



# The Arbitration Agreement

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# The Arbitration Agreement

An arbitration agreement is an autonomous agreement, separable from any contract under which the arbitral dispute arises





# The Arbitration Agreement

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



# The Arbitration Agreement

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



# The Arbitration Agreement

- ✓ 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

Typically, NO!

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

But may come at the price of efficiency if the parties do not each cooperate

Though selection of “rules” may help

UNCITRAL Rules specifically tailored for this purpose



