

Rashda Rana and Michelle Sanson, *International Commercial Arbitration*, Thompson Reuters, 2011, ISBN 9780455228242, 365 pages

As international commercial arbitration becomes an increasingly accepted avenue for parties to resolve disputes, the book *International Commercial Arbitration*, by Rashda Rana and Michelle Sanson is a useful tool to gaining a strong understanding of the topic, particularly with regards to its application in the Asia Pacific region, specifically: Australia, China, Hong Kong, Singapore and Malaysia. The book is well set out, and written in a manner that is easy to follow. An astute reader will no doubt be well placed to form a solid working knowledge of how international commercial arbitration works, particularly with regards to the five countries mentioned.

Rashda Rana is currently the General Counsel for Bovis Lend Lease, has lectured at the University of Sydney and was instrumental in devising the international commercial arbitration course at the University of Sydney's Law School. Rashda is an active member of a number of significant industry associations, including the Founding Member and the current Secretary of the newly formed Society of Construction Law Australia, a Fellow and Director of the Australian Centre for International Commercial Arbitration (ACICA), Fellow of Institute of Arbitrators and Mediators Australia (IAMA), Fellow of Chartered Institute of Arbitrators (CIArb), Fellow of Commercial Law Association of Australia (CLAA) and Treasurer of Arbitral Women.

Michelle Sanson is a Senior Lecturer in Law at the University of Western Sydney. Prior to entering academia, she worked with Blake Dawson Waldron on international trade and transport law. Michelle has authored a number of other books on international trade law including *International Law and Global Governance* (Cameron May, London 2008) and *Essential International Trade Law* (Cavendish Publishing Ltd, 2005).

As the title suggests, the book *International Commercial Arbitration* deals with international commercial arbitration in the region, namely: Australia, China, Hong Kong, Singapore and Malaysia. The authors attempt to provide a solid basic understanding of how international commercial arbitration works, and its applicability in the five major international arbitration jurisdictions mentioned above.

Chapter 1 is particularly useful as it gives the novice reader an introduction and definition to international commercial arbitration. It highlights the advantages to arbitration, but also acknowledging that it is sometimes inappropriate. It also provides the history and development of arbitration, noting that it is far from a 'new' method of dispute resolution. Chapter 1 then turns to examining the statutory approach and developments of international commercial arbitration in the Asia-Pacific region, with particular emphasis on the countries mentioned above. A useful table is provided at the end of chapter 1 that summarizes the various treaties, conventions, arbitral institutions and their rules as well as relevant domestic legislation.

Chapter 2 examines the arbitration agreement and its related aspects, including the formulation of the agreement to arbitrate and its activation clause. The chapter touches on the doctrine of party autonomy in formulating the agreement to arbitrate and notes the various choices parties may make in drafting such an arbitration agreement. These include the language, the location of the arbitration, the 'seat', of the arbitration as well as the relevant laws that will govern the arbitration and the merits of the dispute. The authors also highlight

the relevance of the doctrine of separability – that the arbitration agreement is separate and independent of the main underlying commercial contract. This is particularly important as the doctrine of separability protects the jurisdiction of the arbitral tribunal even where parties have alleged the non-existence or invalidity of the main underlying commercial contract.

Chapter 3 looks to the applicable laws and a good portion of the chapter is dedicated to the description and explanation of the key ‘arbitral seat’, and the importance of selecting a seat of neutrality. The authors contend that here, several factors come into play when making this determination, including the sophistication of the legal system, the independence and quality of the judiciary and the judiciary’s knowledge and experience in arbitration. It notes the role that public policy may play when determining remedies, but defers a detailed explanation to chapter 13.

Chapter 4 addresses the two ways in which arbitrations may be conducted: through an established arbitral institution or on an ad hoc basis in the absence of such an institution. Arbitration institutions have well defined rules and guidelines, as well as services and support to effect the arbitration, whereas ad hoc arbitrations are precisely that – ad hoc. While arbitration offers flexibility and reduced costs, it often requires greater time to negotiate the specific rules of the arbitration process. Unsurprisingly, given the international nature of commercial disputes, cultural differences may come into play, and the authors dedicate a portion of chapter 4 in addressing potential cultural differences and the influence it may have on the arbitration process and outcome. In addition to the different legal traditions and education parties and arbitrators may have been exposed to, the authors also make note of the cultural aspects, including the notion of ‘power distance’, which vary from country to country as well as the issue of gender role differences.

The arbitral tribunal is discussed extensively in chapters 5 and 6. Chapter 5 is devoted to the actual formation of the arbitral tribunal and the varying rules and procedures that determine the appointment of arbitrator. It also lists out the various bases for challenging an arbitrator and the court’s role in the appointment and removal of an arbitrator. Chapter 6 provides information on the arbitral tribunal with regards to its jurisdiction and powers. The doctrine of *Kompetenz-Kompetenz* is discussed here; in particular, the criticism of its ‘circuitous reasoning’ – the arbitral tribunal has the authority to decide on its own jurisdiction yet this authority is effectively derived from the parties’ arbitration agreement. The authors however, are quick to dispel these criticisms, putting forward the view that ‘Courts are not in a different position to arbitral tribunals’, and note that most arbitration rules and procedural laws expressly recognize the doctrine of *Kompetenz-Kompetenz*.

Chapter 7 covers the arbitral procedure including the preliminary hearing to determine issues to be decided and the terms of reference as well as a provisional timetable of the proceedings. A significant portion of the chapter focuses on adducing evidence before the arbitral tribunal, including documentary evidence, witnesses and experts. The authors note that admissibility and the rules of evidence in international commercial arbitration is, at times, a blend of the rules of evidence in both the civil and common law systems. Chapter 7 also briefly touches on fast track or expedited procedures, where upon agreement of parties, or in matters of exceptional urgency, disputes may be ‘fast tracked’ or expedited to achieve an outcome in a relatively shorter period of time.

Confidentiality is discussed extensively in chapter 8, with the authors noting that this is perhaps one of the most attractive aspects of international commercial arbitration as opposed

to litigation in a national court, where proceedings are public. However, the authors make a brief note that in recent years there has been a shift in this attitude with the recognition that there is perhaps a public interest in making arbitral awards public. The chapter then moves to highlight relevant cases where the issues of privacy and confidentiality were discussed and the circumstances where the various courts have held that disclosure may be permissible.

Chapter 9 deals with interim measures and awards. These measures are significant especially when dealing with time sensitive matters or goods (such as perishable goods). The authors have highlighted the notion of parallel proceedings, noting that while not expressly set out in the institutional arbitration rules, the power to grant interim measures and injunctions are not limited to the arbitral tribunal. Parties may seek redress through the national court system or the arbitral tribunal.

Chapter 10 lists the various circumstances in which a national court may intervene. However, the authors contend that as arbitration is a form of alternative dispute resolution and courts should not be seen to be interfering in arbitration (judicial non-interference). There is, as the authors note, 'a delicate balancing act between minimizing court involvement in order to maximize the benefits of arbitration and courts providing the necessary legal infrastructure in which arbitration takes place' (page 242).

Chapters 11 and 12 focus on the awards available to parties as well as the recovery of such awards. This essentially marks the end of the arbitration process. Here, the authors acknowledge the potential challenges in international commercial arbitration with regards to the arbitral tribunals deliberations, noting that as members of the tribunal come from different countries, organizing face to face deliberations may pose potential problems, especially when it is sometimes essential that such deliberations take place immediately after the hearing, when the issues are still fresh in the arbitrators' minds. The rest of chapter 11 moves to explain the award process, the types of awards possible as well as their formal requirements including time frames that ensure efficiency. Interestingly, but not surprising due to the international nature of commercial arbitration, the authors include information on how awards may be proportioned into various currencies, as appropriate. Chapter 11 ends with the issue of costs, and the liability for fees and expenses of the arbitrators and arbitral institutions involved. Chapter 12 follows on logically from chapter 11, moving into the recovery and enforcement of awards. There is discussion of the *New York Convention 1958*, which allows for the ease of the enforcement of awards, even across varying countries.

Chapter 13 is the final chapter in the book and deals with the various specialist forms of arbitration, including disputes before the Court of Arbitration for Sport, the International Centre for the Settlement of Investment Disputes and the resolution of disputes between states in the World Trade Organisation.

International commercial arbitration has been gaining popularity as a method of alternate dispute resolution due to several reasons: its applicability in the various systems of law, its ease of enforcement against assets in foreign jurisdictions, its flexibility and perhaps most significantly – its reduced costs as opposed to the judicial route through the courts and the ability to maintain confidentiality. It allows parties to resolve disputes in a manner that is efficient, cost friendly and arguably in a manner less confrontational than court adjudication. The confidentiality aspect also is an important factor as it allows commercial firms to keep the undesirable, unpleasant aspects of litigation and dispute away from the public eye.

While the book does articulate about international commercial arbitration in Australia, the other countries it focuses on are Malaysia, Singapore, Hong Kong and China. This is perhaps understandable, given Asia's growing significance as a commercial hub, and the commercial disputes that inevitably arise. As a result, international commercial arbitration as a method of dispute resolution should and is gaining increasing acceptance in the Asia Pacific region and the authors' focus on the five countries is well placed. The authors' have done well in providing useful table summaries to help the reader plough through the numerous treaties and conventions, and the various institutional arbitration rules that vary from country to country.

Notably, both authors not only have extensive experience in international law but have also taught at universities in Sydney. This is perhaps reflected in the layout of the book – as the authors have noted in the preface – the book is broken down into thirteen succinct chapters, which flows logically from one another and would be particularly useful as a course guide in a typical university study semester. Additionally, each chapter highlights and articulates useful cases with regards to the discussed topic and provides informative sources for further research. Each chapter typically ends with an 'application scenario' that poses a number of issues based on a given scenario. This is useful not only in consolidating the knowledge gained in the chapter, but also handy as tutorial and workshop discussion questions. A model answer guide to these scenario questions included at the back of the book would further augment its usefulness.

The book does serve its intended purpose, in that it provides the reader with a good foundation of the principles of international commercial arbitration and its applicability in the Asia-Pacific region. The focus is not so much on ground-breaking developments or arguments, but to provide the reader with a working knowledge of how commercial arbitration works. The book is written in such a way that does not presume prior knowledge of international commercial arbitration on the part of the reader, and is set out in such a way that gently introduces one to international commercial arbitration, with useful cases to illustrate certain issues, and as articulated above, with end of topic scenario questions to consolidate one's newly acquired knowledge. For the seasoned practitioner, *International Commercial Arbitration* provides a good review, with key topics broken down into thirteen chapters for easy reference and an informative table starting from page 102 that provides a useful 'at a glance' comparison of the various arbitration institutional rules. Further suggested readings are also provided if one desires further research into particular topics and areas of interest.

While the book does not add any ground-breaking developments in the field, it is nonetheless a useful guide for practitioners, but more importantly, a must have for university students studying a course in international commercial arbitration. The relatively easily digestible chapters, condensed with the typical semester in mind, coupled with useful case illustrations make *International Commercial Arbitration* easily understandable, informative and concise. The scenario application questions are also good practice for exam questions. An informative read, *International Commercial Arbitration* should be a key companion for any law student interested in the area.

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