Commercial Arbitration between China and the Portuguese-Speaking World
Commercial Arbitration between China and the Portuguese-Speaking World

Fernando Dias Simões

Wolters Kluwer
Law & Business
For Crisália and Leonor
About the Author

Originally from Portugal, where he graduated from the Faculty of Law of the University of Coimbra, Fernando Dias Simões holds a Ph.D. from the Faculty of Law of the University of Santiago de Compostela (Spain) with a dissertation on the liability of supermarkets for defective products sold under their private labels. Since 2011 he has been Assistant Professor at the Faculty of Law of the University of Macau (China), where he teaches Contract Law and Commercial Arbitration. He is Visiting Professor at the Institute of International Studies in Bangkok (Thailand) and has held visiting scholarships at the Faculty of Law of McGill University (Canada) and Emory University School of Law (United States of America). He has authored and co-authored books and articles on International Commercial Arbitration, Products Liability, Contract Law, Consumer Law, and Legal Ethics.
# Table of Contents

About the Author vii

List of Abbreviations xiii

Preface xv

## Chapter 1

**Macau: Where China Meets the Lusophone World**

§1.01 China’s Interest in the Lusophone World
- [A] The Chinese ‘Go Global’ Policy 1
- [B] The Lusophone World 2
- [C] Reasons of Interest: Diverse Markets and Resources 3
  - [1] Portugal 4
  - [2] Brazil 4
  - [3] Portuguese-Speaking Africa 5
    - [i] Angola 7
    - [ii] Mozambique 7
    - [iii] Cape Verde 8
    - [iv] Guinea-Bissau 9
    - [v] São Tomé and Príncipe 9
  - [4] East Timor 9

§1.02 The Community of Portuguese-Speaking Countries 10
- [A] A Linguistic and Cultural Commonwealth 10
- [B] The Unrealised Potential for Economic Cooperation 12

§1.03 The Language of Trade 14
- [A] Language as an Economic Tool 14
- [B] The Chinese Perspective on Lusophony 17

§1.04 Macau: A Cultural and Economic Platform 19
- [A] The First and Last European Settlement in East Asia 19
- [B] A Cultural Janus: A Blend of East and West 20
Table of Contents

[C] An Economic Platform 21
[D] A High Degree of Autonomy 24
§1.05 A New Role for Macau? 27
[A] The Chinese ‘Charm Offensive’ 27
[C] Macau as a Legal Platform? 35
  [1] Legal Familiarity 36
    [i] The ‘Lusophone Legal System’ 36
    [ii] Law as a Promoter of Trade 40
    [iii] Comparative Law and Macau’s Vantage Point 41
  [2] Promotion of Macau as a Seat of Sino-Lusophone Commercial Arbitration 45

CHAPTER 2
The Global Market of International Commercial Arbitration 55
§2.01 The Seat of Arbitration 55
[A] Meaning 55
[B] Importance 56
  [1] Legal Considerations 57
  [2] Non-legal Considerations 61

§2.02 The Global ‘Battle of the Seats’ 62
[A] International Commercial Arbitration as a Product of Globalisation 62
[B] The Arbitration Industry 64
[C] Interest Groups 65
  [1] The Legislature 65
  [2] Arbitral Institutions 69
  [3] Arbitrators 74
§2.03 Macau’s Goal of Economic Diversification 78
§2.04 Sino-Lusophone Commercial Arbitration as a Specific Market 81

CHAPTER 3
Advantages of Macau as a Seat of Arbitration between China and the Lusophone World 85
§3.01 Adequate Legal Framework 85
[A] New York Convention 86
  [1] Importance 86
    [i] Legal Framework during the Portuguese Administration 89
    [ii] Legal Framework after the Creation of the Macau SAR 91
  [3] Accession by China and the PSCs 95
Table of Contents

[i] China 96
[ii] Portugal 96
[iii] Mozambique 96
[iv] Brazil 97
[v] São Tomé and Príncipe 97
[vi] Non-Member States 97

[B] Mainland/Macau Arrangement 99
[C] Domestic Laws 102

§3.02 Neutrality 104
§3.03 Legal Familiarity 108
§3.04 Cultural Proximity and Linguistic Ability 109
§3.05 Adequate Infrastructures 112

CHAPTER 4
A Roadmap for Improvement 115

§4.01 Improvement of the Legal Framework 116
[A] Implementation of Measures to Ensure the Enforceability of Awards in All Member States 116
[B] Reform of the Arbitration Laws of Macau 118

§4.02 Creation of a New Arbitral Institution 122
[A] Neutrality of the Centre 126
[B] Training of Qualified Administrative Staff 128
[C] Creation of a List of Qualified Arbitrators 129
[1] Technical Qualifications 130
[2] Nationality 132
[3] Language Skills 132
[D] Enactment of Suitable Arbitration Rules 133
[2] Number of Arbitrators 139
[3] Neutrality of the Arbitral Tribunal 140
[4] Language of the Arbitration 143
[5] Flexibility and Predictability 154
[i] Expedited Arbitration 159
[ii] Use of Technological Tools 162
[iii] Competitive Fee Schedule 163
[7] Publication of Arbitral Awards 167

[E] Creation of a Model Arbitration Clause 169
[F] Creation of Purpose-Built Facilities 173

§4.03 Training of Skilled Professionals 173
[A] Arbitrators 173
[B] Lawyers 177
[C] Judges 178
[D] Promotion of Legal Bilingualism 179