt and Road Countries*—has been prepared.

This book series had its origin in a workshop that was held by the International Academy of the Belt and Road in Hong Kong, where some of its authors were present. The consensus of the workshop was that mutual understanding among the B&R countries over their legal traditions, constitutional and governance frameworks, laws on trade transactions and other immediately relevant areas such as financial regulation, employment law and environmental law was crucially important for implementing the B&R Initiative. It is only through a proper understanding of commonalities and differences between these nations that we could develop a meaningful framework for carrying out the related trade, investment and other activities.

The authors were provided with terms of reference for the chapter construction. Each country study would begin with an overview of its legal system relating to cross-border commercial transactions. The substantive parts of each chapter deal with customs systems, foreign trade law, law on foreign direct investments, monetary and banking law, laws relating to construction and infrastructure, labour management and treatment, environment and dispute resolution—both judicial and non-judicial (ADR).

It is also part of the terms of reference that the authors should focus not only on the black letters of the laws but also on how these laws in fact operate in the market place. The authors were given a fair amount of leeway in examining each of these aspects in order that they could highlight those areas where their own nations would have a particular interest. The result is a happy blend of not only different writing styles but also different aspects of law in action.

A distinctive feature of this highly globalised world is coexistence of multilateral and bilateral economic cooperative schemes. As a result, trade and investment barriers have been removed or reduced with the development of both multilateral and bilateral cooperative programmes. These schemes not only regulate trade, investment and finance and banking at the international level but also directly impact on law-making and law enforcement at the national level. For this reason, we decided to have chapters devoted to two such associations—the European Union and ASEAN. These chapters provide support to the study of countries belonging to these associations and explain the interrelations that exist in terms of laws and legal processes between the central authorities and member states. A study of how EU and ASEAN authorities guide, coordinate and encourage a unified legal order for the promotion of trade and economic cooperation is also critical to the B&R Initiative which can learn from relative successes and lessons of the existing regional organisations.

When the B&R Initiative was first introduced, the United States and Japan were not among the B&R countries. Yet, as they are important countries for international economic cooperation, the B&R Initiative is an open concept and there are signs that the two countries may eventually take part in the B&R Initiative, we decided to include them in this book series.

We believe that, by providing an overview of the laws and legal structures that shape business relationships of the countries along the B&R, this book will contribute in a meaningful way to the implementation of the B&R Initiative.

Guiguo WANG  
Alan Yuk-Lun LEE  
Priscilla Mei-Fun LEUNG

18 April 2017

## About the Editors

Guiguo Wang is University Professor and Scholar of “1000 Talents”, Zhejiang University, in Hangzhou, China; Eason-Weinmann Chair of International and Comparative Law, School of Law, Tulane University, in New Orleans, USA; President of International Academy of the Belt and Road (Hong Kong, China); Chairman of the Hong Kong WTO Research Institute; Chairman of the National Committee (Hong Kong, China) and Titular Member of the International Academy of Comparative Law; former Dean of School of Law, City University of Hong Kong in Hong Kong, China and former Director of the Centre for Judicial Education and Research, City University of Hong Kong in Hong Kong, China; and Vice President of the Chinese Society of International Economic Law.

Professor Wang has an arbitration experience for more than 20 years. He is now President of Hangzhou International Arbitration Court and is an arbitrator of China International Economic and Trade Arbitration Commission; Beijing Arbitration Commission; Hong Kong International Arbitration Centre; Panel of Arbitrators of Korean Commercial Arbitration Board and Chinese Arbitration Association of Taiwan, China.

Professor Wang, holder of the JSD degree from Yale Law School and LLM degree from Columbia Law School, is the first person from the Chinese mainland to obtain the JSD degree from Yale Law School since 1949. Having obtained the JSD degree from Yale, he worked in several world-renowned law firms in countries and regions such as the United States, Canada and Hong Kong of China.

Professor Wang used to be an official at the Department of Law and Treaties, Ministry of Foreign Affairs of China. At the recommendation of the Chinese Foreign Ministry, he became the first Chinese recipient of the United Nations Institute for Training and Research fellowship which enabled him to participate in the seminars

offered by the International Court of Justice and to study at The Hague Academy of International Law, the United Nations and the World Bank in 1980.

In the summer of 2010, Professor Wang served as a special lecturer at The Hague Academy of International Law and gave a series of lectures on “Radiating Impact of WTO on Its Members’ Legal System; The Chinese Perspective”.

Professor Wang has published more than 20 books and over 100 journal articles in established journals in China and other countries. His *Legal Order of International Trade* published by the Law Press in 1987 is one of the earliest treatises on the GATT. Professor Wang’s main works include: *Sino-American Economic Exchanges; The Legal Contributions* (1984); *International Banking and Financial Law* (1988); *Contemporary Legal Prescriptions for International Investment* (1988); *China’s Investment Law; The New Directions* (1988); *International Economic Law* (1992); *Wang’s Business Law of China* (4th Ed., 2003); *The Law of the WTO* (2003); *International Trade Law* (2004); *The Law of the WTO; China and the Future of Free Trade* (2005); *International Monetary and Financial Law* (3rd Ed., 2007); *International Investment Law* (2nd Ed., 2008); “Radiating Impact of WTO on Its Members’ Legal System; The Chinese Perspective”, *Collected Courses of The Hague Academy of International Law*, vol. 349 (2010); *International Investment Law; A Chinese Perspective* (in English) (2015); *International Law Perspective of the Belt and Road Initiative* (co-ed.) (2016); *Dispute Resolution Mechanism for the Belt and Road* (co-ed.) (2016).

Dr Yuk-Lun Lee is a Justice of Peace. He graduated from Lincoln University, USA in 2009 with an honorary doctorate of Management, and was elected as the academician of Canadian Chartered Institute of Business Administration (CCIBA). In 2014, he obtained his Master of Business Administration at the University of Wales Newport, UK. Now, Dr Lee is studying for the collaborative PhD degree programme with Fudan University (APRU) and Stanford University.

Dr Lee is also keen in charity affairs, and is chairman (2017/2018) of Tung Wah Group of Hospitals, founding chairman of Phoenix Charitable Foundation, honorary permanent president of Hong Kong Commerce and Industry Associations, China. He also serves as chairman of Pico Zeman Asset Management Limited and Volk Favor Food Company Limited, Vice President of the International Academy of the Belt and Road (IABR), committee member of All-China Federation of Returned Overseas Chinese, committee member of CPPCC Beijing Committee, Director of China Overseas Friendship Association and member of Board of New Asia College of the Chinese University of Hong Kong, China.

Dr Priscilla Mei-Fun Leung has taught at the School of Law, City University of Hong Kong for 24 years and is specialised in Chinese Law, Hong Kong Basic Law and conflicts of law amongst the Chinese mainland, Hong Kong and Taiwan.

Dr Leung is the Chairman of the Judicial and Legal Affairs Committee of the Legislative Council in Hong Kong. She is Associate Professor at the School of Law, City University of Hong Kong; Barrister-at-Law; Arbitrator(CIETAC) and received the Ten Outstanding Young Persons Award of the Year 2000.

Dr Leung has published different articles and books on the above areas both in English and Chinese, including the China Law Reports series(English), the China International Economic and Trade Arbitration Commission Awards series(English) and *Hong Kong Basic Law: Hybrid of Chinese Law and Common Law* (published in 2007 in English). Her publications also include *Comparative Studies of Family Law between Chinese Mainland, Taiwan and Hong Kong* published by the Joint Publishing House in June 2003(Chinese), *Legal Reform of China*(co-ed) in 1994.

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# **Austria**

Writing Group led by Professor Bea Verschraegen



## About the Authors

Ms Bea Verschraegen is full professor at the University of Vienna (Austria), and head of the Section for Comparative Law, Unified Law and Private International Law.

Since 2014, Florian Heindler has been working as legal consultant for a major Austrian bank. From 2009 to 2013 he worked as a researcher and lecturer at the Department of European, International and Comparative Law at the University of Vienna. In addition, he acquired practical experience in law firms including Specht Böhm and CMS Reich-Rohrwig Hainz attorneys at law. He studied Law and Slavonic Studies in Vienna and Moscow. He also lectures at the University of Vienna and Masaryk University of Brno and regularly gives presentations on conferences and other occasions. He is the author of the monograph on *Russian Law of Corporations and Partnerships* in the *International Encyclopaedia of Laws* and of articles in Austrian, German and Russian journals.

# Introduction

Florian Heindler

In 1994 the Austrian citizens decided in a public referendum that Austria shall become a member of the EU. Hence, on 1 January 1995 it took over the *acquis communautaire*, i. e. the set of treaties and common legal provisions. Law-making and administrative powers in accordance with the treaties were transferred to the level of the EU and the Austrian constitution was amended accordingly. Austria also became part of the Schengen territory and became a full member of the eurozone when the respective treaties entered into force and the euro was introduced as a single common currency.

EU law generally has primacy over national law. However, the interplay between the EU Charter of Fundamental Rights, EU treaty law, EU regulations and directives on the one side and national constitutional law, national law, regional law and municipal law on the other side is far more complex and additionally, the application of international law (directly or indirectly) can be difficult and complex. Having said that, various observations can be made. EU law is limited to certain areas of law. The traditional structure of the Austrian legal system (e. g. providing for a division between civil law and public law) is not relevant to the division of competences in the EU legislation. Moreover, EU legislation has broadly described competences and must take into account restrictions to areas wherein rule-making is reserved to the national lawmaker. Taking into account the headings of the following chapters, particularly customs legislation, foreign trade and monetary and banking law are largely determined by directly applicable EU legislation. Whereas labour law, social insurance, civil law and particularly civil procedural law still largely depend on national rule-making, they are driven and influenced partly by EU directives (e. g. in the area of consumer protection and free movement of workers).

The Austrian administration and judiciary after more than 20 years of membership in the EU are used to the relevance and importance of EU law application. EU matters have been integrated into the curriculum of Austrian civil