



Arbitration law National and international

LIUC 2017 -2018

Why arbitration in cross border disputes



Litigation in national court

- Multiplicity of litigation
- Enforcement
- Unfair forum

Self help remedies

- Letters of credit
- negotiation

Binding arbitration



Voluntary system

Fair and neutral method of dispute resolution

IN MOST INSTANCES PARTIES DO NOT AGREE TO ARBITRATE BECAUSE ARBITRATION IS THE MOST FAVORABLE POSSIBLE FORUM, BUT BECAUSE IT IS THE LEAST UNFAVORABLE FORUM THAT PARTY CAN OBTAIN, WHEN NEGOTIATING DISPUTE RESOLUTION MECHANISMS

International Arbitration is efficient:



- if the resulting arbitral award can be turned into a judgment that is enforceable in relevant jurisdictions
- if the arbitration agreement can be enforced, preventing litigation in another forum

New York Convention



The New York Convention is an international treaty with over 150 contracting states that provides for the recognition and enforcement of international arbitral awards and protects parties against domestic litigation commenced in derogation of agreements to arbitrate.

there are other international arbitration treaties, including the Washington Convention for the resolution of investment disputes, and regional treaties, such as the Panama Convention (1975) for the Americas and the European Union's treaty for the enforcement of international arbitration awards (1961).

Art. 1



1. This Convention shall apply to the recognition and enforcement of **arbitral awards** made **in the territory of a State other than the State** where the recognition and enforcement of such awards are sought, and arising out of **differences between persons**, whether physical or legal. It shall also apply to arbitral awards **not considered as domestic awards** in the State where their recognition and enforcement are sought.
2. The term "arbitral awards" shall include not only **awards made by arbitrators** appointed for each case but also those made by **permanent arbitral bodies** to which the parties have submitted.
3. When signing, ratifying or acceding to this Convention, or notifying extension under article X hereof, any State may on the basis of **reciprocity** declare that it will apply the Convention to the recognition and enforcement of awards made only in the **territory** of another Contracting State. It may also declare that it will apply the Convention only to differences arising out of legal relationships, whether contractual or not, which are considered as **commercial** under the national law of the State making such declaration.

Art. 1 “covered awards”



Art. 1 .. apply to the recognition and enforcement of arbitral awards made in the territory of a State other than the State where the recognition and enforcement of such awards are sought

also apply to arbitral awards not considered as domestic awards in the State where their recognition and enforcement are sought.”

General definition of *covered award*

- *Territorial* definition
- *Non territorial* definition

Differences (disputes)



- Differences between PERSONS (individuals, corporations, partnerships, associations, or other non-governmental entities)
- awards made by **arbitrators** appointed for each case but also those made by **permanent arbitral bodies**
- **Reservation available to contracting state: reciprocity and commercial**

Art. 2



- 1. Each Contracting State shall **recognize an agreement** in writing under which the parties undertake to submit to arbitration all or any differences which have arisen or which may arise between them in respect of a defined legal relationship, whether **contractual or not**, concerning a **subject matter capable of settlement by arbitration**.
- 2. The term "agreement in **writing**" shall include an arbitral clause in a contract or an arbitration agreement, signed by the parties or contained in an exchange of letters or telegrams.
- 3. The court of a Contracting State, when seized of an action in a matter in respect of which the parties have made an agreement within the meaning of this article, shall, at the request of one of the parties, **refer the parties to arbitration**, unless it finds that the said agreement **is null and void, inoperative or incapable of being performed**.

Art. 2...



- Exclusivity of arbitration over domestic litigation
- Contracting states are required to recognize arb. agreement so long as they are:
- in writing: see recommendation 2006
- parties agreed to submit to *arbitration* (no *mediation*, forum selection)
- *Differences: real disputes (also future), contractual or non contractual; all or any...*
- *Subject matter capable of settlement by arbitration*
- *Valid – operative – capable of being performed*

Art. 2



- **A contracting state must suspend or terminate pending domestic court litigation if the subject matter of that litigation is subject to an arbitration agreement covered by the New York Convention.**
- *Positive effects:* obligate parties to participate (?); mechanisms to **compensate parties' lack of cooperation (appointment of arbitrators..)**
- *Negative effects:* courts are required to refer parties to arbitration; i.e.: stay of litigation/decline jurisdiction

Art. 3



- Each Contracting State **shall recognize arbitral awards** as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon, under the conditions laid down in the following articles. There shall **not** be imposed **substantially more onerous conditions** or higher fees or charges on the **recognition or enforcement** of arbitral awards to which this Convention applies than are imposed on the recognition or enforcement of **domestic arbitral awards**.

Enforcement of awards



- The effect of Article III is that the **mechanisms to enforce an international arbitral award** under the New York Convention **will vary from country to country**.
- But: to prevent discrimination against foreign arbitral awards in domestic courts, Article III provides that “[there shall not be imposed **substantially more onerous conditions or higher fees** or charges on the recognition or enforcement of arbitral awards to which this Convention applies than are imposed on the recognition or enforcement of domestic arbitral award

Art. 4



- 1. To obtain the recognition and enforcement mentioned in the preceding article, the party applying for recognition and enforcement shall, at the time of the application, supply:
 - (a) The duly authenticated original award or a duly certified copy thereof;
 - (b) The original agreement referred to in article II or a duly certified copy thereof.
- 2. If the said award or agreement is not made in an official language of the country in which the award is relied upon, the party applying for recognition and enforcement of the award shall produce a translation of these documents into such language. The translation shall be certified by an official or sworn translator or by a diplomatic or consular agent.

Minimal requirements for recognition



- 1) “the duly authenticated **original award** or a duly certified copy thereof;”
- (2) “the **the arbitration agreement** or a duly certified copy thereof;” and
- (3) “**a translation** of these documents into such language . . . ce by an official or sworn translator or by a diplomatic or consular agent rtified

Art. 5 sect. 1



- 1. Recognition and enforcement of the **award may be refused**, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that:
 - (a) The parties to the **agreement** referred to in article II were, under the law applicable to them, under some **incapacity**, or the said agreement is **not valid** under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or
 - (b) The party against whom the award is invoked was not **given proper notice** of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; or
 - (c) The award deals with **a difference not contemplated** by or not falling within the terms of the submission to arbitration, or it contains decisions on matters **beyond the scope of the submission** to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or
 - (d) The **composition of the arbitral authority** or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or
 - (e) The award has not yet **become binding on the parties**, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.

Art. 5 sect. 1 (formal requirements)



- the language of Article V **is not mandatory (may)** and thus gives domestic courts **discretion to enforce** an arbitral award **even if** one or more of the grounds available to refuse enforcement is met
- all of the grounds enumerated in Article V, Section 1 are **procedural in nature** and do not permit the party opposing enforcement to re-litigate the merits of the arbitration
- **there is no appeal procedure in the New York Convention to correct substantive errors.**

Art. 5 section 2



- 2. Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that:
 - (a) The **subject matter** of the difference is not capable of settlement by arbitration under the law of that country; or
 - (b) The recognition or enforcement of the award would be contrary to the **public policy** of that country.

Public policy considerations



the New York Convention permits a domestic court to refuse enforcement of an arbitral award if the **subject matter** of the award is **not capable of resolution** by arbitration in the country where enforcement is sought

- this section gives the enforcing court the right to refuse to enforce an award that violates that country's public policy
- the term “**public policy**” is not defined

Art. 6



- If an application for the setting aside or suspension of the award has been made to a competent authority referred to in article V (1) (e), the authority before which the award is sought to be relied upon **may, if it considers it proper, adjourn the decision on the enforcement of the award** and may also, on the application of the party claiming enforcement of the award, order the other party to give **suitable security**.



UNCITRAL MODEL LAW

ON INTERNATIONAL COMMERCIAL ARBITRATION



- The UNCITRAL Model Law on International Commercial Arbitration was adopted by the United Nations General Assembly in 1985
- The UNCITRAL Model Law is designed to **implement the New York Convention as well as any other international arbitration** agreements between the enacting state and any other state
- There are **options available within the** Model Law, and countries are free to modify the Model Law in any manner they may choose

CONTENTS OF THE MODEL LAW



- There are **eight** “Chapters” to the Model Law.
- *GENERAL PROVISIONS: SCOPE OF APPLICATION, DEFINITIONS, AND EXTENT OF COURT INTERVENTION*
- *ARBITRATION AGREEMENTS : DEFINITION AND SCOPE, COURT OBLIGATION TO REFER MATTERS TO ARBITRATION, INTERIM MEASURES*
- *COMPOSITION OF ARBITRAL TRIBUNALS: NUMBER OF ARBITRATORS CHALLENGES TO ARBITRATORS*
- *JURISDICTION OF THE TRIBUNALS: COMPETENCE TO RULE ON OWN JURISDICTION, JURISDICTION TO MAKE PRELIMINARY ORDERS AND INTERIM MEASURES*
- *CONDUCT OF ARBITRAL PROCEEDING: PROCEDURAL RULES FOR ARBITRATION, COURT ASSISTANCE IN TAKING EVIDENCE*
- *MAKING OF AWARD AND TERMINATION OF PROCEEDINGS: FORM AND CONTENT OF THE AWARD TERMINATION OF ARBITRAL PROCEEDINGS.*
- *JURISDICTIONAL RECOURSE AGAINST ARBTRAL AWARD: GROUNDS TO SET ASIDE ARBITRAL AWARDS*
- *RECOGNITION AND ENFORCEMENT OF AWARDS: PROCEDURES TO ENFROCE AWARDS. GROUNDS TO REFUSE TO ENFORCE AWARD*

EUROPEAN CONVENTION ON INTERNATIONAL COMMERCIAL ARBITRATION



- Signed In Geneva In 1961
- Entered Into Force In **1964** And 31 States (AMONG Which Italy) Are Currently Party To It.
- Most European States Are Party To The Convention While Some Non Eu Members Are Parties
- The Convention Consists Of 19 Articles And Addresses The Three Principal Phases Of The International Arbitral Process: Arbitration Agreement Arbitral Procedure And Arbitral Awards

GENEVA CONVENTION



- With regard to the **arbitration agreement**: art. v and vi confirms the principles of competence-competence and the authority of national court to consider jurisdictional objections on an interlocutory basis
- With regard to the **arbitration procedure**: art. iii-vii confirm the autonomy of the parties and the arbitrators to conduct arbitration proceedings
- With regard to **award** the convention supplements the new york convention, dealing with the effects of a judicial decision annulling an award in the arbitral seat, in other jurisdictions



Arbitration agreements

Form, effects and contents

ARBITRATION AGREEMENT



The formation of arbitration agreements raises several question related to

- consent
- form
- substantive validity
- arbitrability

ARBITRATION AGREEMENTS



- **SCOPE AND INTERPRETATION**
- Because arbitration is the voluntary relinquishment of the parties' right to litigate in domestic courts, only those matters that fall within the scope of the parties' arbitration agreement can be arbitrated
- An arbitral award concerning matters outside the scope of the arbitration agreement is unenforceable under the New York Convention

ARBITRATION AGREEMENTS



- **Applicable law**
- In principle parties **may agree on the law applicable** to the arb. Agreement (as they can agree on the law applicable to the arbitral proceeding: see infra, and to the substance of the dispute: see infra)
- In practice they do rarely agree on that issue – therefore:
- Questions of formal validity: usually governed by the law of the seat
- Questions of capacity: *law applicable to the parties* (see: N.Y. Conv. 5.I, a)
- Questions of substantial validity (i.e.: consent, arbitrability) generally determined by the arb. Tribunal: different approaches
 - law of the seat (see art. 34 model law – sect. II a; NY conv. Art. 5 1.a)
 - law of the contract (indirectly chosen by the parties)
 - validation principle (any law under which is valid)

ALLOCATION OF JURISDICTION



- When discussing the allocation of jurisdiction between courts and arbitrators, there are two related doctrines
- the doctrine of **separability**, which generally holds that an arbitration agreement is considered to be a separate contract from the substantive commercial contract to which it is related (art. 16 model law)
- The doctrine of “**competence/competence**” which refers to the authority of an arbitral tribunal to determine its own jurisdiction. (art. 16 model law)



- (1) The arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement (*competence/competence*).
- For that purpose, an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null and void shall not entail *ipso jure* the invalidity of the arbitration clause (*separability*).

NON SIGNATORY ISSUES



- The cornerstone of international commercial arbitration is that **only parties who have agreed** to arbitrate a particular dispute can be forced to do so
- There are FOUR categories of theories by which a non-signatory may be bound to arbitrate a dispute
 - 1. Agency
 - 2. alter ego/group of companies
 - 3. successor/ assignment
 - 4. implied consent/ estoppel

Contents of Arb. Agreements



- ESSENTIAL ELEMENTS
- *“(1) The first, which is common to all agreements, is to produce mandatory consequences for the parties,*
- *(2) The second, is to exclude the intervention of state courts in the settlement of the disputes, at least before the issuance of the award,*
- *(3) The third, is to give powers to the arbitrators to resolve the disputes likely to arise between the parties*
- *(4) The fourth, is to permit the putting in place of a procedure leading under the best conditions of efficiency and rapidity to the rendering of an award that is susceptible of judicial enforcement”.*

Ad hoc – Institutional arb.



- International arbitration may be either **ad hoc** and **institutional**
- Institutional arbitration are conducted pursuant to institutional arbitration rules which have been incorporated by the parties' agreement and that absent that agreement have no independent legal effect.
- Those institutional arbitrations are almost always overseen by arbitration institutions with the responsibility for constituting the tribunal, fixing compensation and similar matters
- Institutions do not arbitrate the merits of the parties' dispute: this is a responsibility of the arbitrators selected by the parties or institution

INSTITUTIONAL ARB.



The best known international arbitration institutions are:

- ICC probably the most famous, it is based in paris but it has branches in HONG KONG, NEW YORK,
- SIAC (SINGAPORE INTERNATIONAL ARBITRATION CENTRE), the leading international arbitration instituton in Asia
- AAA - CDR
- LCIA (LONDON COURT OF INTERNATIONAL ARBITRATION
- In Italy: Chamber of Arbitration of Milan

AD HOC ARBITRATION



- Ad hoc arbitration are conducted without the benefit of an appointing authority or pre-existing arbitration rules, subject only to parties arbitration agreement and applicable national arbitration legislation
- The parties sometimes select pre existing rules designed for ad hoc arbitration: this is the case for **Uncitral arbitration rules**: that occupy an important position in contemporary arbitration practice, as they create a predictable framework for international arbitration acceptable to common law, civil law and other legal system
- Less expensive and more confidential
- No supervision

Pathological ARB. AGREEMENT



VARIETY OF DEFECTS

- *indefinite arbitration agreement*
- *referring to non existent arbitral institution, rules or arbitrators*
- *internally contradictory*
- *optional, non mandatory*



Arbitration proceeding

SEAT, GOVERNING RULES, PROCEDURE

Choise of law



- **Choice of law** in arbitration has three fundamental parts: (1) the procedural law governing the arbitration and its relationship with domestic courts; (2) the substantive law governing the disputed matter;
- While **substantive law** concerns the merits of the matter in dispute, including interpretation and application of the parties' underlying commercial contract, **procedural law** governs the arbitration process and the effect of the arbitration agreement on the matters in dispute.

Procedural law



- **a) which is the procedural law selected by the parties?**
- **b) to which aspects of the dispute does procedural law apply?**
- **c) which considerations might be relevant to the choice of procedural law?**

a) Arbitral seat



- According to general principles governing international arbitration, parties, by selecting a particular location as the **SEAT** of the arbitration, are stating their intent for the procedural law of that location to apply to their arbitration agreement
- According to the Model Law and to most national legislation it is **the law of seat of the arbitration** (*lex loci*) that govern a range of important issues rising in the arbitration both with regard to external relationship with national court and with regard to internal procedural issues including the applicability of basic guarantees regarding party autonomy and due process.

THE SEAT



- THE CONCEPT of **ARBITRAL SEAT** is central to the international arbitration process
- **IT IS A LEGAL CONSTRUCT NOT A GEOGRAPHIC LOCATION**
- IT INDICATES THE NATION WHERE AN INTERNATIONAL ARBITRATION HAS ITS **LEGAL DOMICILE OR JURIDICAL HOME**
- IT IS IMPORTANT TO DISTINGUISH BETWEEN LEGAL SEAT AND LOCATION OF THE HEARINGS



- Arbitration law of the seat generally applies
- Some derogation might be allowed
- Therefore parties might choose rules applicable to their proceeding
- But mandatory provisions of the law of seat might not be derogated from (due process, impartiality, annulment..)

Legal hierarchy - procedure



- a) Mandatory provisions of the law of seat
- b) Parties' agreement (not in conflict with mandatory provisions; arbitral institution rules)
- c) Non mandatory provisions of the law the seat is not in conflict with a) and b)
- d) discretion of the arbitral tribunal

b) To which aspects of the dispute does procedural law apply?



- **It is important to distinguish between procedural and substantive law**
- Some jurisdictions may differ on what may be considered procedural and substantive.
- Generally, the procedural law chosen by the parties and the conflicts of laws principles at the seat of the arbitration apply to determine how to make the distinction between procedural law and substantive law

Procedural law is applicable to



1. EXTERNAL RELATIONSHIP WITH NATIONAL COURTS

- allocation of competence to consider and decide jurisdictional challenges between arbitral tribunals and courts (according to competence -competence, separability doctrine as enacted in different legal regimes....)
- judicial assistance to the constitution of a tribunal, including the selection, removal and replacement of the arbitrators
- judicial assistance in issuing provisional measures in aid of the arbitration
- judicial assistance in evidence taking or discovery in aid of the arbitration
- judicial review of procedural rulings of the arbitral tribunal and
- **MOST IMPORTANT: JUDICIAL REVIEW OF AWARDS, THAT IS ANNULMENT OF ARBITRAL AWARDS**



- **2. INTERNAL PROCEDURES OF ARBITRATION**
- procedural steps and timetable of an arbitration
- evidentiary and pleading rules
- oath for witnesses
- conduct of hearings
- disclosure and discovery rules
- rights of lawyers to appear and ethical obligation of lawyers
- arbitrators' procedural discretion
- arbitrators' relationship with the parties including their liability
- arbitrators' remedial power including to order provisional relief
- form, making and publication of the award
- **At this regard** a further distinction should be made between **mandatory law – non mandatory rules and the rules for arbitration adopted by the parties (see: hierarchy)**

c) CONSIDERATION THAT MIGHT BE RELEVANT TO CHOICE OF THE ARBITRAL SEAT



- 1) LAW OF A CONTRACTING PARTY OF THE NEW YORK CONVENTION
- 2) STANDARD FOR ANNULMENT OF ARBITRAL AWARDS
- 3) SUPPORTIVE NATIONAL ARBITRATION REGIME
- 4) EFFECTS ON SELECTION OF ARBITRATORS
- 5) MATERIAL INFLUENCE ON THE SUBSTANTIVE OR PROCEDURAL ISSUES

Choice of Substantive Law



- Substantive law applicable to the underlying dispute
- ART. 28 MODEL LAW
- CHOISE OF THE PARTIES (IF MADE)
- SELECTION BY THE ARBITRATORS
- CONFLICT OF LAW (?) most legislation (as well as art. 28 of the model law) do not require the tribunal to apply the conflict of law rules of the seat nor they impose any specific choice of law rules on the arbitrators instead they grant the tribunal broad power to apply those conflict rule that it concludes are most appropriate to the case-by-case
- **Mandatory Domestic Substantive Law**

SUBSTANTIVE LAW



- RULE OF LAW (NATIONAL LEGAL SYSTEMS)
with the parties' agreement:
- ***GENERAL PRINCIPLE OF LAW: PRINCIPLES OF LAW THAT ARE COMMON TO LEADING LEGAL SYSTEMS***
- ***LEX MERCATORIA: CONTROVERSIAL CONCEPT REFERRING TO LAW DEVELOPED OUT OF COMMERCIAL DEALINGS AND JUDICIAL OR COURTS DECISIONS CONCERNING THOSE DEALINGS***
- ***UNIDROIT PRINCIPLE OF INTERNATIONAL COMMERCIAL CONTRACTS: DESIGNED TO ESTABLISH A NEUTRAL SET OF INTERNATIONAL RULES OF CONTRACT LAW. THEY ARE OPTIONAL BUT USED BY TRIBUNALS AS GENERAL GUIDANCE***

Considerations affecting the selection of substantive law



- Parties to international transactions often desire their **own national law** to apply in part because it is familiar to themselves
- in some instances a party's home state law will provide no benefits and may instead be detrimental to the party itself.
- failing selection of their home country's law, parties often prefer a law that is developed, stable and well adapted to commercial dealings
- They avoid the law of states that are newly formed
- Parties, in any event, generally select a law which they are familiar to or whose content they can find with reasonable ease

Drafting the arb. agreement



- The considerations for drafting international arbitration agreements are very well set out in the IBA Guidelines for Drafting International Arbitration Clauses.
- **Guideline 1:** “*The parties should decide between **institutional** and **ad hoc** arbitration*”
- **Guideline 2** “*The parties should select **a set of arbitration rules** and use the **model clause** recommended for these arbitration rules as a starting point*”



- **Guideline 3:** *Absent special circumstances, the parties should not attempt **to limit the scope of disputes** subject to arbitration and should define this scope broadly.*
- **Guideline 4:** *The parties should select the **place of arbitration**.*
- **Guideline 5:** *The parties should specify the **number of arbitrators**.*



- **Guideline 6:** *The parties should specify the **method of selection and replacement of arbitrators** and, when ad hoc arbitration is chosen, should select an appointing authority.*
- **Guideline 7:** *The parties should specify the **language** of arbitration.*
- **Guideline 8:** *The parties should ordinarily specify **the rules of law governing** the contract and any subsequent disputes.*



ARBITRATORS SELECTION

Number; method of selection;
qualification; challenges

Party Autonomy



- Selection and removal of the arbitrators is one of the most important aspect of arbitral proceeding
- NY CONV: the recognition of the award may be refused if **the composition of the arbitral tribunal was not in accordance** with the agreement of the parties (or failing sich agreement was not in accordance with the law of the country where the award was made
- MODEL LAW ART. 11.2 “the parties are free to agree on a procedure of appointing the arbitrators”

Number and selection



- **Uneven number**
- The **Model law** (and national legislation) provide that absent agreement the number of arbitrators shall be **three** (*see institutional rules: generally one*)
- **Method of selection**
 - *Party-appointed arbitrators*
 - *Arbitrator selected arbitrators*
 - *Administrative selection of the arbitrator*
 - *Arbitrators selected by domestic courts*

IMPARTIALITY



- INDIPENDENCE AND IMPARTIALITY
- PARTY – APPOINTED ARBITRATOR?

INDIPENDENCE and IMPARTIALITY



- **INDIPENDENCE:** No fact, circumstances, or relationships between the parties and the arbitrators exist which may affect the arbitrator's freedom of judgment
- **IMPARTIALITY** is a subjective element linked to the state of mind and to the behavior of the arbitrator. And it implies that the arbitrator does not favor one of the parties



- **conflict of interest:** qualifies as the situation where a person carries out a function in a context, performing actions which provoke favorable context for himself or unfavorable ones for others in a different context B
- **Neutrality** can be defined as the absence of cultural legal, social proximity with one of the parties

IBA Guidelines



- THE IBA GUIDELINES ON CONFLICT OF INTEREST.
- ORIGINALLY ENACTED IN 2004 THEY WERE REVISED IN 2014
- They Provide :
 - general standards regarding impartiality, independence and disclosure obligations
 - three lists of types of relationships that do or do not represent potential conflicts of interest.

THE LISTS



- The “**red**” list is comprised of waivable and non-waivable conflicts of interest warranting the disqualification of the arbitrator
- The “**orange**” list includes types of relationships that *may* give rise to justifiable doubts as to the independence and impartiality of the arbitrator, but will depend on the facts of the particular disclosure to determine whether disqualification is warranted
- The “**green**” list is comprised of relationships that the prospective arbitrator has no duty to disclose because, according to the Guidelines, they do not generate an actual or appearance of a conflict of interest

Disqualification of Arbitrators Due to Conflicts of Interest



INSTITUTIONAL ARBITRATION

- DISCLOSURE (DUTY OF)
- COMMENTS OF THE PARTIES
- CONFIRMATION (BY THE INSTITUTION)
- CHALLENGES (INSTITUTION AND THE COURTS)

Disqualification of Arbitrators Due to Conflicts of Interest

- AD HOC ARBITRATION
- in ad hoc arbitration, the arbitrator is appointed and will serve as arbitrator after his acceptance, unless circumstances arises according to the applicable law or to the agreement of the parties that allow the parties themselves to challenge the arbitrator
- Challenges according to national law

Multi-Party Arbitration Proceedings



- The appointment of the arbitrators cannot work in conformity with the arbitration agreement.
- The problem was clearly addresses in 1992 for the first time by the French Court of Cassation in the so called “Dutco” case decided on January 7th
- *“the principle of the equality of the parties in the designation of arbitration is a matter of public policy and that can be waived only after the dispute has arisen”* - See icc rules and CAM rules: unless otherwise “resolved” the tribunal in appointed by the institution

Commencing Arbitration Proceedings



- 1) REQUEST FOR ARBITRATIONS
- 2) ANSWER – COUNTERCLAIM
- 3) REPLY TO COUNTER CLAIM
- 4) CONSTITUTION OF THE ARBITRAL TRIBUNAL (APPOINTMENT AND CONFIRMATION)
- 5) LANGUAGE OF ARBITRATION
- 6) INITIAL PROCEDURAL CONFERENCE AND PROCEDURAL DIRECTION (TERMS OF REFERENCE)
- 7) JURISDICTIONAL OBJECTION
- 8) ADVANCE OF COSTS

Preliminary hearings



- Procedural orders
- Organizational meetings
- Terms of reference (ICC)
- New claims (what is a new claim? Can the new claim be admitted)

Pre hearings disclosure



One of the most variable practices in international arbitration proceedings is the method and means of providing **pre-hearing disclosure**. It also is one of the most controversial topics in international arbitration due to the clash in litigation styles between the **civil and common law systems**.

On one end of the spectrum is the view of some **civil law** jurisdictions that no party should be compelled to disclose adverse documents. In those jurisdictions, the only documents provided in litigation should be those in support of each side's case.

On the other end of the spectrum is **US-style discovery** with its broad, expensive and intrusive document discovery where each party is entitled as a matter of right to compel the other side to produce all documents that could lead to the discovery of admissible evidence.

As a general matter, international arbitration has set **something of a middle course, subject to the agreement of the parties**

IBA rules on the taking of evidence



- Provide mechanisms for the presentation of documents, witnesses of fact and expert witnesses, inspections, as well as the conduct of evidentiary hearings.
- Reflect procedures in use in many different legal systems, and they may be particularly useful when the parties come from different legal cultures.
- Documents and witnesses

Documents – disclosure



- Art. 3 if adopted by the parties, **exclude any automatic right to disclosure** but permit a party to make a **specific request for a particular document** or narrowly described category of documents on a showing of relevance to the case and materiality to its outcome (see: **The Redfern schedule**)
- If a Party fails without satisfactory explanation to produce any Document requested in a Request to Produce to which it has not objected in due time or fails to produce any Document ordered to be produced by the Arbitral Tribunal, the Arbitral Tribunal **may infer that such document would be adverse to the interests** of that Party.

Other evidence: witness



With regard to evidence, in general arbitration relies more heavily on **documentary** evidence than on oral testimony

It is also a matter of legal culture: The civil law system is heavily dependent on documentary evidence, while the common law system prizes direct and cross-examination of live witnesses.

Arbitrators may have a civil or common law background. Yet, typical international arbitration has features of both systems.

Different rules and different legal cultures will come into play with regard to the **taking of witness** evidence during the oral hearing.

In the **common law system** parties' counsels conduct the **direct and cross examination**, while in **civil law** country examination was historically **responsibility of the arbitrators**

In international arbitration departures from particular national legal system is almost inevitable,

A good compromise again is the one contained in the IBA RULES see rule 8

Witnesses



- Art. 8 The Arbitral Tribunal shall at all times have complete control over the Evidentiary Hearing.
- The Arbitral Tribunal may limit or exclude any question to, answer by or appearance of a witness, if it considers such question, answer or appearance to be irrelevant, immaterial, unreasonably burdensome, duplicative or otherwise covered by a reason for objection
- Under this approach each party is free to nominate whatever witnesses it wishes to support its case and only exceptionally will the tribunal direct that a particular witness be made available by one of the parties
- At the hearing though, generally **the tribunal will permit the parties' attorneys to conduct the direct and cross examination** but it will also make **occasional interjections and follow up questions** in a more active way than common law judges or arbitrators

Expert witness



- Expert testimony can be presented through experts appointed by each party and/or by the Tribunal
- common law and civil law culture influences the attitude of arbitrators: tribunal with a common law tenor will generally allow the parties to present their expert, consistent with the adversarial tradition
- In contrast civil law tribunals tend to be more skeptical about the benefit of party appointed expert and are inclined toward the use of only tribunal appointed expert
- the IBA RULES admit and regulate both options as rule n. 5 refers to party appointed expert and rule n. 6 refers to tribunal appointed experts

Provisional measures

- *Conservatory – protective – interim relief*
- *Protect parties from damages during the course of the arbitration proceeding*
- *Preserve a factual or legal situation so as to safeguard the rights involved in arbitration*

Provisional remedies

● Arbitrators' authority

National legislation (Law of the seat)

Does the law of the seat allow the arbitrator to grant provisional remedies?

Model law: art. 17 (2006)

Italian law: no

Institutional rules

Limits: only parties; enforcement; object; standards; time

Specialized procedures (emergency arbitration)

● National Courts in aid of

Prior to arbitration (ad hoc)

Measures binding 3rd parties

Limits to arbitrators' authority

Concurrent jurisdiction?

Appropriate national Courts?

Authority

- Model law art. 17 Extensively revised in 2006
- *Unless otherwise agreed by the parties, the arbitral tribunal may at the request of a party, grant interim measures”*
- *Art. 818 italian c.p.c “the arbitrators may not grant attachments or other interim measures of protection, except if otherwise provided by the law”*

Criteria (for arbitrators)

- In general a party seeking an interim measure must satisfy specific requirements (*serious or irreparable harm; urgency; prima facie case*)
- Model law 17 (A) “the party seeking an interim measure...shall satisfy the tribunal that
- - *harm* not adequately reparable by an award of damages is likely to result..
- - *Reasonable possibility* to succeed

Types of remedies



Tribunal's discretion conforming to principled standards

Wide varieties: see. Model law. Art. 17

Maintaining the status quo

taking action/not taking action

Preserving assets

Preserving evidence

Preventing aggravation of the dispute

Performing contractual obligation

Providing security for claims or costs

Complying with confidentiality obligation

Emergency Arbitrator (SIAC)




- **In July 2010, the new SIAC Rules were promulgated which provided for two new and innovative provisions for parties:** the emergency arbitrator and the expedited procedure
- The emergency arbitrator provisions were introduced in the SIAC Rules in order to address situations *where a party is in need of emergency interim relief before a Tribunal is constituted*. SIAC was the first international arbitral institution based in Asia to introduce emergency arbitrator provisions in its arbitration rules.
- On average, an emergency arbitrator takes about 8 to 10 days to render its award / order after having heard the parties. However it is not uncommon to see an emergency award / order passed in as little as 2 days in certain cases.
- Awards issued by emergency arbitrators are enforceable under Singapore law. Singapore's international Arbitration Act was amended in 2012 to provide for the enforceability of the awards and orders issued by emergency arbitrators in Singapore-seated arbitrations and also arbitrations seated outside Singapore. This made Singapore the first jurisdiction globally to adopt legislation for the enforceability of such awards and orders in Singapore.

Emergency arbitration



1. A party that wishes to seek emergency interim relief may, concurrent with or following the filing of a Notice of Arbitration but prior to the constitution of the Tribunal, file an application for emergency interim relief with the Registrar. The party shall, at the same time as it files the application for emergency interim relief, send a copy of the application to all other parties. The application for emergency interim relief shall include:
 - a. the nature of the relief sought;
 - b. the reasons why the party is entitled to such relief; and
 - c. a statement certifying that all other parties have been provided with a copy of the application or, if not, an explanation of the steps taken in good faith to provide a copy or notification to all other parties.
2. Any application for emergency interim relief shall be accompanied by payment of the non-refundable administration fee and the requisite deposits under these Rules towards the Emergency Arbitrator's fees and expenses for proceedings pursuant to this Schedule 1. In appropriate cases, the Registrar may increase the amount of the deposits requested from the party making the application. If the additional deposits are not paid within the time limit set by the Registrar, the application shall be considered as withdrawn

- 
- 3. The President shall, if he determines that SIAC should accept the application for emergency interim relief, seek to appoint an Emergency Arbitrator within one day of receipt by the Registrar of such application and payment of the administration fee and deposits.
 - 4. If the parties have agreed on the seat of the arbitration, such seat shall be the seat of the proceedings for emergency interim relief. Failing such an agreement, the seat of the proceedings for emergency interim relief shall be Singapore, without prejudice to the Tribunal's determination of the seat of the arbitration under Rule 21.1.
 - 5. Prior to accepting appointment, a prospective Emergency Arbitrator shall disclose to the Registrar any circumstances that may give rise to justifiable doubts as to his impartiality or independence. Any challenge to the appointment of the Emergency Arbitrator must be made within two days of the communication by the Registrar to the parties of the appointment of the Emergency Arbitrator and the circumstances disclosed.
 - 6. An Emergency Arbitrator may not act as an arbitrator in any future arbitration relating to the dispute, unless otherwise agreed by the parties.
 - 7. The Emergency Arbitrator shall, as soon as possible but, in any event, within two days of his appointment, establish a schedule for consideration of the application for emergency interim relief. Such schedule shall provide a reasonable opportunity for the parties to be heard, but may provide for proceedings by telephone or video conference or on written submissions as alternatives to a hearing in person. The Emergency Arbitrator shall have the powers vested in the Tribunal pursuant to these Rules, including the authority to rule on his own jurisdiction, without prejudice to the Tribunal's determination.



- 8. The Emergency Arbitrator shall have the power to order or award any interim relief that he deems necessary, including preliminary orders that may be made pending any hearing, telephone or video conference or written submissions by the parties. The Emergency Arbitrator shall give summary reasons for his decision in writing. The Emergency Arbitrator may modify or vacate the preliminary order, the interim order or Award for good cause.
- 9. The Emergency Arbitrator shall make his interim order or Award within 14 days from the date of his appointment unless, in exceptional circumstances, the Registrar extends the time. No interim order or Award shall be made by the Emergency Arbitrator until it has been approved by the Registrar as to its form.
- 10. The Emergency Arbitrator shall have no power to act after the Tribunal is constituted. The Tribunal may reconsider, modify or vacate any interim order or Award issued by the Emergency Arbitrator, including a ruling on his own jurisdiction. The Tribunal is not bound by the reasons given by the Emergency Arbitrator. Any interim order or Award issued by the Emergency Arbitrator shall, in any event, cease to be binding if the Tribunal is not constituted within 90 days of such order or Award or when the Tribunal makes a final Award or if the claim is withdrawn.



- 11. Any interim order or Award by the Emergency Arbitrator may be conditioned on provision by the party seeking such relief of appropriate security.
- 12. The parties agree that an order or Award by an Emergency Arbitrator pursuant to this Schedule 1 shall be binding on the parties from the date it is made, and undertake to carry out the interim order or Award immediately and without delay. The parties also irrevocably waive their rights to any form of appeal, review or recourse to any State court or other judicial authority with respect to such Award insofar as such waiver may be validly made.
- 13. The costs associated with any application pursuant to this Schedule 1 may initially be apportioned by the Emergency Arbitrator, subject to the power of the Tribunal to determine finally the apportionment of such costs.

Judicial enforcement

- The arbitral tribunals lack the authority to enforce their provisional remedies
- The enforcement is the responsibility of national courts
- Model Law art. 17 H /Specific provisions
- Absent specific provisions: Provisional measures /final awards (they are final in that they dispose of the request for preliminary relief)

Judicial Provisional measures *in aid of arbitration*



Concurrent jurisdiction?

- New York Convention (art. II): different approaches (USA) with regard to international arbitration
- The weight of authority concluded that article II does not forbid court ordered provisional remedies *in aid of arbitration (unless parties agreement ...)*
- *National law: concurrent jurisdiction/preferend forum*
- *Model law art. 9 and 17: concurrent – does not waive rights under an arbitration agreement.*
- *Appropriate national Courts? Jurisdiction*
 - *- in aid of arbitration seated*
 - *- location of defendant's assets*

Model Law art. 9

- It is not incompatible with an arbitration agreement for a party to request , before or during arbitral proceedings, from a court an interim measure of protection and for a court to grant such measure.

Model law art. 17J

- A court shall have the same power of issuing an interim measure in relation to arbitration proceedings irrespective of whether their place is in the territory of this State, as it has in relation to proceedings in courts.

Antisuit injunctions

- *Case C-159/02 Gregory Paul Turner v Felix Fareed Ismail Grovit and Others*
- *Case C-185/07 Allianz SpA, formerly Riunione Adriatica di Sicurtà SpA and Generali Assicurazioni Generali SpA v West Tankers Inc.*
- *In Case C-536/13, JUDGMENT OF THE COURT (Grand Chamber) 13 May 2015 ‘Gazprom’ OAO Lietuvos Respublika,*

ARBITRATION AWARDS



- To ensure that the award will be recognized and enforced, an arbitrator or tribunal must:
- Make certain that it has jurisdiction to decide the dispute;
- Comply with the procedural rules governing the arbitration;
- Conform to any dictates in the arbitration agreement;
- Apply the substantive law governing the dispute (the *lex CAUSAE*); and
- When required (e.g., ICC arbitration), have the arbitral organization approve the award.

TYPES OF AWARDS

Provisional decisions

Partial awards

Interim awards

Final awards

Termination of proceedings without a ruling on the merits

Consent or agreed awards

Default awards

FORMAL REQUIREMENTS



MODEL LAW IS REPRESENTATIVE:

SEE ART. 31:

- i) be in writing;**
- ii) contain reasons for the decision, unless the parties have agreed otherwise or if it is a consent award;**
- iii) state the date and the place of arbitration; and**
- iv) be signed by all of the arbitrators or contain an explanation for any missing signature(s).**

REMEDIES

The remedies that might be included in an arbitral award are fairly wide ranging, including:

Monetary relief

Punitive damages;

Specific performance;

Injunctive or declaratory relief;

Rectification or adaptation of contracts;

Interest;

Attorneys' fees; and Costs.

Attacking the arbitral award



The arbitral award has **binding and final effect** on the parties.

(Loosing) Parties have two options:

- Attacking the award in the Country where it was made (trying to have the **award set aside**)
- Opposing the enforcement in another Country (award's **enforcement refused**)

New York Convention



- Article V
- 1. Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that:
 - (e) *The award has not yet **become binding** on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.*



Setting aside the award

Proceeding for setting aside



Only in the Country of the seat of the arbitration

Legal grounds depending on the law of the seat

See the Model law as a general reference

Keeping in mind that there are **national legislation** providing grounds for annulment **more expansive** than under the model law, and other national legislation providing grounds that are **less expansive** than under the model law

Some jurisdictions explicitly allow for substantive review of the award

Model law art. 34



(1) **Recourse to a court against an arbitral award** may be made only by an application for setting aside in accordance with paragraphs (2) and (3) of

this article.

(2) An arbitral award may be set aside by the court specified in article 6 only if:

(a) the party making the application furnishes proof that:

(i) a party to the arbitration agreement referred to in article 7 was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of this State; or

(ii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iii) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside; or

(iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Law from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Law; or

Ex officio



(b) the court finds that:

- (i) the subject-matter of the dispute **is not capable of settlement** by arbitration under the law of this State; or
- (ii) the award is in conflict with the **public policy** of this State.

See: legislation more and less expansive

See: agreements of the parties limiting or expanding judicial review of arbitration awards.

Time limits (art. 34.3)



(3) An application for setting aside may not be made after **three months** have elapsed from the date on which the party making that application had received the award or, if a request had been made under article 33, from the date on which that request had been disposed of by the arbitral tribunal.



Recognition and enforcement

Recognition and enforcement



Recognition: *recognizing the legal force and effect of an award*

Enforcement” *concerns the forced execution of an award previously recognized by the same State*

Legal grounds depend on the law of the country of enforcement

But they are often identical due to the N.Y. Convention (art. 5)

Proceedings for the enforcement might differ but remember art 3. “There shall **not** be imposed **substantially more onerous conditions** or higher fees or charges on the **recognition or enforcement** of arbitral awards to which this Convention applies than are imposed on the recognition or enforcement of **domestic arbitral awards**”.

Recognition and enforcement



- New York Convention Article V
- 1. **Recognition and enforcement of the award may be refused**, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that:
 - (a) The parties to the agreement referred to in article II were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or
 - (b) The party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; or
 - (c) The award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or
 - (d) The composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or
 - (e) **The award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.**



- Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that:
- (a) The subject matter of the difference is not capable of settlement by arbitration under the law of that country; or
- (b) The recognition or enforcement of the award would be contrary to the public policy of that country

Article VI



- If an application for the setting aside or suspension of the award has been made to a competent authority referred to in article V(1)(e), the authority before which the award is sought to be relied upon may, if it considers it proper, **adjourn the decision on the enforcement of the award** and may also, on the application of the party claiming enforcement of the award, order the other party to give suitable security



National arbitration

Italian Legal framework

ITALIAN ARBITRATION LAW



Italy is a signatory to the New York Convention and ratified it on 31 January 1969 without any reservation to its general obligations. The Convention entered into force in Italy on 1 May 1969.

Italy is also a party:

- to the 1927 Geneva Convention on The Execution of Foreign Arbitral Awards,
- to the 1961 European Convention on International Commercial Arbitration as well as
- to the 1965 Washington Convention on the Settlement of Investment Disputes Between States and Nationals of Other States

Legislative framework



Code of Civil Procedure – Book IV, Title VIII, Articles 806 – 840 *(CPC)*

Arbitration in Italy is governed by the CPC rules, which are structured as follows.

Chapter I Articles 806 – 808 *quinquies* provide general rules on the arbitration agreement (i.e. formal requirements, arbitrability, effects and interpretation of the arbitration agreement) as well on the *arbitrato irrituale* .

Chapter II Articles 809 – 815 concern the arbitrators (i.e. number, appointment, replacement, incapacity, acceptance, loss, liability, rights and challenge of the arbitrators).

Chapter III Articles 816 – 819 *ter* details on the arbitration procedure (i.e. seat of arbitration, procedural rules, evidence and stay of the proceedings).



Chapter IV Articles 820 – 826 deal with the award (i.e. timing, content, effects and correction).

Chapter V Articles 827 – 831 deal with challenging the award (i.e. grounds for setting aside, appeal, revocation and third party opposition).

Chapter VI Articles 832 govern arbitrations pursuant to pre-established arbitral rules

Chapter VII Articles 839 – 840 govern the recognition and enforcement of foreign awards and the procedure for opposing such recognition and enforcement.

Historical background



Law 9th February 1983, No. 28 (1983 Reforms) represented the first attempt to reduce the rigidity of the CPC by excluding Italian nationality as a basic requirement for appointment as an arbitrator.

Law 5th January 1994, No. 25 (1994 Reforms) introduced new rules regarding international arbitration in compliance with international conventions and, in particular, with the New York Convention.

Legislative Decree 2nd February 2006, No. 40 (2006 Reforms) **re-drafted most of the previous CPC provisions on arbitral proceedings. The aim of the 2006 Reforms was to promote and improve recourse to arbitration as an attractive alternative to ordinary judicial proceedings**

Legislative Decree 5/2003 (company disputes arbitration)

Law Decree No. 132/2014 (converted into Law No. 162/2014) transfer to arbitration



Arbitrato rituale (ordinary arbitration)

Arbitrato irrituale (free arbitration): binding as a contract/
non- enforceable

Arbitrato extracontrattuale or arbitration on matters not
provided for in a contract

General principles



Due process

Parties' autonomy

Non intervention by the courts

The arbitration agreement



The arbitration agreement can be in the form of a clause within a contract or a stand-alone agreement. In either case, the arbitration agreement should be in writing and should clearly set out the subject-matter submitted to arbitration

Arbitrability: art. 806 and 829

Separability: art. 808.3

The arbitral tribunal



Constitution: parties' agreement – default rules 809

Odd number

Court intervention

Capacity

Indipendence and impartiality

Challenges: art. 815

Commencement of the arbitration



Written request

Appointment of arbitrator

Service to the other party

Arbitral proceeding



Parties' autonomy

Arbitrators apply the rules the deem suitable 816 bis

Due process 816 *bis*

Taking of evidence art. 816 *ter*

Choice of law: 816 bis

Making of award



Time limit: 240 day (see art. 820.2)

Extension

Form and contents of the award : 823 majority – writing – specific content (arbitrators; seat; parties, arb. Agreement, subject matter; reasons, decision; signature)

Effect: see art. 824 *bis*

Setting aside the award



Action for nullity: art. 829

Revocation

Opposition by third party

Art. 829



- 1) if the arbitration agreement is invalid, without prejudice to the provision of Article 817, paragraph 3 [to be read: paragraph 2];
- 2) if the arbitrators have not been appointed in the form and manner laid down in Chapters II and VI of this Title, provided that this ground for nullity has been raised in the arbitral proceedings;
- 3) if the award has been rendered by a person who could not be appointed as arbitrator according to Article 812;
- 4) if the award exceeds the limits of the arbitration agreement, without prejudice to the provision of Article 817, paragraph 4 [to be read: paragraph 3], or has decided the merits of the dispute in all other cases in which the merits could not be decided;
- 5) if the award does not comply with the requirements of Article 823, numbers (5), (6) and (7);



- 6) if the award has been rendered after the expiry of the prescribed time-limit, subject to the provisions of Article 821;
- 7) if during the proceedings the formalities prescribed by the parties under express sanction of nullity have not been observed and the nullity has not been cured;
- 8) if the award is contrary to a previous award which is no longer subject to recourse or to a previous judgment having the force of *res judicata* between the parties, provided such award or such judgment has been submitted in the proceedings;
- 9) if the principle of contradictory proceedings (*principio del contraddittorio*) has not been respected in the arbitration proceedings;
- 10) if the award terminates the proceedings without deciding the merits of the dispute and the merits of the dispute had to be decided by the arbitrators;
- 11) if the award contains contradictory provisions;
- 12) if the award has not decided some of the issues and objections raised by the parties in conformity with the arbitration agreement.

Substantive law



829....

The recourse for violation of the rules of law relating to the merits of the dispute is admitted only if expressly provided by the parties or by the law.

The recourse against decisions which are contrary to public policy shall be admitted in any case.

Enforcement and recognition



New York Convention

Art. 839 (request to the President of the C. App.)

Art. 840 (challenge to the C App.)