

REVIEW



The Arbitration Ordinance of Hong Kong: A Commentary by Robert Morgan [Butterworths Asia, 1997. cv + 891 pp, \$1,500.00]

Robert Morgan's new work on Hong Kong arbitration law and its supplement (xiii + 212 pp) have now been published. In some ways, they are the third portion of a trilogy on the subject. The first portion was a strong introduction to the topic by Robert Morgan, John Scott, and Timothy Hill in the arbitration title for the new *Halsbury's Laws of Hong Kong*. This was followed by Morgan's contribution to the *Annotated Ordinances of Hong Kong* series, also published by Butterworths Asia, and here again he delivers a strong treatment of the subject in his *Arbitration Ordinance*. Now comes *The Arbitration Ordinance of Hong Kong: A Commentary* (the *Commentary*). This latest work, more treatise than commentary, builds upon the considerable research and writing Morgan has accomplished to date in his previous works. Not only is it more ambitious, it also shows additional originality as this title is free from the restrictions of uniform house styles. This freedom has permitted the author to include two very generous forewords by Justice Leonard and Ronald Bernstein.

Beginning with the preface, Morgan notes how the law of arbitration in Hong Kong is in a state of flux. The law in England has been dramatically rewritten with the Arbitration Act 1996; similar provisions in the Arbitration (Amendment) Ordinance 1996 have overhauled the law in Hong Kong. These facts prompt him to note that '[t]his book arrives, then, in the midst of a period of fundamental change.' This point brings me to the only criticism I wish to make of the work. Put shortly, the book arrived one year too early, or to look at it another way, the amendments arrived one year too late! The *Arbitration Ordinance* in the *Annotated Ordinances* series stated the law as of 1 March 1996. The *Commentary* states the law as of 15 December 1996. The Arbitration (Amendment) Ordinance passed through the Legislative Council on 18 December 1996 and received assent on 24 December 1996. These are very short time-frames. However, to address the changes that have taken place Morgan has released a 1997 *Supplement* to the *Commentary* that takes the law only up to 31 March 1997. A second supplement is shortly to be released which will address new rules on the appointment of arbitrators. Again, it is hard to criticise the industry he has shown in keeping his work so up to date, but it comes at a small price: using three books instead of one results in attendant cross-referencing problems and makes the *Commentary* less user-friendly than it deserves to be.

Some of this complexity, it must be conceded, stems in part from the legislation itself which is inherently duplicating. The Arbitration Ordinance addresses domestic and international arbitration and includes the Fifth Schedule or Uncitral Model Law on International Commercial Arbitration. There is

overlap in all three areas. The author points out the ambivalent relationship the Arbitration (Amendment) Ordinance has to the Model Law when he notes that it '(i) supplements the Model Law; (ii) employs alternative mechanisms within the Model Law; and (iii) in a small number of cases, excludes or limits provisions of the Model Law either expressly or by implication' (footnotes omitted).

Some complexity also results from working with the amending legislation. Thus the Arbitration (Amendment) Ordinance 1996, which of course has its own section numbers, amends the principal ordinance. As a result, section references are not easy to follow. This has the effect of distancing the reader from the original *Commentary*.

In summary, ideally one text without supplements should have been introduced a year later (or the legislation should have been released a year earlier). The legislation would then have been fully in force and available in a consolidated form with its supporting rules. Readers could have referred to one text instead of an unwieldy three. However, and notwithstanding this shortcoming (a second edition in the near future could well address this point), the scope and depth of the work by Morgan makes it an invaluable aid to understanding and explaining the current law and the changes it is undergoing.

The *Commentary* is comprehensive — nine hundred pages, separated into four distinct divisions. Following the forewords, preface, and acknowledgements, comprehensive tables of the raw source material under discussion are set out in the first division. Tables of cases, statutes, subsidiary legislation, practice directions, international conventions, and institutional rules are neatly and clearly revealed.

The work, as stated by the author, aims to be comparative in nature and has details of the catalogued tables. There is a good bibliography and a short but extremely concise introductory survey of arbitration in Hong Kong. The commentary on the legislation begins in the second division and is structured around and centres upon the wording of the Arbitration Ordinance. This is a familiar method for analysing statutes. Textually the ordinance is set out in full and is followed by notes in explanation. The headings of the notes are decimal tabbed and refer to the individual section under consideration. Details of the enactment history and comparisons to equivalent English legislation, where relevant, follow. A general section comes next which includes any additional relevant local background or cross-references to other sources that might help in understanding the provision. The cross-references are extensive and refer to a wide range of other texts and articles, reports, papers, and institutional rules.

Appendices comprise the third major division in the work. Some are familiar, eg the Arbitration (Parties to New York Convention) Order, others are not, eg the Consumer Arbitration Agreements Act 1988. Most of the appendices refer to English statutory material, some of which is subsidiary

legislation. One could quibble whether they add to the book. However, one of the author's stated aims was to provide a companion to the existing works on arbitration including Kaplan, Spruce, and Cheng, *Arbitration Cases and Materials*, and Kaplan, Spruce, and Moser, *Hong Kong and China Arbitration Cases and Materials*. To the extent that they are read with the large number of appendices in these other works, one is left with a small but very useful collection of materials. Other materials in the appendices include relevant rules of court, practice directions, the Arbitration (Amendment) Bill 1996, and the Uncitral Arbitration Rules.

The fourth and final division in the *Commentary* consists of six tables. Morgan's tables go a very long way to dispelling much of the complexities in Hong Kong arbitration law. The tables are intended to provide 'at a glance' comparisons of either major features of the Arbitration Ordinance, pre- or post-amendment, or comparisons of the Arbitration Ordinance with its English counterparts. Thus, for example, tables 1 and 3 offer comparisons of the domestic and international arbitration provisions in the pre- and post-amendment situations respectively. Table 5 compares the pre-1997 version of the Arbitration Ordinance with the English Arbitration Acts of 1950–1979 (perhaps another reason for their inclusion as appendices) and other legislation, while table 6 compares the English Arbitration Act 1996 with the Arbitration Ordinance post-Arbitration (Amendment) Bill 1996.

Another of Morgan's stated aims in writing the text was to aid educational programmes in arbitration law and practice. He has considerable experience in this regard, and the table comparisons will undoubtedly prove very useful for those studying local and English legislation.

The commentary is extensive and generally too well-written and researched for any individual parts to be critiqued in a review as short as this one. Thus my preferred focus is to state what I like about this text.

The first point is that the text pauses regularly to sum up important topics. For example, the author lists twelve examples when leave to enforce an award may be set aside in domestic cases. He also analyses in detail the issue of 'steps in the proceedings' and how to decide whether to grant a stay of court action; he lists eleven examples of 'steps' and nine non-examples. With this explanation, one is left with a clear understanding of what will and will not qualify as a 'step in the proceedings' and the court's approach to the topic. This use of examples both affirmative and negative provides a sharp contrast for difficult topics. Morgan's summations also make good use of case law, legislation and other sources. His straightforward employment of authorities again places issues into sharp relief.

As a second general point of interest, it may be emphasised that this is a commentary on the *whole* Arbitration Ordinance complete with schedules. In particular, attention should be drawn to the author's thorough analysis of the

Fifth Schedule or Uncitral Model Law on International Commercial Arbitration. Morgan draws upon leading sources to construe the Model Law and places these sources in a uniquely local context. In so doing he has added considerably to the multi-disciplinary approach that must increasingly be the focus of Hong Kong's arbitration law, to stay abreast of current trends and developments.

The last point of substance concerns his general level of treatment of the subject. Throughout the *Commentary* there is both consistency and excellence with both breadth and analytical depth. To conclude, Morgan's writing has evolved throughout the trilogy of works he has authored, and his *Commentary* has now reached a point where his work compares to other leading international industry standards in arbitration and deserves recognition as such.

J A McInnis*

Wang's Business Law of China by Guiguo Wang [Hong Kong: Butterworths Asia, 1996. Looseleaf, HK\$2,475.00]

When I first looked at this book's predecessor, *Business Law of China, Cases, Texts and Commentary* (Butterworths Asia, 1993), I admired the author's idea of writing a casebook on business law of China, since Chinese statutes are usually overly general in meaning. However, given that China is in a transitional period with rapidly developing laws, especially those relating to business, a question also flashed across my mind: how long would the value of this predecessor last? I am pleased to see that this problem has been identified by the author and resolved with the looseleaf format in the second edition to keep readers updated.

The second edition is more comprehensive in content as well. It provides a survey of the major legal aspects of business law in China, including the legal system, contracts, business organisations, bankruptcy, financing, securities, taxation, real property, intellectual property, foreign trade and investment, and arbitration and litigation. All of the subjects are packed with useful information. The author identifies relevant PRC administrative authorities and their functions (recently amended at the 9th Conference of the NPC (1998)), pertinent Chinese laws and regulations, illustrative charts for understanding the Chinese bureaucratic business systems and processes, and some of the prevailing Chinese business practices. I consider the charts to be most helpful. Additionally, the revised edition also provides references to Chinese statutes for the convenience of readers who want to examine the original sources. However, Professor Wang has not included the 1995 PRC Security Law in this revised edition, even though the Law was enacted one year before the book.

* Associate Professor, Department of Professional Legal Education, University of Hong Kong.