

Summary & Review of Shanghai diaLAWgue

Building Legal Bridges for Chinese-European Business



11th to 12th November 2015
Fairmont Peace Hotel, Shanghai, China

Foreword

The City of Hamburg is an internationally highly recognised venue for jurisdiction, arbitration and legal education. The International Tribunal for the Law of the Sea is located here, as well as law firms and excellent notary offices specializing in all aspects of international law. German-Chinese legal expertise is found in many places in Hamburg, such as in the joint project between the Chinese government and the China-EU School of Law (CESL), or in the Chinese European Arbitration Centre (CEAC). In addition, Hamburg is home of the Max Planck Institute for comparative and international Private Law. Three Hamburg universities also conduct a very successful academic dialogue on law with China: the University of Hamburg, Kühne Logistics University and Bucerius Law School.

The initiation of the “Shanghai diaLAWgue” in November 2015 in Shanghai provided an important and logical step in order to bring Hamburg’s expertise in the area of law and law education with regard to China on a new level. It opens up a new and promising area of cooperation. With its profound expertise on China, Hamburg is the ideal partner for close economic relationships between China and Europe. As Shanghai’s sister city, we consider it both an honour and an obligation to ensure that the economic relationships between China and Europe remain reliable and stable.

Shanghai and Hamburg have developed their areas of cooperation over the last 30 years and established well-respected and friendly relations. I wish that the “Shanghai diaLAWgue” as well as potential future events in the area of law might foster these relations even more.

Olaf Scholz

First Mayor of the Free and Hanseatic City of Hamburg

Speaker

- **Prof. Dr. Dr. h.c. mult. Katharina Boele-Woelki**, President of the Bucerius Law School Hamburg
- **Caroline Berube**, Attorney-at-law, HJM Asia Law & Co. LLC, Guangzhou, Singapore, Shanghai
- **Prof. Dr. Eckart Brödermann**, Chairman of the Chinese European Arbitration Centre (CEAC), Board Member of the Hanseatic Bar, Brödermann Jahn, lawyer
- **Dr. Jan Curschmann**, Chairman of the European-Latinamerican Arbitration Association (ELArb), Chairman of the International Section of the German Lawyers Club, Taylor Wessing, lawyer
- **Dr. Gao Fei**, Juris Doctor, Secretary General
- **Prof. Jetta Frost**, Vice-President, University of Hamburg
- **Christian Graf**, Chamber of Commerce, Area Director of Law, Hamburg
- **Prof. Dr. Armin Hatje**, European Co-Dean China-EU School of Law (CESL), Hamburg University, Faculty of Law
- **Stefan Herms**, Director General, International and European Relations, Free and Hanseatic City of Hamburg
- **YAO Hongmin**, Shanghai International Arbitration Centre
- **Prof. Dr. Hinrich Julius**, European Co-Chair Joint Managerial Committee China-EU School of Law (CESL), Hamburg University, Faculty of Law
- **David Liu**, Jun He Law Offices, Shanghai
- **Friedrich-Joachim Mehmel**, Chairman Rechtsstandort Hamburg e.V. and President of the Higher Administrative Court, Hamburg

- **Prof. XU Meijun**, Professor and Vice Director of the International Affairs Committee at Fudan University Law School
- **Axel Neelmeier**, Schulz Noack Bärwinkel Lawyers and Partners, Hamburg
- **Ass. Prof. Dr. Knut Benjamin Pißler**, Max-Planck-Institute for Foreign and International Private Law, Chief of the Department of China
- **Olaf Scholz**, Mayor of the Free and Hanseatic City of Hamburg
- **Dr. Christoph Schröder**, CMS Hasche Sigle, lawyer, Shanghai
- **Prof. ZHENG Shaohua**, Vice President of the Shanghai University of Finance and Economics (SHUFE)
- **Heiko Zier**, President of the Hamburg Chamber of Civil Law Notaries, notary

Sponsors:



Index

A. Consultation and Contracting

1. Welcome speech, by Stefan Herms and Friedrich-Joachim Mehmel7
2. Challenges for Chinese Corporate Acquisitions in Germany, by Axel Neelmeier 11
3. Corporate Acquisition in Germany from a Chinese perspective,
by David Liu 17
4. Cooperation with Chinese Clients – Experiences of a German Lawyer,
by Dr. Christoph Schröder 23
5. Intercultural Challenges China-Europe, by Caroline Berube and
Prof. Dr. Eckart Brödermann 28
6. Legal Certainty and Reliability for the Realization of Corporate Acquisition through
German Notary Law, by Heiko Zier 30

B. Arbitration

I. Regional Arbitration Perspectives

1. Presentation of Hamburg as leading German Location for Business, Science
and Law, by Friedrich-Joachim Mehmel and Christian Graf..... 33
2. Arbitration in Shanghai: Opportunities and Challenges in Building
International Commercial Arbitration Centre, by YAO Hongmin 40

II. Law and Safe Dispute Resolution as a Backbone to Business

1. Key Note Speech from a Hamburg Perspective, by Olaf Scholz 42

III. International Arbitration Perspectives

1. International Arbitration in China: Opportunities for German Investors and

German Arbitrators – the experience of CIETAC under the new CIETAC Rules, by Dr. Gao Fei	45
2. CEAC as a Success Story in Building Bridges in Arbitration between China and Europe via Hamburg, by Prof. Dr. Eckart Brödermann	54
3. Further Success Stories of Building International Arbitration: The Attraction of the New European Latin American Arbitration Centre for the Development of Chinese Business, by Dr. Jan Curschmann.....	57

C. Education

I. Concepts of International Legal Education

1. Legal Education and Internationalization – Challenges between International Standards and National Requirements, by Prof. Dr. Dr. h.c. mult. Katharina Boele- Woelki	64
2. Challenges of Internationalization in Legal Education: The China Perspective, by Prof. XU Meijun	75
3. Education of Anglo-American law and comparative law in SUFE, by Prof. ZHENG Shaohua	86
4. China-EU School of Law – an Example of International Legal Education – Mastering Challenges of China and Europe, by Prof. Dr. Armin Hatje	88

II. Scientific Cooperation: Solutions for an International Tomorrow

1. Studying Abroad: Practical Challenges – Funding, Accommodation, Visa by Prof. Dr. Hinrich Julius	102
2. Foreign Law in Germany: The Role of the Max-Planck-Institutes, by Prof. Dr. Knut Benjamin Pißler	111
3. Graduate Schools as Starting Point for International Research, by Prof. Jetta Frost	117

D. Pictures

A. Consultation and Contracting

1. Welcome speech

Speaker: Stefan Herms

Madame Liu,

Madame President Boele Wölki,

Madame Vice-President Frost,

President Mehmel,

The presidents of the Hanseatic Bar Association and the Hamburg Chamber of Notaries, Mr Kury and Mr Zier.

Dear colleagues in the law and colleagues from Shanghai and Hamburg,

Ladies and Gentlemen,

I am extremely pleased to be able to welcome you here in the name of the Hamburg Senate in Shanghai at this place that is so steeped in tradition.

Next year will mark the 30th anniversary of the twin city partnership between Shanghai and Hamburg. We will be celebrating together and discussing projects in a large range of areas – from student exchanges to university collaborations, to political contacts and the many intensive business and cultural relationships.

But now something new is being added.

We are jointly experiencing a premiere in our city partnership – an event that initiates an exchange in a field that is new to this partnership – law.

In addition to the current topics we can begin with, as well as the perspectives, others will be added right away. As I am a jurist myself, I would only like to say the following: Here we definitely have a great potential in many areas – collaborations of law offices and their services, the perspectives of arbitration jurisdiction, education and research. The successes enjoyed by all those who are already collaborating in this area – I am thinking of law offices in particular – speak for themselves.

Our partnership has always been characterised by two components: First, the framework: Despite all of our cultural, political and geographic differences, we have a comparable basic situation, as these two cities are the most important international hubs in their countries.

And it is within this framework of comparable interests that, for one, concrete relationships between people, institutions and companies can then evolve.

Among the striking experiences that take place within the framework of our partnership are those of school and university students, whom we encounter again later in collaborations in business, politics and academics. They are the pillars of a partnership built on confidence and mutual recognition and respect.

With this event, we hope to develop new areas of cooperation and strengthen existing relationships. I am convinced that we have the best prerequisites for developing an even more fruitful collaboration in the field of law, one which is supported by active partners.

I hope that you – rather, all of us – will profit from some exciting lectures and discussions, and I thank everyone who has been so actively involved in the preparations.

Speaker: Friedrich-Joachim Mehmel

Ladies and Gentlemen, dear Mr Herms,

As Chairman of Rechtsstandort Hamburg and President of the Hamburg Higher Administrative Court, I would like to welcome you most cordially – also in the name of Rechtsstandort Hamburg – to our joint Shanghai diaLAWgue this afternoon and tomorrow.

For me personally, this is also an emotional moment because in 1985, almost exactly 30 years ago, I once spent two weeks in Shanghai with a delegation of young administration officials and judges on the eve of the signing of the 1986 twinning agreement between Shanghai and Hamburg. By the way, during that visit I also went to the Peace Hotel, the venue of this conference, to hear the jazz band that was already legendary at that time. The musicians were seventy or eighty years old, just as they are today and must have been 100 years ago, too, if one is to believe the historical novel.

Both Hamburg and Shanghai are considered to be Gateways to the World. As Stefan Herms already mentioned, with this dialogue on law, we are now writing still another chapter in the long-standing relationship between Hamburg and Shanghai. Hamburg is a centre of law that incorporates a great deal of legal expertise and also enjoys an excellent reputation internationally, far beyond Hamburg. In this context, I am pleased to be able to introduce to you the numerous representatives of the various associations, organisations that are members of Rechtsstandort Hamburg. Each of them will be participating actively in our conference in the next two days.

To begin with, I'd like to take this opportunity to mention the President of the Hamburg Bar attorney Otmar Kury, who will be our moderator this morning. Following an invitation of Otmar Kury, in the name of the Hamburg Bar, and thus the top representative of the Hamburg legal profession. Yesterday the members of our delegation already met lawyers of the Shanghai Bar in this hotel for an informal meeting, in order to introduce this event organized by the Rechtsstandort Hamburg and to personally invite the Shanghai lawyers. This also with a particular view to the treaty of friendship between the Shanghai Bar and the Hamburg Bar. The Hamburg Bar is very much interested in fostering the special relationship with the Shanghai Bar.

I would also like to introduce Heiko Zier, President of the Hamburg Chamber of Notaries, as well as Mr Graf, Legal Director of the Hamburg Chamber of Commerce, Professor Brödermann, Chairman of the Chinese European Arbitration Centre, and Mr Curschmann, attorney and Chairman of the European-Latin American Arbitration Association.

As representatives of academics and education, permit me to also introduce Professor Boele-Woelki, President of the Bucerius Law School in Hamburg, Professor Frost, Vice-President of the University of Hamburg, and Professors Hatje and Julius from the Law Faculty of the University of Hamburg as well as the China-EU School of Law, both of whom have just been in Peking in this matter. I would also like to name Professor Pissler of the Max Planck Institute for comparative and international Private Law.

Last but not least, let me mention attorneys Neelmeier of the Schulz Noack Bärwinkel law firm and Dr Schröder of CMS Hasche Sigle, who will be lecturing this afternoon and who represent law firms that also have offices in Shanghai. The Taylor Wessing and Graf von Westfalen law firms should also be noted in this connection. They have supported our joint project, as have CMS Hasche Sigle and Schulz Noack Bärwinkel.

I am pleased that we will have an opportunity today and tomorrow to engage in a dialogue regarding various aspects of law, a diaLAWgue. This afternoon, we will be discussing contract negotiations and the conclusion of contracts, tomorrow morning conflict resolution with the focus on arbitration jurisdiction, and tomorrow afternoon the complex of education and further training. At this time, I would like to extend my sincere thanks to you, Mr Liu of Jun He Law, Shanghai, and to Ms Berube of HJM Asia Law & Co, who will be contributing to our discussion today through their active participation as speakers. Furthermore, let me welcome the representatives of the Shanghai International Arbitration Center and the China International Economic and Trade Arbitration Commission, who will be speaking tomorrow morning, as well as Professor Meijun of Fudan University Shanghai, who will be presenting a lecture to us tomorrow afternoon.

I am particularly pleased that tomorrow afternoon the First Mayor of the Free and Hanseatic City of Hamburg, Olaf Scholz, will be joining us as keynote speaker, along with a Hamburg business delegation that is just returning from Peking, as well as Ms LIU Hua, Head of the Legislative Affairs Office of the Shanghai Municipal People's Government, who will honour us with greetings from the City of Shanghai. As you can see, Ladies and Gentlemen, Hamburg as a centre of law covers a very wide range of activities, even apart from the courts, which I am representing as the President of the Higher Administrative Court in Hamburg.

So – that's enough of an introduction. I am looking forward to two days sharing a dialogue about the law, as well as an exchange of the various perspectives in individual subject areas. Ladies and Gentlemen, I hope we will all have two exciting, informative and enriching days together.

2. Challenges for Chinese Corporate Acquisitions in Germany

Speaker: Axel Neelmeier

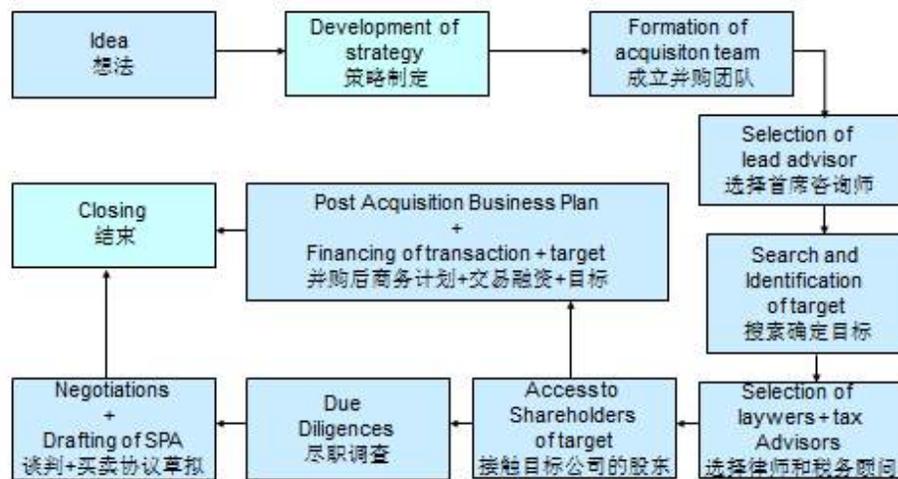
Challenges for Chinese Investors in Germany 中国投资者在德国面临的挑战

Shanghai DiaLawgue
Wednesday, November 11th, 2015

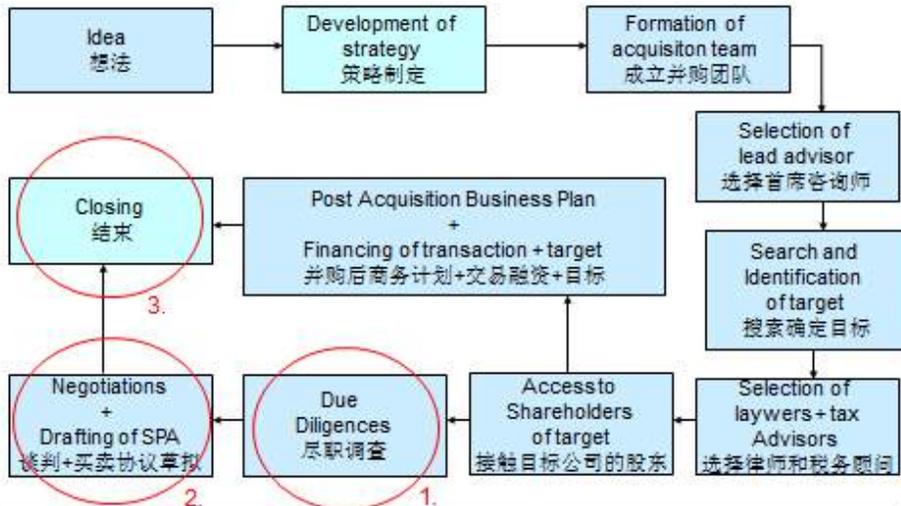
Speaker发言人:
Axel Neelmeier
German Attorney-at-Law德国律师
www.snb-law.de



The Acquisition Process 并购过程

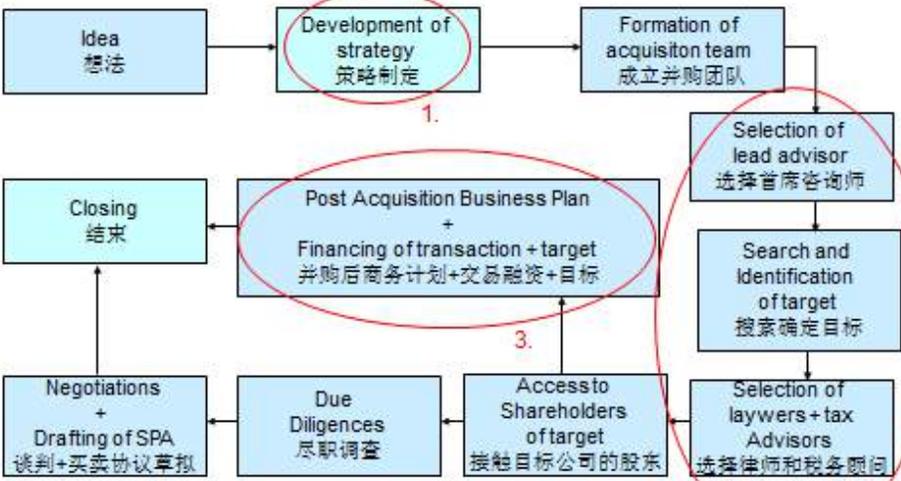


Deal Breakers 交易中断



3

Typical Deal Breakers for Chinese Investors 常见中国投资者的交易中断



4

The Strategy I 战略 I

Do not focus on a bargain! 不要专注于讨价还价!

- ➔ Cheap targets have a weak market position and are not profitable 便宜的目标公司市场地位弱且无盈利能力
- ➔ Turnaround difficult to achieve for a foreign investor 对外国投资者而言实现转盈利比较困难
- ➔ No perfect fit with investor's business 与投资者业务不能完美契合



5

The Strategy II 战略 II

- ➔ Strategic search to be preferred! 更倾向于策略性的搜索
- ➔ Development of search criteria: 制定搜索的标准:
 - Analysis of world market 对全球市场的分析
 - Development of buyer's market strategy 制定买方市场策略
 - Financing capabilities 融资能力
 - Search profile (industry, size, location, value) 搜索目标公司 (行业, 大小, 地点, 价值)



6

The Advisors 顾问

- No successful transaction without professional advisors 无专业的顾问则无成功的交易
- No Western transaction was ever made without advisors 西方的交易没有不通过顾问
- Chinese like to save money on advisors 中国人喜欢省顾问的钱
- Every euro spent on advisors will pay double in 花在顾问身上的每一欧元都相当于双倍投资于
 - reducing investment amount 降低投资金额
 - profitability of target post merger 合并后的目标企业盈利能力



7

Post Merger 并购后

- Post merger business and integration plan 并购后的商务计划和整合计划
- Post merger financing of target 并购后目标公司的融资



8

Post Merger Financing of Target 并购后目标公司的融资

- Banks exit minded 警惕银行退出 (change-of-control clauses 控制权改变条款; new majority shareholder 新的大股东; shareholder loans 股东贷款)
- Securing or restructuring of bank loans required 需要保障或重组银行贷款结构
- Business plan post acquisition 并购后的商务计划
- Management to support business plan 管理层对商务计划的支持
- Financial commitment of Buyer (equity, SHL) 买方的财务承诺)
- Collateral for loans 间接贷款



9

10 Golden Rules 10条黄金法则

1. „When you are in Rome, do it as the Romans do!“ 入乡随俗！
2. Establish a competent inhouse M & A team 建立一个称职的公司内部并购团队
3. Develop a strategic investment plan 制定战略投资计划
4. Conduct a strategic search for targets 战略性搜寻目标公司
5. Be careful about loss making or insolvent targets 小心亏损的或破产的目标公司
6. Develop a second business plan for post acquisition financing and integration 为收购后的融资和整合制定商务计划



10

7. Do not fall behind schedule (e.g. in bidding procedures)
不要落后于时间表（例如，在招投标过程中）
8. Do not fall behind written agreements (NDA, Lol, verbal / gentlemen`s agreements)
不要落后于书面协议（保密协议、意向书、口头/君子协定）
9. Engage German advisors experienced in China 聘用具有中国经验的德国顾问
10. Rather spend money on advisors than suffer losses later 与其事后遭受损失不如事前聘用顾问



Thank you for your attention!
感谢您的倾听！

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3. Corporate Acquisition in Germany from a Chinese perspective

Speaker: David Liu

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Corporate Acquisition in Germany from a Chinese perspective

Presented by David Dingfa LIU
Jun He Law Offices, Shanghai Office

Soon to be at FuJae Partners
david.liu@fujaelaw.com

November 11, 2015
Shanghai, Fairmont Peace Hotel,
Room No. 20, East Nanjing Road, Shanghai, China



I. Structuring Considerations for Outbound Investments

1. Tax considerations;
2. Investment protection considerations; and
3. Commercial/business considerations.



II. PRC Government Authorities for Approving Outbound Investments

Generally, before making an outbound investment by the Chinese investor (*other than investors from financial/insurance/securities sectors*) is required to seek approval by, and file with, the following three governmental authorities:

- the National Development and Reform Commission or its local counterparts (“**NDRC**”);
 - the Ministry of Commerce or its local counterparts (“**MOFCOM**”); and
 - the State Administration of Foreign Exchange or its local counterparts (“**SAFE**”).
- Approval by or filing with the SASAC may also be required if the outbound investment involves state-owned assets.



III. Approval for the Outbound Investments

1. ***Investment project information report to be filed with the NDRC***; this report must be filed with the NDRC before conducting substantial work in relation to the potential investment project, e.g., concluding a binding agreement, making a firm offer, submitting an application to the approval authority of the country where the outbound investment project is located, or making any formal bidding in the case of an overseas bidding project.





IV. Approval and Timing for the Outbound Investments – Cont'd

1. DRC will issue a confirmation letter within 7 working days after acceptance of the project information report. The confirmation letter will form part of the required application documents during the subsequent formal application process.
 2. If the contemplated investment is not listed in the annual overseas investment plan of the investor, the investor shall add it to be an additional major principal business investment project, and the investor shall file the investment plan with SASAC, and SASAC shall issue a written opinion to the investor within 20 working days if it has any objection to the investment.
-



V. SAFE Approval of Initial Spending for Outbound Investment

1. Initial expenses means expenses related to the outbound direct investment before setting up the project or the enterprise.
 2. If the budgeted initial expenses exceeding 15% of the planned total investment, special SAFE approval of such initial expenses will be required.
 3. Initial expenses includes: (1) any deposit that the Chinese investor is required to pay when acquiring the shares or assets of the overseas enterprise in accordance with the laws and regulations of the country where the project is located or the requirements of the seller; (2) any bidding deposit during a tender process for the outbound project; and (3) expenses incur to conduct market survey, lease any office and equipment, employ staff and engage any intermediary agency.
-



VI. MOFCOM Merger Control/Antitrust Approval

If the outbound acquisition constitutes a concentration of business operators and meets the following *anti-trust* filing threshold provided by the PRC anti-trust laws and regulations, the investor is obligated to file an anti-trust application to MOFCOM in advance, failing which the concentration shall not be implemented:

1. the ***total amount of the global turnover*** realized by all business operators participating in the concentration during the previous accounting year exceeds RMB10 billion with *at least two business operators each achieving a turnover of more than RMB400 million within China during the previous accounting year*; or
 2. the ***total amount of the turnover within China*** realized by all business operators participating in the concentration during the previous accounting year exceeds RMB2 billion with *at least two business operators each achieving a turnover of more than RMB400 million within China during the previous accounting year*.
-



VII. NDRC Approval of the Investment Project

1. If the contemplated investment project involves electricity transmission and power grid sectors, which may be the sensitive industries as defined under the rules issued by NDRC, the outbound investment must be approved by the NDRC, regardless of the amount of investment.
 2. Within 20 working days from its acceptance of the project application report submitted by the investor, NDRC is required to submit an examination opinion to the State Council for its formal approval.
 3. The timing may be extended for another 10 working days if the examination opinion cannot be submitted within the above time-frame. Additional time may also be taken if NDRC needs to entrust a consulting firm to assess the outbound investment, which is generally no longer than 40 working days.
 4. The rules have not provided any time limit for the State Council to issue its formal approval.
-



VIII. Filing with MOFCOM the Outbound Investment Project

1. If the investor is a national SOE, and the contemplated investment does not involve sensitive countries or sensitive industries as defined under the rules issued by MOFCOM (which is not identical with those defined under the rules issued by NDRC, and the approval authorities will apply their own rules respectively), the investor only needs to file the outbound investment with MOFCOM for recordation purposes.
2. MOFCOM is required to complete the recordation and issue the Enterprise Overseas Investment Certificate to investor within 3 working days, *provided that* the outbound investment complies with the relevant rules on outbound investments



IX. Registration with other Government Authorities

1. **SASAC registration** -- Project Establishment Registration with respect to State-Owned Assets;
2. **SAFE registration** -- after the approval has been issued by the approval authorities in charge of the outbound direct investments, apply for foreign exchange registration with SAFE.
3. **SASAC asset occupation registration**, with respect to state-owned assets, this registration must take place within 60 days after the outbound invested enterprise has been incorporated and assets been injected into it (or in the case of an acquisition, after the investor has acquired shares of the overseas target company).





X. Concluding Remarks

1. Outbound investments are generally feasible.
2. Tax, investment protection and commercial considerations need to be taken into account at the very front.
3. Various PRC government approvals and registrations are required, and more gov't approvals/registrations are applicable for SOEs.



Thank you!



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4. Cooperation with Chinese Clients – Experiences of a German Lawyer

Speaker: Dr. Christoph Schröder

Sehr geehrte Frau Liu,
Sehr geehrter Herr Bürgermeister,
Sehr geehrte Damen und Herren,

ich freue mich sehr, dass ich heute in diesem Rahmen einen Vortrag über meine Erfahrungen als Rechtsanwalt mit chinesischen Mandanten halten darf. Dem Senat der Freien und Hansestadt Hamburg und dem Rechtsstandort Hamburg danke ich für die Einladung. Unseren Gastgebern danke ich für die hervorragende Vorbereitung

Bevor ich richtig anfangen möchte, möchte ich einige wenige Sätze in chinesischer Sprache ergänzen. Ich übersetze sie später selbst.

Gewei lingdao, nüshimen, xianshengmen, dajia xiawu hao!

Wo feichang rongxing you jihui jintian zuo zhe ci yanjiang. Shixian wo xiang qing dajia yuanliang, zhunbei de bu gou zhoudao, shijian tai jin le. Wo renwei zheci yanjiang feichang shihe wo. Benren zai Hanbao chusheng zhangda, zao shang gaozhong de shihou jiu kaishile xuexi zhongwen, 1992 nian he 1993 nian canjia le Shanghai – Hanbao jiemei chengshi de xuesheng jiaoliu, houlai jingchang lai guo Shanghai, 2012 nian yilai changzhu Shanghai, zuowei lüshi bangzhu Zhongguo qiye zouchuqu. Wo yong Zhongwen jiu shuodao zheli, jixialai hui yong Dewen jixu yanjiang.

Ich meine, dass mir dieser Vortrag geradezu auf den Leib geschnitten ist. Ich bin in Hamburg geboren und aufgewachsen. Ich hatte das Privileg, am Christianeum Chinesisch lernen und 1992 und 1993 am Schüleraustausch der beiden Partnerstädte Hamburg und Shanghai teilnehmen zu dürfen. Wenn ich mich richtig erinnere, war Herr Neelmeier bereits damals Mitglied des Förderkreises Deutsch-Chinesischer Schüleraustausch und hat also dazu beigetragen, dass ich jetzt hier stehe! Ich habe Shanghai danach immer wieder besucht, etwa im Jahre 2003, um für meine Doktorarbeit zum chinesischen Transportrecht zu recherchieren. Bei der Vorbereitung darauf unterstützt hat mich ein anderer hier Anwesender, nämlich Knut Benjamin Pissler, der China-Referent am Max-Planck-Institut in Hamburg. Seit 2012 lebe ich nun mit meiner Familie hier in Shanghai und berate als Rechtsanwalt der Kanzlei CMS chinesische Unternehmen bei ihren Investitionen und sonstigen geschäftlichen Aktivitäten in Deutschland.

Bevor ich über meine Erfahrungen mit chinesischen Mandanten berichte, möchte ich eines deutlich machen: Vorsicht mit Verallgemeinerungen! Nicht jede neue Erfahrung, die man in einem fremden Land macht, ist eine typische Erfahrung. Das gilt insbesondere für China, das so groß, so bevölkerungsreich, so vielschichtig ist und so viele verschiedenartige Unternehmen und Unternehmer hat, dass wir alle – mich eingeschlossen – mit Verallgemeinerungen besonders vorsichtig sein müssen. Unsere Kanzlei kommt hier mit den unterschiedlichsten Unternehmen in Kontakt: große und kleine Unternehmen, staatliche und private Betriebe, börsennotierte Gesellschaften. Auch die Erfahrung mit internationalen Transaktionen und die Erfahrung bei der Zusammenarbeit mit Rechtsanwälten können sehr unterschiedlich ausfallen. Dies betrifft nicht nur das Unternehmen an sich, sondern auch die Ansprechpartner, mit denen wir zusammenarbeiten.

Dennoch möchte ich im Folgenden einige Thesen aufstellen, die für die Zusammenarbeit mit vielen chinesischen Mandanten gelten:

- Vertrauen

Ich beginne mit meiner wichtigsten These. Denn sie ist der Ausgangspunkt für weitere Beobachtungen:

Chinesische Mandanten vertrauen ihrem Anwalt nicht (so stark wie deutsche Mandanten).

Vertrauen ist die Grundlage für die Zusammenarbeit zwischen Anwalt und Mandant. Ohne Vertrauen kann das Mandat nicht zum Erfolg führen. Während deutsche Mandanten ihren Anwälten auch schon zu Beginn der Zusammenarbeit ein hohes Maß an Vertrauen entgegenbringen, kann ich das für China nicht bestätigen.

Beispiel 1: Chinesische Mandanten bitten uns gelegentlich, eine Vertraulichkeitsvereinbarung zu unterzeichnen. Das habe ich in Deutschland noch nie erlebt. In Deutschland ist bekannt, dass Rechtsanwälte zur Verschwiegenheit verpflichtet sind und sich daran auch halten. Für mich ist die Sache mit der Vertraulichkeitsvereinbarung inzwischen fast schon zur Routine geworden, während ein französischer Kollege unserer Kanzlei neulich verärgert war:

"Maggie!..."

Beispiel 2: [Mandatsvereinbarung] "The Client is entitled to determine the legal services to be provided by CMS. CMS will provide legal services only after receiving the instructions from the Client."

Beispiel 3: [Mandatsvereinbarung] "Nachdem CMS die schriftliche Kündigung erhalten hat, muss CMS sofort sämtliche mit dieser Vereinbarung zusammenhängenden Arbeiten einstellen."

Beispiel 4: [E-Mail] "But I don't think we need to revise the agreement for this point, as it is an umbrella agreement, and you will not do anything without our instruction. Please confirm."

Für uns als Kanzlei ist all dies selbstverständlich, und wir würden nicht nur unseren Ruf aufs Spiel setzen, sondern uns schwerwiegenden rechtlichen Konsequenzen gegenübersehen, wenn wir ohne oder gar gegen die Instruktionen unseres Mandanten handelten.

- Chinesische Mandanten verhandeln viel, auch mit ihrem Anwalt.

Es ist ja allgemein bekannt, dass Verhandlungen Zeit brauchen. Ebenso weiß man, dass Verhandlungen mit chinesischen Vertragspartnern mehr Zeit brauchen. Das gilt auch für die Verhandlungen über die Mandatsvereinbarung. Dabei ist es einerseits verständlich, wenn der Mandant Änderungen an unserem Vertragsentwurf wünscht. Darauf müssen wir im Grundsatz natürlich eingehen. Andererseits habe ich einige Situationen erlebt, die deutlich über meine Toleranzgrenze hinausgegangen sind.

Beispiel: Kostenklausel in Mandatsvereinbarung

Beispiel: Eine chinesische Kanzlei sprach uns an. Ihre Mandantin, ein chinesisches Staatsunternehmen, brauchte Unterstützung für den Bau eines Krankenhauses im Ausland. Wir bewarben uns um das Mandat, und zwar mit unseren üblichen Stundensätzen, boten aber einen Nachlass an für den Fall, dass bestimmte Umsatzschwellen überschritten werden sollten. Unsere Bewerbung war erfolgreich, jedoch schlossen sich sehr langwierige Verhandlungen über die Mandatsvereinbarung an, weil das Staatsunternehmen darauf bestand, dass sowohl die chinesische Kanzlei als auch wir in ein und demselben Vertrag die Verpflichtung zur rechtlichen Beratung übernahmen. Das war u.a. deshalb schwierig, weil wir unsere Haftung begrenzen wollten, die chinesische Kanzlei aber unbegrenzt haftete. Zu diesem Zweck mussten wir dann eine interne Vereinbarung zwischen den beiden Kanzleien schließen. Die Verhandlungen über beide Verträge zogen sich über zwei Wochen hin und brachten mich an die Grenze meiner Geduld. Die vertragliche Konstruktion sah vor, dass wir unsere Rechnungen an die chinesische Kanzlei ausstellen und die chinesische Kanzlei ihre Rechnungen an das Staatsunternehmen ausstellen würde, und zwar zu Stundensätzen, die damals rund 100 Euro höher lagen als unsere. In dieser Situation, als also lang verhandelt worden war und meine Nerven mehrmals blank gelegen hatten, die Unterzeichnung aber unmittelbar bevorstand, da fragte die chinesische Kanzlei:

"And could you also add some words to the 2 party agreement about CMS may think to offer a discount when the payment reaching certain fee thresholds?"

Die Verhandlungsfreudigkeit der chinesischen Mandanten kann sich allerdings auch zu Gunsten des Anwalts auswirken. So hatten wir uns bei einem Festpreis für einen Due Diligence Report einschließlich chinesischer Übersetzung hinsichtlich der Übersetzungskosten verschätzt und waren darauf angewiesen, dass uns der Mandant insoweit entgegenkam. Und das hat er auch getan.

- Viele Entscheidungen trifft der Chef selbst.

Das bedeutet zwangsläufig, dass die Entscheidungswege länger sind und Entscheidungen länger brauchen. Wird der Chef nicht frühzeitig in das Mandat einbezogen oder nicht auf dem Laufenden gehalten, kann es sein, dass wochenlang vorbereitete Verhandlungen wieder bei Null starten müssen, sobald der Chef an den Verhandlungstisch kommt.

Das bedeutet im Übrigen auch, dass wir häufig chinesische Übersetzungen anfertigen oder in Auftrag geben müssen. Denn der Chef braucht meistens die chinesische Fassung. So kommt es, dass der Mandant beispielsweise die Übersetzung der Vollversion eines DD-Reports verlangt. Ein DD-Report hat häufig 50 oder mehr Seiten. Wir versuchen immer wieder erfolglos, die Mandanten davon zu überzeugen, dass es für die Entscheidung auf höchster Ebene völlig ausreicht, das 5- bis 10-seitige Executive Summary zu lesen. Meistens kommt es dann zu dem Problem, dass die Übersetzung innerhalb kürzester Zeit vorliegen muss, weil sie als Grundlage für die sich anschließenden Verhandlungen über den Unternehmenskaufvertrag dient. Es gibt allerdings nur wenige Übersetzungsbüros, die in kürzester Zeit erstklassige juristische Übersetzungen sehr umfangreicher Dokumente liefern können. Sie können sich vorstellen, dass dann viel Fingerspitzengefühl und Verhandlungsgeschick notwendig ist, um die guten Übersetzer davon zu überzeugen, mehrere Nachtschichten nacheinander zu schieben...

Es kann auch bedeuten, dass die Mitarbeiter, die in die Transaktion eingebunden sind, - jedenfalls aus Sicht des Anwalts - falsche Prioritäten setzen.

(SPA-Entwürfe nicht lesen, aber Übersetzungsvereinbarung aufblasen)

- Viele chinesische Mandanten erwarten von uns, dass wir mehr sind als nur Rechtsanwälte.

Das betrifft zum einen den **Aufgabenkreis**, der zum Teil deutlich über die Rechtsberatung hinausgeht. Weit verbreitet ist etwa der Wunsch, der Anwalt könne bei der Suche nach einem geeigneten Zielunternehmen helfen. [Gründe: 1. Auffassung, es bedürfe nur einer guten Gelegenheit und nicht einer

systematischen Herangehensweise, um ein geeignetes Kaufobjekt zu finden; 2. Kostenlose Unterstützung, weil Kanzlei in der Anfangsphase der Geschäftsbeziehung ein großes Interesse an der Mandatierung hat.] Mit dieser Erwartungshaltung kann man unterschiedlich umgehen, aber ich werde das hier aus Zeitgründen nicht näher ausführen.

Zum anderen betrifft es die **Rolle** des Anwalts in der Mandatsbeziehung. In Deutschland werden Anwälte als Berater wahrgenommen, die die Grundlagen für Entscheidungen der Geschäftsleitung liefern. Dem Mandanten ist in der Regel bewusst, dass er dem Anwalt viele Informationen geben muss, damit dieser ihn bestmöglich beraten kann. In China hingegen erwartet der Mandant häufig, dass der Anwalt allein das Problem für den Mandanten löst.

Es ist also häufig nicht damit getan, dem Mandanten mehrere Optionen für das weitere Vorgehen aufzuzeigen und im Einzelnen zu erläutern, welche Vor- und Nachteile die Optionen haben. Vielmehr wird der chinesische Mandant sich zurückmelden und fragen: Und was soll ich jetzt machen? Eine solche Beratung läuft darauf hinaus, dass der Mandant dem Anwalt die Verantwortung für die Entscheidung komplett überträgt. Auch damit muss man umgehen lernen.

- Essen und Trinken

Bevor ich 2012 nach Shanghai kam, hatten viele Kollegen schon befürchtet, dass ich nun jeden Abend *baijiu* und andere hochprozentige alkoholische Getränke in großen Mengen zu mir nehmen müsse, um in der chinesischen Geschäftswelt zu bestehen. Das ist aber nicht der Fall.

Zwar ist es in China nach wie vor Tradition, den Beginn einer Geschäftsbeziehung oder den Abschluss einer Transaktion mit viel Alkohol zu feiern.

Aber die Politik des chinesischen Staatspräsidenten Xi Jinping (ba xiang guiding) hat dazu geführt, dass vor allem Staatsunternehmen inzwischen häufig darauf verzichten, zu einem Essen in großem Stil einzuladen. Ein Shanghaier Staatsunternehmen hat kürzlich einem chinesischen Kollegen und mir gesagt: "Wir würden Euch gern in ein Restaurant einladen, aber das dürfen wir nicht mehr; wir müssen in der Kantine essen."

Außerdem habe ich den Eindruck, dass vor allem jüngere Chinesen Essen mit viel Alkohol selbst nicht mögen und deshalb vermeiden.

5. Intercultural Challenges China-Europe

Speaker: Caroline Berube and Prof. Dr. Eckart Brödermann

Legal Cultural Aspects of Contract Negotiations in China

- 10 recommendations for Chinese-European contract negotiations -

Although there are numerous issues to be considered when doing business in China, it is possible to summarize a small check list for contract negotiations with Chinese Companies:

1. **Language of the contract:** A decision is necessary to decide on the “risk of language”. Chinese? German? English? Bilingual? Which language shall apply in the case of dispute? Who bears the risk of translation? It makes sense to integrate a clause into the dispute resolution regime stating the language in which documents will be admissible.
2. **Choice of law:** In German-Chinese contracts of sales it makes sense to use the **identity of German and Chinese international sales law** („**CISG**“ for „Convention on the International Sale of Goods“). Alternatively, or additionally, it may make sense to work with the **UNIDROIT Principles** of International Commercial Contracts (www.unidroit.org). Both legal instruments are easily accessible in German, English and Chinese via the internet, (including jurisprudence and literature, see www.unilex.info). Both legal instruments have influenced the Chinese and the German legislator. In combination with the arbitration clause they may be helpful for legal risk management. Furthermore, the Chinese civil law and civil procedure law is related to the German civil law and civil procedure law. Consideration should also be given to the applicability of laws beyond the topic of contract law (e.g. representation, property law, company law) and to determine compliance with any other applicable mandatory laws.
3. **Dispute resolution:** In light of lacking possibility of recognition of German judgements in China and vice versa of Chinese judgements in Germany, a good dispute resolution clause is *the* risk management instrument. As long as the parties get along well, they do not need the small print in a contract. The contract will be used only in case of dispute; in that case, however, the dispute resolution clause is the most important one. It is highly recommended, for ease of convenience, to choose a neutral place in a *common law* country (e.g. Hong Kong, Singapore) where both the Chinese and the German laws are part of the family of *civil law*. In a common law jurisdiction, other rules with respect to the production of proofs are applicable.
4. **Currency:** Euro? RMB? The Chinese love US Dollar. The exchange risk needs to be considered.

5. **Signature:** The signing of a contract and the seal have a high value in China. The signing event should be seen in as important a light as the signature of the documents and a small ceremony should be arranged. Each party should receive an original signed contract.
6. **Patience:** If things move too easily, something is not right. Something is always happening (even later in the contract period with respect to price, quality or time lines). The contract conclusion is only a snapshot in time of the contract negotiation. Thereafter the parties should continue to negotiate in a spirit of cooperation.
7. **Independence:** The Chinese have become more independent during the last 10 years and are not so keen on business with foreigners anymore. They have good alternatives in their own market.
8. **Length of contract:** Chinese love short contracts, so focus should be given to the most important clauses.
9. **Contractual partners:** Detailed research is indispensable to gain information about the contractual partner (which could be organized by a law firm with regional presence and knowledge.) There is more information to consider than can be gathered in Germany.
10. **Guanxi (relations):** Relations are important in China like in the rest of the world. You should refrain from Guanxi to the judge (question of a participant at the conference!) That could lead to prejudice by the judge against the German party.

6. Legal Certainty and Reliability for the Realization of Corporate Acquisition through German Notary Law

Speaker: Heiko Zier

Notaries are of crucial importance in almost any corporate transaction in Germany. The Constitution of the German Notaries amongst many other reasons substantiates above all the legal certainty and reliability for each notarized transaction. Notaries are appointed exhaustively all over Germany. Thus every citizen in Germany has at least one Notary in his vicinity.

All German notaries are part of the German administration of justice system. Whereas the dispute-settling courts as one cornerstone of the German judiciary are the key institution to resolve conflicts, *after* such conflicts have arisen, the German notaries are appointed to prevent conflicts from arising in cooperation with other institutions of the justice administration. This is the second cornerstone of the German judiciary, the preventive administration of justice system. Its central duty is to employ conflict-avoiding measures and hence to improve efficiency overall and to keep costs on a low level. Its further purposes are to ensure "the equality of arms principle" between the parties and to relieve the court system. The preventive administration of justice system is foremost comprised of legal areas that are of particular importance for each citizen. Firstly, these are issues which affect each personally, that are administered through the guardianship court, the custody court, the family court or the probate court; secondly, all issues that are of essential and economical importance, which have to be registered by the commercial register or the land registry.

The Notary prepares in these areas almost every single transaction that have to be executed by the court departments as the second step. The notary is not involved in those transactions as a party representative, but obliged to neutrality as part of the judiciary. Therefore, it is ensured that all over the territory of Germany each citizen has a cost-effective, neutral and high quality access to legal advice in any central area of life. Vice versa these transaction will not become effective without involvement of the Notary.

All German notaries work closely with all German register courts, in particular with the commercial register which is of utmost importance for company transactions as well as with the land registry. I kindly ask you to direct your attention with me to the commercial register as we focus today on the acquisition of companies.

The German commercial register enables everybody to attain within seconds for a small fee the reliable information, if and when a company has been founded, who the entity is that owns the company, where

the company is registered, and above all, who are the persons that are capable of representing legally bindingly the company. The information obtained through the register enjoy public faith, this means, there is the legal assumption that what is entered into the register is correct and vice versa, anything that is not entered into the register is deemed to be legally non-existent. This system allows a remarkable level of reliability and certainty, which is unique in Europe. All facts, that have to be reported to the commercial register and afterwards are to be published by the commercial register, are presumed to be correct by law. In order to identify the authorized representatives of the involved companies, that in turn buy or sell another company, it is not necessary in Germany in contrast to many Anglo-Saxon countries, which usually do not know even roughly comparable register systems alike, to furnish a time-consuming and cost-intensive legal opinion which addresses the questions of existence and representative authority of the company. In addition, those legal opinions have to be provided by both parties commonly. Time and economical disadvantages in association therewith can be omitted for German companies.

Just the fact of the compulsory participation of a Notary in any communication with the commercial register, justifies, that the facts reported through the register enjoy the protection of public faith. The Notary services the commercial register and prepares the electronic entry in the register via transmission of the data required. The involvement of the notary is for example indispensable for the most common legal company, the so called company with limited liability, for its foundation, for each change of the articles of association, for the appointment of directors or authorized representatives and for the transfer of shares of the company. Each person, which is engaging in business with German companies, can be guaranteed that no legal defects affect the aforementioned facts und thus the company acquisition will not be delayed or even endangered. For the notary has to identify the parties involved undoubtedly and has to ensure that the notarized transaction is fully valid and does not violate any applicable laws. In particular for the overwhelming majority of transactions with regard to company law, in which merely legally lay people are involved, the same degree of certainty and reliability can be ensured as in transactions which are accompanied by legal professionals, since the Notary has to be involved into the transaction and consequently has to provide his skills that require him to be as highly qualified as a German judge.

After the transfer of shares of German limited liability companies the Notary is legally obliged to submit a new list of shareholders to the commercial register and to the company itself. The position as a shareholder can be proven via this list, which again enjoys public faith. With regard to a new transaction, it is thus certain, who the shareholder is.

As there is for the representative authority as well as for the shareholder as shown in the list of shareholders the protection of public faith by operation of law.

The compulsory engagement of a Notary does not only provide a particularly high degree of security for the parties involved but also for the public that usually has interests in the parties (for example tax

reasons) and the target company (for example for money laundering issues). Moreover, the Notary has reporting obligations, for instance to the tax authority with regard to all his notarized transactions.

I hope, that I could show you with these brief remarks the benefits of a preventive administration of justice system, in particular with regard to the company law.

B. Arbitration

I. Regional Arbitration Perspectives

1. Presentation of Hamburg as leading German Location for Business, Science and Law

Speaker: Friedrich-Joachim Mehmel

Hamburg diaLAWgue – as can also be seen at www.hamburg-diaLAWgue.com – is one of the core activities of Rechtsstandort Hamburg. Particularly in periods of increasing internationalisation, this also involves exchanges in the area of law. All too often, the importance of law in connection with the reliability of relationships between countries, and especially in the business sector, is often underrated. This is highly significant for cities like Shanghai and Hamburg, both of which are prospering international business hubs and consider themselves to be Gateways to the World, cities with major ports and international business relationships. Without a functioning legal framework, beginning with the initiation of business deals, contract negotiations and contract closings and extending to implementation of the contract and, if necessary, appropriate dispute resolution, truly satisfactory business relationships are not possible. In this sense, law is a key economic factor, a factor that affects the choice of location.

This is what motivated us to establish Rechtsstandort Hamburg five years ago as a network, as you can see at www.rechtsstandort-Hamburg.de. A national comparison shows that Hamburg is an outstanding centre for law. Hamburg offers a legal community with law offices that operate internationally and that also enjoy an excellent reputation internationally. Some of them have a location here in Shanghai and are represented in the delegation. All told, there are over 10,000 practicing lawyers in Hamburg, a city with over 1.7 million inhabitants. The Hamburg notaryship demonstrates exceptional quality. Mr Zier, the President of the Hamburg Chamber of Notaries, reported to us most impressively yesterday on just how significant a functioning Latin notary is. Also situated in Hamburg are 18 different courts for the various legal sectors, as well as the International Tribunal for the Law of the Sea and a chamber of the European Patents Court. Dispute resolution is particularly important. In addition to a well-functioning legal system that generally does its work quickly, mediation – in which China also has a long tradition – and arbitration jurisdiction play a key role. Mr Graf, Legal Director of the Hamburg Chamber of Commerce, will discuss this later. What is involved here is no more and no less than thinking preventively, when concluding a contract, about which instruments for dispute resolution would be best for the partners. In case conflicts should arise later, for example, arbitration agreements can and should be included in the contract, even the selection of the right dispute settlement mechanisms, in case disturbances should arise in the

contractual relationship. Hamburg has a great deal to offer in this respect, as it has a longstanding, manifold tradition here. Mr Graf will be speaking on this topic shortly, and afterwards we will also hear from Professor Brödermann on the Chinese European Arbitration Centre and from Dr Curschmann on the European-Latin American Arbitration Association, both founded in Hamburg.

With the Law Faculty of the University of Hamburg and the Bucerius Law School, Hamburg also has two institutions that offer high-quality legal training and that also enjoy an excellent international standing. In particular, there is the China-EU School of Law, which is run under the leadership of the Law Faculty of the University of Hamburg. It will also be the topic of a lecture this afternoon. The Max Planck Institute for comparative and international Private Law enjoys an outstanding reputation internationally. These three institutions are represented in the scientific advisory board of Rechtsstandort Hamburg.

As you can see, Hamburg has a lot to offer in the field of law and offers a quality that is known far beyond Hamburg. Not least for this reason, this sector is an important location factor, which is why we also speak of the *Hamburg centre of law*. It is essential to effectively convey the significance law has in society. To the public, law is often abbreviated to consist of crime stories, blood and thunder, criminal convictions – and this is not likely to be much different in Shanghai than in Hamburg. All that matters is sensationalised reporting. The true importance of the law, as I mentioned earlier, is all too easily pushed into the background. We want to counterbalance this through the network of Rechtsstandort Hamburg.

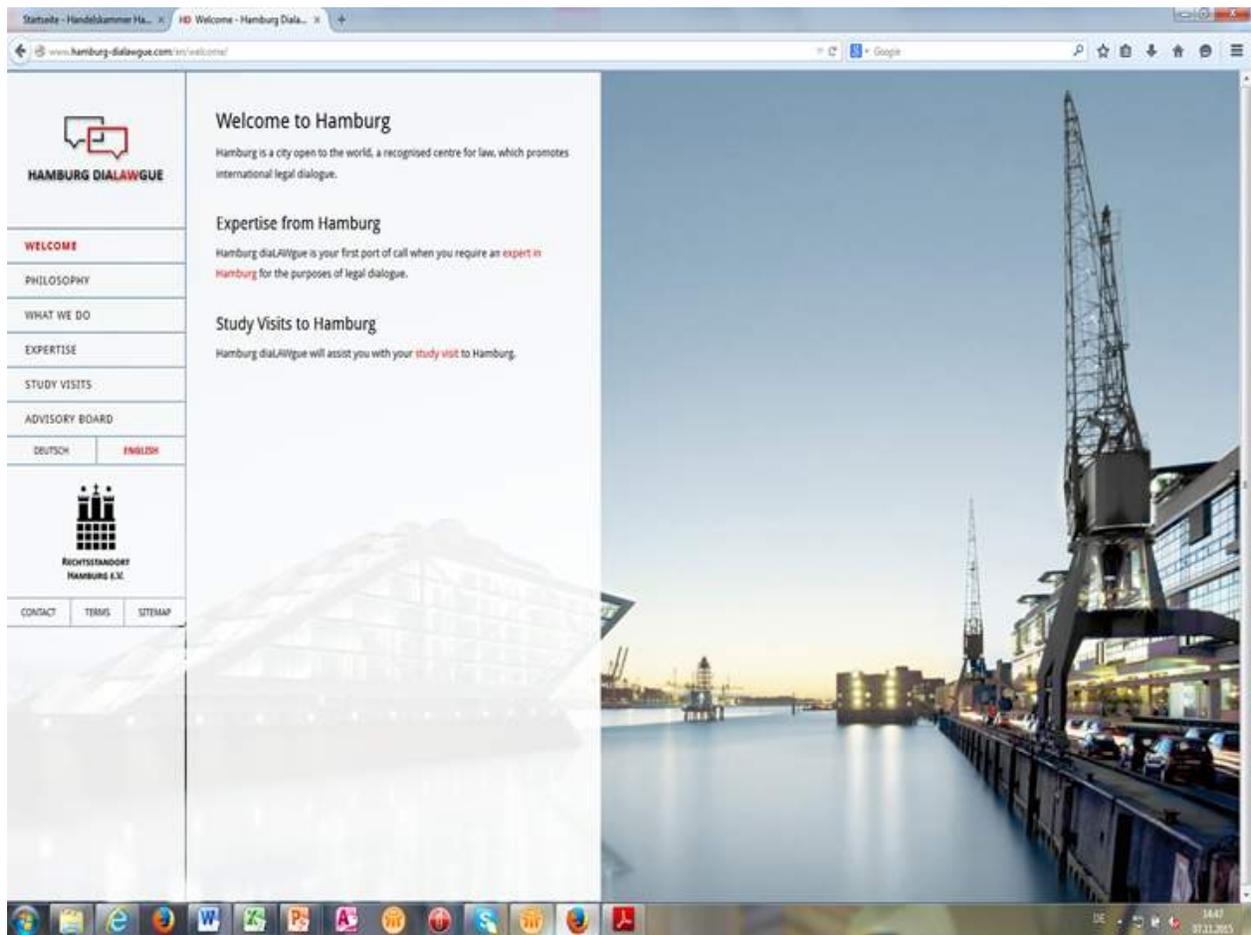
But law is also an important factor in international competition. A functioning legal system with fair, predictable, reliable and rapid dispute resolution is extremely important, especially as seen by business, as well as in international trade, in international economic relationships. In this regard, Hamburg – with its qualified attorneys, its notaries, its courts, and more than 20 arbitration courts or arbitration organisations that are active locally and internationally – is also very well equipped in the international context.

From the business point of view, law is thus an important location factor. Legal stability, reliability and predictability are also of great importance for the cohesion of a society, for the community, and for each individual. If we have a functioning judiciary system, a functioning legal system, we also have an important prerequisite for social stability. If the individual has to wait too long to assert his rights, or if the process is erratic, this often also becomes a source of dissatisfaction. As the President of the Higher Administrative Court in Hamburg – that is, for the area of administrative law – I would like to mention, too, the fact that one could even say that law, functioning state structures, and thus also functioning judicial control through the courts, is a main pillar that permits a community to function. Of the essence here is constantly ensuring a balance between the rights of the individual citizen, on the one hand, protecting him from harm, and, on the other hand, the ability of the state and the community to function, especially in view of social change, which is constantly accelerating, and taking into account the increasing digitalisation of business

and society. International studies repeatedly confirm the importance of law for economic development and social stability, as well as the ability of nations to compete.

Ladies and Gentlemen, I hope I have been able to give you a brief overview of Hamburg as a centre of law. For an elucidation of the main focus of this part of the agenda, arbitration, I would like to give the floor to Mr Graf.

Speaker: Christian Graf





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CENTRE FOR LAW

INTERNATIONAL CENTRE FOR LAW

ALLIANCE FOR GERMAN LAW

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Welcome to Hamburg

Hamburg is a city open to the world, a recognised centre for law, which promotes international legal dialogue.

Rechtsstandort Hamburg e.V. was founded in 2009 to increase the national and international visibility of Hamburg as a centre for law, and to lay the foundations for its future development. The society seeks to be a platform for those active in the legal sector, to create an information hub, and to facilitate coordinated engagement. The society does this in partnership with, among others, the Hamburg Bar Association, the Hamburg Chamber of Notaries, the Hamburg Society of Lawyers, the Hamburg Society of Judges, the Hamburg Chamber of Commerce and the Free and Hanseatic City of Hamburg, represented by the Department for Justice, in conjunction with the Max Planck Institute for comparative and international private law, the Bucerius Law School and the Law Faculty of the University of Hamburg.

Hamburg as a centre for law

Hamburg is a centre for law, with a tradition of republicanism and the rule of law, as well as a notable international outlook.

[More >](#)

Hamburg as an international centre for law

Hamburg is a legal hub noted for its internationalism.

[More >](#)



International ●

Arbitration in Hamburg: A Great Choice

- Around 20 arbitration institutions
- Highly-qualified arbitrators
- Complete legal infrastructure
- International airport
- International support services
- High quality acomodations





Arbitration in Hamburg: A Great Choice

Institutions

- **Court of Arbitration of the Hamburg Chamber of Commerce**
- **Chinese European Arbitration Centre (CEAC)**
- **European Latinamerican Arbitration Association (ELArb)**
- **Arbitration Courts of Commodity Trade Associations**
- **German Maritime Arbitration Association (GMAA)**



Dispute Resolution Services of the Hamburg Chamber of Commerce

Conciliation

1. **General conciliation**
2. **Special conciliation centers**
3. **Hamburg-Beijing Conciliation**

Arbitration

1. **Court of Arbitration**
2. **Arbitration Court of German Coffee Association**
3. **CEAC**

Mediation

1. **Business Mediation Centre**
2. **German - French Mediation Centre**



Cost Comparison of Arbitration Institutions

Case Value	50.000 €	500.000 €	5.000.000 €	
Hamburg Chamber	4.945 €	29.268 €	92.518 €	
DIS	12.385 €	46.585 €	171.685 €	Cost Calculator minus VAT DIS
ICC	18.898 €	78.655 €	238.567 €	Medium Fee for Arbitrators
Swiss	13.462 €	82.067 €	240.192 €	Medium Fee for Arbitrators
Vienna	11.250 €	52.875 €	167.875 €	Medium Fee for Arbitrators
Stockholm	18.055 €	60.720 €	170.660 €	Medium Fee for Arbitrators
MKAS	5.915 €	18.202 €	43.348 €	
LCIA	k.A.	k.A.	k.A.	Time based, Arbitrators max. 400 GBP/h, Administration 100 - 225 GBP/h

Basis: Internet Cost Calculators, Panel of 3 Arbitrators, VAT excluded, \$ to € exchange rate: Interbankrate 1. Mai 2011

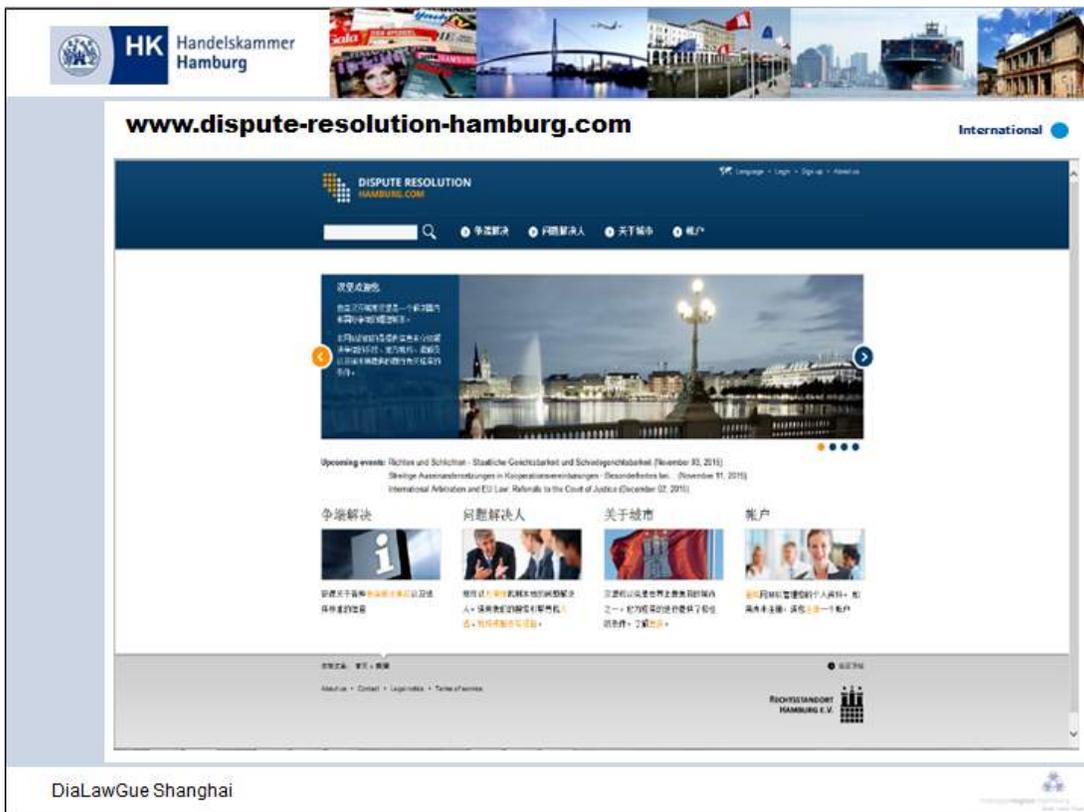
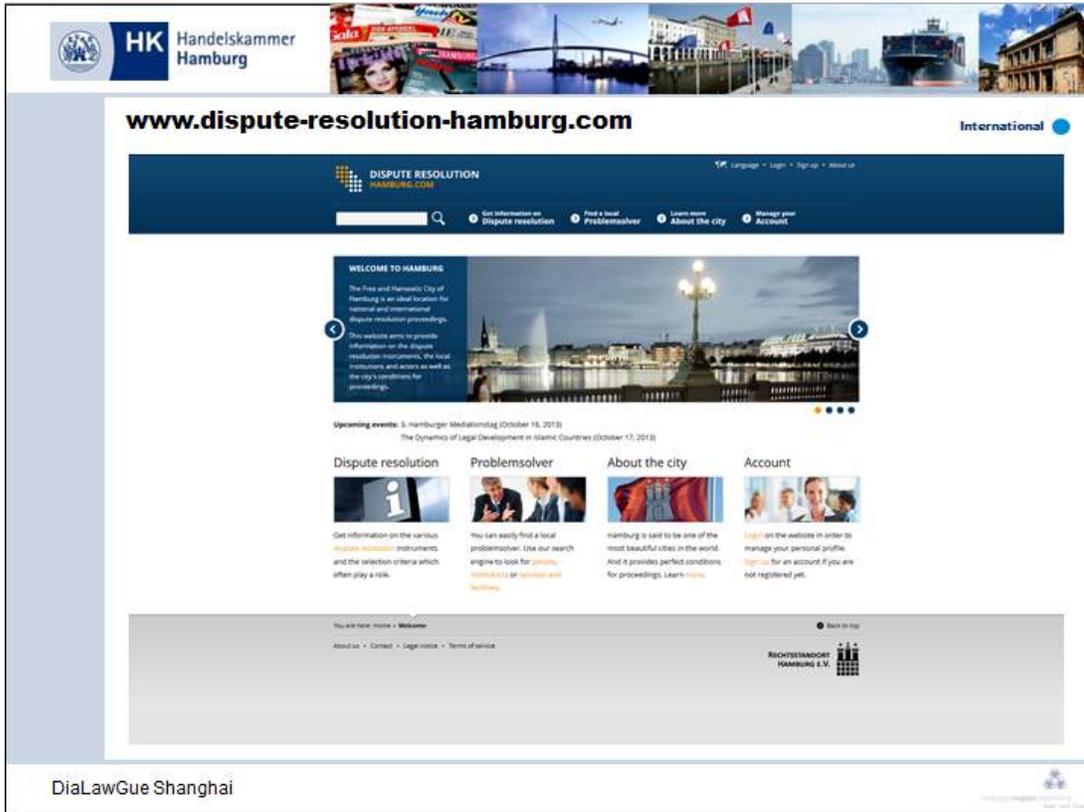


Commodity Arbitration

- **German Coffee Association**
- **National Association for Foreign and Wholesale Trade with Canned Fruits, Nuts etc.**
- **Association of the German External Trade in Grains, Animal Feed, Oilseeds and Pulses**
- **German Association of Wholesale Traders in Oils, Fats and Oil Raw Materials**
- **Approx. 10 Others**

Special Features:

- **Arbitrators are businessmen of the branch**
- **Legal advisor of the association is involved in proceedings**
- **In some cases: arbitral appeal tribunal (VdG, Waren-Verein)**



2. Arbitration in Shanghai: Opportunities and Challenges in Building International Commercial Arbitration Centre

Speaker: YAO Hongmin

The non-litigation dispute settlement mechanism, which is represented by commercial arbitration, has in recent years gradually become a common practice in international economic and trade exchanges. Compared to the rigidity of the court proceedings, the autonomy, professionalism, flexibility, efficiency, confidentiality, finality of awards and performability of arbitration make it more suitable for the commercial disputes in the international economic and trade exchanges. The advantages of a commercial arbitration system also spawned the reform of arbitration law systems in many countries.

The year 2015 is the 20th anniversary of implementing the Arbitration Law of the P.R.C. For twenty years, with China's economic development, China's commercial arbitration has made considerable progress and has gradually matured. Shanghai, as one of China's earliest business arbitration cities, has become one of the main windows of Chinese business arbitration to the world. Based on this, I will share with you some practices and reflections of construction of the International Commercial Arbitration Center in Shanghai.

1. Transition and Development: The general situation of China's Commercial Arbitration

China's modern commercial arbitration has, since its initial establishment, made great progress in the past 20 years. From a legal perspective, the primary framework of a modern Commercial Arbitration legal system with Chinese characteristics has now been established. With regard to the relationship between arbitration agencies and judicial institutions, the Supreme People's court and people's court at all levels have gradually changed the judicial review of the arbitration from "supervision" to "support". In 2014, the 235 domestic arbitration institutions received 110,000 cases with a total amount of RMB 265.6 billion.

2. The construction of the International Commercial Arbitration Center - opportunities and challenges of Shanghai

Despite great development, there is still room for improvement. The construction of the International Commercial Arbitration Center is not only a challenge but also an opportunity for Shanghai. According to the standards proposed by the British-chartered Institute of Arbitrators, Shanghai has the following five advantages in the construction of the International Arbitration Center: the internationalized and legalized business environment, a friendly judicial safeguard system for the development of arbitration, leading domestic arbitration institutions, a large number of legal services and experienced professionals, as well as excellent geographical and location advantages.

3. Specialization, Internationalization: Consideration and practice of the Shanghai International Arbitration Center (referred to as “SHIAC”)

In recent years, SHIAC has been making great efforts to pursue the objectives for the promotion of the internationalization of arbitration.

1) Perfect the arbitration rules in accordance to international trends. On 1 May 2014, SHIAC released the “Arbitration rules in China (Shanghai) pilot free trade zone”.

2) Further development of internationalized arbitrators/mediators. Having a diverse background of over 61 countries and regions, the 858 arbitrators and 48 mediators of SHIAC are top professionals that have built comprehensive experience in respective areas including law, financial market, international trade, etc.

3) Expand higher-end transnational commercial arbitration. On 28 August 2014, the world’s first international aviation arbitration court, the Shanghai International Aviation Court of Arbitration was established in Shanghai.

4) Further construction of international arbitration platforms. SHIAC has inaugurated “BRIC countries dispute resolution Shanghai Center” on 14 October 2015. In addition, SHIAC has, with the South African Arbitration Foundation, the South African Institute of Arbitration, and Africa Alternative Dispute Resolution Center, formally signed the agreement on the establishment of a non-joint dispute settlement mechanism on 5 June 2015.

4. Summary

Currently it is the golden age of the development of commercial arbitration in China and Shanghai. Constructing Shanghai as an International Commercial Arbitration Center can be expected soon.

II. Law and Safe Dispute Resolution as a Backbone to Business

1. Key Note Speech from a Hamburg Perspective

Speaker: Olaf Scholz

Madame Liu,
Mr Mehmel,
Mr Westhagemann,
Mr Anke,
Participants in the Shanghai DiaLAWgue,

Anyone who does business must expect risks. The people of Hamburg know this all too well. As early as the 14th century, pirates made the lives of the Hanse merchants difficult and maritime trade with England and Holland immensely hazardous.

But even back then, Hamburg was a guarantor for safe trade relationships.

In 1401, the Hanseatic city provided the financing for two Schnigge ships, including weapons and all hands that were needed. One of these agile sailing vessels had a name that sounded harmless – Bunte Kuh, or Colourful Cow. But as the command ship of the Hanseatic fleet, it gave short shrift to a pirate crew that had gone too far. Klaus Störtebeker, the notorious pirate and one of the leaders of the crew, was caught and convicted in Hamburg. A sculpture on the former Grasbrook, in the middle of what is today Hafencity, commemorates his inglorious end.

Luckily, the methods of the *lex mercatoria* have changed since the Middle Ages. We now have much more modern and practical means of assuring collaboration in international trade law.

After all, Hamburg is an important, internationally recognised venue for jurisdiction and arbitration. We have the International Tribunal for the Law of the Sea, law firms specializing in international law, and excellent notary offices. The level of expertise in business law has also broadened our collaboration with China.

This also applies to the topic of digitalisation: As China's Gateway to Europe, Hamburg is a trailblazer for the next "industrial revolution," Industry 4.0. The intelligent networking of value added chains will enable a higher degree of digitalisation and even closer collaboration for business. This offers enormous opportunities and potentials, but also challenges. And particularly because so much is at stake, legal

security for everyone involved is more important than ever. “Building Bridges for Business” is one of the responsibilities of Hamburg’s legal institutions in the international context.

The Shanghai Dialawgue aims at building safe bridges for the close economic relationships between China and Europe. With its profound expertise on China, Hamburg is the ideal bridgehead for this plan. As Shanghai’s sister city, we consider it both an honour and an obligation to ensure that the economic relationships between China and Europe remain reliable and stable.

“Made in Hamburg” is also our hallmark in regard to legal assistance and the protection of business transactions and partnerships.

We have first-class references in such things. Exemplary of the juridical collaboration between Hamburg and China is the success of the law firm Schulz Noack Bärwinkel (SNB). In 1995, it became the first German law firm to obtain a license to work in Shanghai. In his role as a partner of the firm, Peter Schulz, the former President of the Hamburg Parliament and First Mayor of the Free and Hanseatic City of Hamburg, has been closely involved in the twinning agreement between Hamburg and Shanghai from the very beginning. In this position, he personally received the license that was awarded by the Chinese Ministry of Justice.

Dear Mr Neelmeier, I would like to take this opportunity to congratulate you – and your entire law firm – in the name of the Senate of Hamburg on your 20th anniversary.

Ladies and Gentlemen,

You will find German-Chinese legal expertise in many places in Hamburg. For example, there is the joint project between the Chinese government and the European Union: the China-EU School of Law (CESL).

Under the leadership of the Law Faculty of the University of Hamburg, CESL is supported by 12 European and 4 Chinese universities and educational institutions. The core of this collaboration is the Master’s programme, which provides a degree in Chinese and European law at the same time. CESL also provides the appropriate specialist literature, including the “China EU Law Journal” and the “China EU Law Series.” It includes a programme of further education as well, in which more than a thousand Chinese jurists have participated up to now. We are very proud of this successful collaboration.

Another joint project is the Chinese European Legal Association (CEAC). Anyone who is developing relationships between China and Germany certainly appreciates the support offered by CEAC. The CEAC arbitration clause and the CEAC choice of law clause help in the case of contractual negotiations. And if there should be a legal dispute, the CEAC offers an arbitration process that is recognised by both sides and is therefore an efficient form of settling disputes.

In addition, Hamburg is the home of the Max Planck Institute for comparative and international Private Law. It is the seat of basic research and teaching. It offers a great deal of information about the compatibility of national jurisdictions and the legal treatment of cross-border matters.

Three Hamburg universities also already conduct a very successful academic dialogue on law with China: the University of Hamburg, Kühne Logistics University and Bucerius Law School.

This is in line with our history. Hamburg has a very long tradition as a venue for international commercial law. It dates back to Albrecht Mendelssohn Bartholdy, the grandson of the composer Felix Mendelssohn Bartholdy, who was a professor of foreign law and comparative law at the University of Hamburg in 1920 and for whom a graduate school of law is now named.

As you can see, Ladies and Gentlemen, legal expertise is a Hanseatic skill. Many brilliant minds and much active participation are devoted to strengthening the good trade relationship between Hamburg and China, to safeguard it legally and to renew it. I am pleased that you are involved in all of this. I hope you will have much success and develop new contacts.

Many thanks.

III. International Arbitration Perspectives

1. International Arbitration in China: Opportunities for German Investors and German Arbitrators – the experience of CIETAC under the new CIETAC Rules

Speaker: Dr. Gao Fei*

* The following presentation presents the editorial summary of the original PowerPoint presentation by Mr. Fei.



International Commercial Arbitration in China



- **ESTABLISHMENT OF CIETAC MAKES THE GROWING UP OF INTERNATIONAL ARBITRATION IN CHINA**
- International commercial arbitration in China started from 1956 when China Economic and Trade Arbitration Commission (CIETAC) was set up in accordance with the **DECISION OF THE GOVERNMENT ADMINISTRATION COUNCIL OF THE CENTRAL PEOPLE'S GOVERNMENT CONCERNING THE ESTABLISHMENT OF A FOREIGN TRADE ARBITRATION COMMISSION WITHIN THE CHINA COUNCIL FOR THE PROMOTION OF INTERNATIONAL TRADE** ("Decision of Establishment of CIETAC") adopted on May 6, 1954 at the 215th session of the Government Administration Council.
- In other words, CIETAC marks the appearance of international commercial arbitration in China and the development of CIETAC witnesses the development of international commercial arbitration or foreign related arbitration in China.
- Also, in 1959, China Maritime Arbitration Commission was set up in accordance with the **DECISION OF THE STATE COUNCIL OF THE PEOPLE'S REPUBLIC OF CHINA CONCERNING THE ESTABLISHMENT OF A MARITIME ARBITRATION COMMISSION WITHIN THE CHINA COUNCIL FOR THE PROMOTION OF INTERNATIONAL TRADE** ("Decision of Establishment of CMAC") adopted on November 21, 1958 at the 82th plenary session of the State Council.

中国国际商事仲裁法律的发展



- **民法有关国际商事仲裁的规定**
- ◆ 1982年民事诉讼法（试行），第169条时效、第204条执行互惠原则
- ◆ 1991、2007、2013民法有关规定；第237条国内仲裁；第26章涉外仲裁
- **仲裁法规定**
- ◆ 《仲裁法》1995，第七章涉外仲裁专章
- ◆ 最高仲裁法司法解释2006
- ◆ 最高人民法院关于《涉外仲裁及外国仲裁事项有关问题的通知》，双重报告制度
- ◆ 最高人民法院关于承认和执行外国仲裁裁决收费及审查期限问题的规定
- 2个月内裁定，6个月内执行完毕
- 不予执行的，2个月内上报最高院
- 收费人民币500元
- ◆ 最高院其他有关国际商事仲裁的批复、个案答复等，比如
- 《最高人民法院关于对上海市高级人民法院等就涉及中国国际经济贸易仲裁委员会及其原分会等仲裁机构所作仲裁裁决司法审查案件请示问题的批复》2015

中国国际商事仲裁法律框架



- 国际法
 - ◆ 《承认和执行外国仲裁裁决公约》《纽约公约》1958
 - ◆ 贸法会《国际商事仲裁示范法》1985/2006修订
 - ◆ 贸法会《仲裁规则》2010/2013修订
 - ◆ 贸法会《透明度规则》2014
- 解决投资争端公约（此投资条约仲裁，不是国际商事仲裁）
 - ◆ 《解决国家和他国国民之间投资争端公约》《华盛顿公约》1965
- 国内法
 - ◆ 《仲裁法》1995
 - ◆ 最高人民法院关于适用仲裁法的司法解释2006
 - ◆ 民诉法有关规定2013
 - ◆ 最高人民法院关于执行中国加入《纽约公约》的通知1987
 - ◆ 最高法院有关仲裁的解释、答复或个人批复
- 最高关于认可执行港澳台仲裁裁决安排/规定

HISTORY



- Since 1986, China became one of the member States of the Convention **on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention 1958)**, indicating that the arbitral awards rendered by CIETAC and CMAC shall be recognized and enforced by all the New York Convention member States all over the world.
- In 1991, China issued its Civil Procedure Law (**CPL**), the first law regulating international commercial and maritime arbitration in China, which was **amended in 2007 and 2013**. Coming into effect on January 1, 2013, Article 237 and Chapter 26 of the **CPL** respectively provides the enforcement of domestic arbitration and foreign related arbitration, commercial and maritime etc. in China as well as foreign arbitral awards.
- In 1994, China issued its Arbitration Law which was implemented in September 1, 1995, the first arbitration law in China, indicating that a modern arbitration system in China has been already set up from that time.
- In 2006, Supreme Court (**SPC**) issued its Interpretation of Certain Issues Concerning the Application of the Arbitration Law of PRC (**SPC Interpretation 2006**), which constitutes the important part of the legal framework of China international commercial arbitration.
- Except the Interpretation of Arbitration Law 2006 above, the SPC has issued a series of other orders, directions, interpretations related to arbitration which still constitute an important part of legal framework of international commercial arbitration in China.

Features



- **Only institutional arbitration** cases shall be legitimately submitted in the mainland China, ad hoc arbitration cannot be conducted in accordance with the Arbitration Law with the exception of the recognition and enforcement of New York Convention awards.
- **Foreign lawyers** can be authorized to take part in the arbitration procedures but they can not give the legal opinions about Chinese Laws.
- **Three elements of a valid arbitration agreement** A valid arbitration agreement shall be composed by three elements in accordance with **Article 16 of the PRC Arbitration Law**. One is an expression of application for arbitration, the other is the matters for arbitration, and the third is **the designated arbitration commission**. Without designating an arbitration commission in an arbitration agreement, the arbitration agreement shall be regarded invalid in accordance with Article 18 of the Arbitration Law.
- **Jurisdiction Decision made by the institution** Generally, it is the arbitration commission that has the power to decide the jurisdiction of an arbitration case in stead of the arbitral tribunal in accordance with Article 20 of the PRC Arbitration Law.

Features



- ❑ **Both court and arbitration commission have power to determine the jurisdiction of a case**

Jurisdiction Decision-Article 20 of the Arbitration Law:

- **Where parties concerned have doubt on the validity of an agreement for arbitration, a request can be made to the arbitration commission for a decision or to the people's court for an order. If one party requests the arbitration commission for a decision while the other party requests the people's court for an order, the people's court shall pass an order.**

Still Double-track judicial review system of arbitration award

- **Two different judicial review systems shall be respectively applied to the enforcement and setting aside of domestic and foreign-related/international commercial arbitration awards under Chinese laws. For instance,**
 - (1) As to the domestic arbitral award, the elements for setting aside and no-enforcement of an award respectively provided by Article 58 of the PRC Arbitration Law, Article 21 of the SPC Interpretation 2006 and Article 237 of Civil Procedure Law 2013 of which there are three elements related to substantial matters.
 - (2) But as to the foreign related arbitral award or international arbitral award, the elements for setting aside and non-enforcement respectively in accordance with Article 70 and 71 of Arbitration Law and Chapter 26 of Civil Procedure Law 2013 which are basically the same provisions provided by the NEW York Convention. No element relates to the substantial matters of an arbitral award.

□ **General Features and advantages under CIETAC arbitration for European investors and arbitrators**

Jurisdiction decision made by tribunal as well

- Since 2005, CIETAC Rules has been providing that CIETAC shall have the power to determine the existence and validity of an arbitration agreement and its jurisdiction over an arbitration case in accordance with Arbitration Law of PRC, and at the same time it also provides that **CIETAC may, if necessary, delegate such power to the arbitral tribunal**, which is complying with the arbitration practice in European countries and is the first providing that the jurisdiction decision may be made by the tribunal with CIETAC's authorization

Other parties' autonomy

- Provides first in China that parties may agree to appoint arbitrators from outside of the Panel of Arbitrators
- Provides first that parties may agree on the application of other arbitration rules except the CIETAC Rules, or any modification of the CIETAC Rules
- Parties may agree the place of arbitration, the place of oral hearing and the language of the arbitration procedures
- Parties may agree on the Summary Procedure or the Ordinary procedure as they like

General Features and Advantages



- Parties may agree the conduct of hearing, adopting an inquisitorial or adversarial approach when examining the case having regard to the circumstances of the case
- The tribunal may, if necessary, issue procedural directions and lists of questions, hold pre-hearing meetings and preliminary hearings, and produce terms of reference, etc., unless otherwise agreed by the parties
- Provides first the combination of conciliation with arbitration, CIETAC may assist the parties to conciliate the dispute in a manner and procedure it considers appropriate where the parties wish to conciliate their dispute but do not wish to have conciliation conducted by the tribunal
- Scrutiny of draft award before signing the award by the tribunal
- Expert inquiry commission may give opinions on complicated and difficult issues related to both substances and procedures of the case
- Arbitrator's dissenting opinions shall be docked into the file and may be attached to the award, but it shall not form a part of the award
- Arbitrators shall guarantee to handle the cases independently and impartially
- Arbitrators shall not represent either party, remain independent of the parties, treat them equally and give them the same opportunities in the proceedings

- 不知名外国律所代理带来的问题
 - 不了解中国仲裁
 - 诸多误解片面指责
 - 发出程序令将所有程序问题作出规定
- 知名外国律所带来的问题
 - ◆ 当事人对适用英美普通法民诉程序不民意带来的冲撞
- 第三世界外籍仲裁员带来的问题
 - ◆ 不了解中国贸仲仲裁员行为规范守则
 - ◆ 诸多程序要求不符合规定
- 国内仲裁员盲目学习英美普通法程序带来的问题
 - ◆ 列出程序时间表与中国贸仲规则规定的期间带来的冲撞
 - ◆ 适用文件披露程序

最高院倾向于强制执行外国仲裁裁决



- ◆ 宁波德高裁决执行案
 - 宁波中院裁定执行德高钢铁与宁波工艺在北京作出的国际商会裁决，2009年4月
 - 理由：非内国裁决；依据：纽约公约
 - “一切因执行合同或与本合同有关的争执，应提交设在中国北京的国际商会仲裁委员会，按照《联合国货物销售公约》进行仲裁
- ◆ 存在问题
 - 互惠保留一只承认和执行在执行地国之外的另一缔约国领土内作出的裁决
 - 意味着不能依据纽约公约第一条规定执行非内国裁决
 - 本案裁决在中国作出，仲裁地/管辖地在中国上海，为中国裁决
- ◆ Z v. A & Others (HCCT 8/2013) 约定中国为仲裁地
 - 有争议提交国际商会在中国仲裁；争议依据国际商会规则在中国仲裁
 - 约定合同解释及法律适用均为中国法
 - 香港高等法院判决中国即香港，此裁决为香港裁决，可执行

最高法院倾向于支持仲裁协议有效



◆ 安徽龙得利仲裁协议有效案

- 提交国际商会依据国际商会规则在上海仲裁
- 2013年3月作出的《最高人民法院关于申请人安徽省龙利得包装印刷有限公司与被申请人BP Agnati S. R. L. 申请确认仲裁协议效力案的复函》（[2013]民四他字第13号）
- 确认仲裁协议有效；结果：执行裁决
- “任何因本合同引起的或与其有关的争议应被提交国际商会仲裁院，并根据国际商会仲裁院规则由按照该等规则所指定的一位或多位仲裁员予以最终仲裁。管辖地应为中国上海，仲裁应以英语进行。”
- “any dispute arising from or in connection with this contract shall be submitted to arbitration by the International Chamber of Commerce (‘ICC’) Court of Arbitration according to its arbitration rules, by one or more arbitrators. **The place of jurisdiction shall be Shanghai, China.** The arbitration shall be conducted in English.”
- 管辖地即为仲裁地，依中国法律仲裁条款有效。

中国贸仲上海分会示范仲裁条款



□ 示范仲裁条款

凡因本合同引起的或与本合同有关的任何争议，均应提交中国国际经济贸易仲裁委员会上海分会按照申请仲裁时该会现行有效的仲裁规则进行仲裁。仲裁裁决是终局的，对双方均有约束力。

Model Arbitration Clause

Any dispute arising from or in connection with this Contract shall be submitted to China International Economic and Trade Arbitration Commission (CIETAC) Shanghai Sub-Commission for arbitration which shall be conducted in accordance with the Commission's arbitration rules in effect at the time of applying for arbitration. The arbitral award is final and binding upon both parties.

中国国际经济贸易仲裁委员会示范仲裁条款

□ 示范仲裁条款

凡因本合同引起的或与本合同有关的任何争议，均应提交中国国际经济贸易仲裁委员会在**上海**按照申请仲裁时该会现行有效的仲裁规则进行仲裁。仲裁裁决是终局的，对双方均有约束力。

Model Arbitration Clause

Any dispute arising from or in connection with this Contract shall be submitted to China International Economic and Trade Arbitration Commission (CIETAC) for arbitration in Shanghai which shall be conducted in accordance with the Commission's arbitration rules in effect at the time of applying for arbitration. The arbitral award is final and binding upon both parties.

Model Clause



Any dispute arising from or in connection with this Contract shall be submitted to China International Economic and Trade Arbitration Commission (CIETAC) **Shanghai Sub-Commission** for arbitration which shall be conducted in accordance with the Commission's arbitration rules in effect at the time of applying for arbitration. The arbitral award is final and binding upon both parties

凡因本合同引起的或与本合同有关的任何争议，
均应提交中国国际经济贸易仲裁委员会上海分会，
按照申请仲裁时该会现行有效的仲裁规则进行仲裁，
仲裁裁决是终局的，对双方均有约束力

THANK YOU!



中国国际经济贸易仲裁委员会
CHINA INTERNATIONAL ECONOMIC AND
TRADE ARBITRATION COMMISSION

2. CEAC as a Success Story in Building Bridges in Arbitration between China and Europe via Hamburg

Speaker: Prof. Dr. Eckart Brödermann

It is the general rule that no treaties exist between China and other states regarding the recognition of national court decisions. However, China and roughly 140 other nations, including member states of the European Union, are indeed contracting states to an international convention offering a valid foundation for the recognition of foreign arbitral awards. Thus, making the conclusion of an arbitral agreement a cornerstone to risk management in contracts with any China related content.

The following arguments outline the advantages of implementing the CEAC arbitration clauses (available at www.ceac-arbitration.com -“Download-Centre“).

1. Customized for Business with China

Founded in 2008, CEAC was an initiative of the Hanseatic Bar in Hamburg, the Hamburg Chamber of Commerce and law firms with Chinese business experience from around 20 countries.

CEAC's shareholder is the Chinese European Legal Association (CELA) a sponsoring association focused on encouraging and supporting intercultural legal and social understanding between China, Europe and the world with a particular focus of promoting arbitration.

2. Many Years of Preparation

CEAC came about after many years of discussions and deliberations with Chinese attorney- and arbitration organizations (in particular with CIETAC), the China Council for the Promotion of International Trade (CCPIT) and 470 practitioners from 47 nations. The idea was first discussed in Shanghai during a Hamburg mayor's visit in 2004 and in the „World Leading Cities Bar Leaders“ meeting.

3. Acceptance by Chinese Organizations

The Chinese business organizations such as CIETAC, CCPIT and All China Lawyers Association („ACLA“) know it is unrealistic for all businesses to implement arbitration clauses favoring Chinese institutions. The Chinese economy also has a real interest in pragmatic and functional solutions for international business/trade with Europe (or Africa, Latin America or North America). At the same time, Chinese businesses often do not want to submit to an arbitration clause favoring a German/European arbitral organization. The ICC-Arbitration Clauses also are often refused on the

Chinese side of a contract due to the costs that they involve. CEAC arbitral proceedings are less costly.

4. The Concept of Neutrality

a) Neutrality in the Committees

Chinese members are integrated in CEAC committees. This is particularly true of the Appointing Authority, being the committee which appoints the arbitrators and addresses issues of disputes regarding the appointments of arbitrators. The Appointing Authority is comprised of three members who are: a Chinese, a European arbitrator and an arbitrator from the rest of the world respectively.

The first president of the advisory board is a former president of ACLA and formerly a president of the Inter-Pacific Bar Association (IPBA), which – like the International Bar Association (IBA) – offered the parameters for a number of discussions and negotiations precluding the CEAC's founding (e.g. during the IPBA Conference in 2007 in Peking).

b) Rule Neutrality

German Arbitration Law is based on the UNCITRAL Arbitration Law model to which China agreed. The CEAC Arbitration Rules in their core share the same wording with UNCITRAL Rules to which China also contributed. CEAC's Choice of Law Clause summons the applicability of the identical international sales law in China and in Germany. China and Germany are both contracting states to the applicable UN-Sales Law („CISG“).

Outside this Sales Law, the use of the UNIDROIT offers ground rules for international sales and (UNIDROIT Principles“, www.unidroit.org). China and Germany both are member states to the UNIDROIT.

5. It Works.

In CEAC's first 10 cases, the disputes resolved involved 7 jurisdictions: Canada, Israel, Spain, Italy, Germany, China and Hong Kong. The disputed volume resolved in these disputes exceeded 50 Million Euro.

6. Throughout Asia

CEAC's arbitration clauses can now be found in many General Terms and Conditions and are implemented by leading businesses in Germany in contracts involving all of Asia. The Chinese presence in CEAC promotes a growing acceptance all over Asia.

7. Supported in Hamburg

CEAC is supported by the city of Hamburg; the Senator of Justice is CEAC's patron. Hamburg has even changed some judiciary law, allowing CEAC to use the Hamburg Regional Court's overnight mailbox for their Arbitration proceedings.

8. CEAC Growing Internationally

Since 2009, CEAC has continued to participate in events all over the world; annual events such as the IBA-Week (Rio de Janeiro, Madrid, Vancouver, Dublin, Tokyo, Vienna) are just a few of the mainstays.

In 2013 the CEAC-Arbitration Rules were an essential part of an international student competition. Approximately 2500 Students from 300 universities from around the globe participated. It was a must for all instructors and the promoting law firms to become familiar with the CEAC Arbitration Rules (see „You Tube“, „Vis Moot Finals 2013“).CEAC has been discussed, inter alia, in Chinese publications.

3. **Further Success Stories of Building International Arbitration: The Attraction of the New European Latin American Arbitration Centre for the Development of Chinese Business**

Speaker: Dr. Jan Curschmann



Shanghai Dialawgue

The new ELArb European-Latinamerican Arbitration Center



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Hamburg

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Shanghai,
12/11/2015

Sponsored by



2

Major criteria for the selection of an arbitral institution

- Institution must be experienced and trustworthy
- Costs: cost-benefit ratio
- Advantages of specialized institutions?

3

In order to provide a platform for the **efficient settlement of disputes** the Lateinamerikaverrein has jointly set up with other institutions and natural persons the charitable European-Latinamerican Arbitration Association (ELArb). The admission to the European Latinamerican Arbitration Association (ELArb) is open to all natural persons, organizations and companies all over the world. **Its purpose is the promotion of international commercial arbitration with a special emphasis on disputes which are related to Latin America.**

4

- In collaboration with legal experts from Europe and Latinamerica the European Latinamerican Arbitration Association (ELArb) is currently drafting **Rules of arbitration tailored to the specific requirements of Latinamerica.**
 - The Schedule of Costs of the ELArb Arbitration Center guarantees a cost-efficient dispute resolution.
 - The ELArb Arbitration Center works in collaboration with the Hamburg Chamber of Commerce at an administrative level.
-

5

- **ELArb European-Latinamerican Arbitration Association**, founded in November 2014, is the sole shareholder of the ELArb Arbitration Center
- Institutional members are:
 - Lateinamerikaverrein (founded in 1916, more than 400 member companies) 
 - Rechtsstandort Hamburg e.V. 
- Technical support:
 - Handelskammer Hamburg (founded in 1665) 

6

- Registered seat in Hamburg.
- **Free choice of the seat of arbitration** for the arbitration proceedings.
- Specialised in dispute resolution between companies from Latinamerica and Europe, but **open to any dispute resolution with a link to Latin America**.
- **List of experienced and multilingual** (in particular Spanish and Portugese-speaking) **arbitrators** from Europe, Latin America and third countries.

7

Hamburg is a centre for law

HOME VEREIN AKTUELLES RECHTSSTANDORT THEMEN Suchbegriff SEARCH



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Welcome!

The association "Rechtsstandort Hamburg e.V." was established in 2009 to increase the national and international visibility of Hamburg as a centre for law, and to lay the foundations for its future development. The society seeks to be a platform for those active in the legal sector, to create an information hub, and to facilitate coordinated engagement.

We derive our success from the commitment of association participants and their interaction with each other. Contributions, such as ideas and projects which further the purpose of the association, are encouraged and welcome. Contact us.

Hamburg as a centre for law

Hamburg is an important location for business, science, and law. Our association network connects you with the significant members of the Hamburg legal community in both private and public entities.

Topics

We regularly publish and discuss items of interest pertaining to Hamburg jurisdiction.

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8

Hamburg is a centre for law

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- Mediation
- Cconciliation
- Expert determination
- Arbitration**
- What is arbitration?
- Legal framework
- Institutions
- Litigation
- Selection criteria
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Arbitration

What is arbitration?

Arbitration is a method of dispute settlement using private entities known as "arbitral tribunals".

Arbitral tribunals usually consist of either one or three arbitrators. The primary role of an arbitral tribunal is to apply the law and make a dispute decision by administering a so-called "arbitral award".

In principle, arbitral awards are final and binding. They can only be challenged before a state court under exceptional circumstances. For example, it applies to cases where the parties never validly agreed on arbitration. Arbitral awards can be enforced in most countries worldwide.



9

Hamburg is a centre for law



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- Conciliation

Arbitration

What is arbitration?

Hamburg is the seat of several well-known arbitration institutions, such as the [German Maritime Arbitration Association \(GMAA\)](#), the [Court of Arbitration of the Hamburg Chamber of Commerce](#), the [Chinese European Arbitration Centre \(CEAC\)](#) and various commodity arbitration institutions. Hamburg is also frequently chosen as a place for arbitration by institutions based outside Hamburg, such as the [German Institution of Arbitration \(DIS\)](#) and the [International Chamber of Commerce \(ICC\)](#). The "Hamburg Friendly Arbitrage" is a special form of ad-hoc arbitration developed from local trade usages. These are published in [Section 20](#) of the "Local Usage in the Commodity Trade in Hamburg" (Official Gazette No. 237 dated October 13, 1958). Hamburg based arbitrators have formed the [Hamburg Arbitration Circle \(HAC\)](#) as their association to organize lectures and to support the promotion of Hamburg as a place of arbitration.

10

Hamburg is a centre for law



CEAC

CHINESE EUROPEAN ARBITRATION CENTRE HOME

English Deutsch 汉语 Français

Home - Our Services - Executive Summary

Executive Summary

The Chinese European Arbitration Centre ("CEAC") offers services of an institutional arbitration centre tailor-made to the needs of trade with China. It is based on a truly global approach granting equal power to Chinese, European and worldwide participants in the market (from areas other than Europe and China). This approach guarantees neutrality, in particular during the process for the choice of a neutral arbitrator (as noted, for example, in a [Swiss reaction](#) to the foundation of the CEAC).

During the preparation and negotiation of an international contract with a direct or (however remote) indirect relation to China, the parties can refer to a [CEAC Arbitration Clause](#) to agree on a neutral place of arbitration (for example, if none of the parties succeeds in insisting on a national arbitration system).

11

Hamburg is a centre for law



GERMAN MARITIME  ARBITRATION ASSOCIATION

Arbitration ▾ Mediation ▾ Conciliation ▾ Expert Opinion ▾ Project Adjudication ▾ About GMAA ▾

ABOUT GMAA

The GMAA (short for German Maritime Arbitration Association) is a non-registered association which supports the alternative dispute resolution in the maritime industry. GMAA does neither administer nor otherwise interfere in the individual proceedings but exclusively provides rules of procedures. It also organizes seminars and events related to arbitration, mediation, expert opinion, adjudication and conciliation.

In this section of our website you will find general information related to GMAA. Some information is only available to GMAA members who are required to register ("Login/Logout") before accessing the corresponding webpages.

[Here](#) you will find a general overview about some essential characteristics of the GMAA in various languages.

If you have any further question with regard to GMAA, please do not hesitate to contact the Secretariate (info@gmaa.de).

12

THANK YOU!

13

C. Education

I. *Concepts of International Legal Education*

1. Legal Education and Internationalization – Challenges between International Standards and National Requirements

Speaker: Prof. Dr. Dr. h.c. mult. Katharina Boele-Woelki

1. What should a law school's curriculum look like if it is to meet the needs of the twenty-first-century student? Carel Stolker in his book on *Rethinking Law Schools* (Cambridge University Press 2014) extensively addressed this issue. There are at least two ways of approaching the question. On the one hand, most lawyers across the world still work in a predominantly national environment, applying national law. Most legal practice remains jurisdiction-based. On the other hand, the law and the legal profession increasingly become transnational. Not only big law firms but also international organizations need a different type of lawyer: one who is proficient in both English and his or her native language, who masters cross-border private relationships (e.g. transactions or family relations) and who is aware of the global impact of his or her professional work.

2. Hence legal education of today should provide international opportunities. These consist of three components: (1) offering a comparative perspective, (2) learning languages and (3) studying abroad. The comparative perspective should not only consist of introductions into other jurisdictions (legal families) but should also address the methodological question of how to compare. Similarities and differences are to be detected, they are to be explained and finally to be evaluated. Studying law and learning languages is the second important element. Indisputably, English is the lingua franca of today's communication in the legal world, but the consultation of primary sources (judicial decisions and legal writing) requires learning other languages than English as well. Finally studying at a foreign law school should be organised. This may be enabled by an international exchange programme or by taking part in summer schools which are offered worldwide on very different subjects, such as human rights, intellectual property, international arbitration or international business law. The Hague Academy of International Law, for example, offers two summer schools: one on private international law and one on public international law. More than 600 students and young researchers from all over the world are attending the famous Hague lectures each year.

3. The educational concept at Bucerius Law School considers the internationalization one of the key elements. It combats provincialism, it widens our horizon, it provides insights into other legal cultures, it enables communication and understanding, it establishes a worldwide network and it meets the challenges of today's interconnectedness. To begin with English proficiency is one of our admission requirements. The curriculum includes mandatory courses in "Legal English", "Contract Drafting", and

“Anglo-American Law”. Legal language courses in French, Spanish, Russian and Chinese are also offered and students at Bucerius Law School regularly take part in international competitions such as Moot Courts (in Vienna, Hong Kong and other locations). However, the key element of the internationality in the curriculum is an integrated, mandatory semester abroad during the students’ third year of study. In the transnational practice for which we prepare our students, they will regularly encounter problems that involve more than one legal system. Considering this, all Bucerius Law School students gain insight into at least one other legal system during their semester abroad. All students select one of our partner law schools and spend approx. 4 months there. They are required to take a certain number of law courses in a foreign language to get the credits transferred. Students are able to choose from 95 partner institutions in 32 countries or apply (on their own) at a non-partner university. The selection is a combination of the students’ wishes and their academic standing. Each fall from September to December, when one class of Bucerius students spends a semester abroad we are welcoming about 100 exchange students from our partner law schools. Their *Programme in International and Comparative Business Law* is taught in English, we offer German language courses and students can obtain a “Certificate in Management and Leadership for Lawyers”. In addition we offer a one-year, English-taught Master Law and Business, which consists of complementary law and business courses that provide an interdisciplinary approach to central issues in international business. Integrated into the programme is an eight-week internship period and a master thesis. In the academic year 2015-2016, 52 students from 29 countries are enrolled. Finally, initiated in 2008, the Bucerius Summer Programme in International Business Law, Intellectual Property Transactions and Sports Law (new in 2016) is open to law students and young lawyers from all over the world. The three summer courses are taught in English by renowned German and international professors and practitioners. Currently, more than 2000 international alumni are connected through our newsletter and they regularly attend the reunions which are organized in Hamburg or abroad.

Legal Education and Internationalization

-

Challenges between International Standards and National Requirements

Katharina Boele-Woelki



BUCERIUS LAW SCHOOL
HOCHSCHULE FÜR RECHTSWISSENSCHAFT

Legal education around the world

- Huge differences, e.g.
 - Requirements
 - Length
 - Practical experience
 - LLB and LLM
- Jurisdiction based

Internationalisation of legal education: why?

- Combats provincialism
- Widens our horizon
- Provides insights into and better understanding of other legal cultures
- Enables communication
- Establishes a worldwide network
- Is essential to meet the challenges of today's interconnectedness

Rethinking the Law School

Education, Research, Outreach and Governance

Carel Stolker, Cambridge 2014

- What are the most important components of internationalizing legal education successfully?

Internationalisation of legal education

Components

1. Comparative perspective
2. Law and languages
3. Study abroad

1. Comparative perspective

- Introduction into other legal systems
 - Legal families
 - Auslandsrechtskunde
- Learning how to compare
 - Detecting similarities and differences
 - Explaining similarities and differences
 - Evaluating solutions

2. Law and languages

- Which language?
- Offering languages courses
 - Consulting primary legal sources of other jurisdictions
 - Translating foreign legal texts
- Going abroad

3. Studying abroad

- International exchange programs
- Partner universities
- Recognition of credits
- Scholarships (DAAD, Studienstiftung des deutschen Volkes etc.)
- Summer courses
 - Human rights
 - Intellectual property law
 - Business Law
 - International Arbitration
- Hague Academy of International Law
 - Public international law
 - Private international law

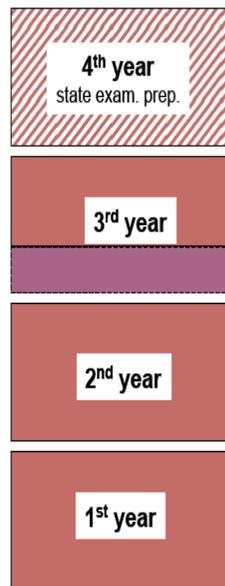
Bucerius Law School



Our view on internationalisation of legal education

- English proficiency is one of the admission requirements
- Mandatory courses in Legal English, Anglo-American Contract Law, etc.
- Legal language courses in Spanish, French, Russian, etc.
- Participation in Moot Court competitions, Model United Nations Society etc.
- Mandatory semester abroad

Mandatory semester abroad



Entire class (115 students) spends mandatory semester abroad at one of 95 partner law schools in 32 countries
Academic requirements abroad: certain number of foreign or international law courses in a foreign language

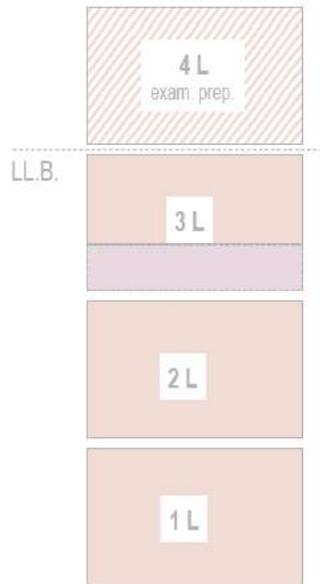
20 credits transferred toward the LL.B. degree (not graded, across-the-board)

Partner universities

- 95 partner universities in 32 countries
- More than 200 spots available
- Bilateral cooperation agreements based on balanced exchange of students
- Partnership selection and annual evaluation
- Tuition fees paid to home university only / No money transfer between the schools

Incoming students

Program in International and Comparative Business Law



- Up to 110 international exchange students
- 4 months
- Each fall term

Bucerius Summer Programme

- International Business Law
 - International Intellectual Property Transactions
 - Sports Law
- Intensive short-term programs offering law courses, workshops and site visits taught by academics & practitioners from Germany and abroad

Bucerius' Master Law and Business

- One-year, English-taught program to train legal and business professionals
- Interdisciplinary approach
- Eight-week internship, social project and a Master's thesis
- Currently 52 students from 29 countries
- Extensive selection process

International alumni

- Nearly 2000 international alumni
- Networking
- Annual reunions in Hamburg and abroad & regional meetings
- Alumni newsletter



Liaison offices



Internationalisation of legal education is key

- Increasing mobility of people and transfer of goods

- International and regional legal sources
 - International and European law
 - International Business Law
 - International Family Law
 - International Litigation and Arbitration

- Shanghai DiaLAWgue

2. Challenges of Internationalization in Legal Education: The China Perspective

Speaker: Prof. XU Meijun

The internationalisation of legal education in China dates back to 1862, when Tongwenguan employed William Alexander Parsons Martin in Beijing to teach courses on international law. In the 1970s, law exchange programmes were set up and groups of visiting scholars and students were sent to other countries to study law. After the students returned from abroad, they imparted concepts and ideas about these foreign countries' laws to other students and scholars in China. In the 1980s and 1990s, a number of doctoral theses translated law codes and cases into Chinese. From that point on, Western law could be better understood and researched. When China joined the WTO in 2001, the internationalisation of Chinese law seemed to be a progressive and irresistible tendency. This is reflected in the number of foreign law students in China. More and more foreigners come to China to study law, and in the past 10 years, China has become one of the top three countries in the world in importing overseas students. In 2014, almost 380,000 foreign students studied in China.

With the rising number of foreign students, China has to face more and more challenges. The scale of expansion has to be balanced with the teaching quality. Until November 2008, there were 634 law schools in China. More than 300,000 undergraduate students studied law, a number which has increased 105.7 times in the past 30 years. 220,000 college students studied law, a number which has increased more than 200 times in the past 30 years. 79,000 candidates studied for a master's degree, and 10,000 candidates pursued a PhD degree. The Chinese legal education faces a dual pressure. It has to be internationalised, and it has to be competitive: In 2005, the aggregated income of law services was USD 399.2 billion. The majority of those services were conducted in the US and Europe, whereas Asian countries contributed only 5.7 % of the income. In China, 103 foreign law firms, including 50 top international law firms, set up offices or branches. To stand up to the international pressure, the Chinese education system is mainly based on practical training. The ratio between practical training and knowledge teaching is 8:2. Imparting knowledge is conducted in 16 core courses stipulated by the Ministry of Education. The knowledge education is finished with the national judicial examination or the civil servant examination.

On 29 December 2011, the Central Political and Law Committee and the Ministry of Education issued a United Opinion concerned with the education and cultivation of excellent legal talents. The United Opinion pointed out three main problems in the current legal education: First, there is a lack of diversity in the current law schools; second, the practical skills of law graduates are being treated insufficiently; and third, the education on socialism rule of law is insufficient. The United Opinion also demonstrated the solutions. Clinical legal education, moot courts and inviting practitioners such as lawyers, judges or prosecutors to

hold lectures or even establish their own courses at law schools can improve practical skills. The invitation of professional foreign practitioners teaching the law of their own countries can improve internationalisation as well as J.M. students. At Fudan University Law School (FLS), since 2002, two categories of J.M. students have been established. The Mentors are practitioners. The students can benefit from cooperation with governmental and judicial departments such as the Shanghai Municipal Procuratorate's Office and Shanghai High People's Court. Further, FLS offers a large number of international academy platforms, such as the Fudan-Nordic Judicial conference, the Fudan-Konstanz Legal Forum and an IP teaching and research programme with Philips, just to name a few. To boost the internationalisation of Chinese legal education, an international consulting committee was established in 2013. This committee consists of a number of famous international jurists, legal scholars and legal practice experts. The committee will provide advice for the law school's international development. Dean Elizabeth Maggill, Stanford University School of Law, and Professor Zhang Wenxian were named co-chairpeople. FLS hosts a variety of exchange programmes for all level students with 34 partner institutions, and it was ranked 4th in the QS World University Rankings among mainland China law schools. In fall 2012, FLS has introduced its LL.M. programme in Chinese business law for foreign lawyers, executives, students and professionals engaged in international trade and/or interested in Chinese business and financial law. The courses are taught in English. The curriculum includes, inter alia, international law, Chinese civil, tax, business and securities law, Chinese language lessons and much more. FLS is also engaged in the training of lawyers. The Shanghai Advanced Institute of Lawyers aims at being an international platform for high-level lawyers training.



Challenges of Internationalization in Legal Education: *The China Perspective*

Prof. Xu Meijun
Fudan University Law School



Internalization of Legal Education in China

- in 1862, Tongwenguan(同文馆) in Beijing employed William Alexander Parsons Martin(丁韪良) to teach courses about international law. Tongwenguan was one of the earliest organization to teach foreign law in China.
-



- From 1970s, some rule of law exchange programs were set up, groups of visiting scholars and students were sent to other countries to study law. After returning China, they impart concept and ideas of law from other countries to their students and other scholars.
-



- In 1980-1990s, a number of doctoral theses translated law codes and cases so that further promote to understand and research over western law.
 - In 2001, China joined WTO and as a member of WTO, internalization of law seems as a progressive and unresistable tendency in China.
-



- Meanwhile, more and more foreigners come to China to study law.

in past 10 years, China has risen up to be a top 3 overseas students importing country in the world.

in 2014, almost 380,000 foreign students studied in China.



Challenges of Internalization in Legal Education in China

- Scale expansion vs. teaching quality
 - Till Nov. 11, 2008, there are 634 law schools in China. More than 300,000 undergraduate students in law who increased 105.7 times in past 30 years. 220,000 college student in law who increased more than 200 times in past 30 years. 79,000 candidates in master degree and 10,000 candidates in Ph.D degree. (China rule of law blue paper *Report on Development of China Rule of law, 2009*)



- Knowledge feeding v. professional training
 - 16 core courses stipulated by Ministry of Education;
 - National Judicial Examination;
 - civil servant examination;
 - knowledge teaching : practical training: 2:8
-



- Internationalized vision:
 - In 2005, whole income in world law service is USA 399.2 billion, which U.S and Europe is the majority, Asia countries only constitute of 5.7%. (Datamonitor 2005,12)
 - 103 foreign law firms set up offices or branches in China, including 50 international top law firms.
 - Chinese legal education face dual pressures: to be internationalized and to compete with other countries
-



Reaction and Reform in Legal Education in China

- On 12.29,2011, United Opinion issued by Central Political and Law Committee and Ministry of education on education and cultivation of excellent legal talents pointed out three main problems in current legal education:1) lack of diversity of current law school; 2) short of practical skills of law graduates; 3) insufficiency of education on socialism rule of law.
-



- clinical legal education;
 - Mooting trial;
 - J.M students;
 - Invite practitioners, such lawyers, judges, procurators to deliver lectures, even open courses at law school;
 - Invite professional foreigner to teach law of their own countries.
 - 3+3 cultivation scheme.
-



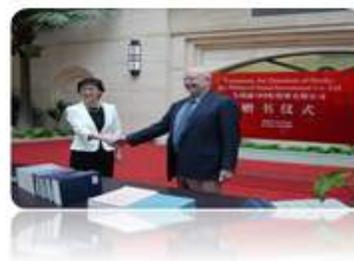
Exploration and Experience at Fudan University Law School

- Two categories of J.M students from 2002;
- Mentor in Practice;
- Cooperation with Government and Judicial Departments, such as Shanghai Municipal Procuratorate's Office and Shanghai High People's Court;
- FLS forms a large number of international academy platform, such as Fudan-Nordic Judicial conference, Fudan-Konstanz Legal Forum, and IP teaching and research program with Philips, etc..

International Consulting Committee in 2013



A number of international famous jurist, educationist of law and legal practice experts as members to form the International Advisory Committee, which will provide advice for the Law School's international development. Dean Maggill Elizabeth, Stanford University School of Law, and Professor Zhang Wenxian were named the co-chairmen.



Various exchange programs for all level students



In 2013, FLS ranks 4th in QS World University Rankings among mainland China law schools.

Asia

- National University of Singapore
- Tel Aviv University
- The University of Hong Kong
- City University of Hong Kong
- National Taiwan University

Australia

- Bond University

Canada

- Queen's University at Kingston
- McGill University

United States

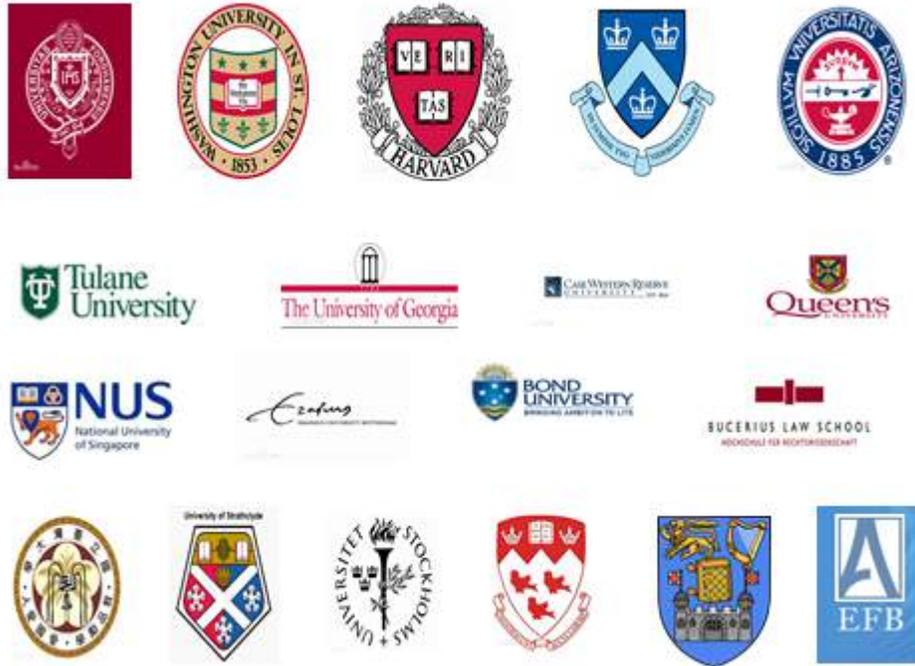
- Harvard Law School
- Columbia Law School
- Washington University in St. Louis
- University of Arizona, James E. Rogers College of Law
- William & Mary Law School
- Fordham University
- Tulane University
- Case Western Reserve University
- Georgetown University
- University of Georgia

Europe

- University of Helsinki, Finland
- Stockholm University, Sweden
- Lund University, Sweden
- Aarhus University, Denmark
- University of Amsterdam, Netherlands
- Erasmus University Rotterdam, Netherlands
- Bucerius Law School, Germany
- SOAS University of London, UK
- University of Strathclyde, UK
- Paris Bar School, France
- Ghent University, Belgium
- ILRAP Centre for International Law Research and Policy, Belgium
- Trinity College Dublin, Ireland
- Universitat Autònoma de Barcelona, Spain
- Universidad Pontificia Comillas, Spain
- University of Bologna, Italy

Statistical Data





LL.M. Program in Chinese Business Law

- ④
 Since fall 2010, FLS has launched its LL.M. (Master of Law) Program in Chinese Business Law for foreign lawyers, executives, students, and professionals engaging in international trade and/or interested in Chinese business and financial law. The language of instruction is English.



**Shanghai Advanced
Institute of Lawyers (SAIL)
aims at being an
international platform for
high-level lawyers training.**



Thank you !

3. Education of Anglo-American law and comparative law in SUFE

Speaker: Prof. ZHENG Shaohua*

* The following text presents the editorial summary of the original PowerPoint presentation by Mr. Shaohua.

- **Brief introduction of SUFE and school of law**

The SHUFE, founded in 1917, is a top-ranked, world-renowned research university. With SHUFE now increasingly opening itself to the outside world, it aims to showcase this spirit as well as its outstanding teaching quality.

The Law School of SUFE was officially created in December 1998. It is the training base of outstanding legal talents of the Ministry of Education, the National law practice base, the judicial research base of Supreme Court free trade zone, China - Latin American Law Research Base of the china law society and Ji training base of legal talents. Currently, the Law School has 52 full-time teachers, among which there are 19 professors, 103 part-time teachers and 1100 students.

- **Common Law and Comparative Law Programs in SHUFE**

SHUFE Law has wide connections with foreign law schools and research institutions. Foreign law professors are often invited to give lectures for the students or to present speeches in the seminars. Currently SHUFE Law has the following four Common Law and Comparative Law Programs.

- Common Law Certificate Program

The program is aimed at undergraduates. It has two types of course: fundamental (compulsory) and advanced (optional). All courses are taught in English. There are 6 fundamental courses, each of which has 3 credits, and 5 optional courses, each of which has 2 credits. Students are required to have in a minimum of 22 credits. Once the students finish all courses and pass the examination, they will obtain the Common Law Certificate from SHUFE Law.

- All-English Comparative Law Program (International Financial Law) with 1 + 1 joint training project

The All-English Comparative Law Program is aimed at domestic postgraduate and it has 7 courses.

- All-English LL.M Program

The All-English LL.M. is a program for international postgraduate legal study provided by SHUFE Law. It welcomes the students who come from other countries in the world and possess diverse culture

backgrounds to participate. The foreign students have the chance to study and live together with the outstanding Chinese law students.

The period of LL.M. program is two years, including 13 courses, of which 7 are Comparative Law courses.

- All-English Ph.D. Program in Law and Finance

The All-English Ph.D. Program in Law and Finance is a program for international postgraduate legal study provided by SHUFE Law. The period of PhD program is three years, including two-semester taught courses and four-semester thesis writing. There are 9 courses, of which 7 are Comparative Law courses.

- **Problems and Considerations**

With regard to Education on Common Law and Comparative Law the following four questions are worth our consideration.

- Vocational or academic training

The goals and purposes of the training need to be clarified. Does it aim at training professional skills or prepare for later academic work.

- Decentralized or systematic training

Does a study program offer a systematic training on a specific field of law or does it offer opportunities to organize individual trainings.

4. China-EU School of Law – an Example of International Legal Education – Mastering Challenges of China and Europe

Speaker: Prof. Dr. Armin Hatje

The China-EU School of Law (CESL) was established in connection with the “reform and open door policy” launched by the Chinese government and its efforts for establishing a society based on rule of law. The extension and complexity of legislative reforms, the overall modernisation of the machinery of justice and the interaction with the international community highlighted the increasing need for institutions devoted to high quality legal training, and particularly for training including European law components.

European financial support to CESL’s establishment was formalised with the Financing Decision of EUR 18.2 million in July 2006, the related Financing Agreement of January 2007, and the signing of a grant contract with a consortium of high-ranking European and Chinese universities and educational institutions. CESL is the only Sino-foreign law school in China. José Barroso, then President of the European Commission and Li Keqiang, then Vice Premier of China and currently Premier of China, inaugurated the school in 2008. The University of Hamburg took a leading position in building up CESL, the school’s Consortium Office is located at the University of Hamburg and the current European Co-Dean of CESL is a University of Hamburg professor.

According to the Financing Agreement, the action was aimed at supporting and facilitating exchange, cooperation and better understanding in the field of professional legal education. The establishment of CESL is seen as step towards a significant improvement of the knowledge, skills and performance of the Chinese legal profession in relation to European and international law and legal systems, and considered a key factor in supporting the transition process and the sustainability of legal, social and economic reforms. The action is, at the same time, meant to serve as a platform for European scholars and students to observe and better understand legal reform and progress in China.

According to the Financing Agreement, and following the approval by the Chinese Ministry of Education, CESL offers graduate-level legal studies that currently include a two-year “Master in Chinese Law”, taught in Chinese, and a one-year “Master of European and International Law”, taught in English, that can be combined into a three-year “Double Master’s Program”. In addition to master’s programmes, activities performed by CESL under the grant agreement also consist of the organisation of training programmes for judges, prosecutors, lawyers and other legal professionals, and research and consultancy.

Master's programmes

One of CESL's goals is to provide top-quality legal education in the field of European, international and comparative law to mainly Chinese, but also to international, students as well as to provide a programme enabling European students to improve their knowledge of Chinese law and legal practice. The school offers a Double Master's Programme, consisting of a two-year Master of Chinese Law and a one-year Master of European and International Law (MEIL). In addition, the one-semester programme Chinese Law Taught in English (CLTE) is offered to non-Chinese students. Together with the MEIL programme, Double Master's Programme graduates become competent legal professionals working in an international environment with knowledge of the European legal system and the national European legislations as well as international and comparative law. Currently, there is no other master's programme in China specialising in European and international law, while the United States and other common law jurisdictions (Australia, Canada, etc.) have been more successful in setting up programmes in legal education, thus creating an educational challenge for Europe. The MEIL programme with elective courses at partner universities in Europe is a unique programme.

The number of European law students with an understanding of Chinese law is currently low. As the political and economic importance of China continues to rise, legal interaction between China and Europe increases. It is thus important to have European law graduates with knowledge of Chinese law. CESL therefore offers the CLTE programme to European and international law students and graduates. In the future, the aim is to also offer the programme as a one-year master's programme.

Since 2008, more than 350 Double Master's students and more than 60 Master of European and International Law students have graduated. Almost 50 students have completed the Chinese Law Taught in English programme. In 2015, 98 % of all graduates found employment in the legal sector immediately after graduating. Almost 800 people have already been enrolled as master's students at CESL and another 32 as PhD students. CESL's students come from 25 different countries.

Professional Training

CESL also seeks to expand the knowledge and experience of Chinese legal professionals of the European legal system, legislation and best practice as well as international and comparative law. Further, it aims to contribute to creating a link between Chinese and European legal professionals. The professional training courses broaden the horizon of the legal professionals and legal institutions which contributes greatly to strengthening rule of law in China. As the rapid movement of economic and social developments and a growing interaction with the international community, including the European Union, rises, the need for Chinese legal professionals with knowledge of European and international law

increases as well. CESL organises professional training courses in cooperation with the National Prosecutors College (NPC), the National Judges College (NJC), and lawyers' associations on the national and provincial level as well as courses for civil servants. To date, over 6,000 legal professionals have been trained by CESL.

Research

CESL also facilitates research exchange and cooperation between European and Chinese legal scholars as well as functions as a permanent platform for scholars and students. European scholars and students improve their knowledge of Chinese law and practice, and Chinese scholars improve their knowledge in the field of European and international law. Long-lasting research contacts leading to research networks between Chinese and European colleagues, as coordinated by CESL, are the result of these activities, as shown by the experiences with research grants offered in the past. The PhD exchange and research activities assist in establishing contacts between Chinese and European institutions. The mixed research project groups consist of European and Chinese researchers and increase the interaction among European and Chinese legal circles and enhance knowledge of European, international and Chinese legal systems through comparative research. These comparative studies and fruitful discussions influence and help strengthen rule of law in China. To achieve this goal, CESL supports PhD candidates, publishes the "China-EU Law Journal" and its own book series, the "China-EU Law Series", in cooperation with the internationally renowned publishing house Springer. Furthermore, CESL organises workshops and conferences such as the "CESL International Symposium Series" and the annual "Academic Conference", and supports research projects. Since 2008, more than 130 research scholars were supported. International legal experts exchanged views at more than 30 workshops and conferences organised by CESL.

Future

From 2018, CESL will be established as a self sustainable law school with support from the Chinese government, the European Union and European governments.



CESL

// Prof. Dr. Armin Hatje / University of
Hamburg / November 2015



CONTENTS

- > General information
- > Programs
- > Future



CHINA-EU SCHOOL OF LAW



AIMS

- > Legal Education
- > Professional Training
- > Research



LEGAL FOUNDATIONS

- > Financing Agreement

- > Consortium Agreement

- > Grant contract between the EU and the University of Hamburg (Financing)

11/11/2015



HISTORY

- > Founded in 2008 in cooperation between the P.R. China and the EU

- > Opening ceremony under participation of Li Keqiang, Premier of the State Council of the P.R. China, and José Manuel Barroso, former President of the European Commission

11/11/2015





11/11/2015



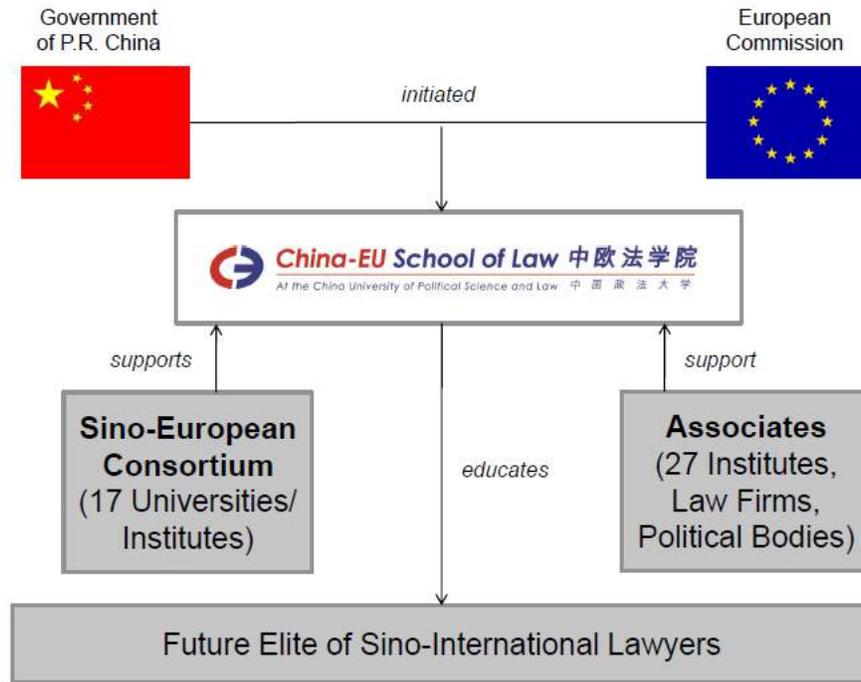
STRUCTURE

- > First Sino-European law school in China
- > Led by a joint China-EU Consortium composed of high-ranking Chinese and European universities

11/11/2015



CESL CONSORTIUM



PROGRAMS



OVERVIEW

- > Double Master (LL.M./J.M.)
 - Duration: Three years
- > Master of European and International Law (MEIL)
 - Duration: One year
- > Chinese Law Taught in English (CLTE)
 - Duration: One semester

Since 2008, 754 young people have already been enrolled as master students at CESL, another 32 as PhD students.



WHY A MASTER AT CESL?

- > Rising demand for experts in European AND Chinese law
 - China as a fast-growing political and economic power
 - EU as one of the largest trade partners of China

- > Excellent preparation for prospective international lawyers
 - Curriculum includes European, international and Chinese law as well as Chinese language courses
 - Lecturers from 17 European and Chinese universities

11/11/2015



MASTER IN EUROPEAN AND INTERNATIONAL LAW (MEIL)

- > A one-year, two-semester programme
 - One semester in China, one semester in Europe

- > Taught in English by a “Flying Faculty” from European universities

- > Focuses on the principles, regulations and procedures of European and international law

11/11/2015



...

- > A master programme with an internationally-recognized degree (LL.M.) awarded by the University of Hamburg
- > All international students are welcome to take elective courses in Chinese law and/or Chinese language courses

11/11/2015



PROFESSIONAL TRAINING

- > Training courses organised for judges, prosecutors and lawyers
- > Training programmes offered in collaboration with the National Judges College, National Prosecutors College and law associations in China and Europe



Since 2008, more than 6,000 legal professionals (judges, prosecutors, lawyers and civil servants) were trained by CESL

11/11/2015



RESEARCH

- > CESL supports Sino-European research projects with research grants
 - Since 2008, 135 research scholars involved in CESL-funded research projects

- > PhD programmes offered for Chinese and European students

11/11/2015

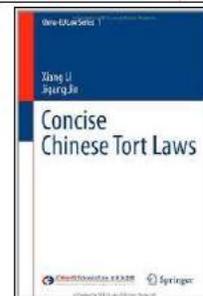


...

- > Regularly organised guest lectures, academic conferences and workshops
 - on various topics of international law, European and Chinese law, as well as comparative law
 - Since 2008, 30 workshops and conferences were organised

- > Publication of the China-EU Law Journal and the China-EU Law Series with Springer

11/11/2015



FUTURE



DEVELOPMENT AFTER 2018

- > Self sustainable Law School with support of the Chinese government, the EU and national governments





**THANK YOU FOR YOUR
ATTENTION!**



II. Scientific Cooperation: Solutions for an International Tomorrow

1. Studying Abroad: Practical Challenges – Funding, Accommodation, Visa

Speaker: Prof. Dr. Hinrich Julius

Academic education is internationalising. In 2014/2015, 8.2 % of all students studying in Germany were international students. Germany ranks third for international students' target countries for basic and full studies. Only the USA and the UK attract more students. Australia, Canada and France rank closest to Germany with each one attracting slightly less students. Eighty-five percent of these international students are free movers – meaning that they find their university outside of existing cooperation programmes.

The situation in law is different. The field of law is a national education naturally dealing with a national subject matter. However, international experience and knowledge is of rising importance, not only in commercial matters, but also in criminal law and administrative practice. This is reflected in the number of law students studying abroad, whose numbers are far below the general levels. The countries where they come from are neighbour countries – in Germany, most foreign law students are from Poland and France with an annual number of around 350 students each. Chinese students also play a (lesser) role with around 150 law students per year studying in Germany.

A look in the other direction demonstrates that German students like to study abroad. The target countries, however, differ from the home countries of incoming international students to Germany. By far the highest number of German students study in Austria (2012: more than 30,000) followed by the Netherlands (25,000), Switzerland (almost 15,000) and France (around 6,300). China is on the fast track to becoming more and more interesting for German students as the rise in interest in China is remarkable. Whereas in 2003 1,280 German students studied in China, the number had risen to 6,300 in 2012.

A conclusion can be drawn from these figures. If one agrees that although law is primarily a national education, further internationalisation of the views of future jurists is needed, the current number of students gaining international experience is low. Students studying law abroad will do so primarily in addition to their national studies. Study abroad can be promoted by offering programmes that are attractive after the basic studies. The number of students, however, can and should primarily be increased by offering integrated, or at least coordinated, programmes. In the following, I want to focus on practical issues we as universities have to deal with or support the students with in order to increase international exchange. Practical challenges are taken here as the starting point for suggestions of improvement.

These challenges begin with the academic preconditions, i.e. the requirements of a German university to study. In general, foreigners cannot meet German universities' entry requirements for German students, which are based on German high school grades and waiting time. Therefore, for basic studies, a general

quota of 10 % has been reserved for foreign students. The application procedure includes a review of the national higher education certificate. This is performed by *uni assist e.V.* using a database developed by the German Academic Exchange Service (DAAD). In China this procedure is centralised; an academic examination institute (*Akademische Prüfstelle (APS)*) with offices in Beijing and Shanghai evaluates and certifies the equivalence of the higher education certificate. Future students also have to undergo interviews and tests. Very often before studying, students need to attend a preparatory semester in Germany– the so called *Studienkolleg*. Here potential students improve their German language abilities and are introduced to German academic culture. Language abilities are a second requirement. Sufficient proficiency in German can be assessed by a Test of German as a Foreign Language (TestDaF) or the equivalent. Advanced studies (e.g. Master's degree) require proof of a sufficient Bachelor's degree in the specific field and proficiency in German or, for some studies, English. Structured programmes and cooperation can ease the practical handling of the necessary requirements. Within Europe a system of exchange for one semester without many administrative preconditions for students has been established with the ERASMUS exchange programme. This programme is probably the most successful instrument to enhance the internationalisation of academic studies and is based on a formalised cooperation between all European universities.

After having met the formal academic requirements, the German visa is a central issue. For studying purposes in Germany, a student visa application is required. The processing time takes between two to three months. It is recommended to apply for a visa already with the application confirmation and not to wait until a possible acceptance is given. This is also easier within cooperation programmes. The visa is subject to proof of sufficient finances. Each student must prove assets in the amount of 659 € per month. The student visa is transferrable into a residence permit and is valid for 10 years at maximum, 15 years if a doctorate is included. In addition to the studies, the visa entitles students to work for 120 days a year and entitles students to 18 months residence in Germany after studies to seek work. For Chinese applicants, the *Akademische Prüfstelle (APS)* in Beijing and Shanghai also offer visa services.

Once all the formalities of studying abroad have been overcome, students face practical challenges. In recent surveys, 42 % of foreign students indicate accommodation is the biggest problem in Germany, increasing from 31 % in 2009. Student dormitories are available only for a small percentage of students. Foreign students have far more difficulties than German students within the private housing market. Practically, this difficulty is solved by offering foreign students easier access to dormitories – especially in coordinated cooperation programmes. Thirty-seven percent of foreign students live in dormitories – a number far higher than among German students. In Hamburg, due to special difficulties in finding suitable accommodation, some dormitories accommodate up to 50 % foreign students. The prices vary and range from 233 € to 385 € per month. This is much more affordable than private dormitories, which cost up to 500 € per month.

Second to the accommodation issue, 41 % of foreign students list contact to German students as the second biggest problem, followed by problems with the orientation within the studies. Contact among students can be supported within programmes, and especially in programmes where German and foreign students study together. From my personal experience, the studies' content is a challenge for foreign students. Foreign students often have studied individually instead of in small teams. Chinese students usually have learned to work hard and learn by heart. Many students, however, do not have a lot of experience in individual and independent reasoning and argumentation – something of course German students also have to learn during their studies. Forty-one percent of all foreign students do not successfully finish their studies, which is approximately 10 % more than German students. Here, cooperation programmes give the possibility of closer tutorship which can improve study success.

A final issue is the question if foreign students should stay in Germany after their studies. Forty-four percent of non-EU foreign students stay in Germany after their studies compared to 52 % among non-German, EU students. Currently this is highly debated and politicians demand a higher ratio of foreign students working after their studies in Germany. An academic education financed by the state should also benefit the national economy. This argument is not fully shared. In addition to economic payback of student financing, one also has to see that foreign students take back to their countries not only knowledge of German education, but also a knowledge of Germany which they will use during their professional life.

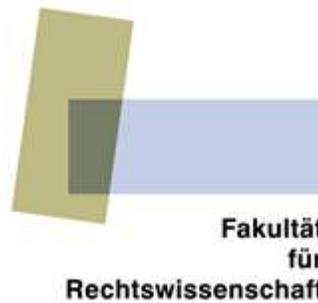
What is being done at the University of Hamburg with regard to supporting foreign students? The University of Hamburg is the largest educational and research institution in northern Germany with over 40,000 students and 4,300 scientists and scholars. Founded in 1919 by local citizens, it has been home to Nobel prize winners such as Otto Stern and now offers 170 degree programmes in six faculties: Law; Business, Economics and Social Sciences; Medicine; Education, Psychology and Human Movement; Humanities; Mathematics, Informatics and Natural Sciences. The law faculty offers a full programme of the state exam (*Staatsexamen*). It also offers a Magister degree programme (LL.M.) in German, in which foreign students attend the same courses as German students studying for their state exam. Accommodation possibilities for students in Hamburg is above the German average, with 23 dormitories managed by Studierendwerk Hamburg with spots for international students, privately-run dormitories, Europa-Kolleg dormitories, student hostels and a broad offer of shared apartments. The faculty also offers master's programmes in English in which foreign students can study together with German students: one programme at Europa-Kolleg on European and European Legal Studies and one programme on Law and Economics. Issues of accommodation, orientation within the law programme and with German students are taken care of in these respective programmes along with close cooperation with foreign institutions in order to ease entry procedures. While this is a well-functioning basis, further efforts have to be undertaken

in order to increase international cooperation. Integrated, or at least coordinated programmes, can best tackle practical challenges of international students coming to Hamburg.

Shanghai DiaLAWgue, 12. November 2015

Studying Abroad

Practical Challenges



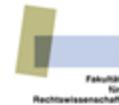
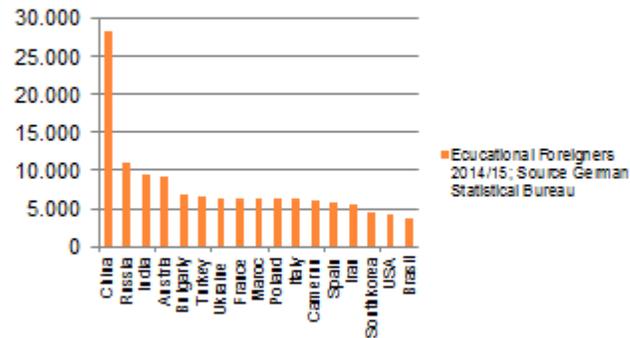
Prof. Dr. Heinrich Julius

Studying Law Internationally – Practical Challenges

- **Internationalisation of Legal Education – some figures**
- **Academic Preconditions**
- **Visa**
- **Accommodation**
- **Culture**
- **Options at University of Hamburg**

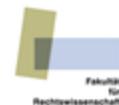
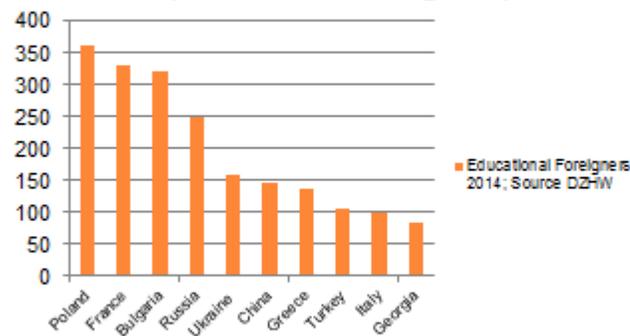
Studying Abroad - Figures

Foreign Students in Germany 2014/15 (Educational Foreigners)

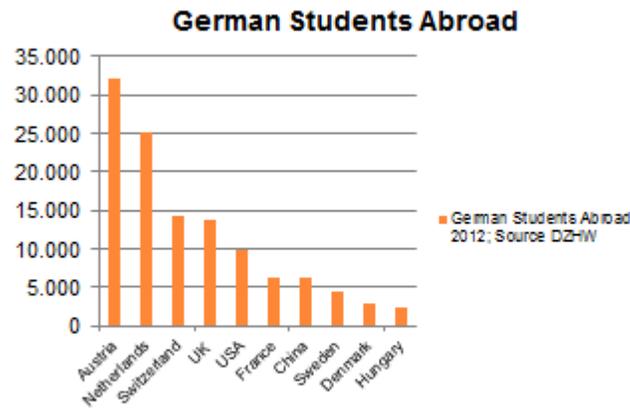


Studying Law Abroad - Figures

Foreign Students in Law (Educational Foreigners)



Studying Abroad – the other direction



Academic Preconditions, forms of study

- **Foreigners cannot meet requirements of German Universities (High-School Grade; Waiting Time) →**
 - **General Quota for foreign students (10%)**
- **Bachelor / State-exam:**
 - Review of Higher Education Certificate
 - Generally uni-assist e.V. (Database DAAD);
 - In China APS (Akademische Prüfstelle) Beijing (Database, Interview, TestAS)
 - Studienkolleg (Preparatory Semester; language and content)
 - Sufficient Proficiency in German (TestDaF; Equivalent)
Goethe Institutes
- **Master**
 - Sufficient Bachelor Degree in the field
 - Proficiency in German (or English)
- **Exchange Programmes („ERASMUS“)**

Central Issue: Visa

- **Student Visa Application**
 - 2 – 3 months processing time
 - Application best with application confirmation of university
 - Proof of finances (659 € per month)
 - Transferrable into residence permit
 - Max validity 10 years (15 if doctorate is included)
 - Work allowed 120 days a year
 - After Studies 18 months purpose seeking work
- **APS**
 - Since 2013 also in Shanghai
 - Offers one hand service



Issues of Concern: Accommodation, Culture

- **Accommodation**
 - 42 % of foreign students name accommodation as biggest problem in Germany (2009: 31 %)
 - Student dormitories only for small percentage of students (6 %)
 - 37 % of foreign students live in dormitories
 - Dormitories in Hamburg up to 50 % for foreign students (due to special difficulties)
 - Prices vary: € 233,- – 385,- per month
 - Private dormitories; up to € 500,-
- **Culture**
 - 41 % of foreign students name contact to German students as second biggest problem in Germany (2009: 37 %)
 - 41 % of foreign students name orientation within studies as problem
 - Personal Experience: unclear content / individual learning
- **Success**
 - 41 % of students do not finish their studies (German students 30 %)
 - 44 % of students stay in Germany (EU-foreigners 52 %)



Options within University of Hamburg

- **University of Hamburg: To Research, To Teach, To Educate and Form**
 - Over 40,000 students, 4,300 scientists and scholars, largest educational and research institution in North Germany
 - 170 degree programmes in six faculties: Law; Business, Economics and Social Sciences; Medicine; Education, Psychology and Human Movement; Humanities; Mathematics, Informatics and Natural Sciences.
 - Key research areas: Climate, Earth, Environment, Matter and the Universe, Neurosciences, Multilingualism, Governance, Infection Research, Structural Biology as well as Heterogeneity and Education.
 - Founded in 1919 by local citizens. Nobel prize winners such as Otto Stern, Wolfgang Pauli and Isidor Rabi were active at the University.



University of Hamburg: Law

- **Study law at the University of Hamburg**
 - Staatsexamen
 - Law as a Minor
 - Magister (LL.M.) specifically for Foreigners (in German)



Achieving Aims: Accommodation

- **Student/Internship Accommodation in Hamburg**
 - 23 dormitories managed by Studierendenwerk Hamburg with spots for international students
 - Privately-run dormitories
 - Europa-Kolleg dormitories
 - University of Hamburg Guesthouse
 - Shared apartments (WGs)
 - Student hostels



University of Hamburg: Europa-Kolleg

- **Europa-Kolleg Hamburg:** an internationally recognised, interdisciplinary institution for education and research in the field of European integration
 - Institute for European Integration
 - 2 Master Programmes: European and European Legal Studies and European Economic Law
 - Founded in 1953 as a non-profit-making foundation under private law.
 - Furthering research and academic teachings in the area of European Integration and international cooperation.



2. Foreign Law in Germany: The Role of the Max-Planck-Institutes

Speaker: Prof. Dr. Knut Benjamin Pißler

The Max Planck Institute for Comparative and International Private Law in Hamburg is dedicated to performing foundational research and promoting the transfer of knowledge in the fields of comparative and international private law and business law. By analysing similarities and differences in the legal regimes of Europe as well as other parts of the world, the Institute studies the interaction of private rule-making, national legal systems, supranational law and interstate treaties. The research performed at the Institute also serves to lay the groundwork for an international understanding of law and to help develop rules and legal instruments with which the application of national law can be better coordinated in cross-border matters. This is an academic mission of considerable significance particularly within a united Europe and against the background of increasing globalisation and a corresponding internationalisation of law.

When within the Institute's academic mission, the Institute provides courts and agencies with legal information on foreign law and conflicts of law. In respect of foundational comparative law research, the Institute also prepares expert opinion analyses on behalf of federal ministries and other institutions. In extremely limited circumstances legal information may be provided to notaries and attorneys. Requests in relation to commercial disputes or the preparation of a legal action in a foreign court will not be entertained.

Affording international scholars an opportunity to work on their research projects at the Institute is deemed of particular importance. To this end, a limited number of short-term scholarships (up to a maximum period of four months) are awarded each year. Additionally, the scholarship programme serves to promote personal and institutional contacts with scholars working in the fields of comparative and international private law and thereby continually expand the Institute's global network.

The research project in question must correspond to the academic interests of the Institute, as only then can it be ensured that scholarship recipients will be able to engage in meaningful academic exchange with other researchers and find relevant literature in our library.

Scholarships are available for:

- Foreign doctoral candidates,
- Foreign post-doctoral candidates and other advanced-stage researchers,
- Foreign professors or other senior researchers of equivalent academic achievement.

Applicants need not be proficient in German. However, if the researcher envisions that her intended research will include an inquiry into German law her research proposal should indicate how she will – as necessary – obtain the desired information from foreign-language sources.

To ensure smooth and effective communication with Institute staff members and other guests, applicants should at a minimum have a strong command of either German or English.



Priv.-Doz. Dr. Knut B. Pißler
Research Fellow
Max Planck Institute for Comparative and International Private Law

MAX-PLANCK-GESellschaft

Foreign Law in Germany: The Role of the Max-Planck-Institutes

1

MAX PLANCK INSTITUTE FOR COMPARATIVE AND INTERNATIONAL PRIVATE LAW



Priv.-Doz. Dr. Knut B. Pißler
Research Fellow
Max Planck Institute for Comparative and International Private Law

MAX-PLANCK-GESellschaft

Agenda

1. The work of the China Unit: Some statistical facts
2. Proceedings in rendering a legal opinion 给予法律意见
3. Problems in rendering a legal opinion

2

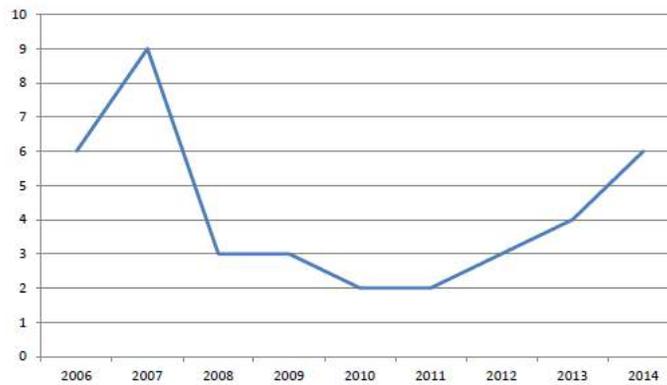
MAX PLANCK INSTITUTE FOR COMPARATIVE AND INTERNATIONAL PRIVATE LAW



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Legal opinions rendered by the China Unit (2006 to 2014)



3

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Fields of law where the China unit rendered legal opinions (2002-2014)

- Thai succession law 继承法
- Korean adoption law, succession law
- Vietnamese family law (divorce), succession law
- Chinese law of obligation (general terms of contract, loan contract, transportation contracts), company law, competition law, family law (divorce, maintenance, matrimonial property 婚姻财产, custody of children 儿童抚养 after divorce)

4

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Max Planck Institute for Comparative and International Private Law

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Proceedings in rendering a legal opinion

- Providing legal services is not the mission or function of the Institute
- The Institute provides courts and agencies with legal information on foreign law and conflicts of law
- No legal advice is provided to private individuals
- In extremely limited circumstances legal information may be provided to notaries and attorneys
→ Aim: Avoidance of conflicts of interests

5

MAX PLANCK INSTITUTE FOR COMPARATIVE AND INTERNATIONAL PRIVATE LAW



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Research Fellow
Max Planck Institute for Comparative and International Private Law

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Proceedings in rendering a legal opinion

- The Institute (not the individual researcher at the Institute) is usually entrusted by a court with giving legal information on foreign law and conflicts of law
- After a written inquiry is furnished to the Institute, the coordinator of legal opinions at the Institute forwards the request to the researcher responsible for the legal system in question
- The researcher examines the case as to whether it is commensurate with his/her capabilities and academic interests
→ The Institute/researcher is under no obligation to provide legal information

6

MAX PLANCK INSTITUTE FOR COMPARATIVE AND INTERNATIONAL PRIVATE LAW



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Research Fellow
Max Planck Institute for Comparative and International Private Law

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Proceedings in rendering a legal opinion

- After the case is accepted by the researcher, the court furnishes the Institute with the original case file
- The researcher assesses the estimated cost of providing the court with the legal opinion (on a hourly basis)
- The court requests the party, who filed the case, to provide a down payment according to the estimated costs
- After the notification of the down payment by the court to the Institute, there is an internal deadline of six months for rendering the legal opinion to the court (not binding)

7

MAX PLANCK INSTITUTE FOR COMPARATIVE AND INTERNATIONAL PRIVATE LAW



Priv.-Doz. Dr. Knut B. Pißler
Research Fellow
Max Planck Institute for Comparative and International Private Law

MAX-PLANCK-GESellschaft

Proceedings in rendering a legal opinion

- In rendering the legal opinion the researcher consults relevant laws, legal literature and court decisions (if available)
 - Importance of the library of the Institute as well as legal databases in the internet

8

MAX PLANCK INSTITUTE FOR COMPARATIVE AND INTERNATIONAL PRIVATE LAW



Priv.-Doz. Dr. Knut B. Pißler
Research Fellow
Max Planck Institute for Comparative and International Private Law

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Problems in rendering a legal opinion

- Legal literature and court decisions do not always answer the question in the specific case
→ Importance of connections with academics and judges in the foreign jurisdiction
- Problem arises if an answer to the question in the specific case cannot be rendered either by legal literature, court decisions or by consulting academics and judges in the foreign jurisdiction
- Appeal of judgments 对判决的上诉 based on the false application of foreign laws (an invalid appeal ground 上诉基础 in Germany but insufficient investigation of foreign laws likely viable 可行的)
- Liability of researchers for rendering false legal opinions as to foreign laws

9

MAX PLANCK INSTITUTE FOR COMPARATIVE AND INTERNATIONAL PRIVATE LAW



Priv.-Doz. Dr. Knut B. Pißler
Research Fellow
Max Planck Institute for Comparative and International Private Law

MAX-PLANCK-GESellschaft

Foreign Law in Germany: The Role of the Max-Planck-Institutes

Thank you!

pissler@mpipriv.de

10

MAX PLANCK INSTITUTE FOR COMPARATIVE AND INTERNATIONAL PRIVATE LAW

3. Graduate Schools as Starting Point for International Research

Speaker: Prof. Jetta Frost

I. Albrecht Mendelssohn Bartholdy Graduate School of Law:

Aims – Course – Topics

It is our aim is to provide excellent learning opportunities for PhD candidates and post-docs by offering a research-informed curriculum, including introductory courses in core compulsory subjects and covering all fields of legal science. Our school advocates a well-founded interdisciplinary education according to international standards.

The degree programme at the Graduate School of Law is optimal for graduates of both legal science and other disciplines who are keen to produce ambitious doctoral work in an excellent and interdisciplinary research environment.

Doctoral candidates from all over the world ensure the continued challenge of intellectual diversity and contribute to the programme's international orientation.

We integrate our post-docs well in teaching and research. By offering education and training in cooperation with other university departments and faculties, we promote vocational and academic development, thus preparing them for future careers. The Albrecht Mendelssohn Bartholdy Graduate School of Law is committed to the principle of equal opportunity in education and employment. Our programme has been designed to accommodate the integration of family and working life.

The faculty has two research areas as the cornerstones of its degree programme. These are research area 1: 'Market economy and governance at international and national levels – legal regulation under the conditions of economization and globalisation'; and research area 2: 'Legal limits – limits of law: Social and technical change as a legal challenge'.

These two research areas display similarities. Basic legal assumptions, role models, forms and instruments are influenced by social systems as these alter or break up.

Legal science faces the challenge of adapting to such changes and must be flexible enough to contribute suitable legal models to altered circumstances.

The Albrecht Mendelssohn Bartholdy Graduate School of Law particularly welcomes interdisciplinary PhD topics from all areas of legal science, including its sub-disciplines. Theses may reflect their theoretical or methodological foundations, or those of other fields of research. Should an emphasis be placed on either legal doctrine or method, the thesis must also deal with the relationship between the two. The choice of topic and the content orientation will have a bearing on justification for specific scholarships.

II. Albrecht Mendelssohn Bartholdy

Lawyer – Peace Researcher – Artist

The Graduate School of Law follows the tradition of interdisciplinary academic excellence set by its name-giver Albrecht Mendelssohn Bartholdy.

From 1920, Albrecht Mendelssohn Bartholdy was professor for private law, comparative and international private law in Hamburg. Having been a member of the 'Politics Law Consortium', he had been sent to Versailles in 1919 by the government of the German Reich, as a delegate at the Paris Peace Conference. Mendelssohn Bartholdy founded the 'Institute of Foreign Politics' in 1923. Recognition grew rapidly for the new discipline 'War and Conflict Studies', which was later to become an integral part of peace studies.

Mendelssohn Bartholdy was an expert on Anglo-American law and held a wide range of connections abroad. He was judge at the International Arbitration Tribunal in The Hague in 1925, and in 1931, delegate to the League of Nations. His enforced emigration in 1933 put an abrupt end to his shining career. Mendelssohn Bartholdy found asylum the following year in England, where he became research fellow at Balliol College, Oxford. He died in Oxford in 1936 after a severe illness.

The strong connection between law and peace is perfectly portrayed in the person of this great scholar and it comes as no surprise that Mendelssohn Bartholdy chose judicial office as the subject of his first works.

Mendelssohn Bartholdy was not merely an academic but as an acclaimed concert pianist, composer and poet he loved music and literature. As a teacher of civil, public and international law, a lawyer, academic, politician and an artist, Mendelssohn-Bartholdy has a reputation for crossing borders and disciplines. Both privately and professionally, his name stands for freedom-embracing, cosmopolitan and internationally orientated jurisprudence with an interdisciplinary approach. The graduate programme is committed to the credo of these ideas.

III. Well-structured PhD programme:

Well-founded – Interdisciplinary - In consideration of international standards

It consists of a set of compulsory courses and optional lectures, workshops and seminars.

- The **compulsory part** of the programme consists of:

a) A course on '**Legal research and methods for PhD-students**' (one to two semester hours per week, tutorials)

This course on writing legal academic papers offers in-depth legal methods for PhD-students. Students learn to reflect on legal methods, both theoretically and by putting them into practice.

The course covers the rules of good practice, research techniques, working with data-banks, as well as how to apply suitable legal methods. It is a mandatory first semester course. Block seminars cover a variety of different topics in detail over following

semesters. PhD-students benefit from the opportunity of teaching within the faculty. Students are offered support and advice and excellent academic supervision is available at all times.

b) The doctoral colloquium

In the doctoral colloquium the PhD students present their research projects, lay down the key issues and the fundamental research questions of their works, and enter into a debate with the other students and the directorate.

- The **optional part** of the programme consists of

a) A regularly recurring lecture concerning **The development of sub-disciplines:** Developments of civil law, public law, criminal law

b) Changing **lectures** about specific fields of legal research. In the past three years, there have been courses about: The theory and environment of private law, Natural law – positivism – post-positivism, State theory - an introduction, Administration sciences, Administration law, Criminal law and criminology, The idea of Europe.

In the course of these lectures, not only the particular topics but also general questions concerning legal research were dealt with; such as: Legal theory – concepts and discourse, Philosophy of law – questions, Legal rhetoric– what constitutes a good argument?, Legal methods, Legal criticism – an introduction, Sociology and political science approaches to law, Qualitative and quantitative methods of social sciences and their meaning, Constitutional economics – an introduction to institutional economics, Problems of interdisciplinarity.

c) Research workshop: Legal science research questions: Foundations of legal science are dealt with in depth during the research workshop. The Albrecht Mendelssohn Bartholdy Graduate School of Law expects doctoral candidates to take these foundations as a starting point for further reflection.

The following topics are named as examples: Natural law from antiquity to the present day, Jurisdiction from a historical (or systematic) perspective, Law as a science, Law and literature, Rule and decision, The study of administration from different scientific aspects, Institutional approaches (including within legal science)

d) Research seminars: Subject-specific seminars in the research areas of b&c. This format provides the perfect environment for discussion of PhD-topics.

- Supervision

Once registered in the Graduate School PhD-students make agreements with their supervisors, setting out mutual obligations, and supervision teams are established. The graduate School of Law considers it vital to ensure cross-disciplinary mentoring.

By reporting regularly on their progress PhD-students benefit from excellent academic professional feedback. The establishment of a young-researchers group within the Graduate School promotes intensive PhD-student supervision and their comprehensive integration into legal research. Groups are

supervised by staff who are experts in their fields, dedicated to supporting the further education of post-docs and junior professors.

IV. Application – Scholarship – Contact

Application requirements:

An excellent law degree or a non-legal research-orientated master degree (in particular in business sciences, political sciences or sociology)

Application documents:

- application form (can be downloaded at our website)
- diploma
- tabular curriculum vitae
- index of all publications to-date (optional)
- research proposal (up to four pages)
- personal statement for applying to the Albrecht Mendelssohn-Bartholdy Graduate School
- two recommendations given by professors as proof of doctoral suitability
- language certificates (German or English): Non-native speakers, who write their dissertation in German or in English are obliged to prove their language skills by relevant certificates. German: TestDaF or DSH, English: Certificate that proves C1-Level of the Common European Framework of Reference for Languages (CEFR).

The Albrecht Mendelssohn Bartholdy Graduate School of Law awards scholarships. Please state clearly, should you also be applying for a scholarship in your application.

Admission criteria:

- excellent scientific performance, proven, as a rule, by first class qualifications (cf. § 3 PromO AMBSL)
- a suitable PhD-project related to either a graduate-school course or to the faculty, or as a contribution to the general scientific curriculum.

V. Personal Advice:

For questions concerning application and the course in general, please contact via email or telephone:

email: kontakt@albrecht-mendelssohn.bartholdy.de

Tel.: +49 (0)40-428 38 9362

+49 (0)40-428 38 9365

Application details can also be found at :

www.albrecht-mendelssohn-bartholdy.net

Address:

Albrecht Mendelssohn Bartholdy Graduate School of Law

Universität Hamburg, Fakultät für Rechtswissenschaft, Rothenbaumchaussee 33, D-20148 Hamburg

D. Pictures













Legal Notice:

Rechtsstandort Hamburg e.V.

Eingetragen beim Amtsgericht Hamburg, VR 20360

Vorstand i. S. v. § 26 BGB

- Friedrich-Joachim Mehmel (Vorsitzender)
- Heiko Zier (stellvertretender Vorsitzender)
- Dr. Steffen Koch (Schatzmeister)
- Christian Graf (Schriftführer)

Der Verein wird von je zwei Vorstandsmitgliedern gemeinschaftlich vertreten.

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