

Law, Practice and Procedure of Arbitration by Sundra Rajoo

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There has been a growing tendency in recent years to settle international disputes by recourse to arbitration, in Malaysia as well as in many other countries in the world. The Malaysian Arbitration Act 1952 ("the 1952 Act") based on the United Kingdom Arbitration Act 1950 is today deemed out of date and in need of urgent revision. Cecil Abraham, current Chairman of the CI Arb's Malaysian Branch, has clearly recognised the necessity to update this Act and some draft amendments have been prepared by the Bar Council's ADR Committee.

In this massive tome, Sundra Rajoo, immediate past Chairman of the CI Arb's branch and one of Malaysia's best-known arbitrators, comprehensively covers Malaysian and international arbitration practice and procedure. He explains why the 1952 Act is not well suited to the needs of the international community and makes practical suggestions as to the adoption of uniform arbitration rules. Any volume seeking to cover such ground will be a daunting text for most authors but Professor Turner gives the game away in the foreword when he says this book is "on any score a magnum opus". Readers will be in for a pleasant surprise. First, the text is comprehensive, hence the length of the work, but it is very readable and there is a good table of contents to the 56 chapters and 30 appendices. The index has been prepared with thought but perhaps is not as detailed as one would like (only 18 pages). The tables of cases and legislation, however run to 102 pages.

For those who want to understand the whole ambit of arbitration from scratch, the content is sensible and well laid out. The sequence leading to arbitral reference logically follows the event, explaining the nature of arbitration, the legislative framework, the definition of an arbitration, the relevance of arbitration to parties, privacy and confidentiality and finally the types of arbitration available to be incorporated into agreements or references. The author underlines the relevance of arbitration, which has been hindered in Malaysia since the 1997 Asian financial crisis, especially for foreign parties, because of the increasing requirement by the Malaysian courts that the national language be used for its proceedings and cause papers.

The next section moves on to define arbitral agreements. There is a concise and cleverly crafted chapter dealing with the elusive concept of "separable" arbitration clauses. In just four pages, the text makes light of complexities that arise from repudiation of the contract as decided in *Heyman v Darwins Ltd* [1942] A.C. 356 at 374. In like manner, the panel's jurisdiction, the rights of parties to refer matters to arbitration, the scope of arbitration agreements and the essential dispute or difference are also dealt with. Sundra Rajoo draws useful examples from industry, commerce and construction (a matter in which he is particularly interested as he has specialised in construction law and arbitration). The section on stays of proceedings is useful to all who are involved in the day-to-day conduct of arbitral matters. There is also a clear section on commencement of arbitration and establishment of the arbitral tribunal.

The worry for most practitioners is that whilst arbitration confers the benefit of confidentiality and (with exceptions) finality, it does so at a price. The fees of the various arbitral bodies for administration expenses, arbitrators' and lawyers' fees are now in some jurisdictions quite staggering. This problem is not addressed. Many practitioners have, rightly, the feeling that arbitration expenses are cause for anxiety and clients may find redress in the courts in a cheaper and expeditious manner if not bound by arbitration agreements.

The author concludes with the timely question of the reform of the Malaysian Arbitration Law, undertaken by the Malaysian Bar who are attempting to "try to work out this crucial issue", according to Tuan Haji Kuthubul Zaman bin Bukhari, President of the Malaysian Bar. However, *Law, Practice and Procedure of Arbitration*, though written primarily from the perspective of Malaysian law, is not geographically limited. It refers to many cases and statutes from a wide variety of jurisdictions in Asia, America and Europe, which reinforce its interest for foreign lawyers too. The author admits: "There is no doubt that the archaism of the 1952 Act contributes to some of the frustrations, delays, court challenges and curial interferences, which are part of Malaysian arbitration scene." The world of arbitration is 1st changing and we have to be reminded that its efficiency depends also on the jurisdictions' capacity to adapt their legislation to meet the challenges. One hopes Malaysia will keep pace and adapt to the Uniform Code.

With his background (a UK law degree, Master in Construction Law and Arbitration, Master in Philosophy in Law and Diploma in International Commercial Arbitration), Sundra Rajoo is highly qualified to compile such an important work. From the text it is obvious he is highly knowledgeable in the field of arbitration and has substantial practical experience. This book will be a useful working instrument for novices as well as for experienced practitioners. Its interest lies not only in its clarity but also in the interesting, practical vision and way of reasoning of its author.