

# CONTENTS

<i>Abstract</i>	xi
<i>Table of cases</i>	xiii
<i>Table of legislation</i>	xvii

## Part I Background

CHAPTER 1	THE CHALLENGES OF THE USE OF ONLINE ARBITRATION IN COMMERCIAL TRANSACTIONS	3
1.1	The concepts of Online Dispute Resolution (ODR)	3
1.1.1	Traditional means of dispute resolution	3
1.1.2	The popularity of alternative dispute resolution	4
1.1.3	The advent of Online Dispute Resolution	5
1.2	Obstacles to the use of online arbitration	8
1.2.1	Suitability of the types of cases	8
1.2.2	Technological advancement and constraints	12
1.2.3	Legislative measures	13
1.2.3.1	International regulatory development	13
1.2.3.2	The EU framework	17
1.2.3.3	The US trend	22
1.2.3.4	The Chinese approach	23
CHAPTER 2	THE DEVELOPMENT OF BEST PRACTICE FOR ONLINE ARBITRATION	26
2.1	Developing online arbitration best practice	26
2.1.1	eBay and SquareTrade (past experience)	27
2.1.2	AAA and Cybersettle	27
2.1.3	WIPO and ICANN-UDRP	28
2.1.4	CIETAC and HKIAC	30
2.1.5	Other established ODR services	33
2.1.6	The most recent development of ODR services	33
2.1.7	The growth of ODR best practices	35

2.1.8	Core principles	37
2.1.8.1	Efficiency	37
2.1.8.2	Accountability (transparency) v confidentiality	38
2.1.8.3	Accessibility	42
2.1.8.4	Credibility and accreditation	43
2.1.8.5	Security	46
2.1.8.6	Enforceability	47
2.2	Purposes and structure of this book	48

## Part II Procedural rules for online arbitration

CHAPTER 3	ONLINE ARBITRATION PROCEDURES	51
3.1	The further development of general ODR regulations	51
3.2	Choice of service providers	55
3.3	Choice of procedure rules	62
3.4	Selection of online arbitrators	63
3.5	Expert witnesses and electronic evidence	67
3.6	Format of arbitration agreements	70
3.7	Process of hearing/commencement of arbitration proceedings	72
3.8	Format and issuance of online arbitral awards	74

CHAPTER 4	SYSTEMATIC LEGAL AND TECHNOLOGICAL DEVELOPMENT FOR ONLINE ARBITRATION PROCEDURES	78
4.1	The expansion of general ODR systems	78
4.2	Expertise, authority, reputation and strategic alliance	82
4.3	Appointment of online arbitrators	87
4.4	The admission of electronic evidence	91
4.5	The attendance/testimony of witnesses online in arbitral proceedings	96
4.6	Security, integrity and accessibility of online arbitration platforms	97
4.7	Selection of the seat of online arbitration	100
4.8	Users' awareness and protection in online arbitration	103
	Summary	104

## Part III Substantive legal issues of online arbitration

CHAPTER 5	THE VALIDITY OF AND LAW APPLICABLE TO ONLINE ARBITRATION AGREEMENTS	107
5.1	Validity of online arbitration agreements	107
5.1.1	The recognition of forming arbitration agreements via electronic communications	107

## CONTENTS

5.1.2	The incorporation of an arbitration clause or agreement via electronic means	110
5.2	Online consumer arbitration agreements	117
5.2.1	Private online consumer arbitration agreements	117
5.2.2	Public/statutory small claims arbitration	124
5.3	Online commercial arbitration agreements	125
CHAPTER 6 THE ENFORCEMENT OF ONLINE ARBITRAL AWARDS		130
6.1	Legal framework for online arbitral awards	130
6.2	Jurisdiction and applicable law concerning online arbitral awards	133
6.3	Challenge of online arbitral awards	138
6.4	Recognition and enforcement of online arbitral awards	140
	Summary	147
Part IV Conclusions and afterthoughts		
CHAPTER 7 THE WAY FORWARD: INTERNATIONAL HARMONISED BEST PRACTICES		151
7.1	Future legislative trends	151
7.2	Solutions to obstacles in online arbitration	154
<i>Appendix I Regulation (EU) No 524/2013 of the European Parliament and of the Council of 21 May 2013</i>		161
<i>Appendix II China International Economic and Trade Arbitration Commission (CIETAC) Online Arbitration Rules</i>		181
<i>Index</i>		195