

CONVERGENCE AND DIVERGENCE OF PRIVATE LAW IN ASIA

There has been an increasing need for greater integration of many Asian economies, either within the confines of ASEAN or on a more geo-economically strategic scale including major Asian jurisdictions like China, Japan, and Korea. A number of key personalities within the regional legal fraternity have advanced views that such integration ought to occur through the harmonization of legal rules, arguing that in doing so, uncertainty and other transaction costs would be reduced and commercial confidence within the region concomitantly increased. This edited volume brings together eminent and promising scholars and practitioners to investigate what convergence and divergence means in their respective fields and for Asia. Interwoven in the details of each tale of convergence is whether and how convergence ought to take place, and in so choosing, what are the attendant consequences for that choice.

Gary Low is Vice-President (Legal & Regulatory Engagement) for e-commerce platform Lazada Group. He read for law at the LSE (LLB First Class Honours), Oxford (BCL, Distinction), and Maastricht (PhD). He was Justices' Law Clerk of the Supreme Court of Singapore, and shortly thereafter practised shipping and commercial law at Rajah & Tann LLP. Formerly on faculty at Tilburg, Maastricht and SMU, Gary has held visiting appointments at Cornell, Keio and CEU. Before becoming an in-house counsel, he was Deputy Senior State Counsel at the Attorney-General's Chambers.

Convergence and Divergence of Private Law in Asia

Edited by

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Lazada Singapore & RedMart



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To my children, Tobias William and Sophie Philippa, now six and four, respectively. One was born when I entertained the idea for this book, and the other was born just as I hosted the contributors at a conference. I should really stop at three.

Contents

<i>List of Tables</i>	<i>page</i> ix
<i>List of Contributors</i>	x
<i>Acknowledgments</i>	xv
<i>List of Abbreviations</i>	xvii
1 Introduction	1
Gary Low	
2 Uniform Law and the Production and Circulation of Legal Models	7
Luca Castellani	
3 Convergence, Divergence and Diversity in Financial Law: The Experience of the UNCITRAL Model Law and Cross-Border Insolvency	33
Andrew Godwin	
4 The New York Convention and the UNCITRAL Model Law on International Commercial Arbitration: Existing Models for Legal Convergence in Asia?	62
Michael Hwang	
5 Convergences and Divergences: Comparing Contractual and Organizational Models in International Regulatory Cooperation	81
Fabrizio Cafaggi	
6 Law as a Market Standard: Voluntary Unification in Contract and Company Law	105
Andreas Engert	

7	Is the Harmonisation of Asian Contract Law Possible? The Example of the European Union Mateja Durovic and Geraint Howells	135
8	The Presumption of Regularity in Chinese Corporate Contracting: Evidence and the Prospect of Regional Convergence Charles Zhen Qu	153
9	Mind the Gap: Studying the Implementation Discrepancy for the ASEAN Economic Community Sanchita Basu Das	180
10	The Rule of Law as Key to the ASEAN Legal Order: How Can It Be Ensured? Francis Jacobs	204
11	How Asian Should Asian Law Be? Ralf Michaels	227
	<i>Index</i>	252

Tables

3.1	Convergence objects and methodologies	<i>page</i> 38
8.1	Patterns of cases: percentage of authorised transactions	156
8.2	Pattern of court decisions: Contract enforceability and company liability	157
8.3	The RTB approach: what the contractor is entitled to assume	161
8.4	Approaches to the determination of the validity of unauthorised corporate security contracts	163
8.5	Decisions based on (inter alia) the RTB approach: outcomes	165
8.6	Evidence on modes of executing security instrument: seal	173
8.7	Evidence on modes of executing security instrument: signature	174
9.1	State of development divide in ASEAN	190

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All fault is mine alone. But the credit is shared and justly so.

Abbreviations

ABLI	Asian Business Law Institute
ABs	accreditation bodies
AEC	ASEAN Economic Community
AFC	1997–98 Asian Financial Crisis
AFTA	ASEAN Free Trade Area
AICHR	ASEAN Intergovernmental Commission on Human Rights
AIMO	ASEAN Integration Monitoring Office
APLMA	Asia Pacific Loan Market Association
ARISE	ASEAN Regional Integration Support by the European Union
ASEAN	Association of Southeast Asian Nations
AUSAID	Australian Agency for International Development
B2B	business to business
BGB	German Civil Code
BRC	British Retail Consortium
CABs	conformity assessment bodies
CBs	certifying bodies
CEO	chief executive officer
CESL	Common European Sales Law
CISG	United Nations Convention on Contracts for the International Sale of Goods
CLMV	Cambodia, Laos, Myanmar, and Vietnam
CLOUT	Case Law on UNCITRAL Texts
COMI	center of main interest
CPOs	certification program owners
CPTPP	Comprehensive and Progressive Agreement for Trans-Pacific Partnership
CSR	corporate social responsibility
DCFR	Draft Common Framework of Reference
DIFC	Dubai International Financial Centre

DSU	Dispute Settlement Understanding
EASA	European Advertising Standards Alliance
EBRD	European Bank for Reconstruction and Development
ECHR	European Convention on Human Rights
ECJ	European Court of Justice
ECSC	European Coal and Steel Community
ECtHR	European Court of Human Rights
EEA	European Economic Area
EEC	European Economic Community
EFTA	European Free Trade Association
EU	European Union
EURATOM	European Atomic Energy Community
FAO	Food and Agriculture Organization of the United Nations
FDI	foreign direct investment
FLO	Fairtrade Labelling Organization
FSC	Forest Stewardship Council
FTA	free trade agreement
GDP	gross domestic product
GFSI	Global Food Safety Initiative
GLCs	government-linked companies
HCCH	The Hague Conference on Private International Law
HDI	Human Development Index
HKIAC	Hong Kong International Arbitration Centre
HPC	High People's Court (China)
HPMs	high-priority measures
IAF	International Accreditation Forum
IATA	International Air Transport Association
ICAO	International Civil Aviation Organization
ICC	International Chamber of Commerce
ICCA	International Council for Commercial Arbitration
ICoC	International Code of Conduct
ICSID	International Centre for Settlement of Investment Disputes
IEC	International Electrotechnical Commission
IFS	International Featured Standards
ILO	International Labor Organization
IMR	indoor management rule
INCOTERMS	International Commercial Terms
IO	international organizations
IOSCO	International Organization of Securities Commissions
ISDA	International Swaps and Derivatives Association
ISEAL	International Social and Environmental Accreditation and Labelling Association

List of Abbreviations

xix

ISO	International Standards Organization
ISO/GRI	International Standards Organization / Global Reporting Initiative
LCIA	London Court of International Arbitration
LMA	Loan Markets Association
LR	legal representative
ME	monitoring and evaluation
MNC	multinational corporation
MOU	memorandum of understanding
NGO	nongovernmental organization
NSW	national single window
NTBs	non-tariff barriers
NTR	national trade repository
OECD	Organisation for Economic Co-operation and Development
OHADA	Organisation for the Harmonisation of Business Law in Africa
P&C	parts and components
PACL	Principles of Asian Contract Law
PECL	Principles of European Contract Law
PEFC	Programme for the Endorsement of Forest Certification
PKDs	prioritized key deliverables
PPP	purchasing power parity / public-private partnerships
PRC	People's Republic of China
RA	Rainforest Alliance
RECEP	Regional Comprehensive Economic Partnership
ROO	rules of origin
RSPO	Roundtable on Sustainable Palm Oil
RTB	reason-to-believe approach
RTRS	Round Table on Sustainable Soy
SAARC	South Asian Association for Regional Cooperation
SADC	Southern Africa Development Community
SAFA	Sustainable Assessment of Food and Agriculture
SAN	Sustainable Agriculture Network
SAR	Special Administrative Region
SDG	Sustainable Development Goals
SME	small- and medium-sized enterprise
SOEs	state-owned enterprises
SPC	Supreme People's Court (China)
TPP	Trans-Pacific Partnership
TPR	transnational private regulation
UCC	US Uniform Commercial Code
ULF	Uniform Law on the Formation of Contracts for the International Sale of Goods

ULIS	Uniform Law on the International Sale of Goods
UNCITRAL	United Nations Commission on International Trade Law
UNCTAD	United Nations Conference on Trade and Development
UNFSS	United Nations Forum on Sustainability Standards
UNIDROIT	International Institute for the Unification of Private Law
UPICC	UNIDROIT Principles of International Commercial Contracts
USAID	US Agency for International Development
WHO	World Health Organization
WTO	World Trade Organization
WWF	World Wide Fund for Nature