



Asian Dispute Review

Since 1999

January 2019

SPONSORED BY

■ HONG KONG INTERNATIONAL ARBITRATION CENTRE

■ CHARTERED INSTITUTE OF ARBITRATORS (EAST ASIA BRANCH)

■ HONG KONG INSTITUTE OF ARBITRATORS

■ HONG KONG MEDIATION COUNCIL

General Editors



Romesh Weeramantry



John Choong

Consulting and Technical Editor



Robert Morgan

Editorial Advisory Board

Cao Lijun
Henry Chen
Michael Hwang SC
Neil Kaplan CBE QC SBS
Gabrielle Kaufmann-Kohler
Julian Lew QC
Michael Moser
Yoshimi Ohara
Hi-Taek Shin

Supervisory Board

Paul Barrett (*Chartered Institute of Arbitrators, East Asia Branch*)
Chiann Bao (*Hong Kong International Arbitration Centre*)
Vod K S Chan (*Hong Kong Mediation Council*)
Sylvia Siu (*Hong Kong Institute of Arbitrators*)

Editorial Assistants

Jonathan Mackojc
Filip Nordlund

All enquiries to the *Asian Dispute Review's* Editors should be sent to asiandr-editor@hkciac.org

PUBLISHER



Hong Kong International Arbitration Centre

38/F, Two Exchange Square
8 Connaught Place, Central
Hong Kong
www.hkiac.org

Design

KAC Design

Advertising Contacts

Kirti Ladharam: kirti@hkiac.org
Karen Tan: karen@hkiac.org
Tel: (852) 2525 2381

Sponsoring Organisations

Hong Kong International Arbitration Centre
Chartered Institute of Arbitrators, East Asia Branch
Hong Kong Institute of Arbitrators
Hong Kong Mediation Council

www.asiandr.com

Copyright in all material published in the *Asian Dispute Review* is retained by the Hong Kong International Arbitration Centre (HKIAC) on behalf of the sponsoring organisations. No part of this journal may be reproduced or transmitted in any form or by any means, including recording and photocopying without the written permission of HKIAC, application for which should be addressed to HKIAC. Written permission must also be obtained before any part of this publication is stored in a retrieval system of any nature. The journal does not accept liability for any views, opinions, or advice given in it. Further, the contents of the journal do not necessarily reflect the views or opinions of the publisher, the editors, members of the Editorial Advisory Board or the Supervisory Board, HKIAC or the other sponsoring organisations and no liability is accepted in relation thereto.

3	EDITORIAL
	ARBITRATION
4	Lessons for Enforcement Across Jurisdictions: Reflections on <i>Astro v Lippo</i> <i>Albert Monichino QC</i>
13	The Prague Rules on the Efficient Conduct of Proceedings in International Arbitration: Are They an Alternative to the IBA Rules on the Taking of Evidence in International Arbitration? <i>Peter J Pettibone</i>
18	Learning from D'Asia-Vu: Asia-Based Institutions as a Model for ICSID Reform <i>Tom Villalón</i>
24	IN-HOUSE COUNSEL FOCUS A Case Study on the HKIAC Administered Arbitration Rules 2018 <i>Joe Liu</i>
31	JURISDICTION FOCUS Country Update: Mongolia <i>Nominchimeg Odsuren</i>
38	BOOK REVIEW Regional Economic Integration and Dispute Settlement in East Asia: The Evolving Legal Framework <i>Reviewed by Professor Leon Trakman</i>
40	NEWS

Past issues of the *Asian Dispute Review* are also available at www.kluwerarbitration.com



EDITORIAL

This issue of *Asian Dispute Review* commences with an article by Albert Monichino QC analysing the high-profile *Astro v Lippo* dispute and related line of court decisions from Singapore and Hong Kong regarding the enforcement of five arbitral awards made in Singapore. This is followed by an article by Peter J Pettibone discussing the Prague Rules on the Efficient Conduct of Proceedings in International Arbitration 2018, how they relate to the IBA Rules on the Taking of Evidence in International Arbitration 2010 and how they may serve the needs of parties, particularly those from the PRC, who are more familiar with a civil law-type procedure.

Tom Villalón then explores how ICSID's latest review of its Arbitration Rules may be assisted by recent editions of procedural rules adopted by arbitral institutions in East Asia. This is followed by the 'In-house Counsel Focus' article by Joe Liu on the most salient provisions of the HKIAC's recently adopted Administered Arbitration Rules 2018, which are helpfully explained through the use of a case scenario.

The 'Jurisdiction Focus' article by Nominchimeg Odsuren discusses important changes made to international arbitration in Mongolia by the Revised Arbitration Law of 2017 and key cases decided under it in 2018 by Mongolia's Court of Civil Appeals.

The issue concludes with a book review by Professor Leon Trakman of Anna G Tevini's treatise, *Regional Economic Integration and Dispute Settlement in East Asia: The Evolving Legal Framework*.

We take this opportunity to wish you all the very best for 2019 and look forward to providing you with more insights into the world of dispute resolution in the Asian region in the year ahead – which will mark the 20th anniversary of *Asian Dispute Review*.

General Editors



CONTRIBUTORS



Albert Monichino QC
Chartered Arbitrator
Australia



Joe Liu
Hong Kong International Arbitration Centre
Hong Kong



Peter Pettibone
Pettibone International ADR LLC
New York



Nominchimeg Odsuren
Avinex Partners LLP
Mongolia



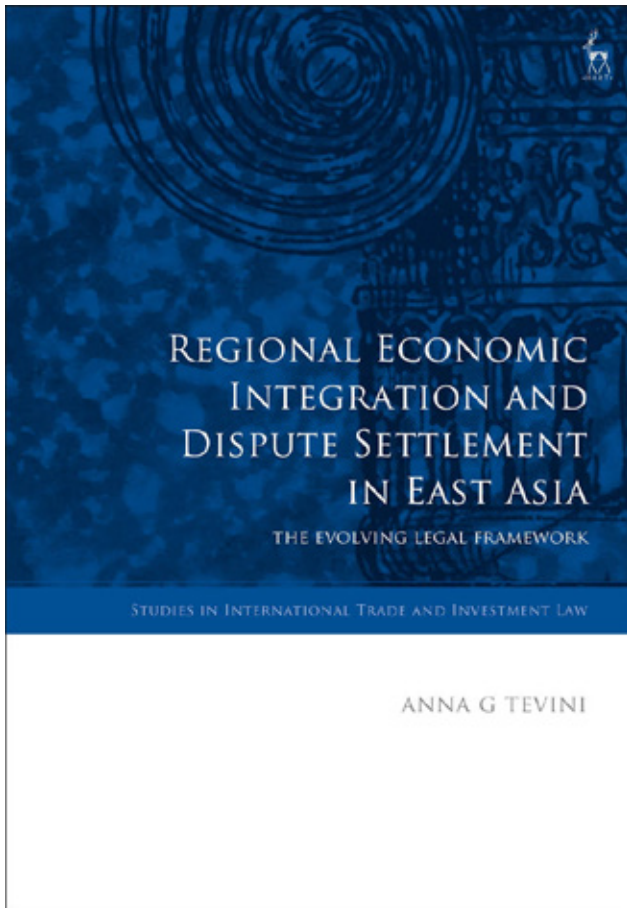
Tom Villalón
Bae, Kim & Lee LLC
Seoul, South Korea



Professor Leon Trakman
UNSW Professor of Law and Arbitrator
Australia

Regional Economic Integration and Dispute Settlement in East Asia: The Evolving Legal Framework¹

Reviewed by Professor Leon Trakman



This is an excellent book which has its rightful place in the libraries of lawyers who are involved in international dispute settlement, particularly but not exclusively in East Asia. However, it should also interest a wide range of further readers involved in the international economic order, including social historians, political scientists and government officials, as well as research students in these and other fields.

As its title indicates, the book focuses on the regional economic integration of countries in East Asia, including the four leading regional economic partnerships there: the Association of South East Asian Nations (ASEAN), the ASEAN-Chinese Comprehensive Economic Cooperation Agreement (ACFTA), the Japan-Singapore New Age Economic Partnership Agreement (JSEPA) and the

Mainland China-Hong Kong Closer Economic Partnership Arrangement (CEPA).

The book has significant interdisciplinary value in concentrating on the soft law, historical, political and economic factors giving rise to each partnership agreement and the hard law embodied in the policies, principles, rules and standards by which that hard law is applied. The author engages in an extremely well written analysis of the historical background to the World Trade Organization (WTO) and the General Agreement on Tariffs and Trade (GATT) preceding it, as background macro-forces that have influenced the regional creation of these four East Asian partnerships. She reflects on the complex social, economic and political dynamics influencing each agreement since inception. She also considers the development of trade liberalisation,

its evolving nature and its disparate conceptualisation and application over time, place and space. The analysis and discussion are of seminal importance in understanding these partnership agreements in law as in practice.

Even though the book prioritises hard over so-called 'soft' law, the discussion in the first two chapters, aptly, deals with the soft law necessary to understand the nature and complexity of the new economic world order surrounding global and regional trade in which East Asia is an important and functioning part. The author avoids engaging in an over-exuberant political polemic or compendium of diverse cultural, religious and social forces influencing the creation and functioning of each regional partnership. In Chapter 4, however, she explores the important challenges and obstacles faced by the different East Asian partnership agreements and provides useful insights into how to address them in discrete cases.

Chapter 1 seeks to ensure, very effectively in the writer's view, that the reader is familiarised with competing models of economic integration, such as market-driven and policy-driven models, primary and secondary rules arising from or related to those models, as well as the scope and depth of their impact upon international and regional economic integration. In considering these different factors, the book adeptly demonstrates how they influence the adoption and application of each partnership agreement, including their influence on market- or policy-driven treaty making. Rather than engaging as a political commentary on the virtue of such policies, the chapter focuses on identifying the nature and perceived social, political and, ultimately, legal impact of these policies upon the formulation of partnerships, principles and rules of application.

Chapter 2 equally adeptly examines the history of each regional partnership. It explores the general and particular political and economic factors that have contributed to the formulation of each agreement and, importantly, on its ongoing legal development as an instrument in regulating regional commerce in East Asia. Adopting an historical approach, the chapter explores the development of trade internationally and regionally, from its modern incarnation in the 1960s, to the extrapolation of legal rules from that incarnation, to their current exposition in each agreement. As a result, it identifies the growth of market-based

economic integration, both globally and regionally, and through different and particularised models of economic integration. The chapter also engages in such complex legal considerations as the application of the 'rule of law' among States that diverge in their very conception, construction and application of that concept.

Chapter 3 moves to legal issues relating to the construction of each regional partnership agreement. It considers, *inter alia*, the drafting history, institutional framework and the distinct and related legal attributes of each agreement. It also highlights both comparable and disparate constructions of these frameworks across East Asia. It does this by examining the legal institutionalisation of the agreements and by comparing their respective levels of legalisation. Understanding these disparate levels of legalisation is extremely important to those entering into negotiations and devising contracts relating to commerce in the applicable partnership region. If dispute resolution is to include dispute avoidance, this chapter provides a valuable framework in which to seek the former and, only failing that, resorting to the latter.

Chapter 4 extends this analysis to different conceptions of the significance of, and challenges for, the East Asia region, the extent to which liberalisation of trade is endorsed across East Asia, the significance of that endorsement, and prospective changes in and ramifications arising from those changes in the future.

The greatest value of the book lies in its clarity, comprehensiveness and demonstrated understanding of the subject. For those who engage in trade and investment in the region, the book is invaluable background reading, without purporting to be a 'how to' or 'step-by-step' guide to negotiating, contracting or resolving disputes. Its significant value is to enable the reader to comprehend the complexity of the subject-matter and to remove layers of complexity without marginalising the economic, political and, especially, legal obstacles in doing so. The book is highly recommended to scholars, students and practitioners engaged, directly or otherwise, in the field of dispute resolution, not only in East Asia but also in other regions and, indeed, globally. ■■■

¹ Anna G Tevini (2018, Hart Publishing), ISBN 978-18-494-6583-0, i-xxviii+557 pp, casebound.