“Prescription and Relief—Is It a Matter of Choice?”
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I. INTRODUCTION

Asia is a region with very diverse legal cultures and systems, some with strong English common law roots, some with distinct Germanic, French or Dutch civil law influence and yet others with a fusion of both common and civil law traditions. Fortunately in arbitration, many states in Asia have adopted UNCITRAL Model Law on International Commercial Arbitration (1985) (‘MAL’). There are however two large economies who have not as yet adopted MAL. They are China and Indonesia. Even so, the influence of MAL is evident in their arbitration legislation. The adoption of MAL augurs well for the use and development of arbitration in Asia. This paper discusses an area in arbitration not specifically covered by MAL which the author feels some further thinking and reformative harmonization may be useful for the development of arbitration in Asia, namely:

Whether statutory time prescriptions and the type of relief available in arbitration comes within the choice of law provision in the contract or falls squarely within the law of the seat of the arbitration.

The purpose of this article is not to cover the topic of conflict of laws extensively, but to discuss apparent problems in arbitration involving conflict of laws issues.

II. TIME PRESCRIPTION

National laws often prescribe the time within which a particular claim may be brought in court and this is then extended to apply to arbitration. Statutory time limitation may be set out in a specific limitation statute or sometimes in several statutes. There appears to be no consistent bases upon which states fix such periods.
A. National Laws on Time Prescription

1. China

Article 135 of General Principles of Civil Law\(^1\) provides that “[e]xcept as otherwise stipulated by law, the limitation of action regarding applications to a people's court for protection of civil rights shall be two years” (emphasis provided).

Contract Law\(^2\)—Article 129, Time Limit for Action provides as follows:

“[f]or a dispute arising from a contract for the international sale of goods or a technology import or export contract, the time limit for bringing a suit or applying for arbitration is four years, commencing on the date when the party knew or should have known that its rights were harmed. For a dispute arising from any other type of contract, the time limit for bringing a suit or applying for arbitration shall be governed by the relevant law” (emphasis added).

2. Japan

A claim under the Civil Code\(^3\) is extinguished after 10 years from the date the claim becomes exercisable; a claim under the Commercial Code\(^4\) is extinguished after 5 years from the date the claim becomes exercisable.

3. Philippines

Civil Code of the Philippines\(^5\) provides that a written contract must be enforced within 10 years from the time the right of action accrues\(^6\) while oral contracts must be enforced within 6 years from the time the right of action accrues.\(^7\)

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5. Civil Code of the Philippines (Republic Act No. 386) 1949, Article 1144.
6. Ibid. Article 1144.
7. Ibid. Article 1145.