

J.H. Herbots, *Contracts in the People's Republic of China*

die Keure, 2018, 133 p. + Appendices

Review by Jean-François Tossens

Guest Lecturer at the Catholic University of Leuven
Member of the Brussels bar (Tossens Goldman Gonne)

Professor Jacques Herbots is a much-appreciated contributor to b-Arbitra. He provided our readers with an overview of the characteristics of arbitration law in China¹ and with the first translation in Dutch of the CIETAC Arbitration Rules as revised in 2015.²

His newly published book on *Contracts in the People's Republic of China* offers in a first part a complete overview of the substantive rules applicable to contracts in China, in a manner that 'makes the subject matter intelligible to the European way of thinking', as stated by Prof. Chen Min in his foreword. Prof. Herbots rightly advocates that no lawyer involved in international relations should remain ignorant today of the Chinese legal system, with which an increasing number of transactions are physically or digitally connected. Former Dean of the Faculty of Law of Leuven, J. Herbots speaks fluent Mandarin and has lectured for 25 years on China's Contract Law. He is the perfect person to introduce us to the specificities of this complex legal system.

The book also contains a section on arbitration, which has become the predominant mechanism of dispute resolution for international contracts in China. China has made significant efforts since it joined the WTO in 2011 to offer a reliable frame for foreign investments and international arbitration. China has now adopted the greater part of the essential principles of transnational arbitration practice. The China International Economic and Trade Arbitration Commission (CIETAC) is a widely recognized arbitration

¹ Herbots, J.H., "*Les caractéristiques propres du droit de l'arbitrage de la République Populaire de Chine*", b-Arbitra, 2014/2.

² B-Arbitra, 2017/2.

institution handling thousands of international disputes. Chinese courts also duly apply the New York Convention.

Yet China has kept some characteristics of its own that the international practitioner should know. The Confucian Philosophy of avoidance of conflicts will lead to a systematic effort of Chinese arbitrators to lead the parties to an amicable settlement. The particular weight given to 'ex aequo et bono' considerations will sometimes result in a gap between the laws written on paper and their implementation. The principle of competence – competence is notably absent in China, issues of jurisdiction of arbitrators being referred to the institution or to the People's Court. Also of interest is the distinction made by Chinese law between three types of arbitration: the domestic arbitration, the foreign-related arbitration having its seat in mainland China and the foreign arbitration having its seat outside mainland China. This distinction, combined with the specificities of the concept of seat of arbitration in China has sometimes led to confusion. Some courts for instance will not accept the validity of an arbitration in China under the auspices of a foreign institution.

By offering a user-friendly overview of both substantive law issues and of procedural issues, this book will be a valuable tool for all arbitration practitioners dealing with China or simply interested in knowing more about this increasingly important legal system in international business. The book is completed by a helpful selected bibliography and by Appendices, consisting in the main applicable Chinese statutory provisions.