Part B Common Facts for Questions B.1, B.2 and B.3 Aus Coal is a company incorporated in Queensland and specializes in coal exploitation and exportation. It supplies coal to customers across the Asia-Pacific region. SingTech is a company incorporated in Singapore and is famous for its special software to enhance the strength of steel which is mostly produced by burning coal. Because of the huge demand in coal and steel in China, early in 1995, AusCoal and SingTech established a joint venture, China Coal and Steel (CCS), incorporated in Shanghai China. CCS regularly buys coal from AusCoal and has an exclusive license to use the special software designed by SingTech. CCS made a huge investment to build warehouses close to the Shanghai port because the Shanghai Municipal Government signed a long-term contract with it, which authorized CCS to use the Shanghai port to import Australian coal freely from 1995 to 2025. In return, the contract also required CCS to hire Chinese employees and license the software to Chinese steel manufacturers who would buy coal from CCS. Since its establishment, CCS’s business in China has gone very well. However, in 2020, according to the ABC News Report in Australia, due to the tension between Australia and China, the Chinese central government suddenly issued informal instructions to prevent ships carrying Australian coal from entering any Chinese ports, which included the Shanghai port. When this apparent ban was issued there were several ships carrying the coal that CCS had paid for that were on their way to Shanghai. All the ships were refused permission to be anchored in the Shanghai port and any other Chinese ports for an indefinite period. It was very hard for CCS to resell the coal quickly due to the bad global economy in the wake of the COVID-19 pandemic. Consequently, CCS suffered a huge loss. Question B.1 Advise CCS and its shareholders AusCoal and SingTech about their best options and related procedural law and practice issues to resolve its dispute with the Chinese government about using the Shanghai (or other Chinese) Port.3 Facts only for Question B.2 ChinaSteel is a state-owned enterprise in China and is CCS’s largest coal buyer. However, because ships carrying Australian coal are not allowed to enter Chinese ports due to the scenario outlined above, ChinaSteel decided to look for other suppliers. AusCoal recommends its subsidiary in Indonesia, IndoCoal, to CCS. IndoCoal specializes in producing and exporting high-quality Indonesian coal. ChinaSteel has basically agreed to sign a sales contract with IndoCoal and AusCoal. This contract provides that ChinaSteel shall buy Indonesian coal worth of RMB 250 million (AU$ 50 million) from IndoCoal. The coal will be shipped from Indonesia to China. However, they have disagreement on the drafting of the dispute resolution clause in their sales contract. IndoCoal and ChinaSteel are concerned about burgeoning costs and delays in international arbitration, so agree to resolve all disputes arising from the sales contract through a cross-border litigation process. Question B.2 Advise IndoCoal and AusCoal about the risks and issues to resolve their disputes in (1) regular courts in China, Australia or Indonesia, or (2) international commercial courts in either China or Singapore. You should also discuss the procedural issues to recognize and enforce foreign judgments in Australia, China, and Indonesia, respectively. Facts only for Question B.3 Australia and China have resumed a very friendly relationship. Ships carrying Australian Coal are now allowed to enter Chinese ports. ChinaSteel continues to purchase coal from CCS. SingTech licensed ChinaSteel to use the software to enhance the strength of steel. However, the US government discovers that ChinaSteel is a company with a military background, so it required all US companies including their overseas subsidiaries not to do business with ChinaSteel. Because SingTech is a wholly owned subsidiary of a US company, it has to comply with the US government’s order. Consequently, it stops licensing the software to ChinaSteel. ChinaSteel argued that, according to the Chinese Rules on Counteracting Unjustified Extra-territorial Application of Foreign Legislation and Other Measures, SingTech must continue to license the software to it. Suppose that the software licensing agreement concluded by SingTech and ChinaSteel contains the following clauses: Clause 9: “Governing Law: This contract is subject to English law.” Clause 10: “Dispute Resolution: Parties agree to submit disputes arising from this contract to arbitration administered by the Singapore International Arbitration Centre in Shanghai China.” Question B.3 Advise SingTech about its best options and related procedural law issues to resolve its dispute with ChinaSteel regarding the licensing of the software.