

Introduction: Asian Investment and Finance Law

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This special issue marks the latest milestone in Sydney Law School's long and strong tradition in engaging with Asian legal systems.

The late Professor Alice Erh-Soon Tay, former Head of the Department of Jurisprudence, became the Director of the Centre for Asian and Pacific Law at the University of Sydney (CAPLUS) upon its establishment in 1994. Professor Tay had a deep commitment to the study of the development of law in the Asian region. Her many publications included *Greater China: Law, Society and Trade*,¹ and the breadth and depth of her scholarly engagement with Asian legal systems is evidenced by a commemorative volume published soon after her untimely passing in 2003.² Under her leadership, the Law School, through CAPLUS and in conjunction with the East China University of Politics and Law, initiated one of the first intensive programs in Chinese Law giving Australian students the opportunity to study Chinese law in the People's Republic of China. The Shanghai Winter School continues to be one of Sydney Law School's most popular programs, and recently celebrated its 18th year of operation.

Associate Professor Klaus (Alex) Ziegert became CAPLUS Director in 1998, after Professor Tay was appointed President of Australia's Human Rights and Equal Opportunity Commission. Drawing on his expertise in socialist law and systems-theory based 'comparative jurisprudence', he established the 'Hanoi Winter School' to encourage Australian student engagement with Vietnamese law.

Professor Luke Nottage, a specialist in Japanese law, joined Sydney Law School in 2001 and, with support from CAPLUS,³ established the cross-institutional Australian Network for Japanese Law (ANJeL). Now centred on the law schools at the University of Sydney, the Australian National University and Bond University, ANJeL promotes teaching, research and community engagement with the Japanese legal system, particularly in Australia. Activities include annual

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¹ Alice E-S Tay and Conita S C Leung (eds), *Greater China: Law, Society and Trade* (Lawbook Co, 1995).

² Günther Doeker-Mach, Klaus A Ziegert and Daniel Atzbach (eds) *Alice Erh-Soon Tay: Lawyer, Scholar, Civil Servant* (Franz Steiner Verlag, 2004). See also, Julia Horne, 'The Cosmopolitan Life of Alice Erh-Soon Tay' 21 *Journal of World History* 419 (2010).

³ See, eg, Tom Ginsburg, Luke Nottage and Hiroo Sono (eds) *The Multiple Worlds of Japanese Law: Disjunctions and Conjunctions* (published jointly with the University of Victoria's Centre for Asia-Pacific Initiatives, 2001).

international conferences and related publications,⁴ as well as the Kyoto and Tokyo Seminars in Japanese Law for undergraduate and postgraduate law students from Australia, Ritsumeikan Law School and elsewhere.

Professor Vivienne Bath, then an international legal practitioner with many years experience in China and Asia, joined Sydney Law School in 2005 as Director of CAPLUS, and has expanded the Law School's offerings in Chinese Law. She also accelerated CAPLUS's program of engaging with the legal and academic community in Asian Law through research, conferences, workshops and public events.

Sydney Law School's existing expertise in Chinese and Japanese Law was supplemented by the appointments of Dr Simon Butt (ARC Australian Post-Doctoral Research Fellow specialising in Indonesian law) and Dr Salim Farrar (Islamic and Malaysian law), in 2008 and 2009 respectively, and of a very capable administrator for CAPLUS, Mr Craig Bromley. Dr Butt and Dr Farrar have inaugurated the 'Southeast Asia Winter School', taught at Gadjah Mada University in Yogyakarta and the International Islamic University in Kuala Lumpur.

Many other Faculty members are involved in researching aspects of Asian law and society, such as Professor Ben Saul (ARC Future Fellow).⁵ Several significant joint research projects have been recently completed⁶ or are now underway.⁷ The CAPLUS management board now comprises academics with an interest in many areas of Asian, international and comparative law, including Professor Gillian Triggs (Dean of Sydney Law School) and Dr Brett Williams (specialising in international trade and competition law). Strong support has also been offered to CAPLUS by its affiliate member, Judge Judith Gibson of the New South Wales District Court, and CAPLUS associates: Professors Mark Findlay, Ben Saul, Sheelagh McCracken and Lee Burns, Dr Kate Miles, Ms Nicola Franklin, Mr Daniel Rowland and Mr Micah Burch.

Sydney Law School has benefited in all these endeavours from institutional links with leading law schools in China, Hong Kong, Taiwan, Japan, Singapore, South Korea, the United States and Australia, as well as informal links with many

⁴ See, eg, Luke Nottage, Leon Wolff and Kent Anderson (eds) *Corporate Governance in the 21st Century: Japan's Gradual Transformation* (Elgar, 2008).

⁵ Hitoshi Nasu and Ben Saul (eds) *Human Rights in the Asia-Pacific Region: Towards Institution Building* (Routledge, 2011).

⁶ See, eg, Vivienne Bath and Luke Nottage (eds) *Foreign Investment and Dispute Resolution Law and Practice in Asia* (Routledge, 2011).

⁷ See, eg, Professors Rosemary Lyster and Elisabeth Peden, Associate Professor Tim Stephens and Dr Simon Butt, 'Developing a Legal Framework for Indonesia's Participation in an Internationally Sanctioned Scheme for Reducing Emissions from Deforestation (and Degradation)' (ARC Discovery Project, 2010–12); Associate Professor Fleur Johns, Professors Ben Saul, Phil Hirsch and Ben Boer, 'Mekong Laws: Scales, Sites and Impacts of "Hard" and "Soft" Law in Mekong River Basin Governance' (ARC Discovery Project, 2011–13); Dr Simon Butt, 'Indonesia's Constitutional Court: Safeguarding Democratic Transition?' (ARC Discovery Project, 2011–14); Professor Luke Nottage, Mr Micah Burch and Dr Brett Williams, 'Fostering a Common Culture in Cross-Border Dispute Resolution: Australia, Japan and the Asia-Pacific' (Australia-Japan Foundation, 2010–12, updated at <<http://blogs.usyd.edu.au/japaneselaw/>>); 'Socio-legal Norms in Preventing and Managing Disasters in Japan: Asia-Pacific and Interdisciplinary Perspectives' (Conference, co-funded by the Japan Foundation Sydney, 1–2 March 2012, Sydney Law School).

others.⁸ The strong commitment of the University of Sydney to Asian studies, in particular through the China Studies Centre and the International Development Program Fund, has also been of great assistance to CAPLUS and Sydney Law School.

Closer engagement with the rapidly-evolving Asian region is a priority in the current strategic plans of both Sydney Law School and the University of Sydney as a whole. This special issue, the first ever on Asian law for the *Sydney Law Review*, tracks recent developments on investment and finance law in Asia. It comprises eight articles (and one book review) covering a wide range of pressing legal issues by a range of eminent specialists in Asian law. The first three articles cover developments that go beyond particular jurisdictions. Mr Andrew Godwin (University of Melbourne) addresses the issue of corporate rescue and bankruptcy across the Asian region. Nottage and Professor Souichirou Kozuka (Gakushuin University) address the reform of consumer credit services markets in Japan and beyond, drawing on regulatory techniques in product safety regulation. A rather different dimension to the ‘safety’ of financial services is pursued by Associate Professor Kerri Sadiq and Dr Ann Black (University of Queensland) in their article on regulation of sharia-compliant products, which they compare to Australia’s regulatory regime.

Professor Tim Lindsey (University of Melbourne) also addresses the question of Islamic law in his article, but focusing on the regulation of Islamic banking in Indonesia. Butt looks at another issue in Indonesian law — the proliferation of local taxes and the effect on the investment regime. Bath, Professor Natalie Stoianoff (University of Technology, Sydney) and Associate Professor Sarah Biddulph (University of Melbourne) look at a number of important issues in Chinese trade and investment. Bath compares the national interest tests for foreign investment in Australia and China; Stoianoff considers the role of the World Trade Organization in China’s intellectual property regime; and Biddulph looks at labour law in China, a topical issue for investors and others. Nottage and Mr Fady Aoun (University of Sydney) end with a review of a very recent book on corporate governance in Asia.⁹ Together, these articles constitute a lively and topical addition to the discussion of important issues in Asian law.

As guest editors of this special issue, we thank all the other contributors, numerous referees for the blind review process conducted throughout 2011, *Sydney Law Review* staff and editorial board members. We also record our gratitude to

⁸ For example, the University of Hawaii’s William S Richardson School of Law, which in 2011 hosted the inaugural joint symposium on (public) law reforms in Asia — an event also involving law professors from Seoul National University and the University of British Columbia. Published papers include four in (2011) 13 *Asian-Pacific Law and Policy Journal* available at <<http://www.hawaii.edu/aplpj/>>; Simon Butt, ‘Anti-Corruption Reform in Indonesia: An Obituary?’ (2011) 47 *Bulletin of Indonesian Economic Studies* 381–94; Salim Farrar, ‘Enforcing the Law Against the Enforcers: The Law Enforcement Agency Integrity Commission of Malaysia’ in Khairil Azmin Mokhtar (ed), *Constitutional Law and Human Rights in Malaysia: Selected Issues* (Sweet & Maxwell, 2nd ed, 2012). A second joint symposium will take place at Sydney Law School over 3–4 August 2012, focusing on recent business law reforms in Asia.

⁹ Dan W Puchniak, Harald Baum and Michael Ewing-Chow (eds) *The Derivative Action in Asia: A Comparative and Functional Approach* (Cambridge University Press, 2012).

CAPLUS and other Sydney Law School and university colleagues (including successive Law Deans) for their ongoing support of engagement with Asian legal systems.