





Separable – even if the arbitration is a mere clause within a larger agreement – such as a sales of goods

Autonomous and subject to governing law distinct from main contract

Separable, such the most defects in the main contract do not effect the arbitration agreement

The arbitration agreement must also address a broad and complex array of issues





- ✓ Final & Binding
- ✓ Scope
- ✓ Place/Seat
- ✓ Language
- ✓ Applicable proc law
- ✓ Applicable substantive law(s)
- ✓ Institutional (or ad hoc)
- **✓** Rules
- ✓ Number of arbitrators



- ✓ Choosing arbitrators
- ✓ Paying arbitrators
- ✓ Confidentiality
- ✓ Discovery
- √ Hearing procedures
- ✓ Interim relief
- √ Consolidation
- ✓ Decision/awards
- ✓ Costs of arbitration

Rules as Standard Terms

Should parties draft complex arbitration agreement to deal with all the issues



Negotiating dispute resolution can sour deal



No need to create a custom arbitration regime.

Should parties draft complex arbitration agreements to deal with all of these issues?

Simply use standard arbitration clauses, which incorporate "rules" as standard terms by reference

Much like the use of INCOTERMS

With institutional arbitration rules, also get institutional administration of proceedings

Comes at a price, but often worth it in terms of efficiency



Institutional versus Ad Hoc

Institutional Arbitration

Provides effective answers to most listed issues

But comes with financial cost of administration

May also impose mandatory rules, limiting the parties' autonomy

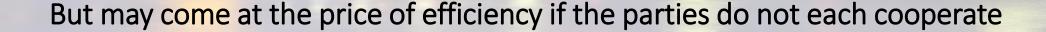


Institutional versus Ad Hoc

Ad hoc Arbitration

Maximum flexibility (no institutional K party)

Minimum cost



Though selection of "rules" may help



UNCITRAL Rules specifically tailored for this purpose

