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Guide to International Arbitration

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FOREWORD Why International Arbitration?

The expansion and globalisation of cross-border investment and trade has led to increased and ever more complex commercial relationships between businesses, investors and states. As, inevitably, some of those relationships break down, parties need to consider (preferably at the outset of the relationship) the best means of resolving any disputes which may arise. In many cases, that will be arbitration.

Arbitration has been used for centuries, with Plato writing about arbitration amongst the ancient Greeks. In more modern times, arbitration became the standard method for resolving disputes in certain industry sectors (such as construction, commodities, shipping and insurance) where the arbitrators' technical expertise was particularly valued. However, over the last 50 years or so, arbitration has been increasingly embraced by the international community, with many recognising its importance as the primary means of resolving complex, transnational commercial disputes (as well as the economic benefits for a state of being perceived as "arbitration friendly").

Here, in a nutshell, are a few of the features that have led to the prominence of arbitration in the international arena:

- Enforceability: Arbitration awards are more widely and readily enforceable than court judgments as a result, primarily, of the 1958 New York Convention, a multilateral treaty for the enforcement of arbitral awards to which more than 145 states are party.
- Neutral forum: A party will often prefer not to submit to the jurisdiction of another party's national courts. International arbitration can provide a neutral forum for dispute resolution.
- Procedural flexibility: Arbitration rules are streamlined, flexible and far less complex than most national rules of civil procedure, making them better suited to parties from different jurisdictions.
- Arbitrators with the appropriate experience: Arbitrators
 can be selected for their familiarity with relevant
 commercial practices, trade usages and legal structures,
 and their ability to apply different national laws and deal
 with comparative law issues.

... over the last 50 years or so, arbitration has been increasingly embraced by the international community, with many recognising its importance as the primary means of resolving complex, transnational commercial disputes

• Party autonomy: The parties to an arbitration can shape their dispute resolution process by, for example, selecting the governing law, the place of arbitration, many aspects of the arbitral procedure and, of course, arbitrators whom they believe will ensure a fair hearing of their case.

However, arbitration is not right for every party in every situation. It might have drawbacks, depending upon a party's particular circumstances and objectives. It is therefore necessary to make a considered decision in each case.

This Guide is designed to help with that decision and, where appropriate, to assist in the drafting of arbitration provisions. Although an arbitration clause need not be complicated, as the source of the arbitrators' mandate, it is critical.

Unlike courts, arbitral tribunals have no inherent power or jurisdiction. Their authority arises from the parties' contract (albeit that, once selected by the parties, arbitration has the backing of statutes and treaties). It is therefore particularly important to take care in drafting the arbitration provisions. Once a dispute has arisen, self interest will often mean that it is too late to reach further agreement upon how it should be resolved.

In short, whilst this Guide is not a comprehensive treatise on arbitration or a substitute for specialist advice, it provides convenient and practical assistance in relation to the principal matters to be addressed.

CHAPTER I

What is Arbitration?

Arbitration is a private form of binding dispute resolution, conducted before an impartial tribunal, which emanates from the agreement of the parties but which is regulated and enforced by the state. The state requires the parties to honour their contractual obligation to arbitrate, provides for limited judicial supervision of arbitral proceedings and supports the enforcement of arbitral awards in a manner similar to that for national court judgments.

Arbitrations are typically conducted by either one or three arbitrator(s), referred to in each case as the "tribunal". The tribunal is the equivalent of a judge (or panel of judges) in a court action. However, the arbitrators are generally selected by the parties (either directly or indirectly through a third party or institution) and, as a result, the parties maintain some control over who is to determine their dispute. Arbitrators in international cases are usually very experienced lawyers and/or experts in the field in which the dispute has arisen.

The tribunal's powers and duties are fixed by the terms of the parties' agreement (including, in particular, any arbitration rules which have been adopted) and the national laws which apply in each case.

Under most leading legal systems, arbitrators are obliged to make their awards according to the applicable law unless the parties have agreed otherwise (for example, by empowering the tribunal to decide in accordance with what it perceives to be "fair"). The tribunal is obliged to follow due process and ensure that each party has a proper opportunity to present its case and defend itself against that of its opponent. However, in other respects, the procedure can be very flexible.

National laws generally recognise and support arbitration as a mutually exclusive alternative to litigation as a means of finally resolving disputes. Some practitioners

(particularly in the US) therefore refer to arbitration as a form of alternative dispute resolution ("ADR"). However, the acronym "ADR" is more often used to describe non-binding procedures (such as mediation), thereby distinguishing between litigation and arbitration on the one hand, and ADR on the other.

In fact, non-binding procedures are not really an "alternative" to litigation and arbitration because, unless the parties reach a settlement, they must still resort to a binding procedure, such as arbitration or litigation, to resolve their dispute. This has caused some to redefine ADR as "amicable dispute resolution", thereby emphasising that that mediation and related approaches depend upon the voluntary cooperation and agreement of the parties.

Arbitration is also to be distinguished from binding expert determination. As the procedures for both can largely be prescribed in the parties' contracts, they can take very similar forms. On a decision-making level, the distinction is that whilst the arbitrators may be selected for their experience in particular fields, they are tasked with deciding the dispute primarily upon the basis of the parties' submissions and the applicable law, whereas experts use their own knowledge to come to their decision.

The distinction between arbitration and expert determination can be very important because, whereas arbitration is normally regulated by national arbitration laws, which safeguard the constitution of the tribunal and the procedure followed, expert determination is virtually unregulated. In the international context, arbitration also benefits from enforcement conventions which allow the direct enforcement of awards. The decisions of experts only have the force of contract and, to enforce them, a new action must be brought in the appropriate jurisdiction for breach of contract.

CHAPTER II

When Should Provision for Arbitration be Made?

Parties should consider whether or not to provide for arbitration every time they enter into a contract. However, it is particularly important to do so where the parties (or their assets) are in different jurisdictions or where disputes might give rise to complex technical issues.

Lawyers commonly refer to the "advantages and disadvantages" of arbitration. However, whether any given feature of arbitration is an advantage, a disadvantage or of no interest to a party is entirely dependent upon its objectives. We have therefore simply placed the features which most often prove conclusive in the decision-making process towards the top of the list that follows.

Enforceability: Due to international conventions, the potential for enforcing arbitral awards worldwide is much greater than that for court judgments. As there is little point in obtaining a court judgment which cannot be enforced against suitable assets, this feature often conclusively determines the choice of arbitration for international contracts. The most important enforcement convention (although there are others) is the 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (known as the New York Convention). More than 145 countries are party to the New York Convention, each of which broadly agrees to enforce arbitral awards made in other contracting states subject only to limited grounds for objection. The parties to the New York Convention are listed in Annex 2. There is no such wide-ranging convention providing for the enforcement of court judgments (the closest being the Brussels Regulation, which is limited to parties in Europe).

Neutrality: A party to an international contract will often wish to avoid resolving disputes through the local courts of another party. Arbitration provides the opportunity for neutral dispute resolution (*e.g.*, with international rules being applied by a multinational tribunal in a mutually acceptable venue).

Confidentiality: Although the degree of confidentiality afforded by the arbitration law of different jurisdictions (absent express provision by the parties) varies, there can be no doubt that arbitration provides greater privacy and confidentiality than litigation (which is often public). Further, parties can provide for the required degree of confidentiality in their arbitration agreement (at least until such time, if ever, that enforcement through the courts becomes necessary, when confidentiality might be put at risk by the court process, and subject to any mandatory reporting obligations).

Technical expertise and experience: The parties can select arbitrators with relevant expertise or experience. Although some jurisdictions have very good specialist courts (e.g. the Commercial Division of the New York Supreme Court and the English Technology and Construction Court), in others, parties run the risk of their dispute being decided by a judge with little or no relevant experience.

Procedural simplicity and flexibility: Arbitration rules are generally far simpler and more flexible than court rules. As a result, they are relatively easy to understand for parties of different nationalities, the proceedings are more easily focused on the substantive issues and the parties are better able to adapt the dispute resolution process to suit their relationship and the nature of their disputes. In many cases, parties (or tribunals exercising discretion left to them by the parties) choose to follow a procedure which is similar to court procedures, although they might change, for example, the scope of disclosure or waive rights of appeal. However, in some cases, parties go much further, waiving the right to an oral hearing or empowering the tribunal to decide according to principles of fairness rather than according to the law. Of course, a potential drawback arising from the flexibility and the generality of arbitration rules is that,

where the parties do not reach agreement in advance, there is a greater risk of debate over procedure, which can cause uncertainty and lead to delays.

Choice of arbitrators: Unlike court proceedings, where parties generally have no input into the choice of judge for their case, the parties to an arbitration usually appoint, nominate or at least have some input into the selection of the arbitrator(s). Most developed arbitration laws require that all of the arbitrators be impartial. However, a party can use its choice or input into the selection process to help ensure that, as far as possible, the tribunal will understand the commercial context, the relevant issues and the party's procedural preferences. The parties may agree upon certain criteria for the arbitrators, or for the presiding arbitrator, although care should be taken not to narrow the field so far that there are difficulties in identifying potential candidates. In arbitrations with more than one party on either side, or where other parties might be joined in to the proceedings, maintaining the parties' right to choose the arbitrators (rather than simply delegating the choice to an institution) can be particularly challenging. For example, if one party has the right to select an arbitrator but two parties on the other side cannot agree upon a joint selection, the latter could claim that they were not being treated equally. Careful consideration as to the means of appointing the arbitrators is therefore required in such multi-party scenarios.

Cost: There is no simple answer as to whether arbitration is cheaper than litigation. As legal fees generally account for the majority of the costs of proceedings (whether arbitration or litigation), the controlling factors are largely the complexity of the dispute, the way the proceedings are conducted and their length. In arbitration, parties have to pay for the arbitrators, any administering institution and the hiring of venues for hearings. On the other hand, there are no court fees and parties are free to agree to a process tailor-made for their dispute. This might, for example, be a streamlined, "fast track" procedure (although inflexible and unrealistic schedules can be problematic). Significantly, parties to international contracts normally agree that there is no right of appeal (on the merits) from any award (potentially saving years of further proceedings). In any event, in many

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jurisdictions, awards may only be reviewed in strictly limited circumstances. International arbitral tribunals are generally empowered to award the successful party the majority, or at least a measure, of its costs, although practice varies depending on the applicable rules/law and the composition of the tribunal.

Pre-emptive remedies: Whilst arbitral tribunals are often empowered (by the parties or the applicable law) to grant preliminary relief, such as an order freezing assets, they cannot impose criminal sanctions upon a defaulting party. For this reason, and to allow relief before the tribunal has been appointed, arbitration rules/laws commonly allow parties to apply to courts for interim relief (as distinct from a hearing of the merits of the case).

Joinder of parties and related disputes: In contrast to court proceedings, it is generally necessary to obtain all parties' consent before additional parties or related disputes can be joined to an existing arbitration. Whilst a few national legal systems (e.g., the Netherlands) allow parties to apply to the courts to order a "third party" to be joined to an arbitration, this is unusual. Where consideration to this issue is given at the time the contract is drafted, the difficulty can be addressed by appropriate provisions in the arbitration agreement. In essence, such provisions record the parties' consent to joinder in advance of the situation arising, and set out a procedure for the joinder to take place. In multi-contract and/or multi-party transactions, provisions for joinder can become complicated and require considerable care in drafting. However, if provision is not made before a dispute arises, it will often be difficult to obtain all of the parties' consent because of their differing self-interests. In such circumstances, relevant parties will have to decide whether or not to pursue separate proceedings in relation to the third party.

CHAPTER III

The Tribunal

In the vast majority of cases, the arbitral tribunal consists of either one or three arbitrators. The choice between one or three arbitrators can be made in advance or left for agreement between the parties (or for decision by an arbitral institution or appointing authority) after the dispute has arisen.

Arbitration with a sole arbitrator is generally cheaper than using three arbitrators, both because of the savings in arbitrators' fees and because he or she can conduct the proceedings more quickly, without the need to coordinate with two other busy professionals. However, providing for a sole arbitrator means that the parties cannot each select or nominate an arbitrator and, of course, the proceedings revolve around just one decision-maker. In addition, the exchanges and interplay among the arbitrators in a three-member panel can sometimes give more insight into the tribunal's decision-making process, allowing a party to alter its strategy accordingly. For these reasons, high-value and complex international disputes are generally referred to three arbitrators.

Parties usually seek advice from their lawyers as to suitable arbitrators. When we advise in this regard, we draw upon our experience of persons with the required attributes . . .

The major arbitration rules (and many national laws) provide methods for the appointment of the tribunal in default of agreement between the parties. In general, sole arbitrators are selected by agreement between the parties or, if no agreement is reached within the allotted time, by the chosen appointing authority (or, if none, the relevant court). Where three arbitrators are to be appointed, two

of them are normally selected by the parties, with the Chairman or President being chosen either by the two party-selected arbitrators or by the appointing authority (or court).

The parties can require that the arbitrators (or the Chairman) possess specified qualities (*e.g.*, persons in practice for at least 10 years or of different nationalities from the parties or with experience in international financial transactions). The arbitrators need not be lawyers but, for high value international disputes, they normally are.

Parties usually seek advice from their lawyers as to suitable arbitrators. When we advise in this regard, we draw upon our experience of persons with the required attributes (including experience as an arbitrator) and work with our client to identify those arbitrators who we would expect to follow thought processes most in tune with our client's case. Among the factors we consider are:

- the candidate's familiarity with the governing law and the applicable arbitration rules;
- the candidate's background (e.g., legal training and experience, experience in the relevant industry or similar industries);
- the language and the place of the arbitration;
- the candidate's writings (although many arbitrators are guarded in their publicly expressed views) and past decisions/awards to the extent known or available;
- our interactions with the candidate in previous arbitrations or at conferences, the views of our colleagues and the candidate's general reputation; and
- the candidate's ability to influence the selection of the Chairman/President and the likelihood that the candidate's views will carry weight with the other arbitrators during deliberations.

CHAPTER IV The Choice of Arbitration Rules

Many countries have arbitration laws which provide a legal framework for the conduct of arbitrations. However, subject to mandatory requirements of the applicable law, parties are free to agree upon the procedure for their arbitration (or simply accept the default procedure under that law). Rather than drafting a custom-made procedure for each contract, parties usually adopt (and modify as appropriate) a set of tried and tested ready-made arbitration rules. These rules (as amended or supplemented by the parties) are then interpreted against the backdrop of the arbitration law of the seat (legal place) of the arbitration.

Institutional arbitration

There are many arbitral institutions across the world: some focus on disputes with a strong tie to the country or region in which the institution is based, some focus on disputes in particular subject matters and some are fully international in scope and are used by parties throughout the world. We focus below on three pre-eminent international institutions, which are widely used and provide a good basis for discussing the factors to be considered when choosing institutions and rules:

- The International Court of Arbitration of the International Chamber of Commerce ("ICC"). The ICC, which is based in Paris, was established in 1923. It is probably the best known international commercial arbitration institution. For further information, see www.iccwbo.org;
- The London Court of International Arbitration
 ("LCIA"). The LCIA, which is based in London, was
 established in 1892. It is Europe's second leading
 international arbitration institution (after the ICC)
 and is very well known internationally. The LCIA has
 affiliated arbitral institutions in Dubai (DIFC-LCIA), India
 (LCIA India) and Mauritius (LCIA-MIAC). For further
 information, see www.lcia.org; and

There are many arbitration rules to choose from and, in considering the selection, it is useful to distinguish between arbitrations which are to be administered by institutions ("institutional arbitrations") and those which are not ("non-administered" and "ad hoc" arbitrations).

• The International Centre for Dispute Resolution ("ICDR"). The ICDR is a part of the American Arbitration Association ("AAA"), which was established in 1926, and is the best known arbitral institution in the US. The AAA administers a large number of domestic disputes through its network of US offices. The ICDR administers international arbitrations (pursuant to its International Arbitration Rules). For further information, see www.adr.org.

(For details of many more arbitration institutions by region, see Annex 3.)

The rules of the ICC, LCIA and ICDR are all suitable for use around the world and for arbitrations conducted in various languages and under various governing laws. In each case, it is for the arbitrators to resolve the dispute, with the institutions simply administering the arbitrations.

In this capacity, the ICC, LCIA and ICDR each receive and distribute the parties' initial submissions, assist with the appointment of the tribunal (with or without party-nominations) and resolve any challenges that a party may make against an arbitrator. The arbitration rules of each institution are broadly similar: all leave a considerable degree of flexibility with the parties and the tribunal. What particularly distinguishes

these institutions from each other are the degree of administration (or supervision) their rules entail and their fee structure.

Degree of administration

The ICC procedure is more actively administered, involving two additional steps not found in many other rules (such as those of the LCIA and ICDR):

- the preparation of Terms of Reference, a document which defines the scope of the arbitration by setting out the basic claims and defences, the relief sought and the issues to be addressed; and
- the scrutiny of draft awards, especially as regards issues which might affect their enforceability, by the ICC Court before the final awards can be issued to the parties.

The value of these supervisory functions must be weighed up against the likely additional time and cost to be devoted to them.

In contrast, the procedures under the LCIA and ICDR Rules are lightly administered, with the role of the LCIA and the ICDR in each case being primarily concerned with the appointment of (and challenges to) the tribunal. There is no formal requirement for Terms of Reference or the scrutiny of draft awards.

Fee structure

The fees of the ICC and tribunals appointed pursuant to its Rules are based upon the amount in dispute. The ICC requires payment of two "advances" on the estimated fees and costs at the start of the process: a provisional advance to cover the period until the Terms of Reference; and then a full advance to cover the rest of the arbitration (although this can be adjusted later if deemed appropriate). In high value disputes, this requires parties to pay (or guarantee payment of) substantial sums up front.

By contrast, the LCIA charges (for itself and the arbitrators) according to the time actually spent. The fee rates which the LCIA agrees with arbitrators are

Many countries have arbitration laws which provide a legal framework for the conduct of arbitrations.

generally far lower than those same arbitrators would seek to charge if approached directly by the parties.

Although the ICDR's administrative fees are based upon the amount in dispute, the tribunal's fees (as with the LCIA) are calculated according to the time spent.

There are differing views as to which fee structure generally works best and, in any event, their suitability for each case will vary according to factors such as the amount in dispute and the time taken and effort required by the arbitrators to bring the proceedings to a conclusion

Unadministered and ad hoc arbitrations: the **UNCITRAL** Rules and pure ad hoc arbitrations under national arbitration laws

Although some practitioners refer to all non-institutional arbitration as being "ad hoc", there is a useful distinction to be made between arbitration under the UNCITRAL Rules and arbitration which is purely under a national law.

The UNCITRAL Rules (developed by the United Nations Commission on International Trade Law) were originally developed as a neutral alternative to the other major rule systems which, fairly or not, were viewed with scepticism in many capital-importing countries. However, they have been widely used in both general commercial transactions and arbitrations between states and individuals (they were used as the basis for the Iran-US Claims Tribunal Rules and for a number of Bilateral Investment Treaties). They have also influenced other rule systems.

Although there is no administering institution under the UNCITRAL Rules, parties commonly designate an "appointing authority" to appoint the arbitrator(s) if the system of party appointments breaks down, and to deal with any challenges to the arbitrators. Many arbitral institutions (such as the ICC, the LCIA and the ICDR) will serve as an appointing authority under the UNCITRAL Rules for a fee. If no appointing authority is designated and the system of party appointments breaks down, all is not lost as, pursuant to the UNCITRAL Rules, the Secretary General of the Permanent Court of Arbitration in The Hague (a body created by the 1899 Hague Convention for the Pacific Settlement of International Disputes) will appoint an appointing authority. However, this additional step is best avoided by the parties designating the appointing authority in advance.

Rather than drafting a custommade procedure for each contract, parties usually adopt (and modify as appropriate) a set of tried and tested ready-made arbitration rules.

Most jurisdictions allow parties to agree to arbitrate without them having to specify any rules or procedures. In such event, the procedure for the appointment of the tribunal and the conduct of the arbitration generally will be that provided by the law of the seat of the arbitration. However, many national arbitration laws make only limited provision for the procedure to be followed, leaving it to the parties and the tribunal to decide how the arbitration will be conducted (which can lead to disagreement and delay at the outset).

Ad hoc arbitration often arises because parties do not agree upon (or simply fail to provide for) any institutional rules. Parties may, for example, agree Ad hoc arbitration often arises because parties do not agree upon (or simply fail to provide for) any institutional rules.

that any arbitration shall be conducted pursuant to a particular national law. However, in an international context, parties should first satisfy themselves that they are content with the relevant legislation and that they are willing to go to the local courts where necessary to resolve difficulties.

Parties sometimes also believe that, by avoiding the fees of arbitral institutions, ad hoc arbitration might prove cheaper than institutional arbitration. Whilst this is possible in theory, in practice, the benefits of the institution's administrative services and the lower charges of arbitrators under institutional rules can easily outweigh the costs involved, especially in connection with large and complex disputes, where many procedural issues are likely to arise. Ad hoc arbitration significantly increases the likelihood of court intervention and these potentially significant costs must also be considered. In the main, before selecting ad hoc arbitration, parties should satisfy themselves that they would not be better served by an institutional form of arbitration or the use of the UNCITRAL Rules.

Important "specialist" international arbitration organisations

There are also specialist arbitration organisations for specific types of disputes, such as:

The International Centre for the Settlement of Investment Disputes ("ICSID"). Based in Washington, D.C., and operating under the auspices of the World Bank, ICSID was established pursuant to the 1965 Washington Convention on the Settlement of Investment Disputes between states and nationals of other states. ICSID is concerned

exclusively with disputes arising directly out of an investment between a contracting state and a national of another contracting state. Jurisdiction is established on the basis of consent, contract, local investment legislation or treaty rights. A rise in investor-state disputes and the explosion in Bilateral Investment Treaties which provide for ICSID arbitration have made ICSID of increasing importance in investor/state disputes. Investor-state disputes are discussed in greater detail in Chapter VIII;

- The World Intellectual Property Organisation ("WIPO") Arbitration and Mediation Center.
 Established in Geneva in 1994 as an offshoot of WIPO (itself an agency of the United Nations), the Center provides arbitration and mediation services (under its own rules) for intellectual property disputes; and
- The China International Economic and Trade Arbitration Commission ("CIETAC"). As many Chinese counterparties insist upon CIETAC, companies doing business in China might well find themselves incorporating CIETAC provisions into their agreements. CIETAC is one of the most active arbitration centres in the world.

Summary overview

There are a large number of arbitral institutions and rules to choose from, some appropriate for a wide range of disputes and some only for specific types. Whilst there may be certain advantages and disadvantages for a party in using a particular set of rules, the ICC, LCIA, ICDR and UNCITRAL Rules are largely interchangeable and can all be selected for use wherever the arbitration is to take place. However, some differences in drafting might be advisable depending upon the rules selected (for example, specifying an appointing authority in the case of the UNCITRAL Rules).



CHAPTER V

The Place of Arbitration

There is an important distinction between the legal place (the "seat") of any arbitration and the place where one or more of the hearings or other procedural steps physically take place. Although the two often coincide in practice, it is the seat which determines the legal framework within which the arbitration takes place, not the location where the parties or the tribunal choose (as a matter of convenience) to meet.

When selecting the seat of arbitration, parties should consider, in particular, the effect that this might have upon the conduct of the arbitration and the potential enforceability of the ultimate award.

The conduct of the arbitration

In choosing the seat of the arbitration, the parties are selecting the procedural law which applies. For example, by selecting London, England, as the seat, the parties bring about the application of the 1996 Arbitration Act.

The procedural laws applicable in arbitration "friendly" centres (such as London, New York, Paris, Hong Kong and Singapore) have few mandatory provisions and allow the parties considerable freedom to agree upon the lawyers to represent them, the procedure to be followed, the language of the arbitration and the tribunal to decide their dispute. The result is that these centres and the specialist lawyers, experts and technical staff (such as translators, stenographers and IT personnel) who service them are able to accommodate the considerable diversity of disputes which arise in the international arena. Arbitration is encouraged (often in order to promote trade) and, accordingly, the role of the courts is kept to a minimum, being primarily to support the arbitration process and to assist, if necessary, with the enforcement of the award.

In less arbitration-friendly countries, the courts have greater powers to assume control over disputes within their jurisdiction and tend to be more interventionist (particularly where disputes have a political dimension). There are also sometimes constraints upon the conduct of the arbitration, such as the requirement to use locally qualified lawyers and restrictions upon who can act as arbitrators.

In choosing the seat of arbitration, parties should consider, in particular, the effect that this might have upon the conduct of the arbitration and the potential enforceability of the ultimate award.

Enforceability of the award

The seat of arbitration is also of critical importance to the enforceability of the resulting award pursuant to the New York Convention. By becoming party to the Convention, each of the states (see Annex 2) has agreed, subject to limited grounds of refusal, to enforce commercial arbitral awards made in other contracting states. Accordingly, by selecting a state which is party to the New York Convention as the seat for any arbitration, parties provide considerable scope for enforcement of their awards.

CHAPTER VI Typical Steps in an Arbitration

The procedure for an arbitration can take many forms. In some arbitrations, parties agree that the dispute shall be resolved upon the basis of written submissions, without a hearing. In others, such as commodity arbitrations, the parties rely very heavily upon the arbitrator's own expertise, blurring the distinction between arbitration and expert determination (which does not enjoy the statutory backing and enforcement regimes applicable to arbitration).

Typically, a substantial international arbitration will include most of the following steps (although some of them may overlap or take place simultaneously):

- Claimant's Request for Arbitration, including at least a summary of the claims
- Respondent's Answer, which will indicate any counterclaims to be made
- Claimant's Reply to Counterclaim (if appropriate)
- · Appointment of the tribunal
- Procedural hearing setting the steps and timetable for the arbitration
- Claimant's full Statement of Case (if not served with the Request for Arbitration)
- Respondent's full Defence and Counterclaim (if not served with the Answer)
- · Claimant's Reply and Defence to Counterclaim

For a substantial and complex dispute, an arbitration typically takes about 12-18 months from commencement to the final hearing, although it can be shorter or longer depending upon, for example, the procedures adopted, the availability of the tribunal and the parties' conduct.

- Disclosure of the documents relied upon or of the (often very limited) categories of documents requested by the other party
- Exchange of witness statements (sometimes followed by rebuttal statements)
- Exchange of expert reports (sometimes followed by rebuttal reports)
- Meeting of experts to narrow issues and joint statement of matters agreed/in dispute
- Exchange of pre-hearing submissions
- Hearing
- Post-hearing submissions
- Award