BOOK REVIEWS

Dispute Resolution in Asia, Michael Pryles, ed., Kluwer Law International, 1997. Pp. 324.

Despite its financial downturn, the Asian region continues to be a major factor on the financial scene. Its enormous population and resultant purchasing power, its constant search for more foreign investment, and an increasing tendency to "go global," all contribute to the growing number of international transactions in and with the region. The plummeting Thai baht of July 1997 signaled a slow-down, but by no means a halt to the trend. And, regrettably, more transactions give rise to more disputes. Now two years on, although looking toward recovery, we are experiencing the litigious fallout of the crisis.[1]

"Is there an 'Asian' style of dispute resolution?" The introduction to *Dispute Resolution in Asia* begins with the warning that "[d]ated generalizations and anecdotes are a shaky basis for corporate decision-making. . ." and continues with the premise that, unlike the countries of the European Union, Asian states have to a large extent retained their social and legal diversity. We are first reminded of the five major sources of "Asian" legal heritage – civil law, common law, Islamic law, socialism and Hindu/Buddhist influences. Then the authors point out the varied political organizations in Asia – socialism, republicanism and constitutional monarchy. These distinctions provide the matrix for this comprehensive comparative study of the dispute resolution mechanisms in ten Asian jurisdictions.[2]

Two generalizations are fairly obvious. First, until very recently, there have been very few Asian legal practitioners working in the field of international commercial arbitration. Second, those who are familiar with arbitration, for the most part do not share the "publish or perish" attitude of their Western confreres. The resultant dearth of comparative material on dispute resolution was striking. The ICC Court Supplement,[3] published in 1998 from conference proceedings of 1997, was an initial attempt at providing basic information about the status of arbitration in a number of major Asian jurisdictions. The Pryles book, although covering much of the same geography, is topically much more

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[1] The ICC Court of Arbitration has received 269 requests for arbitration in the first six months of 1999. This compares with a figure of 210 in the same period of 1998.

[2] Australia, Peoples Republic of China, Hong Kong, Japan, Malaysia, Philippines, Singapore, Taiwan, Thailand, and Vietnam.

[3] The ICC International Court of Arbitration Bulletin Special Supplement, November 1998, a collection of papers from "Asian Update," a conference held in Hong Kong in November 1997.

wide-ranging, as it treats not only arbitration, but also mediation and litigation in state courts.

Dispute Resolution in Asia will appeal to both the academic and the practitioner. Comparativists will enjoy the variety of national approaches and solutions described in the book, while busy lawyers will appreciate the neatly organized and labeled topics that create a user-friendly, county-by-country handbook. This is not just a book for litigators; it will also be valuable to wise drafters of international agreements who realize that it is preferable to know ahead of time what dispute resolution mechanisms are available in their partner's country, before scribbling off a choice-of-law or arbitration clause that will only trigger more problems.

Dispute Resolution in Asia contains a panorama of jurisdictions. On one hand is Vietnam's socialist/transitional economy where arbitration is little known and used; authors Michael Polkinghorne and Ngoc Bich Nguyen take the trouble to outline that country's rather complicated legislative hierarchy. On the other hand, Hong Kong and Singapore, with their state of the art legislation, arbitration friendly courts, and cosmopolitan outlook, vie for top honors as the best arbitration venue in Asia.

Each country in the book has its own chapter, and these follow a similar pattern. Under Litigation, there is information on the court structure and on jurisdiction, and on choice of law, conservation and procedural issues. What facilities exist for obtaining evidence from abroad? Will the court restrain proceedings abroad? Will the court restrain a party from removing assets from the jurisdiction? What kind of treatment is accorded a judgment from a foreign court? The answers vary widely from one jurisdiction to another.

In most chapters, mediation or conciliation is included with litigation. In the Philippines and Taiwan chapters, mediation has its own, very brief heading. Victor Lazatin writes that in the Philippines, a pre-trial conference is mandatory in civil cases, and that the court or a mutually acceptable third party may mediate a dispute. Nigel Li describes three types of mediation available in Taiwan – by local governments, courts (usually optional, but mandatory for disputes involving small amounts) and, for international issues, the Bureau of Foreign Trade.

The arbitration sections of each chapter cover sources of law, choice of law, recognition and enforcement of arbitration agreements, choice of arbitrators, fees, procedure, the extent of judicial intervention, and the award and its enforcement.

The authors of each chapter have clearly chosen to place different emphases on different topics, no doubt reflecting their own perceptions and national treatment of the issues. For example, Lawrence Boo spends a few pages describing the academic training and research that have without doubt contributed to Singapore's reputation as a first-rate venue for international arbitration.

The inherent difficulty of putting anything legal into writing is of course, its propensity to evolve. For example, Vietnam's new Commercial Code, anticipated

in the text, has now become a reality, having entered into force on January 1, 1998.

In another jurisdiction, Michael Moser's contributions on Hong Kong and the Peoples Republic of China mentioned the anomalous situation resulting from the July 1, 1997 Handover, which made application of the New York Convention impossible between Hong Kong and the Mainland which, despite their "two systems" are indeed "one country." In fact the situation persisted until this year, rendering Hong Kong an unattractive venue for international arbitrations involving a mainland Chinese party. On June 21, 1999, however, an accord was finally signed between the Justice officials of both jurisdictions to facilitate enforcement of arbitration awards made on each other's territory. The implementing legislation is currently before the governments of both jurisdictions and enforcement is expected to be available before the end of 1999. This is no criticism of the book, which in fact remained accurate for two years, but simply points out the necessity of supplementing any text with up-to-the-minute research.

From a North American or European viewpoint, Asia may until recently have seemed a faraway monolith. Global commerce has brought us closer together, both in putting the deals together, and in repairing the defects. It has also demonstrated the differences among the Asian nations, both in their development and in their attitudes. *Dispute Resolution in Asia* demonstrates in a practical and engaging format, that diversity among ten Asian trading nations. Any legal practitioner involved in international business, litigation or arbitration, is likely to reach for this book in the very near future.

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