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Business Compliance in International Commercial Transactions across Asia Pacific

Program

Wednesday 21 February 2024

Time: 9:00am-5:20pm Conference, 5:30pm-7:15 pm Reception

Venue: The University of Sydney Law School, Boardroom and Common Room, Level 4, New Law Building F10

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9-9.20am	**Opening** • **Professor Simon Bronitt,** Dean, University of Sydney Law School • **Dr. Jie (Jeanne) Huang,** Co-director, Centre for Asian and Pacific Law of the University of Sydney
9.20-10.20am **Common Room**	**Keynote: Justice and injustice in foreign judgments – does terminology matter?** **Chair: Professor Simon Butt,** Co-director, Centre for Asian and Pacific Law of the University of Sydney **Speaker: Professor Andrew Dickinson,** University of Oxford **Commentator: Professor Vivienne Bath,** University of Sydney Law School
10.20-10.50am	*Group Photo and Break*
10.50-12.15am ***(Parallel panels)***	**Panel 1: Anti-Money Laundering and Compliance Responses (Common Room)** **Chair: Professor Colin King,** University of Sydney Law School • ***Anti-Money Laundering and Counter Terrorism Financing compliance: A banking perspective on the value of adopting a commercial risk-based approach*** Victoria Trent, *Commonwealth Bank* • ***A Critical Analysis of the Risk-Based Approach to Anti-Money Laundering and the Legal Profession*** Dr David Chaikin, *the University of Sydney Business School and Lana Nadj, Nadj Advisory, Sydney* • **Online:** ***Digitisation in Trade Financing: Mitigating Money Laundering Risks through Technological Innovation, Regulatory Interoperability, and Increased Policy-focused Dialogue*** Manvee Kumar Saidha, *Trilegal, Mumbai, India* • ***Enhancing Business Compliance Through Beneficial Ownership Disclosure in Indonesia (Anti-Money Laundering and Corporate Crime Perspectives)*** Dr Anastasia Suhartati Lukito, *University of Surabaya, Indonesia* **Panel 2: Dispute Resolution Compliance -Arbitration (Board Room)** **Chair: Professor Ling Bing,** University of Sydney Law School • ***Compliance with Alternative Dispute Resolution commitments in international commercial and investment agreements*** Professor Luke Nottage, *University of Sydney Law School*

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	• ***Unilateral Sanctions as Defenses in Investment Arbitration*** Dr Yang Liu, *East China University of Political Science and Law* • ***Assessing the Choice of law and Choice of Foreign Arbitration Clauses in Cross-border Consumer Contracts under the Unfair Contract Terms Legal Framework: Developments in Australia and Overseas*** Dr Shu Zhang and Pavan Swamy, *Deakin University Law School* • ***The Judicial Interpretation and Application of Due Process Defence under the New York Convention: The Experience of Chinese Courts*** Dr Dan Xie, *East China University of Political Science and Law*
12.15am-12.30pm	*Break*
12.30-1.30pm ***(Parallel panels)***	**Panel 3: Corporate Crime and Compliance (Common Room)** **Chair: Professor Vivienne Bath**, *University of Sydney Law School* • **Online: *'Deferred Prosecution Agreements in Australia: How to Protect the Shawcross Principle'*** *Avin Persad-Ford, Howard C. Cohen & Associates* • ***Rethinking Criminal Compliance Reforms in China*** *Professor Zhenjie Zhou, College for Criminal Law Science, Beijing Normal University* • **Online: *'Exhaling Corporate Compliance for Combating Modern Slavery in India's Global Value Chain: An Analysis'*** *Soumya Rajsingh, Faculty of Legal Studies, South Asian University* **Panel 4: Data Compliance: Protection and Security (Board Room)** **Chair: Dr Dan Xie,** *East China University of Political Science and Law* • ***Is China the World's Biggest Face Recognition Dealer?: Global Companies and China's Data Surveillance and Privacy Laws*** Yixian Li, Ravi Prakash Vyas and Inma Conde, *University of Sydney Law School* • ***Legality of Legal Products Produced by AI based on Positive Law in Indonesia*** *Fitria Dewi Navisa, Universitas Islam Malang, Indonesia* • ***Towards a Cross-Border Cyber-security Legal Framework: Examining Data Protection Compliance Risks in Digital Trade across the Asia Pacific*** Naeem AllahRakha, *Tashkent State University of Law*
1.30-2pm	***Lunch (Common Room)***

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2-3.25pm *(Parallel panels)*	**Panel 5: Compliance in International Trade and Investment (Common Room)** **Chair: Judge Judith Gibson, the District Court of New South Wales** • ***Data Protection and National Security—Foreign Direct Investment in Australia and China*** Tianqi Gu, *University of Sydney Law School* • **Online:** ***Choice of Forum Clause and the Protection of Weaker Parties: Lessons from Asia*** Dr Lemuel Didulo Lopez, *RMIT University* • ***Economic Sanctions and the Trade-Compliance Dilemmas for Chinese Companies*** Dapo Wang, *Shanghai Jiaotong University* • **Online:** ***'Once a Trader, Always a Trader' - Or Maybe not: The EU Law Shaping of the Law of State Immunities*** Dr Stefano Dominelli, *University of Genoa, Italy* **Panel 6: Supply Chain Legal Compliance (Board Room)** **Chair: Dr. Katherine Owens, Sydney Law School** • ***ESG Implementation: Who should bear the additional governance costs for companies to achieve ESG aims?*** Dr. Wangjie Chen, *East China University of Political Science and Law* • **Mandatory Human Rights Due Diligence and Director Liability: Bridging the Enforcement Gap** Dr Alan Koh, *Nanyang Technological University, Singapore* • ***Online: Environmentally Responsible Business Practices: Concept and how to enact them in Vietnam*** Minh Nhut Le, *International Law Faculty at Ho Chi Minh City University of Law* in Vietnam
3.25-3.40pm	*Break*
3.40-5.10pm *(Parallel panels)*	**Panel 7: Dispute Resolution Compliance -Litigation (Common Room)** **Chair: Professor Luke Nottage**, University of Sydney Law School • ***The HCCH Conventions in Chinese Courts*** Professor Tao Du, *East China University of Political Science and Law* • ***Declining Jurisdiction in China and South Korea: A Mixture of Civil and Common Law Culture in Private International Law?*** Dr Yan Li, *Seoul National University Law Research Institute* • **Online:** ***The Barriers for Recognition and Enforcement of Foreign Judgments in Vietnam*** Dr Thu Thuy Nguyen, *Hanoi Law University* • ***Remote Sensing Evidence in The Resolution Of Disputes Concerning Non-Compliant Carbon Credit Products Using A Remote Sensing Analysis Of The Basins Underlying The Malaysia-Singapore Water Agreements As A Frame Of Reference*** Ganesh Sahathevan, *Centre for Industrial Research Pty Ltd*

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	Panel 8: Data Compliance: Cross Border Flow (Board Room) **Chair: Professor Mimi Zou,** University of New South Wales • ***WTO Joint Statement Initiative on E-commerce: half full or half empty?*** Professor Henry Gao and Dr Patrick Leblond, *Singapore Management University* • ***How will China's New Data Property Right System Impact Digital Trade?*** Dr. Jie (Jeanne) Huang, *University of Sydney Law School* • ***An Anatomy of China's Cross-border Data Flow Regulation Regime*** Dr Shangxuan Wu, *East China University of Political Science and Law* • ***Online: "Interoperability of the UK's data governance regimes: From domestic to international trade perspectives"*** Dr Phoebe Li and Dr. Minako Morita-Jaeger, *the University of Sussex School of Law, Politics, and Sociology*
***5:10-5:30* pm**	*Break*
5.30-7.15pm ***(Common Room)***	**Reception: Celebration of the 30th Anniversary of the Centre for Asian and Pacific Law (1993-2023) and the Shanghai Winter School (1994-2024)** **Chair: Dr. Jie (Jeanne) Huang**, Co-director, Centre for Asian and Pacific Law of the University of Sydney **Speakers:** • **Dean and Professor Simon Bronitt,** University of Sydney Law School • **Dean and Professor Tao Du,** School of International Law East China University of Political Science and Law • **Professor Vivienne Bath,** University of Sydney Law School • **Professor Bing Ling,** University of Sydney Law School

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Other events

Corruption, Criminal Law, China: Offering and Accepting Bribes
Tuesday 20 February, 5-6pm

Speaker: Professor Zhenjie Zhou, College for Criminal Law Science, Beijing Normal University
Topic: "Punishing Offering Bribes and Accepting Bribes Equally: Legislative Design and Judicial Efforts"

The XII Amendment to Criminal Law of P.R.C adopted by the Standing Committee of People's Congress on 29 December 2023 is guided by two principles. One is to enhance protection for private enterprises and the other is to punish offering bribes and accepting bribes equally. The reason that accepting bribes, which has been punished ever since the foundation of P.R.C, is stressed now is of course the serious situation of bribery. Meanwhile, although the logic behind this is acceptable, whether legislative purpose can be realized to a high degree depends on judicial efforts. Judging from typical cases and relative statistics, I believe four principles should be observed in terms of criminal law. In the first place, different approaches should be taken to deal with offering bribes committed by organizations and individuals. Compliance model might be a choice. Secondly, crime and civil or administrative violation should be carefully differentiated to prevent criminal punishments from leading to undue harms. Thirdly, the question whether public authorities can be charged with offering or accepting bribes should be answered in specific context. Finally, more flexible systems, such as disqualification and corporate probation, should be considered.

Registration: https://law-events.sydney.edu.au/events/offering_accepting_bribes

China as a Development Model for the Global South: Opportunities and Limits (paper co-authored with Professor Greg Shaffer, the American Society of International Law)
Thursday 22 February, 1-2pm

Speaker: Professor Henry Gao, the Singapore Management University.

With its remarkable economic success, China could be regarded by countries in the Global South as presenting a development model that is easier to emulate than that of Western developed countries. In this paper, we examine to what extent the Chinese model, which China calls "Socialism with Chinese Characteristics," could be regarded as a universal truth for the Global South. We start with two key features of the Chinese model: its export-oriented growth model, which reversed its import-substitution model that communist China practiced in the first 30 years under Mao, and can still be found in many developing countries; and its extensive use of industrial policy that relies heavily on state-owned enterprises and government subsidies, in contrast to the more market-oriented model in Western countries. In addition, we discuss two new areas of development that illustrate the complexity and adaptability of China's heterodox approach to development: the phenomenal growth of its e-commerce sector, despite its longstanding censorship regime; and its sustainable development policies, as illustrated with its recent experience in climate adaptation and energy transition. We conclude by discussing how the Chinese approach, which combines a variety of seemingly irreconcilable approaches, reflects another major feature: experimental pragmatism, and what lessons it might offer to countries in the Global South.

Registration: https://law-events.sydney.edu.au/events/china_developmentmodel

Other events

- **ADR Address of the Supreme Court of NSW**
  Thursday 22 February, 5.30-6.30pm
  Speaker: Professor Luke Nottage, University of Sydney Law School

  Find out more and register: https://disputescentre.com.au/events/supreme-court-of-new-south-wales-adr-address-2023/

- **2024 SCIL International Law Year in Review Conference**
  Friday 23 February

  Find out more and register: https://law-events.sydney.edu.au/events/scil_yearinreview_24

Paper or Slide Presentation

Add your paper or slides to the Shareable link to OneDrive folder for presenter PowerPoints: POWERPOINT PRESENTATIONS - Business Compliance conference 21 February.

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Paper Publication

We plan to publish the papers as a special issue of a leading peer-reviewed journal, such as Chinese Journal of Transnational Law.

The Chinese Journal of Transnational Law is a double-blind peer review journal that aims to address internationally emerging transnational challenges that transcend intellectual and geographic boundaries and require academics from different countries to establish dialogue and communication, and to form understanding and trust. The journal takes a thematic approach to address global challenges from the perspective of transnational law, which is also broadly defined to cover international law (public and private), international economic law, comparative law, the interaction between domestic and international law, and any other legal field possessing a cross-border element. Although published solely in English, the journal embraces relevant submissions from different cultures and regions thus refraining from accentuating the Anglo-Saxon monopoly in the constituency of international legal studies. Its aims and scope are designed in a way that reflects and respects the diversity of views and opinions born out of the particular experiences of different legal regions and attracts readers from the global, regional and Chinese markets. However, it will do so all while providing a forum to enable the analysis, and better understanding, of China, Asia and developing countries' related matters and perspectives on international and transnational legal issues and their influence in shaping related global legal developments and debates. The journal shall be open to not only traditional doctrinal and theoretical legal research on transnational law, but also policy-oriented, contextual and inter-disciplinary research. Although focused on contemporary matters in its aspiration to be a forum for the latest debates on transnational legal studies, it also considers submissions inspired by in-depth historical perspectives that cast new light on present developments. The CJTL covers broad topics including but not limited to:

- Innovative transnational dispute resolution, including both state-to-state and private dispute resolution mechanisms and the impact of culture, psychology, language and geopolitics on dispute resolution;
- Transnational trade, investment and economic governance;
- Transnational family law and the wellbeing of children, including surrogacy, child abduction and same sex marriage in the cross-border context;
- Transnational regulation of technology;
- Transnational corporate responsibility and governance;
- Transnational protection of private rights in tort and transactions;
- Transnational law and development;
- Transnational law and global health governance;
- Transnational environment protection and climate change;
- Transnational criminal law;
- Unilateral sanctions, extraterritorial regulations and blocking law.

This journal includes three sections:

- Research articles (up to 11,000 words inclusive of footnotes)
- Short articles and recent development (up to 6,000s inclusive of footnotes)
- Book reviews on transnational law related issues (up to 1,500 words)

If you want to publish at the special issue, please submit your final paper by **30 April**, following the journal's housing style: https://journals.sagepub.com/pb-assets/cmscontent/CTL/CJTL%20Style%20Guide-1680586913.pdf.

Please visit the Journal's submission site https://mc.manuscriptcentral.com/cjtl to submit your manuscript and send your submission confirmation to.

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Abstracts and speaker bios (arranged alphabetically by surname)

Professor Vivienne Bath

Vivienne Bath is the Professor of Chinese and International Business Law at the University of Sydney Law School. She is also the Associate Director of the Centre for Asian and Pacific Law at the University of Sydney.

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Professor Simon Bronitt

Simon Bronitt is the Head of School and Dean of Sydney Law School commencing July 2019. In 2021, he was elected as a Fellow of the Australian Academy of Law. Drawing on comparative and interdisciplinary perspectives, He has published widely on criminal justice topics.

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Professor Simon Butt

Dr. Simon Butt is the Professor of Indonesian Law at the University of Sydney Law School and the Co-director of the Centre for Asian and Pacific Law of the University of Sydney.

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Dr David Chaikin and Lana Nadj

A Critical Analysis of the Risk-Based Approach to Anti-Money Laundering and the Legal Profession

Abstract

The Risk-Based Approach (RBA) underpins the work of the Financial Action Task Force (FATF) in combating money laundering, terrorism financing and proliferation financing globally. The rationale is to achieve an effective and efficient deployment of limited resources to transactions or relationships that are most likely to be a locus of financial crime. Under the auspices of the FATF, more than 180 countries have applied the RBA at key junctures, such as the design of legislation and regulatory policy, the conduct of industry risk assessments, and the crafting of anti-money laundering (AML) programs by the regulated sector. Key compliance challenges in applying RBA to customer relationships are regulatory uncertainty, financial inclusion and de-risking.

This paper takes as its primary focus AML regulation and the legal profession, asking what is really meant by the RBA in practice? Does customer due diligence prevent regulated entities from being misused by organised crime? How are vulnerabilities identified and mitigated by the private sector, and how is effectiveness measured by the FATF and national authorities? These questions will be tackled by comparing how six common law jurisdictions including Australia, New Zealand, Hong Kong and Singapore have applied the international AML norms to the legal profession.

Bio

Dr. David Chaikin is an Associate Professor at the University of Sydney Business School in banking and finance Law, corporate and commercial law, and asset protection/management of wealth risks. He is also a Barrister in New South Wales.

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Lana Nadj is a solicitor acting in advisory, policy and litigation roles. She is a principal of law practice Nadj Advisory with clients including an international NGO and Harvard Law School.

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Dr. Wangjie Chen

On ESG Implementation: Who should bear the additional governance costs for companies to achieve ESG aims?

Abstract

This paper focuses on the question of who should literally bear the cost of corporate ESG governance. While legislation in various countries requires corporate governance to implement ESG, it ignores the fact that ESG governance comes with additional costs for companies, which are ultimately borne by consumers. But the realization of corporate ESG aims, in essence, is to reduce the cost of governance that should have been shouldered at the country level. Thus, ESG is essentially a way for countries to pass on their costs to companies, which are ultimately borne by consumers, who should actually be the ultimate beneficiaries. In a world where universal ESG norms have not been effectively realized, global consumers who vote with their feet are still predominantly price-sensitive and thus may end up eliminating companies that truly implement ESG in the global marketplace. For this reason, national governments should help ESG-aware companies to reduce the additional costs of governance in the form of subsidies, such as lower tax rates. And minimum standards for ESG at the world level should also be agreed upon as a way to ensure that no companies from countries with the high standards are reversed out of business.

Bio

Dr Wangjie Chen is a Research Associate Professor at the East China University of Political Science and Law.

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Professor Andrew Dickinson

Justice and injustice in foreign judgments – does terminology matter?

Abstract

The resolution of disputes is a public good, essential for the maintenance of order in a civil society. To achieve this end, it is nonetheless necessary that both the outcome and the mechanisms for resolving the dispute be essentially just.

These two propositions apply universally, as well as within individual civil societies. That premise, in turn, encourages a willingness to recognise and enforce foreign judgments that conform to the receiving legal order's fundamental standards of justice.

In his keynote lecture, Professor Dickinson will consider the techniques and terminology used by courts in dealing with assertions that foreign judgments are in some sense unjust, and so not deserving of reception. He will seek to identify both contrasts and common themes across different traditions.

Bio

Andrew Dickinson is the Professor of the Conflict of Laws at the University of Oxford and a fellow of St Catherine's College.

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Dr Stefano Dominelli

Online: 'Once a Trader, Always a Trader' – Or Maybe not: The EU Law Shaping of the Law of State Immunities

Abstract

EU civil procedure has been interpreted consistently with the law of State immunity. International law has influenced rules on international jurisdiction. Such a unidirectional influence seems now to be challenged by the Court of Justice of the European Union with its Kuhn judgment (Case C-308/17). The Court has argued that the expression 'once a trader, always a trader' is no longer valid, and States can escape foreign civil jurisdiction for contracts if they subsequently intervene with public powers.

The aim of the presentation is to reconstruct the approach followed by the Court and exclude its consistency with previous jurisprudence, as too much value is given to the "policy goals" of States. Also, the presentation will reflect on the impact of the judgment, as this only excludes the applicability of EU law. State immunity is to be granted or denied by States according to domestic rules – which are still based on public international law principles. This will raise the question whether the co-existence of two different understandings of acta iure imperiii will hold or whether national systems will re-unite domestic and EU law, to ultimately influence the very concept of State immunity in the realm of public international law.

Bio

Dr Stefano Dominelli is a senior researcher in Public and Private international law at the University of Genoa, Italy.
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Professor Tao Du

The HCCH Conventions in Chinese Courts

Abstract

The Hague Convention on Choice of Court Agreements has now taken effect, and it is imperative and viable for China to ratify it. The enforceability of a choice of court agreement hinges primarily on the governing law of the agreement. Typically, Chinese courts assess the validity of such agreements based on the law of the forum where the case is heard. In contrast, the Hague Convention adopts the law of the country where the chosen court is situated, as mutually agreed upon by the parties. While some Chinese scholars advocate for the application of the law selected by the parties, there is divergence in the approach, with China and the EU aligning their practices with the Convention, while the United States takes a contrary stance.

In the context of determining exclusivity criteria, the practices of China and the EU are in harmony with the Convention, while the United States deviates. Chinese domestic law mandates that choice of court agreements adhere to the principle of an actual connection, a criterion that, although no longer prevalent in most Western nations, retains a measure of rationality and relevance. The ratification of the Hague Convention on Choice of Court Agreements holds profound significance for advancing China's judicial reform and bolstering China's judicial competitiveness.

Bio

Professor Tao Du is the Dean of School of International Law of East China University of Political Science and Law.
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Professor Henry Gao

WTO Joint Statement Initiative on E-commerce: half full or half empty?

Abstract

After 5 years of intensive negotiation, the WTO Joint Statement Initiative (JSI) on e-commerce is expected to conclude by the WTO Ministerial Conference to be held in February 2024. While there were high hopes for the negotiation when it first started in Jan 2019, the final results of the negotiation is likely to leave mixed feelings in the digital trade circle, with some praising it as a historic first, while others lamenting it as a missed opportunity.

Drawing from insights by the two co-authors on the evolution of digital trade provisions in trade agreements, deep analysis on the respective country positions, and the debates and controversies during the JSI negotiations, this paper will provide the first-ever comprehensive review of the results of the JSI. In particular, it will assess the implications of the new JSI on global governance of digital trade, whether it is an agreement that is half empty, i.e., falling short of what it could have achieved, or half full, I.e., a promising start for further collaboration on digital trade governance in the future.

Bio

Henry Gao is a Professor of Law at Singapore Management University (SMU) and Senior Fellow at CIGI.
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Judge Judith Gibson

Bio

Judith Gibson is a judge of the District Court of New South Wales and an affiliate of the Centre for Asian and Pacific Law.

Tianqi Gu

Data Protection and National Security—Foreign Direct Investment in Australia and China

Abstract

In the digital age, data protection has become critical to countries' stable economic and social development. Foreign direct investment (FDI) involving sensitive data poses significant risks to host countries' national security. Australia and China, being significant players in the global investment arena, have taken substantial efforts to emphasise data protection in their FDI regulatory frameworks. China's national security review system for FDI has placed a strong emphasis on data security since its establishment in 2011. This emphasis is supported by China's recently established data security framework, which consists primarily of the Cybersecurity Law, the Data Security Law, and the Personal Information Protection Law. In 2021, Australia enacted comprehensive reforms to its foreign investment framework, emphasising the protection of personal data. This is backed by the amendments to the Security of Critical Infrastructure Act that aim to address evolving data security risks in communications and data storage. This paper examines data protection under the FDI regulatory frameworks of China and Australia and concludes that data security is now a significant consideration in the admission and monitoring of FDI in both countries. The growing emphasis on data security, however, may make the countries' FDI framework applications less predictable for investors.

Bio

Tianqi Gu is a PhD Candidate at the University of Sydney Law School. Email: tianqi.gu@sydney.edu.au

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Dr. Jie (Jeanne) Huang

How would China's New Data Property Right System Impact Digital Trade Treaty Negotiations?

Abstract

China announced an unprecedented data property rights system in December 2022 and issued implementation rules in 2023. The property rights system is widely considered as a parameter to commercialize data in China. Comparing with the EU Data Act, this paper explains the China data property rights system and highlights its innovations and challenges. Focusing on foreign service providers' market access, outbound transmission of data, and regulating non-personal data and non-consumer data product users in digital trade, this paper tries to answer how this system would influence China's implementation of the Regional Comprehensive Economic Partnership, negotiating the Digital Economy Partnership Agreement, the Comprehensive and Progressive Trans-Pacific Partnership and, and the WTO E-commerce plurilateral agreement.

Bio

Dr Jie (Jeanne) Huang is an Associate Professor of Law at the University of Sydney Law School and the Co-Director of the Centre of Asian and Pacific Law.

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Professor Colin King

Colin King is a Professor at the University of Sydney Law School. His research focuses on financial crime, particularly money laundering; proceeds of crime; and deferred prosecution agreements.

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Dr Alan Koh

Mandatory Human Rights Due Diligence and Director Liability: Bridging the Enforcement Gap

Abstract

Recent enacted and proposed legislation on mandatory human rights and environmental due diligence (mHREDD) introduce public law sanctions and civil liability for corporations failing to exercise due diligence or reasonable care in managing such ESG risks. At present, there appears to be little appetite in the ongoing debate about direct enforcement of mHREDD regulation against corporate managers. Nevertheless, the global trend towards acceptance of mHREDD regulation means that the managerial enforcement gap deserves urgent attention. Even in jurisdictions that have yet to implement domestic mHREDD regulations, corporations are increasingly exposed to potential liability under foreign law. Mechanisms by which managers can be held civilly liable in cases of corporate breaches of foreign law should also be considered.

This paper compares managerial civil liability regimes for corporate regulatory breaches in selected common and civil law jurisdictions. The possibilities contained in existing legal mechanisms for holding managers liable in connection with corporate breaches of present and future mHREDD regulation – including under foreign law with extraterritorial scope – would be of value not only to legislators and regulators taking mHREDD seriously, but also potentially victims of corporate irresponsibility seeking civil remedies.

Bio

Dr Alan Koh is an Assistant Professor at Nanyang Technological University, Singapore.

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Dr Phoebe Li and Dr Minako Morita-Jaegar

Online: Interoperability of the UK's data governance regimes: From domestic to international trade perspectives

Abstract

After leaving the EU, the UK is building its data sovereignty regime by proposing the new Data Protection and Digital Information Bill that aims to diverge from the EU GDPR at the domestic level. At the international level, significant policy shifts of the UK's approach on data governance could also be seen in UK's bilateral Free Trade Agreements (FTAs). The UK has departed from the EU style digital trade governance after signing the EU-UK Trade and Cooperation Agreement (TCA) by concluding the innovation and market efficiency-focused digital trade provisions with Asia-Pacific countries including Australia, New Zealand, Japan, and Singapore.

Furthermore, the UK concluded the negotiations on joining the CPTPP on 31st March 2023. Our research question is what does the UK's accession to the CPTPP imply for data governance? We apply qualitative analysis by taking the legal and political economy inter-disciplinary approach. We first demonstrate that there are huge data governance gaps (e.g. ethical, trust, and human rights considerations) between the UK and the CPTPP members by using the Global Data Governance Map. We then examine UK's on-going domestic data-related regulatory reforms.

Bio

Dr. Phoebe Li is a Reader in Law and Technology at the University of Sussex School of Law, Politics, and Sociology.
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Minako Morita-Jaeger is a Senior Research Fellow in International Trade at the University of Sussex Business School, and a researcher within the Centre for Inclusive Trade Policy.
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Dr Yan Li

Declining Jurisdiction in China and South Korea: A Mixture of Civil and Common Law Culture in Private International Law?

Abstract

Declining jurisdiction in private international law is a topic with great significance not only in the theoretical but also in the practical sense. Generally, it is common for a court of a state to decline jurisdiction based on the international parallel proceeding rules and the doctrine of the forum non-convenience, the same goes for China and Korea. However, the novelty lies in the fact that compared to European and American countries, which are relatively familiar with this approach, China and Korea have recently introduced relevant provisions in the Art. 281, 282 of the "Chinese Civil Procedure Act 2023", and the Art. 11, 12 of the "Korean Private International Act 2022", respectively. In terms of specific content, they have many similarities as well as a few differences. One of the most impressive points is that they got civil and common law cultures in this area mixed up in different proportions. Ultimately, this article introduces the Chinese and Korean way to the declining jurisdiction in both theoretical and practical sense, to fill the theoretical gap in this area and to provide compliant guidance to the parties who wish to file a lawsuit in Chinese and Korean courts.

Bio

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Dr. Yixian Li, Ravi Prakash Vyas and Inma Conde

Is China the World's Biggest Face Recognition Dealer?: Global Companies and China's Data Surveillance and Privacy Laws

Abstract

China is becoming a leader in artificial intelligence and data collection as is the leader in facial recognition technology. This network comes with many advantages for the public security, it speeds up investigations, accurately identify criminals and prevent crimes. However, this technology collects a lot of biometric data about people, and the potential misuse of this data concerns individual privacy rights. In 2022, the multinational company Didi Global Inc received the highest regulatory penalty in a data protection case in China. The Cyberspace Administration of China ('CAC'), China's data protection regulator, did not mention which specific part of Chinese or International Laws were breached. To cover this gap, this paper will analyse the Didi Global Inc case and will show what national and international laws were infringed. The expected outcome will be to emphasise the importance of compliance with data laws and to make recommendations to avoid the illegal use of data by international companies in all Asia-Pacific.

Bio

Dr. Yixian Li is a Lecturer at Yunnan University.
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Professor Bing Ling

Bing Ling is a Professor of Chinese Law at the University of Sydney Law School, and a member of the Centre for Asian and Pacific Law.
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Dr Yang Liu

Unilateral Sanctions as Defenses in Investment Arbitration

Abstract

Given the prevalence of unilateral sanctions worldwide, there exists a real possibility that investors negatively impacted by such sanctions may seek remedies by instituting investor-state arbitration against the initiating state. Several ISDS cases challenging sanction measures have been pending. Despite the profound impact that such cases, there has been little academic treatment on sanction issues in investment arbitration. While sanctions can be assessed for their legality against the standards of protection in investment treaties, such analyses may not differ significantly from any other measures under scrutiny before investment tribunals. However, the fact that a challenged measure may come under the name "sanction" is naturally associated with idea of defense, if sanction necessarily conveys the meaning of "responding" to a prior violation. This paper considers three possible defenses that may justify unilateral sanctions against violations of investment treaties: the treaty-based non-precluded measures and customary-law-based countermeasures and state of necessity. The paper assesses the merits and limits of each defense, and suggests ways to better tailor sanction measures if states wish to better avail themselves of such defenses.

Bio

Dr Yang Liu is a Lecturer at the School of International Law of East China University of Political Science and Law.
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Dr Lemuel Didulo Lopez

Choice of Forum Clause and the Protection of Weaker Parties: Lessons from Asia

Abstract

The rationale for protecting weaker parties is that unequal bargaining power makes the weaker party vulnerable to being abused, and in such a scenario, the contract ends up containing terms which are asymmetrically in favour of the much stronger party to the prejudice of the weaker party. In Asia, this problem has an added dimension as inequality of bargaining power may also result from lack of proper comprehension of English language contracts, and other translation issues. Hence, asymmetric Choice-of-Forum clauses, Choice-of-Forum clauses used in transactions involving parties traditionally considered as 'weak', and Choice-of-Forum clauses in standard-form contracts may amount to depriving weaker parties of access to courts and waiving their procedural rights. This paper examines the relationship of Choice-of-Forum clauses and the 'need' to protect weaker parties by looking into the various approaches employed in different Asian countries. In common law and hybrid jurisdictions like Singapore, Hong Kong, Malaysia and the Philippines, the problem is addressed generally through contract law principles of unconscionability, undue influence, public policy and mandatory rules, special statutes. In civil law countries like China and Japan, substantive law along with procedural and jurisdictional rules ensure the weaker parties' protection.

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Dr Anastasia Suhartati Lukito

Enhancing Business Compliance Through Beneficial Ownership Disclosure in Indonesia (Anti-Money Laundering and Corporate Crime Perspectives)

Abstract

The tremendous growth of technology in the Industrial Revolution 5.0 has creating numerous corporations in Indonesia. Many corporations played a huge positive role in terms of fulfilling community needs. But ironically, many corporate crimes are also occurred as a negative excess. Corporations are often used as means to commit crimes, such as money laundering, tax evasion, and corruption. There are various cases of corporate misused which is a major challenge to good corporate governance.

There are people behind the corporation who are not detected and can be controllers or beneficial ownership in the corporation. In spite of creating business compliance of corporation, the Indonesian government has regulated Presidential Regulation 13 of 2018 which requires disclosure to beneficial ownership in every corporation including multinational corporation.

Through the regulation, it is expected that business compliance will increase for corporations in Indonesia. Furthermore, the regulation will indicate Indonesia's commitment in supporting Financial Action Task Force in the Anti-Money Laundering (AML) Perspective and the OECD Principles of Corporate Governance. Therefore, this paper will explore and analyse the Indonesia regulation on beneficial ownership in connection with corporate crime prevention as well as the weaknesses and obstacles.

Keywords: Beneficial Ownership, Disclosure, Anti-Money Laundering, Corporate Crime, Business Compliance

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THE UNIVERSITY OF SYDNEY

Fitria Dewi Navisa

Legality of Legal Products Produced by AI based on Positive Law in Indonesia

Abstract

Technology has developed and changed very significantly, it can be seen from simple items that support human daily life to complex things to support human professions. The obstacle for the government is preparing regulations and policies on artificial intelligence along with the inventions produced by artificial intelligence on positive law in Indonesia which will later become a part of people's lives that aim to gain people's welfare and prosperity. The research method used in this study is normative juridical research using secondary data sourced from library research in the form of research results, journals, the internet, scientific articles, laws, and other sources related to this research. Artificial intelligence cannot be categorized as a legal subject and is equated with a legal entity, in which a legal entity has clear and firm aims and objectives in its establishment and has a human role in it. Work produced by artificial intelligence will be included as an object of copyright, this applies if a human has created something other than the output of an artificial intelligence machine. Works produced by artificial intelligence are indeed not included in the subjective elements of creation, but these works will fulfill the objective elements of creation.

Keywords: Artificial Intelligence, Legal Products, Legal Subject

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Dr Thu Thuy Nguyen

The Barriers for Recognition and Enforcement of Foreign Judgments in Vietnam

Abstract

After the substantial reforms (Doi Moi) in 1986, Vietnam has actively engaged in international trade and investment relations with different countries and regions around the world. To promote cross-border civil and commercial relations, Vietnam has established a sophisticated legal framework regulating these relations, including rules on the recognition and enforcement of foreign judgments. Based on these rules, Vietnamese courts have recognised and enforced numerous foreign court judgments. Nevertheless, private parties faced many challenges in having Vietnamese courts enforce foreign judgments in Vietnam. By analysing the rules and jurisprudence in Vietnam, this paper will reveal the legal barriers that foreign parties must address to enforce foreign court judgments in Vietnam. This paper also provides some recommendations to amend Vietnamese laws on judgment recognition to promote judicial cooperation and facilitate international trade and investment.

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Professor Luke Nottage

Compliance with Alternative Dispute Resolution commitments in international commercial and investment agreements

Abstract

Privately-supplied ADR services, especially mediation, have been growing in Australia and parts of Asia as litigation and arbitration have become increasingly slow and costly. Firms also increasingly commit in cross-border commercial or investment contracts to negotiate and/or mediate disputes before proceeding to arbitration.

Courts generally now find that such agreed pre-arbitration steps are sufficiently certain to be enforceable. But what if controversy arises over whether those steps are complied with? Some courts in some jurisdictions say that usually they should decide this question, so arbitration commencement is blocked or any or any arbitration award is unenforceable, because the arbitrators have no jurisdiction. Other courts say the arbitrators usually should decide: compliance with pre-arbitration steps goes only to admissibility of claims, so a merits issue that cannot be reviewed typically by courts even the arbitrators are mistaken. The latter approach is also preferred by most arbitral tribunals interpreting investment treaties, containing cooling off and/or good faith negotiation requirements between foreign investors and host states (rarely yet mediation) before arbitration, although this may be partly because the investment treaty arbitration system tries to minimise court involvement in investor-state dispute resolution. This paper proposes a nuanced solution to this conundrum of who should usually best decide compliance or otherwise with ADR steps agreed before arbitration.

Bio

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Avin Persad-Ford

Deferred Prosecution Agreements in Australia: How to Protect the Shawcross Principle

Abstract
This paper considers how to implement a deferred prosecution agreement in Australia that complies with the Shawcross principle, which provides for the Attorney General's independence from their Westminster-style Cabinet in exercising prosecutorial discretion. It considers the arguments that Professor Liz Campbell raised in an earlier article in the Sydney Law Review, "Revisiting and Re-Situating Deferred Prosecution Agreements in Australia: Lessons from England and Wales". This paper is largely sympathetic to Professor Campbell's arguments that a deferred prosecution agreement regime in Australia would enhance cooperation between corporate defendants and the Crown, corporate director and officers' compliance with the law, and compensation to victims. It then considers, however, how those arguments may be problematic when considering the Attorney General's independence and how political pressure may interact with Australia's Federal Prosecution Service's Prosecution Policy of the Commonwealth. It considers Canada's proposed deferred prosecution agreement for SNC-Lavalin in 2019 as an example of such an interaction. Despite the abandoned deferred prosecution agreement for SNC-Lavalin, this paper concludes with a proposal for a deferred prosecution regime that simultaneously protects cooperation, compliance, compensation, and adherence to the Shawcross principle.

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Soumya Rajsingh

Examining Corporate Compliance for Combating Modern Slavery in India's Global Value Chain: An Analysis

Abstract
In the contemporary globalised landscape, India is swiftly becoming a pivotal participant in the global value chain. However, the expanding cross-border presence of corporations has raised concerns about potential human rights abuses. According to the Walk Free Foundation, a rights group focused on modern slavery, India tops the list among six G20 nations with the largest number of individuals in modern slavery, totalling 11 million, followed by China, Russia, Indonesia, Turkey, and the US. The spectre of human rights violations by corporations has been widely recognised by international law. Prominent organisations like the ILO, the OECD, and the UN emphasise that corporations bear a duty to respect human rights obligations. These organisations have further propagated the concept through corporate compliance mechanisms like human rights due diligence and reporting, as outlined in specific instruments such as the UNGP and OECD guidelines. However, criticism abounds regarding the adequacy of these mechanisms, often considered soft in character and primarily establishing a self-regulatory system. The current international legal framework falls short of directly attributing obligations to corporations, underscoring the need for the inclusion of these compliance measures in domestic laws for effective enforcement.

India's legal system possesses a comprehensive labour rights framework, and corporate social responsibility is not unfamiliar within the Indian corporate legal structure. This paper aims to evaluate the sufficiency of the Indian legal framework in addressing modern slavery within the global value chain. Furthermore, it seeks to analyse the status of human rights-oriented corporate compliance mechanisms within Indian laws to combat modern slavery effectively. Drawing a comparative analysis with Australia, which has specific legislation addressing modern slavery, the paper aims to deepen the understanding of impactful corporate compliance measures to eliminate modern slavery from the supply chain.

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Naeem AllahRakha

Towards a Cross-Border Cyber-security Legal Framework: Examining Data Protection Compliance Risks in Digital Trade across the Asia Pacific

Abstract

This paper examines cyber-security and data privacy compliance challenges associated with increasing digital trade across the Asia Pacific region. Rapid growth of cross-border data flows has outpaced development of aligned cybersecurity legal frameworks. Using doctrinal research and ground theory analysis, the study compares cyber-security and data protection laws across key Asia Pacific jurisdictions. Gaps and conflicts are identified that engender compliance risks for organizations handling sensitive data in the region. The paper aims to propose legal and regulatory reforms that could enhance cross-border cyber-security compliance through greater regional harmonization. Preliminary findings reveal discrepancies between data localization mandates, breach notification requirements, and privacy enforcement regimes across Asia Pacific economies. Recommendations include establishing Asia-Pacific standards for breach reporting and liability, plus a cross-border cybersecurity legal framework to facilitate secure digital trade. The paper concludes by emphasizing the critical need for modernized, harmonized cyber-security laws and compliance mechanisms to realize the full potential of digital trade in Asia Pacific.

Keywords: Cyber-security, Asia Pacific, Data Privacy, Digital Trade, Cross-border jurisdiction

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Ganesh Sahathevan

Remote Sensing Evidence in The Resolution Of Disputes Concerning Non-Compliant Carbon Credit Products Using A Remote Sensing Analysis Of The Basins Underlying The Malaysia-Singapore Water Agreements As A Frame Of Reference

Abstract

Satellite remote sensing evidence in the form of satellite imagery has been utilised by defence and intelligence agencies worldwide for over 50 years but their utilisation in dispute resolution in litigation before national courts and in international arbitration has been limited at best. Provenance of this form of evidence is likely to be a primary concern, but advances in technology and access to imagery may address these concerns.

The growing market for carbon credits presents an opportunity to resolve these issues for remote sensing data is an efficient means of ensuring that carbon credits are compliant with the regulatory and contractual requirements that bind the parties concerned. In this submission, an analysis of the catchments underlying the perpetually disputed Malaysia-Singapore Water Agreements which utilises satellite imagery is used to identify and address the evidentiary issues that are likely to arise when this or similar agreements are disputed before an international tribunal.

The solutions are then demonstrated to be applicable to addressing issues of provenance of evidence in disputes where non-compliance in carbon credit products is alleged.

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Manvee Kumar Saidha

Digitisation in Trade Financing: Mitigating Money Laundering Risks through Technological Innovation, Regulatory Interoperability, and Increased Policy-focused Dialogue

Abstract

This research paper explores the transformative impact of digitisation on trade financing as a robust strategy to counter money laundering risks. The global economy increasingly relies on intricate trade networks, making the financial sector susceptible to illicit activities. Traditional trade financing processes, laden with manual paperwork and cumbersome verification procedures, create vulnerabilities that money launderers exploit. This study advocates for the integration of advanced technological solutions to streamline and secure trade finance operations. By leveraging digitisation tools such as blockchain technology, artificial intelligence, and machine learning algorithms, financial institutions can establish a transparent and tamper-resistant infrastructure. These innovations enable real-time tracking, authentication, and validation of trade transactions, significantly reducing the scope for money laundering activities. The paper critically analyzes case studies and regulatory frameworks that highlight successful implementations of digitised trade financing systems.

The paper outlines the obstacles encountered in this collaborative effort involving multiple stakeholders. Challenges encompass variations in regulatory frameworks among jurisdictions, intricacies in achieving anti-money laundering/combating the financing of terrorism compliance, rigorous regulations concerning data privacy and security, and obstacles posed by regulations limiting access to payment systems and infrastructure. These difficulties not only result in increased costs but also hinder the smooth progression of transactions. The findings underscore the potential of digitisation not only in enhancing the efficiency of trade financing but also in fortifying the financial ecosystem against money laundering risks. As countries strive to align with evolving international standards, this research provides valuable insights into the synergy between technological advancements and regulatory frameworks to create a resilient and secure trade financing landscape.

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Victoria Trent

Anti-Money Laundering and Counter Terrorism Financing compliance: A banking perspective on the value of adopting a commercial risk-based approach

Abstract

AML/CTF compliance in the Australian banking sector has made its presence known within risk management, but can it be deemed mature? The disruption of financial crime has been and will always be an important problem for banks to address, however, the mechanisms that have been adopted in recent years are commercially unsustainable. This unsustainability is representative of the lack of maturity within AML/CTF compliance, and thus requires an antidote. The antidote is both transparent and opaque; its transparent by ensuring black letter law is met; its opaque due to the need to design and evolve ones risk-based approach. Implementing an AML regime in this manner requires the consideration of the commercial risks at play. The legislation is designed to impose large regulatory infringements on failed mandatory reporting rather than the areas that require the adoption of a risked based approach. This slant in the law presents the greatest opportunity for banks to focus on what matters the most; ensuring mandatory reporting is implemented flawlessly whilst managing only the risks that sit on the edge of a corporations appetite.

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Dapo Wang

Economic Sanctions and the Trade-Compliance Dilemmas for Chinese Companies

Abstract

Currently, the U.S. and EU are increasingly in favor of using unilateral economic and financial sanctions to force target countries/entities to change their behavior, in order to achieve national security and foreign policy interests. In response to the inappropriate application of foreign economic sanctions, China has adopted laws and regulations such as the "The Law on Countering Foreign Sanctions", "The Rules on Counteracting Unjustified Extraterritorial Application of Foreign Legislation and Other Measures", "The Law on Foreign Relations" and "The Provisions on the Unreliable Entity List" to safeguard its sovereignty and the stable operation of cross-border economic activities. In this context, Chinese companies may face the dilemma of complying with foreign sanctions laws and being punished by China's blocking legislation, or enforcing blocking bans of China while being sanctioned by foreign states and losing markets, resulting in hard compliance choice dilemmas and possibly triggering complex conflicts between countries. How should Chinese enterprises deal with sanctions compliance dilemmas in the fields of trade and finance, and how should the anti-sanctions legal system of China be improved in the future, are the main concerns of this article.

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Dr Shangxuan Wu

An Anatomy of China's Cross-border Data Flow Regulation Regime

Abstract

When data are increasingly an indispensable productivity factor for a nation-state's transformation and development, the risks embedded in the processes of collection, storage, transmission, and circulation etc., have gradually emerged. Indeed, the cross-border data flows can constitute the hinge point of national security and data security. Also, it has become the new domain of a superpowers game. The successive promulgation of Data Security Law, Personal Information Protection Law and Cyber Security Law signals an initial establishment of China's data security legal system. And it is necessary to further balance the regulatory benefits between the big data localization protection and the sufficient data circulation and utilization. To better maintain the balance mentioned above, it is feasible to make use of the cross-border flows of big data to penetrate into reconstructing the globalization pattern. With regard to the implementation measure, the policymakers should prioritize the national security protection, focus on regulatory efficacy, make use of the existing global multilateral mechanisms to build the regulation consensus, integrate the ex ante regulation admission requirements and the ex post remedy measures, mix practices of both hard laws and soft laws, promote data compliance, improve the algorithm evaluation and reinforce the regulatory measures' deterrent effects.

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Dr Dan Xie

The Judicial Interpretation and Application of Due Process Defence under the New York Convention: The Experience of Chinese Courts

Abstract

The New York Convention stands as a pivotal framework in international commercial arbitration, notably facilitating the global enforceability of arbitral awards. Of particular importance is Article V(1)(b) of the convention, which introduces the principle of due process into the realm of international arbitration. This paper delves into the nuanced landscape of judicial interpretation and application of Article V(1)(b) by Chinese courts, offering insights into the evolving judicial stance on this matter. The exploration unfolds in three key phases.

Firstly, the paper provides an overview of the diverse approaches taken by Member States of the New York Convention in interpreting Article V(1)(b). Secondly, it conducts an in-depth analysis of the historical trajectory of Chinese courts' treatment of this issue, unravelling the rationale behind both past and current approaches. Lastly, the paper looks forward, contemplating future developments and the potential contributions that Chinese courts may offer in fostering a uniform interpretation and application of Article V(1)(b), particularly within the context of amendments to the People's Republic of China (PRC) Arbitration Law. This comprehensive examination sheds light on the dynamics surrounding the incorporation of due process principles in international arbitration, emphasizing the evolving role of Chinese courts in shaping this landscape.

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Dr Shu Zhang and Pavan Swamy

Assessing the Choice of law and Choice of Foreign Arbitration Clauses in Cross-border Consumer Contracts under the Unfair Contract Terms Legal Framework: Developments in Australia and Overseas

Abstract

With the recent unfair contract terms (UCT) reforms in Australia, businesses with unfair terms in their standard form contracts are at risk of attracting substantial pecuniary penalties. It raises concerns that the use of exclusive choice of law and choice of foreign arbitration in international consumer contracts would be subject to its scrutiny.

In light of this, this manuscript examines the legal and practical consequences of using exclusive choice of foreign arbitration clauses and foreign choice of law with a particular focus on cross-border consumer transactions. It further assesses the pros and cons of the Australian approach in the context of a comparison of developments overseas, and addresses

This manuscript addresses this topic in the following sequence: first, we examine the characteristics of arbitration and choice of law clauses in the context of the general principles of international commercial arbitration. We further explore the key issues arising from the use of such clauses in international consumer contracts by comparing the Australian approach and approaches adopted by other similar UCT jurisdictions. On that basis, we draw conclusions on the potential effect of the new reforms and make suggestions for legal practitioners and legislators.

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Professor Zhenjie Zhou

Rethinking Criminal Compliance Reforms in China

Abstract

The Compliance Reform on Enterprises Involved in Criminal Cases (hereinafter, Criminal Compliance Reform) initiated by the Supreme People's Procuratorate of P.R.C (hereinafter, SPP) in March 2020 experiences a rapid expansion, either in terms of the number of cases handled so far and the range of crimes eligible for criminal reforms or in terms of the number of special personnel charged with supervision duties, full or part time. However, special political and economic backgrounds behind this rapid expansion has caused disputes as to legality and application of the reform, not to say of strong opposition and criticism. For instance, both Criminal Law of P.RC and Criminal Procedure Law of P.R.C are based on individualism, and contains no special principles of deciding criminal responsibility of and sentencing systems designed for legal entities and proceedings for supervising enterprises granted an opportunity to establish or promote internal compliance measures. In other words, the Criminal Compliance Reforms has been confronted with a normative risk. For another instance, the absence of a mechanism of deciding whether to mitigate or decree or to declare non-prosecution according to evaluation of effectiveness of internal compliance measures has resulted in doubts on justness of the reform itself. Meanwhile, as the Supreme People's Court of P.R.C (hereinafter, SPC) started carrying out the Criminal Compliance Reform as of March 2023, especially after the concept of 'all staged compliance' was proposed and recognized by official documents, its feasibility at trial and investigation stage has been seriously questioned, considering the huge number of cases handled by people's courts at all levels.

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Getting to Campus

Address:

The University of Sydney Law School, Boardroom and Common Room, Level 4, New Law Building F10

Taxi:

Please advise the taxi driver to enter via the Parramatta Road entrance next to Victoria Park. Alight next to the Front lawns in front of the old, gothic-style building.

Alternatively, please tell the driver to drop you off below the footbridge on City Road. Then walk 200 metres north on Eastern Avenue.

Sydney Law School is on the eastern side of Eastern Avenue.

Public Transport:

Redfern train station is a 15-minute walk to the campus.

If you are arriving by bus, there are stops at our main entrances on Parramatta Road and City Road.

Parking:

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