

# UNCITRAL MODEL LAW & ARBITRATION RULES

THE ARBITRATION ACT 2005 (AMENDED 2015 & 2019)  
AND THE AIAC ARBITRATION RULES 2018

SUNDRA RAJOO

SPECIAL CONTRIBUTOR  
DR. THOMAS R. KLÖTZEL

DUO

PRINT + EBOOK 1800P

---

SWEET & MAXWELL

## BOOK REVIEW

---

---

***UNCITRAL Model Law and Arbitration Rules: The Arbitration Act 2005 (Amended 2011 and 2018) and the AIAC Arbitration Rules 2018*, Sundra Rajoo & Thomas R. Klotzel eds, Malaysia: Sweet & Maxwell. 2019. 1029 pp. + Proview eBook. ISBN 978-967-2187-59-2. ISBN 978-967-2187-60-8 (ProView eBook).**

There is perhaps no better way to start reviewing a book than to do so after having just referred to it in a live case. The litmus test of how useful a text is to a practitioner is whether the practitioner has found it of assistance when dealing with an issue she or he is facing in a case at hand. We have, at one end of the spectrum, the magnum opus of arbitration that is Professor Gary Born's three-volume treatise on *International Commercial Arbitration*, or, in the field of construction law, *Hudson's Building and Engineering Contracts*. The beauty of these texts is that if you have a slightly thorny problem at hand, or a somewhat esoteric point to chase down, the chances are that there will be something in these texts that will point you in the right direction. At the other end of the spectrum are texts that go by the title 'casebooks'. These are primarily reprints of court judgments, or sometimes extracts from arbitration awards, with some commentary added by the author to provide a road-map through the cases. The books at this end of the spectrum don't often make it to the shelves of practitioners. All other texts fall somewhere along this spectrum.

So when a book with a trippingly-on-the-tongue title *UNCITRAL Model Law and Arbitration Rules: The Arbitration Act 2005 (Amended 2011 and 2018) and the AIAC Arbitration Rules 2018* came across my desk, clocking in at 1,026 pages and accompanied with a lovely (handwritten, what a pleasure!) note from Datuk Professor Sundra Rajoo inviting me to review the book, my expectations immediately leant towards the Born/Hudson's end of the spectrum. And Datuk Sundra, and his co-author, Dr Klotzel, do not disappoint.

Datuk Sundra needs no introduction. A doyen of Malaysian arbitration, he has qualifications in building science, architecture, law, town planning, and an honorary doctorate in law from his *alma mater* for his work in the field of arbitration. A past President of the Chartered Institute of Arbitrators (CI Arb) and of the Asian Pacific Regional Arbitration Group (APRAG), Datuk Sundra was instrumental in putting on the world map as an arbitration institution to be reckoned with the

Kuala Lumpur Regional Centre for Arbitration (now, Asia International Arbitration Centre (AIAC)). A prolific author, this is his eighth book.

The book is divided into four parts.

Part I (about 40 pages in length) sets out the background to the adoption of the UNCITRAL Model Law in Malaysia and the matters leading up to the enactment of the Malaysian Arbitration Act 2005 and its subsequent amendments in 2011 and 2018. A useful summary of the road thus far.

Part II (a chunky 650 pages in length) traverses the current Arbitration Act 2005 section-by-section. It is on this part that I will concentrate my review.

Part III (about 130 pages long) is a commentary on the new (2018) AIAC Arbitration Rules (formerly the KLRCA Arbitration Rules) by Datuk's Sundra's co-author, Dr Thomas R. Klotzel. As this part is taken from another book by Dr Klotzel, and reproduced with his permission in Datuk's Sundra's book, I will not comment on this section save to say that it is very useful to have in a single book a commentary on both the procedural law that would apply to a Malaysia-seated arbitration (domestic or international) and the arbitration rules that are most likely to be used in such arbitration. Dr Klotzel refers to Malaysian jurisprudence relevant to several of the articles of the AIAC Arbitration Rules, which makes for a helpful read. However, for an in-depth examination of the UNCITRAL Arbitration Rules, other texts such as *The UNCITRAL Arbitration Rules: A Commentary* by David Caron and Lee M. Caplan, or *A Guide to the UNCITRAL Arbitration Rules* by Clyde Croft, Christopher Kee, and Jeffrey Waincymer, might be more appropriate.

Part IV (about 60 pages long) sets out the text of the UNCITRAL Model Law and the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. The inclusion of the former is perhaps more useful as a ready-reference to what is provided for in the UNCITRAL Model Law (from which, the Malaysian Arbitration Act 2005 does depart at times).

Where does this book sit amongst other books on Malaysian arbitration law? Until last year, books on the Malaysian Arbitration Act were essentially authored by one person: Datuk Sundra. The most prominent of his books was *Law and Practice of Arbitration*, with its first edition dating back to 2003, and a more recent second edition (in 2017). It was an excellent book and a very welcome first-port-of-call for all things to do with Malaysian arbitration. In 2019, in addition to Datuk's Sundra's present book, we were also treated to Mr Baskaran Thayanathan's *Arbitration in Malaysia: A Commentary on the Malaysian Arbitration Act*. At about half the length of Datuk's Sundra's book, Mr Thayanathan's book provides a very succinct introduction to each of the provisions of the Arbitration Act 2005, with reference to the most prominent Malaysian cases on the subject. Datuk's Sundra's book not only covers Malaysian decisions but also includes

extensive references to cases, journal articles, and textbooks from several other jurisdictions, making his book especially valuable to the avid researcher.

To probe Datuk Sundra's approach in this book in a little more depth, I reviewed the treatment by Datuk Sundra of two sections of the Arbitration Act 2005: section 14 on the grounds for challenging arbitrators, and section 20 on equal treatment of parties and giving parties an opportunity to present their cases. I did not pick these provisions at random. The first time I had cause to refer to Datuk Sundra's books was in 2015 when I was dealing with an arbitrator challenge application under section 14 of the Arbitration Act 2005. Co-incidentally, my reference to his present text also happened to be in the context of an arbitrator challenge, but this time under UAE law (hence my reference to 'a live case' at the outset of this review). Section 20 of the Arbitration Act 2005, on the other hand, provided an opportunity to compare Datuk Sundra's work to two other works on the UNCITRAL Model Law, as it is one of the provisions where the Malaysian legislation departs from the source provision in the UNCITRAL Model Law.

Section 14 of the Arbitration Act 2005 deals with a very important issue: the duty on an arbitrator to disclose matters that could give rise to justifiable doubts as to her or his independence and impartiality, and the consequences of the arbitrator's failure to do so. Datuk Sundra examines this issue (which is one of bias and not of conflict of interest, as was pointed out by Rix, J. in *Laker Airways v. FLS Aerospace* [1999] 2 Lloyd's Rep. 45, a case which also finds mention in Datuk Sundra's book) in significant depth by taking the reader through references in Indian textbooks (Malhotra's *Law and Practice of Arbitration and Conciliation*), case law from England, Germany, Singapore, Hong Kong, Canada, and Australia, journal articles from commentators in Europe, and the customary reference to Prof. Born's treatise on *International Commercial Arbitration*. A casual reader would come out very well informed about the relevant issues, while a practitioner consulting this chapter to research a point would likely find a valuable nugget or two. If one were allowed to nit-pick, one might propose a re-ordering of some of the concepts in this chapter (for instance, the sub-division of the concept of bias into actual, imputed, and apparent bias comes 59 paragraphs into the chapter, when it might have been better placed in the introductory parts), or suggest coverage of the issues surrounding an arbitrator and counsel being from the same Chambers, which sometimes arises in international arbitration involving the English Bar. But these are relatively minor points in the Malaysian context to which Datuk Sundra's text primarily relates.

The wealth of information in Datuk Sundra's book elevates it to beyond being of value only in Malaysian arbitrations to a text that can be a reference for practitioners working on UNCITRAL Model Law cases internationally. To test this, I compared Datuk Sundra's book to Dr Peter Binder's *International Commercial Arbitration and Mediation* (now in its Fourth Edition, 2019) and a newcomer to the scene, *UNCITRAL Model Law on International Commercial Arbitration* (Iljas Bantekas (ed.),

2020), in their respective treatments of the provision in the UNCITRAL Model Law which Lew, Mistelis & Kroll have termed the ‘Magna Carta of Arbitration’ – Article 18. This deals with the arbitrators’ duty to act fairly, to treat the parties before them equally, and to give each party an opportunity to put its case.

This Article has been re-enacted as section 20 of the Arbitration Act 2005 but with one principal difference: where Article 18 of the UNCITRAL Model Law requires parties to be given a *full* opportunity to present their cases, section 20 of the Arbitration Act 2005 requires that parties be given a *reasonable* opportunity to present their cases. In this respect, the Arbitration Act 2005 is closer to the Hong Kong Arbitration Ordinance (Cap. 609) which, in section 46, amends the terms of Article 18 of the UNCITRAL Model Law in a similar fashion, than to the Singapore International Arbitration Act (Cap. 143A), which adopts the words of Article 18 of the UNCITRAL Model Law without any change.

Datuk Sundra’s puts the distinction between *full* and *reasonable* opportunity at the centre of his discussion of section 20. Not only does he note the differing approaches taken in the legislation in Singapore and Malaysia, and the similarity between the approaches in the legislation in Hong Kong and Malaysia, he goes further to consider the position in New Zealand (with whose arbitration legislation the Arbitration Act 2005 is most closely connected), England, Switzerland, France, Canada, Spain, and Croatia. This is impressive. If one were to make any suggestions at all, I would propose that a future edition might benefit from a discussion of whether Popplewell, J.’s observations in *Reliance Industries Ltd. & another v. Union of India* [2018] EWHC 822 (Comm) (where he did not ‘regard the difference [between full and reasonable opportunity] as imposing any higher burden on the Tribunal’) now renders the distinction academic. However, the examples in Datuk Sundra’s book of how various jurisdictions have interpreted this concept would nevertheless be of significant value to a practitioner looking for a ‘similar fact situation’ to persuade a tribunal.

In comparison to Datuk Sundra’s treatment of this topic, Dr Binder’s exploration of Article 18 of the UNCITRAL Model Law is briefer and, perhaps because he does not need to in the context of Article 18, does not comment on the differing approaches in certain jurisdictions as to the extent to which Article 18 has been modified. Mr Bantekas’s commentary on Article 18 takes a European human rights approach to the issue, which may of less relevance to practitioners in international arbitration outside Europe or England.

Datuk Sundra’s new book is a welcome work of scholarship that extends considerably the breadth of his analysis of the Arbitration Act 2005 from that in his previous books, and also provides practitioners outside Malaysia with a valuable reference book. Definitely one for the shelf of the busy international arbitration practitioner.

*Shourav Lahiri*  
*Barrister, Atkin Chambers, London.*

BOOK REVIEW: UNCITRAL MODEL LAW & ARBITRATION RULES THE ARBITRATION ACT 2005 (AMENDED 2011 & 2018) AND THE AIAC ARBITRATION RULES 2018 (/RESOURCES/NEWSLETTERS/130-BOOK-REVIEW/417-UNCITRAL-MODEL-LAW-ARBITRATION-RULES-THE-ARBITRATION-ACT-2005-AMENDED-2011-2018-AND-THE-AIAC-ARBITRATION-RULES-2018)

📅 Published: 19 March 2020

**Author: Sundra Rajoo**

**Special Contributor: Thomas R. Klötzel  
(Sweet & Maxwell, 2019)**

Why do busy practitioners write articles but so few practitioners write legal textbooks? In the first place, why are there so few who are willing to write even academic articles? Not the marketing updates for busy executives but refereed articles that require a careful analysis of the law. Which require citations to legal sources and reasoned views built upon layers of legal reasoning. The obvious answer is time and commitment. Most practitioners in this part of the world are under pressure to bill and the couple of weeks needed to write a decent refereed article do not, as law firm managers would say, bring enough returns on the investment.

When you consider that a legal textbook is at least 10 times the length of a decent academic article, you begin to see why so few practitioners write books. The length is not all there is. The author of a book cannot be selective about the research that he or she undertakes on the chosen subject. To write a book on a subject is to cover the entire landscape. The writer of an article can choose as few or as many topical issues to focus on. The author of a book must cover all material issues within the subject of the book. Hence, the time commitment and the degree of scholarship required to write a decent book are more than what the number of pages might indicate.

On the other hand, when you hold a weighty tome like the 931-paged book by Datuk Professor Sundra Rajoo in your hands, you know that years of hard work have gone into it.

Prof Rajoo was the former President of the Chartered Institute of Arbitrators (CIArb) and the former Director of the Asian International Arbitration Centre (AIAC), formerly known as the Kuala Lumpur Regional Centre for Arbitration (KLRC). He knows his subject.

The book has a rather lengthy title: UNCITRAL Model Law & Arbitration Rules, The Arbitration Act 2005 (Amended 2011 & 2018) and the AIAC Arbitration Rules 2018. It does cover the UNCITRAL Model Law, the UNCITRAL Arbitration Rules, the Malaysian Arbitration Act and the AIAC Arbitration Rules 2018, so the title is descriptive of the subject matter in that sense. Nonetheless, some explanation is in order because one might wonder why one book would cover these four distinct subjects.

The bulk of the book is on the Arbitration Act 2005 of Malaysia (as amended in 2011 and 2018) ("the Act"). As the UNCITRAL Model Law on International Commercial Arbitration (including its 2006 revisions) is incorporated into the Act, Prof Rajoo comments on the provisions of the Model Law whenever such provisions appear in the Act.

The book comprises four Parts. Part I provides an overview and introduces the Model Law, the New York Convention and the legislative history of Malaysia as well as the development of ADR (and the AIAC) in Malaysia. Part II is the section-by-section commentary on the Act. Part III is on the AIAC Rules 2018. Part IV comprises Appendices.

While Part I is not lengthy, it is an extremely useful reference on the development of arbitration in Malaysia. Going back to my earlier comment about the difficulty of writing a book, a harried practitioner writing an article may selectively point to a few milestones and give you two pages of high level commentaries. Prof Rajoo has conscientiously set out how the legislation developed over several decades. This takes much more research and fact-checking than his succinct narrative might suggest. It is a very useful reference thanks to his diligence.

Part II is an important work on the Act. As the author points out (at paras. 2.51 to 2.54), the Act is a single statute covering both domestic and international arbitrations (unlike Singapore which still has the Arbitration Act for domestic arbitrations and the International Arbitration Act for international arbitrations). With the 2018 amendments repealing sections 42 and 43 on references to the High Court to determine any question of law arising out of an award, the distinction between domestic and international arbitrations has become less important.

Although Part II is a commentary on the Act, it is also a study of the provisions of the UNCITRAL Model Law which are mirrored in the Act. Part II is replete with references to the travaux préparatoires of the Model Law, decisions from other jurisdictions, academic literature and UNCITRAL case law digests, i.e. CLOUT. The footnote references are a treasure trove of materials for further in-depth study of the point being discussed. This means that readers will find useful materials on arbitration issues which are common to many countries. The discussions on arbitrability under section 4 of the Act are one example where the author casts his net wide in a survey of how this topic is treated in numerous jurisdictions.

As noted by Philip Yang in his Foreword, this book does not take the place of advice from a competent lawyer in a particular jurisdiction as there is only so much that can be referenced in a discussion of the Malaysian position. For example, para. 18.61 referred to the Singapore case of *Tan Poh Leng Stanley v Tang Boon Jek Jeffrey* [2000] 3 SLR(R) 847 on judicial review of the tribunal's ruling on its own jurisdiction. At the time this book went to press, the Singapore Court

of Appeal's dicta in PT First Media TBK v Astro Nusantara International BV [2014] 1 SLR 372, at [42] which expressed a different view from Tan Poh Leng Stanley had not yet been considered by the same Court in Rakna Arakshaka Lanka Ltd v Avant Garde Maritime Services (Pte) Ltd [2019] 2 SLR 131, at [74]. But the book has provided a good platform to make searching for updates easier.

Part III is written by special contributor Dr Thomas R. Klötzl who is a German Attorney-at-Law. The AIAC Arbitration Rules 2018 consist of the AIAC Rules (Part I) and the UNCITRAL Arbitration Rules (Part II) as modified by the AIAC Rules. Dr Klötzl's commentary on the AIAC Rules provides a practical quick reference to the questions that may arise under each Rule. He also has brief notes on the UNCITRAL Arbitration Rules, but only where he has something to say from the perspective of Malaysian lex arbitri. Readers looking for a general study of the UNCITRAL Arbitration Rules can consider specialist texts such as Dr Peter Binder's Analytical Commentary to the UNCITRAL Rules (Sweet & Maxwell, 2013).

Prof Rajoo has written a very useful reference book for us. I know I will be using this book quite a lot and commend it to all who have interest in Malaysian arbitration law and the UNCITRAL Model Law generally.

**Reviewed by:**

*Chan Leng Sun, SC - Essex Court Chambers Duxton*

Site designed and maintained by Intellitrain Pte Ltd. Copyright © Singapore Institute of Arbitrators. All rights reserved.

Website Terms of Use ([http://www.siarb.org.sg/index.php?option=com\\_content&view=article&id=194](http://www.siarb.org.sg/index.php?option=com_content&view=article&id=194)) Privacy Policy ([http://www.siarb.org.sg/index.php?option=com\\_content&view=article&id=273](http://www.siarb.org.sg/index.php?option=com_content&view=article&id=273))