



Module 3: Commencement of Arbitration

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Agenda



- Legal framework for arbitration
- Type of arbitration
- Seat of arbitration
- Agreements to arbitrate
- Commencement & key initial steps
- Constitution of the arbitral tribunal

Legal Framework



- Arbitration agreement and institutional / arbitral rules (sometimes)
- International treaties
- National laws - Law governing the ...
 - ... contract
 - ... arbitration agreement
 - ... arbitral procedure

Types of arbitration



- Institutional vs ad hoc
 - Administered with rules
 - Non-administered with rules (e.g., UNCITRAL Rules)
 - Non-administered without rules: fallback to applicable law/practice
- Role of the institution
 - Administrative / secretarial functions
 - Does not decide dispute

Arbitration Agreement



- What is it?
- Broader considerations:
 - Capacity
 - Arbitrability
- Form
 - Legislative requirements
 - Essentials & nice to haves
- Presumptions:
 - validity (and competence-competence)
 - separability
- Consequences
 - Key: portability and judicial non-interference
- Model clauses (rule of thumb: use them)

Seat



- Seat vs venue (and other similar concepts)
- Considerations when choosing a seat
- Parties haven't made a choice?
- Legal significance / consequences:
 - presumptively applicable procedural law
 - mandatory laws
 - (sometimes) default rules
 - supervisory courts (interim measures, assistance with taking of evidence, challenges to arbitrators, set aside etc)

Commencement and Key Initial Steps



- Pre-arbitral steps
- Notice of Arbitration
- Reply / Response / Answer
- Constitution of tribunal
- Procedural conference / CMC
- Followed by:
 - Exchanges of submissions
 - Disclosure
 - Hearing
 - Award
 - Enforcement

Constitution of the Tribunal



- Appointment process
- Considerations when selecting an arbitrator
- Conflicts and communications with arbitrators (and arbitral candidates)



Q&A



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