

## THE UNCITRAL MODEL LAW AND ASIAN ARBITRATION LAWS

In the Asia-Pacific, 38 jurisdictions have adopted the UNCITRAL Model Law on International Commercial Arbitration. This book looks at how the text and the principles of the Model Law have been implemented (or not) in key Asian jurisdictions. Most of the jurisdictions covered in this book have declared that they have adopted the Model Law but often with significant modifications. Even when jurisdictions adopt some provisions of the Model Law verbatim, their courts may have interpreted these provisions in a manner inconsistent with their goals and with how they are interpreted internationally. When a jurisdiction has not adopted the Model Law, the chapter compares its legislation to the Model Law to determine whether it is consistent with its principles. Each chapter follows the structure of the Model Law allowing the reader easily to compare the arbitration laws of different jurisdictions on each topic.

GARY F. BELL is an associate professor at the National University of Singapore (NUS) where he teaches arbitration, Indonesian law, International and comparative sale of goods and legal systems of Asia and is Director of the LL.M in arbitration. He is also Director of the Asian Law Institute. He co-edited *Law and Legal Institutions of Asia: Traditions, Adaptations and Innovations* (Cambridge University Press, 2011) with E. Ann Black. He acts frequently as arbitrator.

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THE UNCITRAL MODEL LAW  
AND ASIAN  
ARBITRATION LAWS

Implementation and Comparisons

Edited by

GARY F. BELL

*National University of Singapore*



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## FOREWORD

The use of arbitration to resolve international commercial disputes is as ancient as it is universal. Businesses, as well as states and individuals, have resorted to arbitration to resolve their disagreements since the dawn of recorded history. They have done so for everything from border disputes to criminal cases to commercial controversies to domestic feuds. In many respects, arbitration has been the handmaiden of the rule of law throughout human history – particularly in cross-border and other international disputes.

In recent decades, the use of international arbitration has become ever more prevalent and essential to the rule of law in international matters. Central to this development have been the United Nations Convention on the Recognition of Enforcement of Foreign Arbitration Awards ('New York Convention' or 'Convention') and the UNCITRAL Model Law on International Commercial Arbitration ('Model Law'). Taken together, these two instruments have provided the legal framework for the dramatic growth in international arbitration over the past three decades. Asian states have been at the forefront of adoption of both the New York Convention and the Model Law – with most Asian states having ratified the Convention and nearly forty states having adopted the Model Law.

Although the Convention and Model Law have been central to the development of international arbitration, both globally and in Asia, the actual application of both instruments by national courts is at least equally important. Unless the Convention and the Model Law are faithfully interpreted as applied by national courts, they will not and cannot fulfil their purposes. This book, thoughtfully edited by Professor Gary Bell of the National University of Singapore, provides a detailed and comprehensive examination of the treatment of international arbitration and the Model Law in a dozen leading Asian jurisdictions, including India, mainland China, Hong Kong, Singapore and Malaysia.



Each chapter of the book explores the law and practice of international arbitration in one of these jurisdictions.

The chapters of this book provide countless valuable insights. The challenges of interpreting the Model Law and the instrument's benefits are illustrated by, for example, studies of Indian and Singaporean judicial decisions. The difficulties encountered by jurisdictions that have not adopted the Model Law are explored in chapters examining, for example, mainland Chinese and Taiwanese judicial decisions.

More than anything else, this book confirms the critical importance of international law to international arbitration – and vice versa. The uniform international standards prescribed by the Convention and the Model Law have been essential to the success of international arbitration. Conversely, the efficacy of the arbitral process has been essential to the rule of law. Arbitration has continued its historic role as handmaiden to the rule of law – providing a stable and predictable, but flexible and nuanced, means of international dispute resolution that has enabled international trade and investment to flourish over the past thirty years. This book helps facilitate that continued efficacy and growth of international arbitration by focusing attention on both past achievements and topics for future improvement.

**Gary Born**  
*Singapore*

## ABBREVIATIONS

ADR	alternative dispute resolution
ADR Act	Republic Act No. 9285; Alternative Dispute Resolution Act of 2004 (Philippines)
AO	Arbitration Ordinance Cap. 609 (Hong Kong)
BAC	Beijing Arbitration Commission
CAL	Arbitration Law of the People's Republic of China
CIETAC	The China International Economic and Trade Arbitration Commission
CMAC	China Maritime Arbitration Commission
CPC	Code of Civil Procedure (India)
CPI	Cargill Philippines, Inc.
FTZ	free trade zone
HKIAC	Hong Kong International Arbitration Centre
JAA	Japan Arbitration Act
KAA	Korea Arbitration Act
KCAB	Korean Commercial Arbitration Board
LCA	Law on Commercial Arbitration 2010 (Vietnam)
ML	UNCITRAL Model Law on International Commercial Arbitration 1985, amended 2006
ML 1985	UNCITRAL Model Law on International Commercial Arbitration 1985, UN General Assembly Resolution 40/72 (11 December 1985)
MOJ	Ministry of Justice (Korea)
NYC	Convention on the Recognition and Enforcement of Foreign Arbitral Awards, New York, 10 June 1958, in force 7 June 1959, 330 UNTS 4739
OCA	Ordinance on Commercial Arbitration 2003 (Vietnam)
PDRCI	Philippine Dispute Resolution Center, Inc.
PDRCI Rules	Arbitration Rules of the PDRCI
PGSMC	Pacific General Steel Manufacturing Corp.
SHIAC	Shanghai International Arbitration Center
Special ADR Rules	Special Rules of Court on Alternative Dispute Resolution (Philippines)