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BOOK REVIEWS

Multi-Tier Dispute Resolution (MDR)

Multi-Tier Approaches to the Resolution of International Disputes: A Global and Comparative Study. Edited by Anselmo Reyes and Weixia Gu. Cambridge, UK: Cambridge University Press, 2022. 400 pp. $191.00
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"Multi-tier dispute resolution" (MDR) combines hybrid forms of dispute resolution that often start with mediation, neutral evaluation, or other non-adjudicative approaches and is followed by an adjudicative approach (e.g. arbitration or litigation) when the initial non-adjudicative approach is unsuccessful in resolving all or part of the parties' disputes. MDR provides parties with flexible, creative, and often cost-saving means for settling their disputes; therefore, it has become increasingly popular. Anselmo Reyes and Weixia Gu's edited volume is a must-see work for people who are interested in MDR.

First and most importantly, the book provides a comparative global overview of legal issues related to MDR and in-depth introductions to MDR laws of 13 jurisdictions (i.e. China, Hong Kong, Taiwan, Japan, Korea, Singapore, the US, the UK, Canada, Australia, the EU, Russia, and OHADA countries).

The book is divided into four parts containing 18 chapters in total. Part One provides a global overview of MDR featuring two chapters. Chapter One defines the concept of MDR and explores the differences between "med-arb," "arb-med," "arb-med-arb," etc. It then presents the comparative findings of the book regarding MDR laws and practices in common-law Asia, civil-law Asia, other common-law jurisdictions in the world, and continental Europe. It attributes the diverse development of MDR in the above jurisdictions to various factors, such as "a jurisdiction's legal system, the tradition, and its multi-faceted and variegated cultural aspects" (p. 24). Chapter Two provides an impressive statistics analysis of MDR laws in 195 jurisdictions. The statistics are presented by easy-to-read colourful charts and detailed analysis covering approaches to med-arb, arb-med, regulatory patterns, and development status. Part Four (Chapter Eighteen) concludes the book with a testimony to the resilience and the attraction of MDR in different parts of the world. It argues that MDR will "allow ample flexibility and informality in its mediation stage" and "not jeopardize any award produced in the arbitration stage by reason of the mediation stage having been conducted too loosely" (p. 441).

Part Two of the book focuses on Asia. It first explores the general trends of MDR. The chapter with respect to China (Chapter Three) concludes that it is hard to answer whether MDR in China will be impeded by due process issues, especially those caused by the same neutral serving as both mediator and arbitrator. This is because the majority of Chinese clients are attracted by the familiarity and efficiency that Chinese MDR brings and they usually do not worry about its procedural defects. Chapter Four explores MDR in Hong Kong by considering the competition from Singapore, Shanghai, Shenzhen, and Dubai, and suggests Hong Kong policy-makers engage more efforts to incentivize the use of MDR. According to Chapter Five, although Taiwan is not a member of the Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters, the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, or the Singapore Convention on Mediation, in civil, family,

and labour disputes, Taiwan MDR legal provisions have followed or will be enacted according to these Conventions. Regarding Japan, Chapter Six argues that MDR in cross-border dispute resolution is a recent challenging development due to the language barrier and Japanese civil-law tradition. Chapter Seven argues that Korea does not have an overarching law for private mediation and suggest Korea be more acceptive of mediation and MDR. As discussed in Chapter Eight, Singapore is a very dynamic jurisdiction for MDR from three aspects: judicial enforcement of MDR clauses, regulatory supports, and institutional innovation.

Part Three brings the wider world into the MDR picture. Chapter Eleven answers why MDR is widely used in commercial contracts, how courts and arbitration tribunals consider its enforceability, and what the future trend is in the US. Chapter Twelve focuses on the UK and argues that English courts have established strict criteria for assessing MDR. It alerts commercial users that numerous pitfalls may exist in the drafting process and suggests that they should take extra caution to ensure its enforceability. Regarding Canada, Chapter Thirteen describes the historical shift of Canadian courts from hesitance to acceptance of mediation. Currently, every Canadian province maintains a public system of referral to mediation before judicial trial and MDR agreements have become more prevalent. According to Chapter Fourteen, Australia is generally welcoming MDR; however, the number of court decisions concerning cross-border resolutions is extremely limited, and all the developments so far have occurred in decisions on domestic matters. The EU law and practices are analyzed in Chapter Fifteen. As its attractive title, "Praised, but not Practised," suggests, the use of MDR in the EU remains challenging, and the field responses to the Mediation Directive have varied. Suggestions are offered to enhance the use of MDR in the EU. Chapter Sixteen discusses the work-in-process MDR legislation in Russia. Business demands have promoted considerable judicial practice; although most issues remain controversial, an opportunity to develop MDR has appeared. Chapter Seventeen reviews the Uniform Act on Arbitration, the Arbitration Rules of Procedure of the Common Court of Justice and Arbitration (CCJA) and the Uniform Act on Mediation adopted in the OHADA region. It concludes that parties in the OHADA region will be better aware of the benefits of MDR.

The second reason for the value of this book comes from its research methodologies. Besides traditional black-letter legal analyses, the book also adopts convincing statistics and case-studies. Chapter Two is extensively based on statistics. An important finding is that

> the best predictor of whether a state will regulate at least one type of same neutral hybrid process is not region or legal tradition but rather development status ... low-income states are most likely to regulate such processes (55.2 per cent), followed by lower-middle- (45.7 per cent), high- (37.1 per cent) and upper-middle-income (26.3 per cent) states. (p. 64)

Statistics are also used to demonstrate the Financial Dispute Resolution Center cases (2012–18) (p. 106), mediation caseloads comparison between Chinese Arbitration Association (CAA) and district courts and the number of different types of cases handled by the CAA (pp. 111–2), in-court resolution of labour disputes in Taiwan (p. 126), comparison of civil litigations in leading civil-law countries (pp. 163–6), the number of attorneys as well as arbitration and mediation caseloads in Korea (pp. 168–73), etc. Chapters Nine and Ten are devoted to case-studies: the former explores the use of MDR clauses at the Hong Kong International Arbitration Center, and the latter discusses the use of conciliation and litigation by the Hong Kong Equal Opportunities Commission (EOC).

In conclusion, the book impressively compares MDR trends in Asia with the wider world and convincingly identifies MDR's strengths, weaknesses, and key challenges (the

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enforceability of MDR clauses, the difficulties arising from the conflicting role of the same neutral as mediator and arbitrator, and the enforcement of the mediated settlement agreements from MDR). This book, wonderfully written, may need updates with the ratification and implementation of the Singapore Convention on Mediation in the future. Its comparison could be more precise by focusing on MDR in commercial disputes in Asia and the wider world. It is not entirely clear for readers how MDR in family and labour cases discussed in some chapters of this book is related to the global trend of increasing MDR in transnational commercial disputes.

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Venture capital law in China

Venture Capital Law in China. By Lin Lin. Cambridge: Cambridge University Press, 2021. 340 pp. Hardcover $110.50
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China is now the second largest venture capital (VC) market in the world if one uses annual VC investment as the metric. While various governments around the world have undertaken initiatives to develop a VC market, many have produced lacklustre results. China's success in developing the VC market over a relative short span of 30 years is exceptional—and indeed remarkable. All the more so because it is commonly regarded as lacking the legal infrastructure that accounts for the success of the largest VC market in the world—the US. This book by Lin Lin from the National University of Singapore fills an important gap in the current literature by explaining the development of the Chinese VC market and its unique features.

The author seeks to answer three questions: (1) how China managed to develop the world's second largest VC market within three decades; (2) lessons to be obtained from the China experience; and (3) the way forward. In researching the answers to these questions, the author conducted empirical research—both qualitative and quantitative in nature. This include 60 hand-collected investment agreements and 40 limited-partnership agreements used in the Chinese market over the period 2010–19, as well as extensive interviews with 100 key market participants, ranging from lawyers, venture capitalist, PE managers, founders of start-ups and large technology/e-commerce companies, to individual and institutional investors. This is supplemented by relevant judgments on issues relating to disputes arising from VC investments, and data available from leading law firms and service providers in China and the US—an enormous and impressive endeavour by any measure.

The development of any VC market must address what Gilson terms the simultaneity problem—that is, confluence in the availability of investment capital, sophisticated financial intermediaries, and entrepreneurs. The main body of the book examines three areas that address how the simultaneity problem is addressed in the Chinese context: Venture Capital Fundraising (Chapter 2), Venture Capital Investing (Chapter 3), and Venture Capital Exits (Chapter 4). China does not aspire to be a free-market economy in the fashion of capitalist economies like the US, the UK, and Australia. Its model of "socialist market economy" unabashedly embraces state-owned enterprises and the strong hand of the state in