

**STEPHENSON  
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**A guide to international arbitration**

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# Arbitration process

These are the key steps in the arbitration process.  
Click through to view the stages.



# Preliminary considerations

## Arbitration and litigation compared

Arbitration	Litigation
<b>Confidentiality</b>	
<p>Arbitration proceedings are conducted privately based on party consent. Some arbitration legislation recognises the duty of confidentiality which prohibits disclosure of documents to third parties.</p> <p>Third parties may not participate in the proceedings without the consent of the tribunal and/or the parties or unless they are joined under arbitration rules (in limited instances).</p> <p>Arbitration awards are confidential to the parties under most arbitration rules and do not give rise to binding precedent.</p>	<p>A party's involvement in litigation proceedings is usually of public record unless otherwise ordered by the Court.</p> <p>Discrete issues of law may be better determined with reference to binding precedent.</p> <p>The litigation process prevents a party from protecting (where applicable) trade secrets or scientific information, the prospects of future business, company reputation and customer confidence.</p>
<b>Procedural flexibility</b>	
<p>Parties are free to agree on procedural matters, such as seat of arbitration and various aspects.</p> <p>Arbitration rules are flexible and less complex than national civil court procedure, making them accessible to parties based in different jurisdictions.</p>	<p>Court civil procedure rules and timelines are fixed. Parties may not influence procedure significantly and there are limited instances of deviation, only permissible by the courts.</p> <p>The courts typically have the power to penalise a party for breaching procedural timelines. This is usually an effective deterrent against delay tactics by the parties.</p>
<b>Neutrality</b>	
<p>Parties are cautious about referring disputes to either party's national court and prefer a neutral forum.</p> <p>They may also select hearing locations to take place in a third venue as opposed to the "home turf" of either party.</p>	<p>A party may find national courts to be biased to the domestic party.</p> <p>In some jurisdictions, the decisions of national courts can be arbitrary and influenced by non-legal factors.</p> <p>A foreign party may have difficulty navigating a national court's civil procedures rules and are compelled to bear additional legal costs by engaging foreign counsel to assist.</p>



## Arbitration

## Litigation

### Costs

The costs of arbitration are paid by the parties. This includes, tribunal's fees, administrative fees for hearing facilities and legal costs. The costs are typically split equally between parties.

Procedural efficiencies are possible if parties agree on various procedural matters, resulting in costs-saving.

Cost recovery may, depending on the tribunal, be more than 70% for a successful party.

The state pays for the organisation of the trial process, including hearing arrangements.

Some countries have onerous costs rules requiring the losing party to bear all the winning party's costs.

Cost recovery is generally lower for a successful claimant in a litigation compared to in arbitration.

### Expertise of decision-maker

Parties generally have a say in selecting arbitrators based on their experience and expertise in the industry or subject matter. All pre-hearing disputes are heard by the same tribunal.

A judge is assigned by the court without input from parties. In many courts, multiple judges or registrars are involved in the pre-trial process including determining interlocutory disputes.

### Enforceability

Arbitration awards are widely enforceable under the 1958 New York Convention on the Recognition and Enforcement of Awards, to which more than 160 states are party.

This Convention limits the grounds for refusing enforcement of an arbitration agreement (restricting a national court from favouring one party over another).

A national court may find ways to favour a domestic party.

Judgments of a national court are difficult to enforce abroad, absent any reciprocal arrangement.

Court judgments may be enforced under the Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters. However, the number of states that have ratified the Hague Convention is much fewer than that of the New York Convention.

## Arbitration centres



- 1. London:**  
London Court of International Arbitration (LCIA)
- 2. Paris:**  
International Chamber of Commerce (ICC)
- 3. America:**  
American Arbitration Association (AAA)/International Centre for Dispute Resolution (ICDR)
- 4. Switzerland:**  
Swiss Chambers' Arbitration Institution (SCAI)
- 5. Nigeria:**  
Lagos Court of Arbitration
- 6. Rwanda:**  
Kigali International Arbitration Centre (KIAC)
- 7. Stockholm:**  
Stockholm Chamber of Commerce (SCC)
- 8. Mauritius:**  
Mauritius International Arbitration Centre (MIAC)
- 9. Singapore:**  
Singapore International Arbitration Centre (SIAC)

- 10. Hong Kong:**  
Hong Kong International Arbitration Centre (HKIAC)
- 11. China:**  
China International Economic and Trade Arbitration Commission (CIETAC)
- 12. Dubai:**  
Dubai International Arbitration Centre (DIAC)
- 13. Australia:**  
The Australian Centre for International Commercial Arbitration (ACICA)
- 14. Egypt:**  
The Cairo Regional Centre for International Commercial Arbitration (CRCICA)
- 15. Brazil:**  
The Arbitration and Mediation Center of the Chamber of Commerce Brazil-Canada (CAM/CCBC)
- 16. India:**  
Mumbai Centre for International Arbitration (MCIA)

The main arbitration centres noted above are major centres for general commercial arbitration. There are other centres for specialised types of arbitration work, such as the International Centre for Settlement of Investment Disputes (ICSID), United Nations Commission On International Trade Law (UNCITRAL), London Maritime Arbitrators Association (LMAA), London Metal Exchange (LME), The Federation of Oils, Seeds and Fats Associations Ltd (FOSFA) and the Grain and Feed Trade Association (GAFTA).

## Model clauses

Arbitration institutions typically provide model arbitration clauses, which parties can incorporate into the dispute resolution provisions of their contracts. The model clauses provide reliable frameworks for an efficient functioning arbitration. Parties may adopt the model clauses as drafted or adapt them to fit their specific circumstances.

The following table sets out the key features in draft clauses provided by major arbitration institutions. A tick signifies that the institution's model clause covers the relevant feature, and no tick indicates that the model clause does not provide for that relevant feature. 'Default' means that unless the parties have agreed otherwise, the institution provides default wording on that particular characteristic.

Arbitration institution	Seat	Rules	No. of arbitrators	Language	Applicable law	Other options
ICC	✓	✓	✓	✓	✓	Expedited arbitration/tiered clause
SIAC	✓	✓	✓	✓	✓	Expedited arbitration/ med-arb/ad hoc
HKIAC	✓	✓	✓	✓	✓	Ad hoc
LCIA	✓	✓	✓	✓	✓	Submission agreement
DIFC-LCIA	✓	✓	✓	✓	✓	Submission agreement/ med-arb
SCC	✓	✓	✓	✓	✓	Expedited arbitration/med-arb
CIETAC		✓				
DIAC	✓	✓	✓	✓		Submission agreement
MCIA	✓	✓	✓	✓	✓	Expedited arbitration
ICDR		✓				Med-arb/ tiered clause
ICSID	Default	✓	✓	✓	✓	
PCA	✓	✓	✓	✓		Conciliation/ ad hoc
Uncitral rules	✓	✓	✓	✓		Appointing authority

# Stages of arbitration

## Commencement and constitution of tribunal



Once a dispute has arisen, a party may commence arbitration by serving a notice of arbitration.

Parties should be aware of any statutory or contractual time limits within which a claim must be brought and ensure that the arbitration is commenced within the relevant time. Sometimes, parties must complete steps set out in the arbitration agreement, such as negotiations or mediation, before commencing an arbitration.

After the commencement of arbitration, the arbitration tribunal will be constituted in accordance with the arbitration agreement and the applicable institutional rules or statutory provisions.

## Statements of case



Statements of case are the formal documents that are exchanged between the parties, which outline their

respective cases. They sometimes resemble pleadings in domestic litigation. They generally include the factual and legal basis of a claim or defence. Depending on the rules of arbitration and the directions made by tribunal, the parties may also be required to file with their statements of case its supporting documentary evidence, witness statements and expert reports. The different statements of case that may be filed by the parties are (although the names may vary):

- the claimant's statement of claim
- the respondent's statement of defence (and any counterclaims)
- the claimant's statement reply and defence to any counterclaim
- the respondent's statement of rejoinder and reply to defence to counterclaim.

In certain circumstances, parties may be permitted to amend and/or supplement their statements of case.

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## Evidence gathering

### Production of documents



Document production is a stage of arbitration where the parties may request documents or classes of documents from each other. By this point, the parties will have already provided documents in support of their cases with their written submissions. Documents are typically requested to be produced on the basis that they are not in possession of the party requesting them, and that the documents are relevant and material to the outcome of the case.

The process of disclosure will vary in accordance with the applicable national laws, arbitration rules, any agreement reached between the parties and any orders made by the arbitration tribunal.

### Evidence



#### Witness evidence

Witnesses may file a statement of their evidence to prove facts or matters that are in dispute. These witnesses will have been personally involved in the matters that have given rise to the dispute. They may file more than one witness statement to address different matters or to respond to the witness evidence filed by another party.


Parties should consider who, if anyone, is required to be a witness in an arbitration as early as possible. A witness who has given a written statement of evidence may be required to attend the evidentiary hearing (if there is one) to be asked questions by the tribunal and the other parties in the proceedings.

#### Expert evidence

Opinion evidence from expert witnesses may be required to assist and clarify matters that require technical and/or specialist knowledge in a particular industry or field. Witnesses who give such evidence are under a duty to give an impartial and unbiased opinion of such matters in which they are an expert.

A party must consider whether expert evidence is needed as early as possible once a dispute arises. They must then identify a witness with the relevant expertise who can provide evidence. An expert will usually produce a written report for the tribunal. In some cases, it may be necessary the expert may produce a supplementary report to respond to the evidence of another expert witness. If ordered by the tribunal, the experts may also meet to discuss areas on which they agree and disagree, and may be required to produce a joint report setting out those matters.

Expert witnesses may be required to give evidence at an evidentiary hearing. The tribunal, the opposing party and sometimes the expert for the opposing party may ask questions of the expert witness during the hearing. It has become increasingly common in international arbitration for expert witnesses to give concurrent evidence in a 'witness conference', in other words, the experts in a particular discipline are asked questions by the parties and the tribunal at the same time. This process is informally referred to as 'hot-tubbing'.

 [Practical tips on production of documents and evidence](#)

 [CIArb Guidelines on Witness Conferencing'](#)

## Approach to document production



The approach to document production may be guided by the parties' and arbitrators' respective legal backgrounds.

In domestic litigation in common law jurisdictions, parties are under a duty to disclose both helpful and harmful documents to their case. This may influence the approach of arbitrators and counsel who have practised in those jurisdictions. In civil law jurisdictions, the judge-led inquisitorial nature of domestic litigation generally results in parties producing only those documents that they wish to rely on to support their case, and they will not be required to produce other potentially harmful documents unless the judge requests them. Practitioners from civil law jurisdictions may therefore be used to producing fewer documents. In international arbitration, a middle ground between these two approaches is often reached, though each case will be different. Furthermore, there are grounds on which parties may legitimately withhold relevant documents, such as on that ground of legal advice privilege. In international arbitration, the International Bar Association (IBA) Rules on the Taking of Evidence in International Arbitration and, more recently, the Prague Rules on the Efficient Conduct of Proceedings in International Arbitration, are often used in providing arbitration tribunals and parties with guidance on the appropriate approach.

The obligation to produce documents in an arbitration is generally considered to be less onerous than common law litigation proceedings. This brings important benefits for the parties, including lower costs because fewer hours are spent by the parties' legal advisers reviewing documents. This in turn can lead to a quicker resolution of the dispute.

## Practical tips

### Preserving documents

When a dispute is in reasonable contemplation, parties may be under an obligation to preserve all documents in their control that are relevant to the issues in the proceedings, including any hard copy and electronic documents as well as recordings of telephone conversations.

As soon as a dispute looks set to arise, a party should:

- Suspend any routine steps made to destruct or delete documents.
- Identify the documents or classes of documents that must be preserved.
- Give written notification to all relevant employees, former employees, agents and/or third parties who may hold relevant documents and inform them of the need to preserve those documents and accordingly suspend the business practice of deletion and destruction.

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### **Careful approach to written communications**

It is not uncommon for documents produced in a dispute to be adversely interpreted by the other party. A careful approach to interactions with third parties, such as avoiding ambiguity in communications and keeping a clear internal record of key decisions reached may mitigate the risk that unclear or ambiguous communications may be misinterpreted in a dispute.

### **Memorial or common law approach?**

A tribunal may order the parties to present their written cases compendiously in a 'memorial', or through sequential exchanges of statements of case, evidence and so on. There may be strategic, procedural and legal reasons why a party may prefer one approach over another. Each case will be different.

#### **Memorial**

Arbitrations conducted in civil law jurisdictions or by civil law trained practitioners often adopt the memorial approach. This requires a party to prepare and present its written case in a combined memorial, including a party's factual and legal submissions, its statement of case, documentary evidence, witness statements, expert reports (if any) and legal authorities relied upon.

### **Common law approach**

Arbitrations conducted by common law practitioners may adopt a case management approach that resembles how litigation in common law jurisdictions is conducted. This approach involves parties first exchanging statements of case, followed by requests for documents, exchanges of witness statements of fact, and finally reports from expert witnesses.

#### **Which approach should be adopted?**

The preferred approach will be guided by the parties' respective case theories, the strengths and weaknesses of their cases, and their overall arbitration strategies. A memorial may be more attractive for parties wishing to set out their case upfront, thereby evaluating strengths and weaknesses and using these as a tactic for early settlement. The traditional 'common law' route may be more favourable for parties that wish to determine the issues at an early stage in order to avoid incurring unnecessary costs upfront in preparing evidence, which might address matters that may not be in dispute as the proceedings progress.

The flexible nature of arbitration means that parties may fashion a process best suited to the case or, where they do not agree, the tribunal will adopt a procedure if feels best suits the case.

## Preparation of hearing

### Hearing confirmation and preparation



The tribunal will determine in consultation with the parties how long a hearing of the dispute should last. The

hearings of many arbitrations last 3 to 5 days, but more complicated matters with many witnesses may last weeks or months. The parties will provide the tribunal with the names of factual and expert witnesses who are to give oral evidence, and will seek to agree the order in which witnesses will give evidence. Usually the witnesses for the claimant will give evidence, followed by those for the respondent. Sometimes, the evidence can be taken according to each issue in the case. The parties' expert evidence may sometimes be taken after all the factual evidence has been heard.

Preparation for a hearing is intensive and time-consuming. Given the large amount of information to be digested and presented, parties sometimes prepare for the tribunal a chronology of key events, a dramatis personae, and a list of issues to be resolved.

### Hearing bundles



The parties need to consider what documents will be referred to at the hearing.

These documents will normally be organised into bundles, and the responsibility for preparing them is usually that of the claimant in the arbitration. These bundles will usually include the parties' statements of case, documents, factual and expert witness evidence, and legal

arguments and authorities. The documents will be collated into a hearing 'bundle' which may be printed and provided electronically. For document-intensive cases, parties may use e-trial software to increase the efficiency in referring to large numbers of documents.

### Pre-hearing conference



The tribunal often conducts a pre-hearing conference by telephone or video conferencing before the hearing itself. The conference is scheduled several weeks in advance of a hearing. The purpose of the conference is to discuss administrative, logistical and procedural matters surrounding the hearing. Matters commonly discussed include: sitting times (i.e. when the hearing will start and end each day); how much time will be allocated to each party for their opening and closing statements; the order and procedure for witnesses being presented including expert witnesses; whether witnesses will require interpreters to give evidence; arrangements for transcribers and if real-time transcription is required. The pre-hearing conference may also be used to test video-conferencing facilities if one, some or all of the participants are to attend the hearing remotely. The tribunal is likely to issue specific directions if the hearing is to be conducted virtually. Practical matters unique to each case will also be discussed and agreed. The tribunal may also use this conference to indicate to the parties the issues it would like them to focus on at the hearing and discuss any outstanding or additional matters that have arisen which need to be decided before the hearing.

## Pre-hearing steps



The tribunal may direct the parties to exchange written opening submissions before the hearing. In larger cases, this may be accompanied by a bundle of the key documents, often referred to as a 'core bundle' and possibly a chronology of key events, a dramatis personae, and a list of issues to be resolved.

## Hearing



Most arbitrations will culminate in a hearing to hear legal arguments from the parties and to take evidence from their witnesses. Sometimes a tribunal can dispense with a hearing with or without the consent of the parties, depending on the arbitration agreement, the application rules of arbitration and the law of the seat.

In some cases, especially where the amount in dispute between the parties is modest, a tribunal may decide the case based on the documents submitted by the parties and without a hearing.

The procedure for the hearing will depend on the circumstances of the case, and the preferences of the parties and the tribunal. Usually the claimant will introduce its case first, followed by the respondent. Each party

provides the tribunal with a road map of the case, followed by their key arguments and evidence seeking to persuade the tribunal why their case is to be preferred. Then the tribunal will take evidence from the witnesses. As set out above, the order of witnesses will vary from case to case. Once all the witnesses have been heard, the parties may make closing arguments. Alternatively, the hearing may conclude and the parties will be ordered to submit their closing arguments in writing.

A verbatim transcript is usually taken of the proceedings at a hearing. This transcript is an important record of the oral evidence of witnesses, the arguments made by the parties and the comments and directions made by the tribunal.

## Post hearing



After the merits hearing has taken place, the tribunal may require the parties to make further written submissions.

Those submissions may be exchanged either simultaneously or sequentially. In some cases, the tribunal will hold a further hearing to hear legal arguments. The question of costs claimed by the parties may also be dealt with as part of written closing submissions.



[Enforcement of arbitration awards](#)

**“Adept at handling ad hoc arbitrations and those under the rules of the leading arbitration bodies including the LCIA, ICC and SCC.”**

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# Tribunals

## Introduction



Arbitrations are conducted by arbitration tribunals, typically consisting of either one or three arbitrators who are appointed to resolve the dispute. The arbitration agreement will often determine the composition of the tribunal and the procedure by which the arbitrator(s) will be appointed. Where the arbitration agreement does not address these matters, the composition and procedure may be determined by the arbitration rules chosen by the parties (if any) or the law of the seat of the arbitration.

## Appointment



In most cases where the arbitration agreement provides for one arbitrator (known as the sole arbitrator), he or she will be jointly appointed by the parties. If the parties cannot agree within the relevant timeframe (either specified in the agreement or provided by statute), the arbitrator will be selected by an appointing authority selected by the parties or as set out in the relevant arbitration law.

Tribunals may consist of a panel of three arbitrators, particularly in high value or complex disputes. It is common for each party to appoint one arbitrator and for the third arbitrator to be jointly appointed either by each party's chosen arbitrator or by the parties jointly. Some institutional rules provide that the third arbitrator is to be appointed by the institution. Many institutional rules provide that the third arbitrator acts as a presiding arbitrator, meaning that they have the power to make procedural rulings and to issue the casting vote where there is a deadlock among the members of the arbitration tribunal.

Although arbitrators are nominated by each party, they must be independent and remain impartial. Most leading arbitration systems and institutions provide procedures for challenging arbitrators on the grounds of actual or apparent bias.

In ad hoc arbitrations, parties may choose to specify an appointing authority in deciding on the constitution of the tribunal. The appointing authority can be an arbitration institution (e.g., the LCIA), an individual (e.g., the Secretary-General of the Permanent Court of Arbitration), or even a court.

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## Requirements



Contracting parties are generally free to choose their tribunal, subject to any applicable national arbitration laws, which may impose restrictions. The arbitration agreement may provide that the arbitrators must satisfy certain requirements, often related to qualifications, professional experience or areas of expertise. If the arbitration agreement contains such a requirement, and the chosen arbitrator does not meet this requirement, this can constitute a ground to challenge that arbitrator's appointment. When negotiating the terms of the arbitration agreement, care should be taken when considering whether to include such a requirement in light of the value and complexity of the contract.

## Powers and jurisdiction



The tribunal derives its powers from three main sources:

- the arbitration agreement
- the institutional rules that have been adopted (if applicable)
- the laws of the seat in which the arbitration is being conducted.

Tribunals typically have broad discretion to rule on procedural and evidential matters, and make orders on matters relating to the conduct of the arbitration as well as costs.

The tribunal derives its jurisdiction from the arbitration agreement. In the event that a party challenges the tribunal's jurisdiction to hear all or part of the dispute, most leading

arbitration systems and institutional rules provide that the tribunal can rule on its own jurisdiction, based on a concept known as kompetenz-kompetenz. When deciding whether it has substantive jurisdiction, the tribunal will generally consider:

- whether there is a valid arbitration agreement
- whether the tribunal has been properly constituted
- whether the matters submitted before the tribunal are covered by the agreement.

## Awards and costs



Tribunals may make multiple awards on different aspects of the case at various stages of the arbitration. For example, it is not uncommon for tribunals to consider the issues of liability and quantum separately, and to issue a separate award in respect of each. Sometimes a tribunal will determine the question of costs in a separate award after having determined the substantive matters in issue. Whether a tribunal will issue one or more awards will be determined by the tribunal in the course of the arbitration.

Where a tribunal makes multiple awards, each of the awards are final and binding with respect to the substantive matters decided in them, subject to any arbitration laws that permit a party to appeal to court or (rarely) an agreement between the parties to allow the arbitration decision to be appealed to another arbitration tribunal.

# Expected costs and fees associated with arbitration



Resolving a dispute through arbitration attracts a range of costs and fees. The amount depends on factors including the amount in dispute, the arbitration institution where applicable, the complexity of the dispute and the number of arbitrators.

There are two main categories of arbitration costs:

- the procedural costs
- external costs.

These can be mitigated through third party funding.

## Procedural costs

The procedural costs include the arbitrators' fees and expenses, the administrative charges of any institution, along with extra charges for any additional assistance required by the tribunal. They may depend on several factors including the chosen institution, the number of arbitrators and the seat of arbitration.

Most arbitration institutions require the payment of non-refundable registration/filing fees (for example, the cost of filing a claim before the LCIA amounts to £1,750, before the SIAC the filing fee is SG\$2,000, and before the ICC it is US\$5,000). Some institutions charge administrative fees. For instance, the LCIA charges an hourly administrative fee based on the time spent by the secretariat

in administering the arbitration. Other institutions, such as the ICC, charge a fixed administrative fee based on the amount in dispute. Many of these institutions provide calculators and guides on their websites to allow parties to determine likely administrative fees before they file a claim.

Most arbitration institutions require the parties to make an initial deposit, possibly followed by further deposits as the case progress to cover the estimated fees of the tribunal and the administration costs of the arbitration institution.

Finally, the arbitrators' potential remuneration must be considered. Some arbitrators will be paid by reference to the time they take on the case. Others will be paid according to a scale depending on the value in dispute between the parties. Which of these two approaches will be adopted depends on the rules of arbitration adopted by the parties. For arbitrators whose fees are determined by reference to the amount in dispute (sometimes referred to as 'ad valorem' fees), parties can consult the fee schedules published by the various arbitration institutions. For cases where the arbitrators charge on an hourly basis, their fees will depend on a variety of factors, including the amount in dispute, the time spent on the case and their level of experience. Additional disbursement costs such as travel expenses may also be incurred.



## External costs

The external costs include legal fees and other related expenses, such as the fees of outside counsel, party-appointed experts, witnesses, interpreters, hearing transcribers, and e-trial software providers.

## Third party funding

Third party funding means that a non-party to the arbitration may provide funds to a party in exchange for an agreed return. It is a way of sharing the risks and potential gains of an arbitration between the funded party and the funder.

In most cases, the funding will cover the funded party's legal fees and expenses incurred in the arbitration. In the event that the funded party is successful in the arbitration, the funder will be paid a percentage of the award (usually 20% to 50% of the amount awarded by the tribunal).

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Harwood LLP is a  
burgeoning player  
in the arbitration  
market.”**

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# Enforcement of arbitration awards

## Introduction



The enforcement of judgments or awards is an important factor to take into account when choosing an appropriate means for the resolution of disputes.

Arbitration awards are widely recognisable and enforceable in most countries worldwide by virtue of a number of international legal instruments, the most notable being the 1958 New York Convention (which has 164 Contracting Parties to date). The New York Convention and other conventions such as the 1966 ICSID Convention (also known as the Washington Convention) provide, at least in theory, for a simple and effective method of obtaining recognition and enforcement of arbitration awards across the world.

Of course, in reality, enforcement may prove to be challenging even in jurisdictions which are parties to such international instruments. Nevertheless, the enforcement of arbitration awards is generally still more straightforward and predictable than that of court judgments.

## Procedure to recognise and enforce get a Convention award



The New York Convention is applicable when a party seeks to enforce an award in a jurisdiction other than that of the seat of the award.

Also known as a 'Convention award', the process for obtaining recognition of such an award is straightforward: the party making such an application only needs to supply the award and the arbitration agreement (with respect to both documents, either the original or certified copies shall suffice) to the competent authority where the recognition and enforcement is sought.

## Resisting enforcement of a Convention award



Once a Convention award has been recognised by a court of any of the New York Convention's Contracting Parties, it is enforceable in accordance with the rules of procedure of that jurisdiction save for very limited circumstances.

**“Has a strong practice in court proceedings for the enforcement or challenge of arbitral awards.”**

Chambers 2020

Those limited circumstances are largely in relation to either jurisdictional or due process issues. Examples include cases where the award has been made pursuant to an invalid or non-existent arbitration agreement, or where, in the course of the arbitration proceedings, the award debtor has been unable to present their case.

The enforcing court may also exercise a discretion and refuse to recognise and enforce an award the subject matter of which is not arbitrable under the law of that country, or if such recognition and enforcement would be contrary to the public policy of that country. In many countries, particularly those that have relatively sophisticated arbitration laws, these reasons are infrequently used by the courts to refuse recognition and enforcement of a Convention award.

## Security



Where an award debtor is resisting enforcement of a Convention award on the basis that there is an application for the setting aside or suspension of the award made to a competent authority (i.e. at the seat of the arbitration), the enforcing court may consider it appropriate to adjourn the decision on the enforcement of the award. If so, it is important for an award debtor to note that the court may also, on the application of the award creditor, order them to provide suitable security for such adjournment.

## Our recommendation

We recommend that enforcement issues be considered by businesses as early as possible, even at the stage of contract drafting. This is so that due consideration may be given to the location of assets of contracting counterparties, and the relevant issues which may arise in the event of an arbitration between these parties, including issues of enforcement of any award as against such assets.



# The future of international arbitration



While there has been some criticisms of international arbitration as a mode of dispute resolution in recent times, it

continues to be increasingly popular among international business communities all over the world due to the advantages it offers vis-à-vis other methods of dispute resolution, such as court litigation.

Furthermore, since its inception, the international arbitration community has proven itself resilient and adaptable to various challenges (such as the COVID-19 pandemic) as it continues to provide its services, even as courts in a number of countries have struggled to overcome the same challenges. It is likely that the innovations adopted by the community will have a lasting positive impact on future arbitration practice.

## Virtual hearings



The 2018 Queen Mary University International Arbitration Survey indicated that 78% of arbitrators had

never or only rarely use virtual hearings. This figure reflected the widespread concern then that virtual hearings were a poor alternative to physical hearings. Those sceptical often cited the drawbacks of not being able to scrutinise a witness in person, or doubting the capabilities of online platforms.

Our experience, widely shared in the sector, is that these worries have been largely unfounded. Arbitration institutions, in partnership with technological providers, have established reliable, user-friendly platforms capable of hosting complex international arbitrations. The cross-examination of witnesses and experts in virtual hearings has proven effective. Indeed, many arbitrators have commented that assessing witnesses and experts has been easier in video calls than in person.

It is likely that virtual hearings will remain a substantial feature of international arbitration in the future. The advantages for both arbitrators and clients, especially in terms of cost and time savings, are difficult to deny. Crucially, with adequate preparation, virtual hearings present little to no loss in quality. There are arguably certain advantages to virtual hearings, such as the flexibility of scheduling hearings over a longer span of time (as opposed to a single block of time, which may be more difficult to be accommodated by all parties).

## Remote working

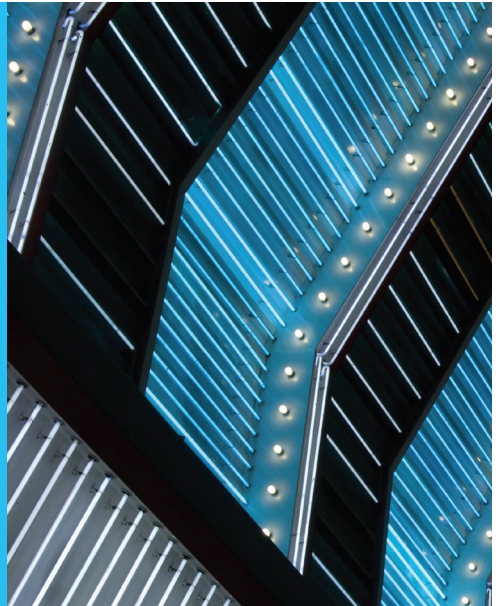


The advent of virtual hearings is complemented by the growing acceptance of remote working worldwide. It is likely that certain elements of remote working will remain and improve arbitration practice going forward, particularly for their costs saving and efficiency benefits. For example, virtual meetings will likely be the preferred option for discussions with experts or witnesses based overseas, as opposed to simple telephone conferences. This not only builds better rapport, but also allows parties to assess at an earlier juncture how the witness or expert will hold up when cross-examined.

A regular feature of international arbitration is cross-border collaboration between teams of lawyers and clients. In the absence of physical meetings, systems and software are likely to feature heavily in future arbitration practice to facilitate effective collaboration and knowledge sharing. These systems and software are anticipated to improve in quality due to continuing remote working demands. Arbitration practitioners, known for their “genius for innovation”, will hopefully be enthusiastic in embracing these new workstreams, realising their strong potential to deliver efficiencies.

### Looking forward

The future of arbitration looks to be more virtual and more technology-driven. The benefits of this on costs and efficiency are likely to be lauded for converting the sceptics. The acceptance of innovation within the arbitration sphere is what attracts users and will continue to influence future participants to embrace this practice. Ultimately, it is this willingness to transform to suit the needs of its customers that will allow arbitration to continue to provide a more accessible, cost effective and satisfying form of dispute resolution.









# Why Stephenson Harwood?

Stephenson Harwood's international arbitration team is able to advise and represent you at any stage of the arbitration process, from drafting a valid and effective arbitration agreement, to representing you in arbitration proceedings, to enforcement (or resisting enforcement) of an arbitration award in courts around the world.

We are known for our expertise in managing complex and substantial arbitrations worldwide across a wide range of sectors and geographies. For example, we are frequently engaged on disputes concerning energy, international trade, commodities, shipping, projects and infrastructure, aviation, private equity, mergers and acquisitions, joint ventures, and financial services. Our expertise is global, led from our offices in London, Paris, Dubai, Hong Kong, Singapore and Shanghai. We have market-leading experience of international arbitrations relating to Africa, India, CIS and South-East Asia.

We are also particularly well known for acting in arbitration-related court proceedings, such as arguing jurisdictional challenges, obtaining freezing orders and have unparalleled expertise in the enforcement of arbitration awards. Many of the cases where our team has acted are leading judgments on international arbitration in courts around the world, including London, Singapore and Hong Kong.

Our team has a wealth of experience – both representing clients and sitting as arbitrators – in the world's leading arbitration institutions including LCIA, ICC, SIAC, HKIAC, LMAA, SCMA, GAFTA, UNCITRAL and ICSID. Members of our team are established thought leaders in the field, being board and committee members of the leading arbitration institutions, having written leading texts and other award-winning treatises on international arbitration.

Our expertise is reflected in the wide variety of clients for whom we act including governments and government entities, national oil companies, private and public energy companies, banks, airlines, shipping companies, insurers, traders and entrepreneurs.

## GET IN TOUCH

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