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BOOK REVIEW:
ARBITRATION OF M&A TRANSACTIONS: A PRACTICAL GLOBAL GUIDE EDITED BY EDWARD POULTON

Reviewed by Tim Samples & Atman Shukla

I. INTRODUCTION

While capital flows and investor-state arbitration have been facing headwinds in the current global environment even before the onset of the Covid-19 pandemic, the arbitration of cross-border M&A transactions is well placed to continue thriving. For various reasons—from customizability in drafting to the enforceability of awards—market participants rely heavily on arbitration for cross-border M&A deals and many other international transactions. In this book review, we provide feedback on a valuable book published recently regarding this topic, titled Arbitration of M&A Transactions: A Practical Global Guide, edited by Edward Poulton.[1]

The substantive part of the book is divided into four parts: national threshold issues (Part 1), the arbitration agreement (Part 2), common types of disputes in M&A (Part 3), and other issues arising from arbitration (Part 4). We offer thoughts on each part of the book below, in sequence.

II. THE BOOK

A. *Part 1: National Threshold Issues.*

Part 1 addresses national threshold issues with local counsel perspectives from seventeen jurisdiction-specific sections: Austria, China and Hong Kong, England and Wales, France, Germany, Italy, Japan, Mexico, the Netherlands, Peru, Poland, Russia, Singapore, Spain, Sweden, Turkey, and the US. These summaries are not limited to matters of arbitration; many of them contain general information about business entities and other matters of law. These perspectives—written by an impressive array of experienced lawyers in the M&A space—offer the reader a quick overview of key issues, such as arbitrability, choice of law, and enforceability.

[1] Arbitration of M&A Transactions: A Practical Global Guide (Edward Poulton ed., 2014).

This Part offers practical and efficient primers on the jurisdictions covered. Because this Part is essentially an edited compilation of perspectives from a variety of jurisdictions, there is some variability in scope and content, which is a common feature in multi-jurisdiction productions like this. We believe Part 1 would prove helpful for any student or practitioner seeking general familiarity with the arbitration landscape in a covered jurisdiction. As an organizational matter, because this Part serves primarily as a jurisdiction-specific reference guide, we wondered whether it would be better placed later in the book.

B. *Part 2: The Arbitration Agreement.*

Part 2 begins by explaining what makes a valid arbitration agreement, including an overview of relevant international conventions, requirements for validity, and matters of competence. A roadmap of arbitration agreements follows, explaining the essential anatomy of arbitration agreements. As the authors correctly note, arbitration clauses are customizable, and the parties are free to depart from "one-size-fits-all" models.[1] The typology of approaches to arbitration clauses—from carve-out and hybrid to fast-track and escalation—is thorough without being tedious. As a complement to this Part's content, the authors add insightful commentary on notable cases and market practices throughout the sections.

Experienced attorneys will likely find certain aspects of this Part useful, while early-career lawyers will find a solid and comprehensive introduction to arbitration agreements.

C. *Part 3: Common Types of Disputes in M&A Contracts.*

Part 3 offers eleven different perspectives on common disputes and headline issues relevant not only in M&A transactions but also in joint ventures and shareholders agreements.[2] These perspectives range from pre-signing and interim period disputes to indemnity claims, from purchase price adjustment issues to valuation perspectives. For several reasons, this segment of the book should help both practitioners and students.

[1] Poulton, *supra* note 1, at 263.

[2] *Id.* at 279.

Refreshingly, the perspectives are delivered not only by lawyers, but also by accountants, consultants, and insurance professionals–such a variety will help readers develop a fuller context for envisioning how a dispute might play out, and how to avoid and/or mitigate disputes in the first place. For example, having articles both on the fundamental notions of breaches of representations and warranties, on the one hand, and the calculation of related damages, on the other hand, provides the reader practical context for the assiduous analysis required for contract drafting and interpretation.

Further, while the perspectives in this Part are certainly offered through a general lens focused on arbitration, in many ways, they are useful as a collective primer for commercial transactions generally, not only for commercial lawyers seeking prefatory reference material, but also for law or business students hoping to learn more about the nuts and bolts of deal-making.

Of special note is the article on warranty and indemnity insurance written by professionals hailing from Aon UK LTD, a well-known insurance firm.[3] Despite using the term "arbitration"[4] only once, this article serves as a useful reminder of the sorts of M&A disputes that can arise, as well as a guide for implementing and negotiating insurance coverage for losses arising from a seller's breach of representations and warranties. Given the ever-increasing prevalence of this insurance product and the breakneck pace of change in available options for insurance terms, having this well-structured article within close reach will prove useful for all M&A lawyers.

D. *Part 4: Other Issues Arising from Arbitration.*

Part 4 includes four articles.[5] They address legal finance, antitrust issues, confidentiality and privacy, and procedural and tactical issues. In a way, we would have found some of the content in this Part to be better placed, and perhaps better

[3] Poulton, *supra* note 1, at 363.

[4] *Id.* at 363.

[5] James MacKinnon, *Using Legal Finance of M&A Arbitrations*, *in* Arbitration of M&A Transactions: A Practical Global Guide at 447 (Edward Poulton ed., 2014).; Gordon Blanke, *Antitrust Issues*, *in id.* at 461; Ioann Knoll-Tudor, *Confidentiality and Privacy in Post-M&A Arbitration Disputes*, *in id.* at 477; John Leadley, *Procedural and Tactical Issues*, *in id.* at 513.

appreciated, if organized as part of a more general segment addressing the administration of an arbitration.

With that said, the articles are useful additions to the book. For instance, the article on legal finance[6] is an interesting reminder for the options, and pitfalls, relating to the financing of legal costs and expenses by outside parties. The article on procedural and tactical issues[7] is also an important piece addressing some key arbitration issues such as interim relief, timing issues, selection of arbitrators, and formal requirements for abiding by contractual prescriptions.

III. CONCLUSION

Overall, *Arbitration of M&A Transactions: A Practical Global Guide* lives up to its title by offering a useful introduction to arbitration agreements, jurisdiction-specific guidance, and a deeper dive on a number of discrete topics particular to M&A and related commercial arrangements. Given the broad scope and a significant variety of authors and perspectives, this book is a useful, practical reference point for any practitioner for spotting issues and identifying topics requiring further research or diligence.

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[6] MacKinnon, *supra* note 6.

[7] Leadley, *supra* note 6.

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