

EDITORIAL

Editorial

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Right before the COVID-19 pandemic swept across the whole world, Professor Ji Weidong contacted me for a Special Issue on international arbitration in the Asia-Pacific region for this publication. I was somewhat hesitating in a sense that international arbitration is not really an academic subject, but rather a pragmatic matter. However, the mere fact that Professor Ji likes to have a Special Issue dealing with the subject was a good indication that the academic community is interested in arbitration in Asia. Arbitration in Asia can indeed have contemporary and future practical importance for international business law.

The reasons why international arbitration in Asia warrants attention are multifold. For the last two decades, Asia has become the emerging international arbitral centre; not only were more and more Asian arbitration institutions set up in the region and those centres have increasingly more international arbitration cases, but also several traditional Western international arbitration institutions have come to Asia and opened their offices in cities such as Hong Kong, Singapore, Shanghai, etc.

Arbitration is a preferred dispute-resolution means for the transnational business community. The cost-effectiveness, flexibility, and confidentiality of the arbitration proceedings together with the international enforceability of arbitration awards have encouraged many international business operators to choose arbitration so that their future dispute will not fall into the hands of national judges whose independence and impartiality are allegedly questionable. This is particularly true when the rule-of-law record of a country is somewhat mediocre and foreign business people do not want to get into a “home justice” legal procedure. With the case-load increase comes the desire to improve the way to conduct arbitration. Indeed, arbitration has been constantly improved over the last several decades and Asia is not an exception.

On the same issue of efficiency and transparency, Hiroyuki Tezuk and Mihiro Koeda have dealt with the efficiency and transparency in a geographically more narrow and typologically larger context; they look at efficiency and transparency issues from the latest development of alternative dispute resolution (ADR) in Japan. Japan is one of the biggest economies and has one of the most developed technologies in the world. However, from both the internationalization of Japanese law firms and the development standpoint of Japanese arbitration institutions, Japan was quite lagging behind. Over the last several years, Japan has doubled its effort to rectify this backwardness by promulgating new laws, setting up new institutions, and implementing new technics.

Alvin Yeo and Chan Hock Keng’s paper deals with the arbitration and court-case handling during the pandemic to adapt to domestic and international travel restrictions. Electronic litigation systems and video conferencing have very suddenly become the

dominant arbitration hearing methods. Yeo and Keng have taken Singapore as an example to outline the legal basis for virtual hearing. The pandemic has forced the grey-hair arbitrators to stop first-class travel and to quickly learn how to manipulate the electronic gadgets and apparels, and to talk to the screen using Zoom and Microsoft Meeting apps.

Cheng-Yee Khong's paper discusses a hot topic, which is third-party funding. With international arbitration getting more and more expensive, some companies just could not afford to start a big-ticket arbitration case, even though they thought that they would have both legal and contractual grounds to win the future arbitration, due to the financial constraints. The upsurge of third-party funding is a natural response to the needs of the markets. Khong examined the regulatory development in Asian jurisdictions and discussed the recent development through two case-studies.

From a country-specific aspect, Faris Elias Nasrallah submitted a paper discussing arbitration in Syria. It is quite rare to have a detailed paper studying the Syrian arbitration system. The country has been suffering from civil war and local conflict since 2011 but this does not smash the resilient and ancient customary Arabic dispute-resolution system. This paper analyzes arbitration in Syria from both Syrian national and international law.