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CONSTRUCTION ENGINEERING & INFRASTRUCTURE

An Introduction to International Arbitration

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Webinar outline

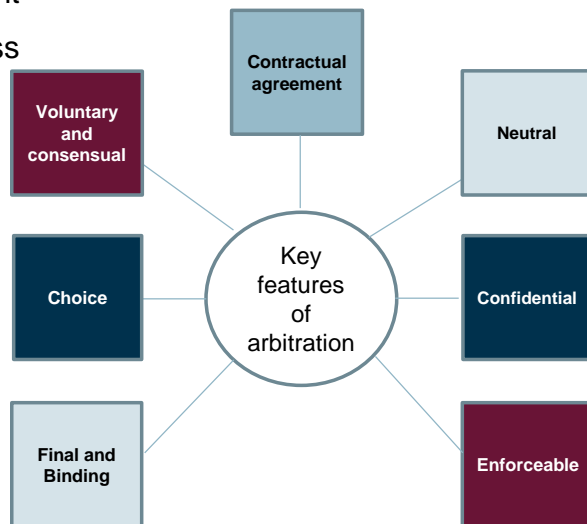
1. What is arbitration
2. Key features of arbitration
3. Advantages and disadvantages of arbitration
4. Why arbitrate
5. How to arbitrate
6. Concluding remarks

What is arbitration

- + Arbitration is an alternative dispute resolution method that is based on the parties' agreement , which provides a final and binding decision.

Key features of arbitration

- + Based on a contractual agreement
- + Voluntary and consensual process
- + Neutral forum
- + Choice
- + Confidential
- + Final and binding decision
- + Enforcement



Advantages and disadvantages of arbitration

Advantages

	Arbitration	Litigation
Flexibility	The parties are free to choose the location, language, procedure and decision-maker.	Determined by the legal system of the location of the dispute. Decision maker is decided by the courts.
Expertise of Decision Maker	The parties are able to choose an arbitrator who is a specialist in the field of the dispute.	Court appointed judges.
Confidential	Generally confidential.	Litigation in court is public.

Advantages and disadvantages of arbitration (continued)

	Arbitration	Litigation
Neutral forum	Provides a neutral forum.	The courts where the proceedings have been issued have jurisdiction.
Speed of decision	Usually quicker to obtain a decision than litigation.	Litigation can be slow.
Cost	Used to be considered cheaper than litigation. However, this will depend on a number of factors.	Litigation can be expensive.

Advantages and disadvantages of arbitration (continued)

	Arbitration	Litigation
Ability to appeal	Only in very limited circumstances for serious procedural irregularities or jurisdiction issues.	Able to appeal on points of law.
Enforceability	An arbitration award can be enforced in any contracting state of the New York Convention.	Enforced through the courts. Depending on the jurisdiction, they may have reciprocal arrangements to enforce foreign judgments.

Advantages and disadvantages of arbitration (continued)

Disadvantages

	Arbitration	Litigation
Waive right to go to Court	If the arbitration agreement is valid then the parties may waive their right to resolve the dispute at court.	The parties do not have to agree beforehand to go to court.
Cost of decision maker	The parties are required to pay the arbitrator's fees.	Judges fees are not paid by the parties.
Ability to appeal	Very limited ability to appeal for serious procedural irregularities or jurisdiction issues.	Able to appeal on points of law.
Disclosure	Disclosure of documents may be more limited than in litigation.	Depending on the jurisdiction, may be required to disclose more documents in litigation.
Interim remedies	May be more difficult to obtain in arbitration.	Depending on the jurisdiction interim remedies may be easier to obtain and easier to enforce.
Additional Third Parties	Prevented from joining third parties who have not signed up to the arbitration agreement.	Able to join third parties.
Enforcement	Arbitration awards are not directly enforceable but a party must resort to judicial remedies to enforce.	A court judgment is directly enforceable.

Why arbitrate?

- + Is the agreement likely to give rise to cross-border disputes?
- + What is the alternative?
- + Are there likely to be sensitive issues?
- + Are potential disputes likely to be technical?
- + Do you want flexibility or a rigid procedure?
- + Are interim remedies likely to be important?
- + Do you want the chance to appeal?

How to arbitrate

The Arbitration Agreement

- + Governs the rights and obligations of the parties
- + Importance of clear and unambiguous drafting
- + Key drafting points:
 - The Tribunal
 - The 'Seat'
 - The language
 - Confidentiality
 - Institutional or ad hoc
 - The procedure



How to arbitrate (continued)

Key Arbitration Institutions

- + International Chamber of Commerce (ICC)
- + London Court of International Arbitration (LCIA)
- + International Centre for Dispute Resolution (ICDR)
- + Singapore International Arbitration Centre (SIAC)
- + Hong Kong International Arbitration Centre (HKIAC)
- + The China International Economic and Trade Arbitration Commission (CIETAC)
- + The Dubai International Arbitration Centre (DIAC)
- + The Abu Dhabi Commercial Conciliation and Arbitration Centre (ADCCAC)



How to arbitrate (continued)

Appointment of the Tribunal

Governed by

- the arbitration agreement

If silent:

- The procedural rules.
- The United Nations Commission on International Trade law (UNCITRAL) rules may be agreed.



How to arbitrate (continued)

Tribunal's Powers

The Tribunal's powers are governed by the:

- The Arbitration Agreement
- Applicable procedural rules
- Applicable governing law

Arbitration Fees

- Up-front fee
- Actual costs fixed at the end of the case
- Institution fees

How to arbitrate (continued)

The Procedure

Governed by:

- The procedural rules
- Agreement between the parties
- The appointed tribunal

The Award

- Final and binding
- Requirement to be signed
- Time limits.



Concluding remarks

“Many cases occur, in which it is perfectly clear, that by means of a reference to arbitration, the real interests of the parties will be much better satisfied than they could be by any litigation in a Court of justice.”

Lord Langdale, M.R., *The Earl of Mexborough v. Bower* (1843), 7 Beav. 132.

Upcoming webinars

- + A Practical Perspective on Arbitration, 27 June 2019
 - Register on our website at www.beale-law.com/events