

BOOK REVIEWS

Arbitration in China: A Practical Guide
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 CHANG [Hong Kong: Sweet & Maxwell Asia,
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It is indeed timely and welcome that we now have an authoritative guide on the arbitration law in China (including the Hong Kong SAR and Taiwan). A huge amount of the existing literature on arbitration laws and principles has largely been produced by authors from England, Europe and the United States. Examples include the well-respected treatises of Alan Redfern and Martin Hunter, *International Commercial Arbitration* (London: Sweet & Maxwell, 1999); Emmanuel Gaillard and John Savage, *Fouchard, Gaillard and Goldman on International Commercial Arbitration* (The Hague/Boston: Kluwer Law International, 1999) and Gary B. Born, *International Commercial Arbitration: Commentary and Materials* (Ardsley, NY: Transnational Publishers, 2001). It comes as no surprise that it has taken a large team of academics, practitioners and organisational and institutional experts to produce this work and that the result is two thick volumes of exposition on the subject in its first impression alone. Access to the information contained in this body of work, particularly for academics and practitioners overseas, was difficult to obtain not least due to geographical and language barriers as well as the diversity of resources.

The last decade has witnessed the extraordinary rise of mainland China as an economic powerhouse, which has shown its seriousness in pursuing economic growth with its accession to the World Trade Organisation and the negotiation of free trade agreements with some of its major trading partners. Concomitant with its economic advances as well as trade and investment expansion, the need for recourse to alternative dispute resolution processes inevitably

follows when differences arise with its trade and business partners. Because its trade and business partners naturally prefer alternative forums of dispute resolution over the local courts, arbitration has become the mechanism of choice, having already enjoyed a healthy history of growth and usage globally and having matured into an accepted, even preferred, avenue for resolving international commercial disputes. Moreover, the strong institutional experience of the China International Economic and Trade Arbitration Commission (CIETAC) has contributed to the advancement of the cause. In comparison, Hong Kong SAR is already a major regional arbitration hub and has developed a body of law in the area. For the sake of completeness, it made sense for the editors to include chapters on, and references to, both Hong Kong SAR and Taiwan arbitration laws in order to produce and render a comprehensive treatment of the subject into a single point of reference.

As noted, this is a two-volume work. The first volume introduces one to the history of arbitration in China and runs the gamut of its development and the current legal framework. It then approaches the process in the usual tried-and-tested way by examining the “life” of arbitration from the formulation of the parties’ arbitration agreement, through the commencement of an arbitration and the course of its proceeding, to the arbitration award and the issues relating to its recognition and enforcement. A noteworthy feature of the volume is that, unlike most other treatises on arbitration laws which stop with the exposition of general principles (and which usually contain several chapters on the introduction to arbitration, which can be somewhat redundant), such exposition forms only one of three parts of the first volume. Particularly impressive is Part 3, which contains stand-alone chapters on specialist arbitration areas, that is, on major areas of commercial transaction that have developed a penchant for making arbitration the dispute resolution mechanism of choice. These run the eclectic gamut of construction, intellectual property and domain name, maritime,

labour, international and bilateral investments, joint ventures and foreign enterprises, insurance, finance, real estate and securities. The editors drew on the strengths of each of its experts in these fields to render the work comprehensive and credible. The second volume serves as a one-stop reference for the texts of current Chinese arbitration laws, rules and other materials. Again, it is useful in its practicability and accessibility for practitioners and researchers alike, although it may become dated over time. Hence, readers are still advised to keep abreast of legislative and institutional rule developments beyond the date of publication.

The first volume encapsulates the essence of the intellectual activity of the authors of the book. It consists of clear chapter groupings with different sets of objectives. The first group of chapters, consisting of Chapters 1 to 7, sets the "background" for the book and is different from the usual cursory introductory chapters to arbitration that may be found in most other works. The first chapter, in particular, is important in setting the tone for the rest of the chapters, which is to provide the backdrop against which arbitration is conducted in China. It charts the tradition of arbitration in China, with a particular focus on the tri-track approach (foreign-related, domestic and administrative), especially the bifurcated regimes of international and domestic arbitration. Such contextual information is important for understanding the peculiarities and intricacies of what is essentially a western construct, but adopted by and transposed to a country which is steeped in the tradition of more informal conciliatory processes and familiar with the internalisation of disputes (outside of the public system of dispute resolution). The subsequent chapters focus on the legal framework, arbitral institutions, bifurcated regimes, offshore options for trade and investment disputes and conflict of laws issues. There is also a chapter on the note-worthy idiosyncrasies and criticisms of the current system in China (Chapter 4). As noted, these chapters are important for they provide essential background information which will be particularly helpful for a reader who is interested in embarking on a further exploration of the subject.

The second group of chapters, consisting of Chapters 8 to 14, contains the general Chinese laws on arbitration and runs the spectrum of the arbitration process from its inception until its conclusion. This is perhaps the most technical area of the book as it approaches the system as almost every other arbitration treatise does, in chronological fashion, and in an efficient easy-to-reference approach. Hence,

the authors here apply the Arbitration Law of 1994, the Institutional Rules of CIETEC and the China Maritime Arbitration Commission (CMAC) and other relevant materials to the subject matter. They also draw from their experiences and from Chinese case law and arbitral decisions while taking the reader through the course of an arbitration, including the creation of the arbitration agreement, the constitution of the tribunal, the commencement of arbitration, its procedures and proceedings, the possible interim measures, the arbitral award, and finally the post-award issues, particularly relating to recognition and enforcement. Chapter 12, which looks at alternative dispute resolution procedures in China in general, deals with a subject that usually does not make an appearance in other arbitration books. It seems a little out of place, sandwiched between chapters dealing specifically with arbitration laws, and perhaps would have been more at home as the final chapter of the first group instead. Like Chapter 4, it does point out interesting differences between arbitration and other forms of alternative dispute resolution and in the process draws the reader's attention to some unique features of arbitration in China.

The third group of chapters, consisting of Chapters 15 to 24, is the most interesting and unique feature of this body of work. The chapters independently and individually focus on specialist areas of transactions in which arbitration plays a major role in dispute resolution. This is where the approach of having experts in each field author individual chapters is most fruitful and makes the most sense. However, the scope and depth of coverage by different authors on each subject matter vary considerably. For example, the chapters on construction, insurance and finance are rather short given the importance of their subject matter. This is understandable in the case of insurance arbitration as it is still in its infancy and the "Financial Disputes Arbitration Rules" have only recently entered into effect. However, the chapter on construction arbitration is perhaps too brief in view of the fact that this is a major transactional area where arbitration is commonly used as the tool of final dispute resolution and in combination with other alternative dispute resolution processes such as the engineer's determination, dispute boards and conciliation. Gaining an understanding of construction arbitration is particularly important given the growth in construction projects in China, the domestic and foreign participation in these works, and the time and cost of these projects. In contrast, the chapters on intellectual property and internet

domain names, and maritime law are much more comprehensive.

According to statistics from the China Internet Network Information Center (CNNIC) (online: <<http://www.cnnic.net.cn>>), the number of Chinese internet users, including those connecting to the internet over broadband connections, has risen sharply over the last few years. With the corresponding increase in worldwide usage and the concomitant development and growth of “borderless” commercial interaction and the exchange of information, issues relating to electronic transactions, including the protection and enforcement of intellectual property rights in China, are becoming very important indeed. Chapter 16 addresses these issues and provides a good and interesting overview of the Chinese experience in each of the specialised intellectual property areas as well as in the related areas of domain name protection, electronic contracting and computer laws.

As noted, the chapters on maritime and labour law are also insightful and relatively well developed. Other modestly-sized, but no less illuminating works include the chapters on investment, joint ventures, real estate and securities arbitration. All in all, these specialist areas are topics that should see considerable growth in analysis in the next edition, corresponding with the expected development and constant changes in transactions and the law in these fields, and the expected concomitant increase in their usage of arbitration. Unlike the other sets of chapters, it can be expected that this set of chapters (grouped under Part 3) and the list of documents under Volume 2, will see the greatest amount of revision by the time the next edition comes along, given their mutable nature.

Finally, there are the stand-alone chapters on arbitration laws in Hong Kong SAR and Taiwan as well as a chapter on the “Supreme People’s Court Draft Provisions on Arbitration”. References are occasionally made to the laws of Hong Kong SAR and Taiwan in the other chapters, but these chapters deal mostly with the development in arbitration laws on mainland China itself. Thus, the stand-alone chapters are necessary to ensure that arbitration laws in Hong Kong SAR and Taiwan are not overlooked in the overall analysis. In other words, they are necessary to complete the objectives of the book. However, those interested in a more in-depth analysis of the already well-developed arbitration laws of Hong Kong SAR and Taiwan should additionally seek out books which specifically address this subject area.

Written by practitioners with practitioners in mind, this work is notably an elaborate patchwork quilt produced by not less than thirty-five experienced and knowledgeable authors, brought together by a distinguished team of editors. It is an ambitious project and attempts to be an exhaustive treatise on the subject. Unlike most other arbitration textbooks, it takes a more practical rather than academic approach. The “practitioner-centric” approach is to be appreciated given the nature of arbitration law and the target reader who is likely to be the counsel or arbitrator wishing to obtain an understanding of the treatment of the subject in China. Certainly, the use of flowcharts, comparison tables and the like makes it even more user-friendly to the arbitration practitioner. So does the consolidation of legislation and legal instruments in a single reference point, which releases the practitioner from spending an inordinate amount of time wading through a quagmire of documents. Perhaps the only shortcoming is the relative paucity of cases and arbitral decisions referred to in Volume 1. However, all in all, it is undoubtedly an important addition to the literature and jurisprudence in arbitration law. It is certainly a logical follow-up to the book *Arbitration in Hong Kong: A Practical Guide*, which was also published by Sweet & Maxwell a year ago in December 2003. Hopefully, more work in the area within the Asia-Pacific region will emerge to balance out the surfeit of materials from the West.

I would consider this book to be a necessary addition to the bookshelf of the arbitration practitioner in China, Hong Kong SAR and Taiwan, parties to domestic and international transactions with Chinese counterparts who are drafting contracts containing arbitration provisions that provide for China as the seat of arbitration (and Chinese procedural law as the *lex arbitri*) and the application of Chinese substantive law, and academics and researchers in arbitration laws.

reviewed by WARREN B. CHIK

The World Trade Organisation: Law, Practice, and Policy BY MITSUO MATSUSHITA, THOMAS J. SCHOENBAUM & PETROS C. MAVROIDIS (Oxford: Oxford University Press, 2004, civ + 589 pp. Softcover: S\$ 126)

The publication of this paperback edition of Matsushita, Schoenbaum and Mavroidis makes