

## COMPLETION REPORT

Promoting International Commercial Arbitration in Japan and China: Reforms and Prospects

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The rate of industrial growth, modernization, and improvement of socio-economic circumstances has, in many instances, outpaced the rate of growth of dispute resolution mechanisms. In many parts of Asia, rapid development has meant increased caseloads for already overburdened courts, further leading to slow adjudication of commercial disputes. As a result, alternative dispute resolution mechanisms, including arbitration, have become more crucial for businesses operating in Asia.

China and Japan are the second and the third biggest economy in the world and play an important role for the development of arbitration in Asia. This research made detailed comparison between the law and practice of arbitration in China and Japan in the following aspects:

- Strength of arbitration laws;
- Practice at arbitration institutions: in this respect, comparison is made between the China International Economic and Arbitration Commission and the Japan Commercial Arbitration Association; and
- Record of recognition and enforcement of arbitral awards.

Based on the above comparison, the research finds that the recent reforms in terms of legislation and institutional infrastructure in both countries have proven to produce positive effects for the development arbitration. It suggests in order to further promote international commercial arbitration in Japan, China and across the region, it is important to consolidate efforts of all stakeholders (in different sectors, public and private, domestic and international), to enhance the legal and institutional infrastructure, to improve the efficiency of the proceeding, and to enhance collaborations in terms of professional training and arbitration of arbitrators.

This research goes further to explore the historical and cultural influence of arbitration development in the two countries, and suggests that the different attitudes towards arbitration in the two countries seem to indicate that local cultures have reacted to the transplanted institution differently. The case of Japan and China illustrates the complex process of selection, rejection, reform and integration of legal transplantation: Japan as an example of selection, rejection and integration, while China as an example of selective adaptations, reform and integration. Through the example of arbitration development in

China and Japan, this research further predicts that the development of international arbitration will continue to be influenced by the combined forces of globalism and localism — a process of ‘glocalization’. It questions the inevitability of a worldwide convergence around Western values, and suggests a diffusion of cultures around the globe, bridging the Western and non-Western differences.

Publication of the Results of Research Project:

Verbal Presentation (Date, Venue, Name of Conference, Title of Presentation, Presenter, etc.)

- Fan Kun, “Globalization of Law and Divergence of Local Cultures — Glocalization of Arbitration From an East Asian Perspective”, delivered at New Directions in Global Thought, Harvard Institute of Global Law and Policy at Five, Harvard Law School, 3-4 June 2013
- Fan Kun, “Cultural Dimensions, Psychological Expectations and Behavior Patterns in Arbitration”, presented at the Conference The Roles of Psychology in International Arbitration, Brunel University, London, 22-24 May 2013
- Fan Kun and Joanna Jemielniak, “Ethnographic Methods in the Study of Hybrid Proceedings in Arbitration”, *Study of Behavior in Extrajudicial Dispute Resolution*, at the Law and Society Annual Conference, Minneapolis, 31 May 2014
- Fan Kun, “Arbitration as a Bridge of Cross-Cultural Differences — A Cultural Perspective”, *Towards a Theory of Arbitration: A Decentering Approach to Globalization*, co-hosted by the Faculty of Law, Chinese University of Hong Kong and Harvard Yenching Institute, on 27-28 June, Hong Kong.

Thesis (Name of Journal and its Date, Title and Author of Thesis, etc.)

*Journal Articles*

- Fan Kun, “International Dispute Resolution Trends in Asia”, *Transnational Dispute Management* (2013).
- “Glocalisation of Arbitration: Transnational Standards Struggling with Local Norms”, 18 *Harvard Negotiation Law Review* (2013), pp. 175-219.
- Fan Kun, “Cultural Dimensions and Investment Arbitration in Asia”, *Journal of World Trade and Investment*, forthcoming, 2014.

*Book chapter*

Clarisse von Wunschheim, Fan Kun, Yu Bing & Guan Zhong, Country report, “China” in Simon Greenberg, Christopher Kee and Romesh Weeramantry (ed.), *International Commercial Arbitration: An Asia-Pacific Perspective* (2nd edition), Kluwer, forthcoming.

Book (Publisher and Date of the Book, Title and Author of the Book, etc.)

N/A