



# Competence-Competence & Separability

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# Competence-Competence

## UNCITRAL Model Law Article 16(1)

The arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement



# Competence-Competence

“Positive” aspect of competence-competence

The Tribunal has the “positive” power to decide the issue

This power is not exclusive to a court’s power to decide the same issue

A court will always have the power to decide at some point (except under US FAA)



# Competence-Competence

“Negative” aspect of competence-competence addresses issue of whether tribunal should decide prior to any court



# Separability

## UNCITRAL Model Law Article 16(1)

A decision by the arbitral tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause



# Separability

## UNCITRAL Model Law Article 16 (1)

If a tribunal exercises jurisdiction over substantive dispute, party may raise a defense with respect to the “validity” of the main contract containing the arbitration clause



# Separability

## UNCITRAL Model Law Article 16(1)

If a tribunal decides in favor of defense, the main contract containing the arbitration clause is rendered “invalid”

If “invalidity” also affected arbitration clause, tribunal’s decision would divest it of basis for jurisdiction

“Separability” saves the arbitration clause, thereby preserving the jurisdiction of the tribunal to issue an award





# Two Essential Attributes

Competence-Competence and Separability are each essential to modern arbitration



# Two Essential Attributes

Competence-competence  
essential to efficient dispute  
resolution and minimizing delay  
associated with jurisdictional  
challenges



# Two Essential Attributes

Separability essential to the tribunal's ability to address the parties claims fully, including any validity defenses, in a single final award



