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BOOK REVIEWS

UNIDROIT Principles of International Commercial Contracts: An Article-By-Article Commentary

Eckart Brödermann

Wolters-Kluwer (2018), 433pp (hardback)

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The 2018 publication *UNIDROIT Principles of International Commercial Contracts: An Article-by-Article Commentary* by Hamburg attorney Professor Dr Eckart J Brödermann is a welcome contribution to understanding the 2016 release of the UNIDROIT Principles of International Commercial Contracts ('UNIDROIT Principles') for practitioners who were previously unfamiliar with this international soft law, as well as those seeking to update and expand their knowledge as to their practical application.

Great strides have been made in the harmonisation of procedural law for international commercial arbitration, thanks in large part to the work of the IBA Arbitration Committee, the United Nations Commission on International Trade Law (UNCITRAL) and others. However, the diversity of contract laws which govern the substantive issues that arise in arbitrations worldwide remains a major challenge.

The UNIDROIT Principles offer an impressive solution for those who seek a unified substantive law regime relating to international contract law issues. UNIDROIT (formerly known as the International Institute for the Unification of Private Law), is an intergovernmental organisation with 64 member states from all five continents. The first release of the UNIDROIT Principles was made in 1994. The fourth and most current release, that of 2016, is the product of further revisions by the UNIDROIT Working Group and is the subject of Brödermann's book.

Brödermann served for five years as an official observer for the shaping of the third release (in 2010) of the Principles by the UNIDROIT Working Group. As he explains in this book, he has also had much experience in applying the UNIDROIT Principles. With this background and insight, the focus of this book is to explain how the UNIDROIT Principles may be not just understood but also implemented in practice.

The author adopts a short commentary approach, giving practitioners an accessible 408-page book that enables them to easily refer to a large volume of information. In an article-by-article commentary, Brödermann bases his initial observations on the 'Official Comments' edited by UNIDROIT, then

offers practical guidance, supplemented by references directing the reader to further commentaries by other prominent experts and teams, including the early commentary in Spanish by the team working with David Morán Bovio and the very lengthy commentary by the team, from 13 jurisdictions, working with Stefan Vogenauer.

As the UNIDROIT Principles apply only to contract law (and not to other legal subjects such as property, securities and others), their scope of application is limited. Other limitations on their application are highlighted, including the requirements of mandatory international and national law, as well as situations where a contract is governed by national law. The book addresses how to work with such limitations, as well as how the UNIDROIT Principles apply in contractual situations where special solutions and clauses are needed.

As Brödermann was instrumental in founding the Chinese European Arbitration Centre (CEAC) and is himself an arbitrator, he offers a number of practical comments aimed towards the application of the UNIDROIT Principles in international arbitration.

Drawing on the experience of an arbitration administered by CEAC, the author recalls a case where the parties agreed to apply the UNIDROIT Principles as a neutral set of rules instead of the UN Convention on Contracts for the International Sale of Goods (CISG) and Chinese law on which the claim was based. That approach was accepted after the parties determined that it would not change their chance of success under the facts of the case and that application of the UNIDROIT Principles could avoid the costs of pleading Chinese law in detail before a tribunal consisting of three non-Chinese arbitrators.

This useful book also offers practical tips on how an arbitral tribunal may approach issues of contract interpretation under the UNIDROIT Principles. One example is the author's explanation regarding the interplay between Article 4.8 ('supplying an omitted term') and Articles 5.1.1–5.1.2 ('express and implied obligations'). Article 4.8 grants discretion to determine what is 'appropriate in the circumstances', with a list of factors that might be considered to fill in a term that was omitted. Articles 5.1.1–5.1.2 address how an 'implied term' may be deduced. The fine line between Article 4.8 and Articles 5.1.1–5.1.2 has been the subject of criticism by some commentators. Noting the frequent differences within a mixed common/civil law tribunal, the author offers the pointer that it may be possible to leave open the question of whether Article 4.8 or Articles 5.1.1–5.1.2 should be applied to a given question, in order to permit alternative reasoning by arbitrators of all backgrounds. Such an open approach may avoid lengthy deliberations towards reaching a joint decision, Brödermann explains.

In order that the reader may easily consult selected portions of the book for advice on specific topics, the author provides definitions and helpful cross-references with a table of correspondence (reprinted from the UNIDROIT Official Comments) of the UNIDROIT articles as they appear in their 1994, 2004, 2010 and 2016 releases, respectively, as well as a list of references showing which articles of the CISG had served as a source for corresponding articles under the UNIDROIT Principles 2016 release. In addition, the book provides orientation to the myriad of rules on contract law, with references to the Principles of European Contract Law (PECL), which is a set of model rules drawn up by contract law experts from both civil and common law systems, the United States Restatement (Second) of Contracts, a treatise on the general principles of common law based upon the laws of various jurisdictions and the Draft Common Frame of Reference (DCFR), a draft for the unification of European law from a joint project involving both civil and common law experts in Europe.

Practitioners will welcome this excellent and timely addition to the body of literature surrounding the UNIDROIT Principles.

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