



Introduction

The Model Law and its Importance in Asia

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The United Nations Commission on International Trade Law (UNCITRAL) adopted the UNCITRAL Model Law on International Commercial Arbitration in 1985 and amended it in 2006 ('ML').¹ As of 30 November 2017, legislation based on the ML has been adopted in seventy-six states in a total of 107 jurisdictions.²

There are thirty-eight states or jurisdictions in the Asia-Pacific³ which claim that their law governing international commercial arbitration is based on a version of the ML (including Australian states or territories). Among these, one can find seven of the ten ASEAN countries.⁴ The ML is therefore very important in Asia.

In fact, none of the most popular seats for international commercial arbitration in Europe and the Americas has adopted the ML: London, Paris, New York and Geneva are all in jurisdictions that have not adopted

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¹ UNCITRAL Model Law on International Commercial Arbitration 1985, amended 2006, UN Documents A/40/17, annex I and A/61/17, annex I, available at www.uncitral.org/pdf/english/texts/arbitration/ml-arb/07-86998_Ebook.pdf. The original 1985 version is available at www.uncitral.org/pdf/english/texts/arbitration/ml-arb/06-54671_Ebook.pdf.

² See www.uncitral.org/uncitral/en/uncitral_texts/arbitration/1985Model_arbitration_status.html (accessed 30 November 2017).

³ Armenia, Australia (Australian Capital Territory, New South Wales, Northern Territory, Queensland, South Australia, Tasmania, Victoria, Western Australia), Azerbaijan, Bahrain, Bangladesh, Brunei Darussalam, Cambodia, Egypt*, Fiji, Georgia, Hong Kong (China), India, Iran, Japan, Jordan, Korea (Republic of), Macao (China), Malaysia, Mongolia, Myanmar, New Zealand, Oman, Philippines, Qatar, Russia*, Singapore, Sri Lanka, Thailand, Turkey* and Turkmenistan. The countries with an asterisk cross two continents, including Asia.

⁴ Brunei Darussalam, Cambodia, Malaysia, Myanmar, Philippines, Singapore and Thailand.

the ML.⁵ The only two top international arbitration seats that have their law based on the ML are in Asia: Singapore and Hong Kong are two very successful international arbitration seats which have adopted the ML.

The second largest jurisdiction in the world, India, is a ML jurisdiction. However, the largest and fourth largest jurisdictions in the world, the People's Republic of China and Indonesia, are not ML jurisdictions.

However, not all ML jurisdictions are equal. On its website, the UNCITRAL posts the following disclaimer:

Disclaimer: A model law is created as a suggested pattern for law-makers to consider adopting as part of their domestic legislation. Since States enacting legislation based upon a model law have the flexibility to depart from the text, the above list is only indicative of the enactments that were made known to the UNCITRAL Secretariat. The legislation of each State should be considered in order to identify the exact nature of any possible deviation from the model in the legislative text that was adopted. [...] ⁶

It is therefore impossible to know merely by looking at the list of jurisdictions that claim they have legislation based on the ML whether they have actually adopted the text of the ML in full, only in part or, in some cases, not at all. Hong Kong and Singapore, for example, have substantially adopted the text and structure of the ML with, however, some significant modifications. There are also jurisdictions that say they have adopted the ML but in fact have not adopted its text at all, but rather claim to have adopted the principles of the ML.⁷

There are also many jurisdictions in Asia that have not claimed to have adopted the text or the principles of the ML, including, for example, the People's Republic of China⁸ and Indonesia. One may still wish to know the extent to which their arbitration laws are similar to or different from the ML and this is why such jurisdictions are included in this book.

The book is the result of a thorough examination of the extent to which the text and/or the principles of the ML have been adopted in

⁵ 'London, Paris, New York and Geneva are the seats that were used most frequently by respondents over the past five years.' *2010 International Arbitration Survey: Choices in International Arbitration*, www.arbitration.qmul.ac.uk/media/arbitration/docs/2010_InternationalArbitrationSurveyReport.pdf at 17.

⁶ See www.uncitral.org/uncitral/en/uncitral_texts/arbitration/1985Model_arbitration_status.html.

⁷ Outside Asia, Quebec is the prime example of this – it claims to have been the first jurisdiction to adopt the ML, but its Code of Civil Procedure does not in fact adopt any of the wording of the ML in either French or English.

⁸ Hong Kong and Macao are ML jurisdictions.

twelve jurisdictions from East, Southeast and South Asia. More specifically, it will investigate the following issues:

1. When a jurisdiction claims to have adopted the ML, the chapter on that country will check whether and to what extent it has adopted the text of the ML, with or without modification, and whether modifications are generally consistent with the principles of the ML. There are eight jurisdictions in this category in this book, all eight of which are found in Part 1 of the book.
2. If a jurisdiction makes no claim to have adopted the ML, the chapter will nonetheless compare the national/internal law with the principles and provisions of the ML to find similarities and differences. There are four jurisdictions in this category in this book, all four of which are found in Part 2 of the book.
3. Beyond the text of the law compared with the text of the ML, each chapter will also analyse whether the jurisprudence or case law interpreted the law in a way that is consistent with how the ML has been interpreted internationally.

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Choice of the Jurisdictions and Authors

This book could not realistically cover all the jurisdictions of Asia. I therefore had to pick some. Of course, the three largest jurisdictions in Asia (the People's Republic of China, India and Indonesia) had to be included. Japan, because of its economic importance, also had to be included. The 'four Asian tigers' (Hong Kong, Singapore, Republic of Korea, i.e., South Korea, and Taiwan) were also included and in the case of Singapore and Hong Kong this could also have been justified by the fact that they are very popular seats for international arbitrations. The Philippines is a large Southeast Asian country that has adopted the ML and Vietnam is one that has not. Malaysia is also a ML country and has the Kuala Lumpur Regional Centre for Arbitration (KLRC) recently renamed the Asian International Arbitration Centre (AIAC). Myanmar was included as an example of a country that recently became a party to the New York Convention and adopted a new law based on the ML.

There could have been many other chapters and I regret that I could not include more jurisdictions in this exercise, but I see this as a good start.

The authors of the chapters were chosen carefully. They are a mix of academics and top arbitration practitioners. Some are very experienced, others are bright young stars. Most of them I have come to know over the years either because they studied at or visited the Faculty of Law at the National University of Singapore where I teach. Others I knew because they were associated with the Asian Law Institute of which I am the Director. In other cases, I have met colleagues through my arbitration practice. They have all produced very impressive accounts of how the ML was implemented in their jurisdiction or how their jurisdiction's law compares to the ML.

How to Read this Book: The Contents of Each Chapter

Each and every chapter has the exact same structure which follows the structure of the ML. This makes comparisons between the ML and the law of a given jurisdiction easier and, in addition, makes comparisons between the different jurisdictions much easier. The ML is the measurement against which every arbitration law is compared in this book. The outline of each and every chapter, taken from the ML, is as follows:

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- Part I General Provisions of the Model Law (Articles 1 to 6)
- Part II Arbitration Agreement (Articles 7 to 9)
- Part III Composition of Arbitral Tribunal (Articles 10 to 15)
- Part IV Jurisdiction of Arbitral Tribunal (Article 16)
- Part IV-A Interim Measures and Preliminary Orders (Articles 17 to 17J)
 - Sub-Part I Measures and Orders by the Tribunal (Articles 17 to 17G)
 - Sub-Part II Recognition and Enforcement of Interim Measures (Articles 17H to 17I)
 - Sub-Part III Court-Ordered Interim Measures (Article 17J)⁹
- Part V Conduct of Arbitral Proceedings (Articles 18 to 27)

⁹ These sub-parts are not stated as such in the ML, but the editor thought they were useful categories for the purpose of comparison. When a jurisdiction did not implement the provisions of the 2006 version of the ML on interim measures, the relevant chapter may have omitted the sub-parts under Part IV-A.

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- Part VI Making of Award and Termination of Proceedings (Articles 28 to 33)
- Part VII Recourse against Award (Article 34)
- Part VIII Recognition and Enforcement of Awards (Articles 35 to 36)

Conclusion

There are therefore many ways to read this book. If you are interested only in the law of a particular jurisdiction, you may of course read the relevant chapter. However, if you are interested in, for example, interim measures in Asia, you could read Part IV-A of each chapter and quickly get an overview of interim measures in twelve Asian jurisdictions.

The fact that each chapter has the same structure allows for comparisons to be drawn between them. This is the case even for the four jurisdictions that have not adopted the ML – the authors have compared their law to the ML.

It would be too sensitive a task for me to comment on which jurisdictions better implement the ML and I therefore leave it to the reader to pass judgement on this, but, as you will see, the authors candidly describe the law of their jurisdiction, including its shortcomings, therefore allowing for an honest evaluation of the implementation of the ML or its principles by both the legislator and the courts.

I hope that this book will contribute to knowledge of the ML and of its implementation in Asia.