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Book review: The UNCITRAL model law and Asian arbitration laws: Implementation and comparison

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Citation

CHAN, Darius. Book review: The UNCITRAL model law and Asian arbitration laws: Implementation and comparison. (2020). *Asian Dispute Review*. 132-133.

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Asian Dispute Review

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July 2020

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EDITORIAL

This issue of *Asian Dispute Review* commences with an article by Kabir Duggal and Rekha Rangachari in which they discuss the Hague Rules on Business and Human Rights Arbitration (2019) and their usefulness in resolving human rights disputes involving businesses in Asia.

Jasmine Low Sze Hui then examines the practical considerations relating to emergency arbitrations against the backdrop of leading institutional rules in Asia. This is followed by Gracious Timothy Dunna's article discussing the recognition and enforcement of foreign interim measures under the Indian Arbitration and Conciliation Act 1996.

For the In-house Counsel Focus article, Mark Mangan, Lukas Lim and Shilun Chen discuss practical considerations in advancing claims through arbitration in the midst of the COVID-19 pandemic. Thayananthan Baskaran then presents developments in international arbitration in Malaysia for the Jurisdiction Focus article.

Professor Darius Chan then reviews Professor Gary Bell's book, *The UNCITRAL Arbitration Law and Asian Arbitration Laws: Implementation and Comparison*.

There then follows an obituary for Professor Derek Roebuck (1935-2020), written by colleague and friend Neil Kaplan CBE, QC, SBS. Professor Roebuck was Dean of the then City Polytechnic (later University) of Hong Kong School of Law and a leading authority on the international history of arbitration.

Finally, this issue concludes with a Special News Report by Robert Morgan on dispute resolution and the COVID-19 pandemic.

General Editors



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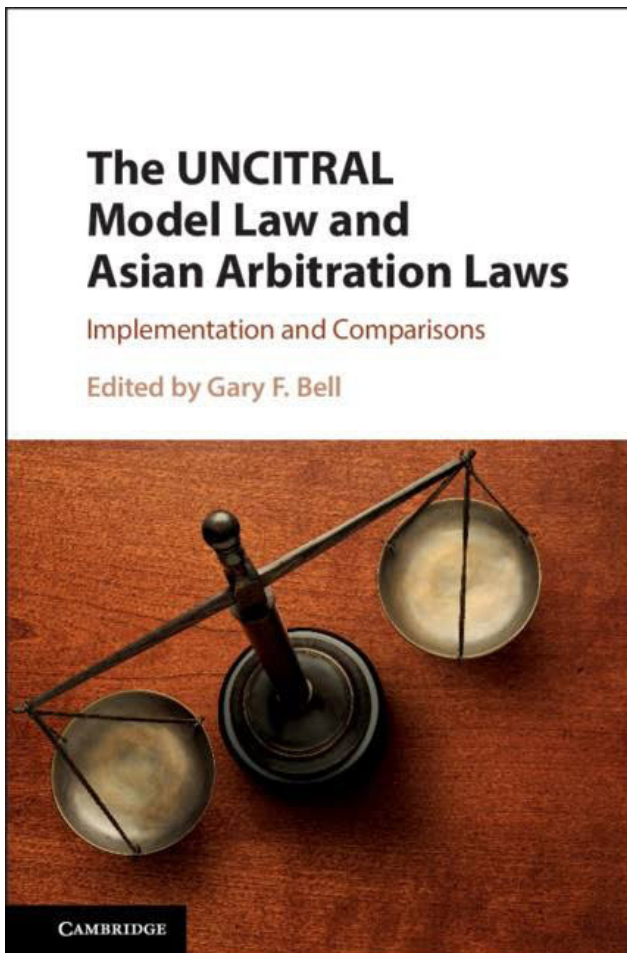
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The UNCITRAL Model Law and Asian Arbitration Laws: Implementation and Comparison¹

Reviewed by Darius Chan



The project embodied by this book - a comparative survey of how every clause in the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration is implemented across 12 Asian jurisdictions - is as ambitious as it is breathtaking. Yet, if anyone can deliver on this scale, it would be Professor Gary Bell, an expert in arbitration law and practice based at the National University of Singapore (NUS) since 1996. Professor Bell is currently Director of the Asian Law Institute and Director of two NUS LLM programmes: Arbitration and Asian Legal Studies. He enjoys the reputation of being one of the region's foremost

experts on Indonesian law, the United Nations Convention on Contracts for the International Sale of Goods (CISG) and arbitration law, bar none. The seeds sown through Professor Bell's considerable studies and writings on and experience of comparative law over the past two decades have now borne exceptional fruit in this book.

Working with 12 different authors covering the jurisdictions of Hong Kong, India, Indonesia, Japan, Korea, Malaysia, Myanmar, the People's Republic of China, the Philippines, Singapore, Taiwan and Vietnam, each jurisdiction occupies a chapter in the book. Every

chapter is a culmination of presentations first made at a conference financed by the EW Barker Centre for Law & Business at NUS in 2015.

Reflective of Professor Bell's masterful curation, each jurisdiction's chapter is organised using the same structure which, in turn, follows the structure of the Model Law, making comparisons across chapters and against the Model Law easier for the reader. The book investigates three issues:

- (1) Where a jurisdiction claims to have adopted the Model Law, the chapter describes whether and to what extent it has adopted the text of the Model Law, with or without modification, and whether modifications are generally consistent with Model Law principles.
- (2) Where a jurisdiction makes no claim to have adopted the Model Law, the chapter compares domestic law with the provisions of the Model Law.
- (3) Beyond the text of the law compared with that of the Model Law, each chapter also analyses whether the jurisprudence or case law has interpreted the law in a way that is consistent with how the Model Law has been interpreted internationally.

The last of these issues is particularly pertinent. In crafting papers or submissions, many readers, whether in academia or practice, will no doubt have had to undertake comparative research to investigate how a particular provision of the Model Law has been interpreted across jurisdictions. In this connection, the current key resource from UNCITRAL - the 2012 *UNCITRAL Digest of Case Law on the Model Law on International Commercial Arbitration* - is relatively dated. Given UNCITRAL's objective of harmonisation, it may not be difficult to conceptualise a future platform at which relevant cases from all Model Law jurisdiction are accessible and searchable via an electronic database. Indeed, the need for such a common electronic resource arguably becomes more and more pressing as the body of case law grows. Until this outcome materialises, however, Professor's Bell book is a timely and much-needed practical resource on the bookshelf.

Insofar as substantive analysis is concerned, the reader will find most of the discussion candid rather than mechanical, with chapter authors proffering refreshing

individual analyses instead of engaging in a purely descriptive exercise that ails many books in this genre. One good example is the chapter on Singapore, written by Professor Bell himself, in which he openly acknowledges the initial struggles of Singapore's relationship with the Model Law:

"It is worth remembering that even in Singapore, now a successful arbitration centre, not so long ago the Courts were not so adept at implementing the ML and even today, occasionally, they get it wrong (in my view). This fact should be encouraging: it takes time for the Courts, the legislature and the legal profession of any jurisdiction which is new to international arbitration to figure out what is needed to implement an arbitration regime ..."

Similarly, in the chapter for India, the authors, Harisankar K Sathyapalan and Aakanksha Kumar, observe:

"We believe that the discomfort in extending a *laissez-faire* regime to international arbitration was a common phenomenon in the developing world and was deep rooted in Asian society. There used to be a widely held view that western solutions to the problems of dispute resolution are of little relevance to the east. The reluctance of the Indian judicial system to accommodate the needs of private international arbitration played a major role in creating a fragile architecture...".

Indeed, any movement away from parochialism and toward harmonisation needs to go beyond the static text of provisions. Rather, it entails a change in attitudes: a necessary landmark along the harmonisation journey is that each State would continually learn from the mistakes of itself and others along the same journey, shorn of simplistic labels of whether one's approach is 'eastern' or 'western'. Professor Bell's book is the passport that *all* States and jurisdictions - Asian or otherwise - should possess during the course of their Model Law journey. ■

¹ *The UNCITRAL Model Law and Asian Arbitration Laws: Implementation and Comparison*, by Gary Bell (Ed), (2018, Cambridge University Press), xviii + 442 pp, casebound, ISBN: 978-1-107-18397-1.