DOWNLOAD PDF INTERNATIONAL COMMERCIAL ARBITRATION AND THE COURTS

Chapter 1 : The London Court of International Arbitration (LCIA)

International Commercial Arbitration Court. A law ought to be short, that it may be the more easily understood by the unlearned. The one who decides in any case.

International Commercial Arbitration Court Compared with litigation in national courts, international arbitration presents two distinct and crucial advantages. For example, an American party who contracts with a Chinese party may not want to litigate any disputes in the Chinese courts; likewise, the Chinese party may not want to litigate any disputes in the US courts. A party may want to avoid litigating disputes in a foreign court for various reasons: This is why parties end up negotiating an international arbitration clause as a compromise: Second, international arbitration awards can be enforced in nearly every country in the world. In international disputes, enforcement issues are complicated by the fact that there exist few international treaties that allow court judgments from one country to be easily enforced in another country. This often makes recovery of assets a complicated affair. By contrast, well over a hundred countries have signed an international treaty on enforcement of international arbitration awards, the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards or New York Convention for short. This treaty means that, subject only to limited circumstances, each signatory country must recognize and enforce arbitration awards. Thus, the New York Convention facilitates enforcement of arbitration awards worldwide. By way of example, consider a party who wins a dispute against another party whose assets are spread out in multiple countries. By contrast, if the winning party receives a favorable arbitration award, the New York Convention will make it easier for that party to recognize and enforce the award in the various countries. In turn, this means that it is more likely that the winning party will be able to recover the full amount of damages awarded to it by an arbitral tribunal. Arbitration presents other advantages. Principal among these are speed and cost efficiency. Generally, arbitration proceedings are subject to less formal rules and procedures than court litigation, which can help speed up a dispute. In addition, arbitration awards are generally not subject to appeals except for certain very narrow and limited grounds , which can also help bring down time and costs of a given dispute. However, these advantages are not automatic; rather, they depend upon the specific circumstances of the dispute, including the size of the dispute, whether the opposing party will try to obstruct the process, the particular rules chosen by the parties to govern the proceedings, and the selection of the arbitrators. A competent arbitration law firm will help navigate these issues and try bring a dispute to a close as quickly and cost-efficiently as possible. Finally, parties can select arbitrators with specialized knowledge about a certain issue or industry. This can be very advantageous for disputes in a highly specialized industry. By way of example, the coffee industry relies on specialized arbitrators who are also experts on the quality of coffee beans. Specialized arbitration institutions that deal with coffee disputes maintain rosters of arbitrators who must have a certain number of years in the coffee industry and meet other industry-related qualifications. Having a specialized arbitral tribunal adjudicate a dispute can save time and costs, because the parties do not need to spend resources educating the tribunal about the specific industry and type of dispute. Morever, having a specialized arbitral tribunal makes it more likely that the tribunal will arrive at a fair and correct result. When negotiating arbitration agreements, parties can specify that the tribunal members must have specific experience in an industry or type of dispute e. Of course, there are times when arbitration is not necessarily the right choice. In other words, if the costs of arbitration equal a very significant percentage of the amount in dispute, it does not make sense to arbitrate the dispute for either party. A party weighing the advantages and disadvantages of international arbitration must carefully consider the cost of arbitration as well as other factors. Again, a competent law firm can help a party weigh these pros and cons. International arbitration is a method for resolving business disputes between parties; it is an alternative to resolving disputes in court. Most often, international arbitration is created by contract: By including an arbitration clause, the parties agree to submit any future potential disputes to arbitration â€" that is, the disputes are to be decided by an arbitral

tribunal composed of one or more arbitrators selected by or on behalf of the parties. The arbitral tribunal will usually decide the dispute according to a set of rules for example, the ICC Rules of Arbitration that the parties have designated in the arbitration clause itself. In practice, arbitrations tend to take place in hotel or law firm conference rooms. The parties and the arbitral tribunal agree on a place and time to meet; once an arbitration proceeding begins, the arbitrator s will decide the dispute much as a judge would in court with some important differences, discussed below. The resulting decision, called an arbitration award, has the same binding force as a court judgment: This means that, subject to certain important limitations, an arbitration award will be recognized and enforced in the courts of virtually every country in the world. International arbitration has become a commonly used method of resolving disputes, especially in international contracts between parties from different countries. Indeed, international arbitration is often the only mutually agreeable means of resolving a dispute between two parties. Hassan is a regular presenter at conferences and seminars speaking on the many aspects of litigation, arbitration and dispute resolution in the Middle East. Since then it was no looking back for him and the firm has grown to have one of the best professional reputation in Dubai due to his professional attitude, hard work, honesty and integrity. With over 24 years of legal experience as a Licensed Advocate in the Courts of Egypt and of the UAE, he has independently handled Court litigation in UAE for sizeable private, multinational and corporate clientele, besides representing some Government Institutions. He is one of the respected leading Litigators in Dubai Courts and deals with all kinds of litigation in court. He handled several enforcement cases for Arbitration Awards issued by various arbitration centers and jurisdictions. He also participated in many Arbitration cases to represent one of the parties in the arbitration disputes. Being a voracious reader, he is able to discuss various topics, other than law, as well. He is very well read and highly intellectual. Protecting his reputation and that of his firm is the top most priority for him. He possesses the requisite skills to provide in-house legal services to overseas law firms as well. Memberships He is the youngest expatriate advocate holding a license to practice in Dubai Courts. He is a prominent member of Legal Researches and Studies Centre, Cairo and published many researches and studies in various branches of Law in Cairo. He has extensive experience in regulatory matters and has assisting local and federal governments on regulatory issues. Essam has acted as counsel and sat as arbitrator at a number of disputes regionally and internationally. He is actively involved in development of arbitration laws in the region and for the training and development of arbitration in the UAE and the region. His practice focuses primarily on local and international clients in shipping, banking, intellectual property, construction and commercial litigation. Essam has published a number of articles and books on litigation and arbitration in the UAE and setting up business in the region. He is on the editorial advisory board of the ICLR.

Chapter 2 : Jurisdiction of Indian Courts on International Commercial Arbitration - iPleaders

The International Court of ArbitrationÂ® is the world's leading arbitral institution. Since , we have been helping to resolve difficulties in international commercial and business disputes to support trade and investment.

Tweet on Twitter Image Source - http: ARBITRATION Arbitration is the settlement of disputes between the parties, in which the parties by mutual consent agree to submit the dispute to the one or more number of arbitrators who tries to settle the dispute between the parties by making a binding decision on the dispute. Arbitration is a way of settling the dispute outside the courts. Arbitration and Conciliation Act, amended in is an act that deals with domestic arbitration, international commercial arbitration and with the enforcement of foreign arbitral awards. International Commercial Arbitration, in this manner helps the parties get rid of the long and technical procedure of the courts. International Commercial Arbitration, unlike the pre-established rules and procedure of the law, works on the terms and the manner previously decided by the parties in the arbitration agreement. The whole procedure of arbitration revolves around the arbitration agreement previously signed between the parties and revolves around the same. The relation between the parties has to be a legal relationship, which may or may not be a contractual relation. International Commercial Arbitration â€" The Indian Perspective As mentioned above, international commercial arbitration is an arbitration that deals with commercial matters, wherein the parties may be of a foreign nation or a resident there or an association or a company incorporated there. The same analogy is followed by Indian law. When the seat of arbitration is in India but at least one of the parties is a foreign national, then such matters would be dealt under the provisions of ICA, i. However, if the seat of arbitration is outside India, then part 1 would not be applicable and such matters would come under the ambit of part 2 of the act. Notice of the Arbitration It is the first step in any arbitration proceeding. One party sends notice to the other party, asking for the settlement of the dispute through arbitration. Therefore, it implies the requirement of the following elements: There should be an intention of the party submitting the notice to refer the matter to arbitration. If these requirements are complied with then such judicial authority would not give any negative judgment, i. However, if the party fails to submit the original arbitration agreement or a duly certified copy thereof, then such application can be dismissed. If the original arbitration agreement or the certified copy is not available with the party or is retained by the other party, then in such a situation the party applying will submit the application along with the copy of the agreement and shall file a petition, praying to the court to order the other party to submit the original arbitration agreement or its duly certified copy, to the court. If the application that has been submitted under sub-section 1 is pending before the judicial authority, the parties may commence or continue the arbitration and an arbitral award can also be made. Under section 9, interim relief is granted to the parties by the court and under section 17, interim relief is granted by the arbitral tribunal. The objective of this provision is to provide security to the party seeking relief until the final decision is given. Appointment of arbitrators Section 11 of the act provides for the appointment of arbitrators. The arbitrator can be of any nationality unless otherwise agreed by the parties. The parties have to appoint one arbitrator each and both the arbitrators have to further appoint a third arbitrator, within thirty days, since the arbitrators are required to be an odd number. However, if there are even number of arbitrators, for example there are two arbitrators and both the arbitrators give the same decision, then, in that case, there is no boundation of having a third arbitrator. These are the basic two requirements that have to be there in an arbitrator. If he is found to be partial and dependent, then his appointment can be challenged. Moreover, if he does not possess the qualifications that are agreed to by the parties then in that case also his appointment as an arbitrator can be challenged. The arbitrator is also required to solve the dispute in a time bound period. Basics of the proceedings The parties are needed to be flexible in terms of the procedure, place and language of the arbitration. The arbitral tribunal has the power to decide that in what sequence the evidence are to be examined. The parties can also settle the dispute through a mutual consent or it can be settled by the arbitral tribunal a well. Cost of the arbitration The arbitral tribunal decides

the cost of the arbitration and that how much amount each party has to pay. If a party refuses or fails to pay the legal and administration fees, then the tribunal in such a case refuse to give the award. After refusing to pay, the parties can approach the court and the court can further give its decision on the cost. Application for setting aside arbitral award If a party is not satisfied with the decision of the tribunal then it can make an application to the court under section 34 of the act to set aside the arbitral award. For example, if the party making the application was not given proper notice of the appointment of the arbitrator, or if a party was under some incapacity, or if the arbitration agreement is not valid, or if the arbitral award is not related to the dispute, or is against the terms of submission to arbitration, or the matters that are not appropriate to submit to the arbitration. As per section 34 2-A , an arbitral award arising out of arbitrations other than international commercial arbitration may also be set aside, if the award made is illegal in nature. The application to set aside the award has to be made within three months from the date of receiving of the award, unless there is a sufficient reason due to which the party could not apply within the required time. In such a case the court can entertain the application to set aside the arbitral award within a further period of thirty days. Refusal to provide interim relief under section 9 and section 17 To set aside the arbitral award under section 34 [x] Finality and Enforcement of arbitral award The arbitral award becomes binding on both the parties under section 35 of the act and is considered to be the same as an order passed by a court of law based on the provisions of the Code of Civil Procedure, Facts In this case the parties had referred the case to arbitration as per the rules of the ICC of arbitration in Paris, with a sole arbitrator. The foreign party wanted to ensure that they receive the recovery of their claim from the Indian party and for that purpose it moved to Indian court for interim relief so as to secure its property. The same was opposed by the Indian party on the ground that as per the New York Convention Convention on Recognition and Enforcement of Foreign Arbitral Awards, concluded on 10th June, , there is no provision to claim interim measure through a court, other than the one where arbitration is taking place. Therefore, in this case the arbitration is taking place in Paris, thus the Indian court cannot be approached to claim the interim relief. The matter went to Supreme Court. The Supreme Court upheld the decision of the High Court. Kaiser Aluminium Technical Services. Facts The parties signed an agreement with respect to the supply of equipment, modernization and up-gradation of production facilities. However, disputes started arising and the dispute was referred to arbitration. The seat of the arbitration was in England and therefore the proceedings took place in England and the award was made in favour of the Respondent. Held The court held that Part 1 of the act would not apply to the cases where the seat of arbitration is outside India. It shall be applicable to only those arbitrations where the seat of the arbitration is India. No suit can be filed for interim relief in India under Part 1, when the seat of arbitration is not in India. This judgment will be applicable to the cases in which dispute took place after the decision of this case. The judgment will not have a retrospective effect. Thus it also increases the need of the international arbitrations, since with the increase in businesses on international level there is an increase in the disputes pertaining to international arbitration. It also provides a sense of protection to the parties and because of this parties can easily enter into agreements on international level. The judgment of the BALCO case holds importance with the view that parties while entering into arbitration do not want to face any inconvenient procedures. It is important that the judicial process is followed in the country where the arbitration is taking place in order to simplify the procedure for the parties in the cases of international commercial arbitration. Kaiser Technical Services, August 30th, ,

Chapter 3 : Commission IHRCJPI | American International Commercial Arbitration Court

The International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation. The International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Feder ation (the ICAC at the RF CCI) is an independent permanent arbitration institution located in Moscow, Russia.

The International Council for Commercial Arbitration provides links to regional and international arbitration treaties. Print resources containing treaty texts and bibliographies include International Arbitration Treaties Loukas Mistelis, et al, eds. The texts of most multilateral treaties can be found in commercial databases, such as Westlaw and Lexis, or on treaty depositary websites. The International Council for Commercial Arbitration provides a list of national arbitration laws on its website. A number of print resources include the texts or bibliographies of national arbitration laws, including International Commercial Arbitration Eric Bergsten and Clive M. Getting the Deal Through , available in print, by online subscription, or through Bloomberg Law, offers guides to arbitration in nearly fifty different countries, written by local practitioners. Each chapter includes a brief listing of the national laws relating both to domestic and foreign arbitral proceedings and to recognition and enforcement of awards. The rules of some of the key international arbitral institutions are also available through subscription databases such as WestlawNext and Lexis Advance. A number of print resources have also been created to assist researchers with finding and comparing the rules of different arbitral institutions. The World Arbitration Reporter: Kerr, et al, 3rd ed. The comparison is presented in chart format, with the provisions arranged by topic. A Comparative Guide Bridget Wheeler, discusses the rules of different arbitral institutions at each stage of the arbitration process. Unlike litigation proceedings, commercial arbitration proceedings are usually confidential. Decisions, awards, and other documents relating to arbitration proceedings are generally not published, and there is no centralized database or publication for researching arbitration proceedings. An increasing number of arbitral awards, however, can be found in commercial databases. WestlawNext and Lexis Advance both have arbitration sections containing both domestic and international arbitration awards. In WestlawNext, this section can be accessed through the Arbitration Materials link on the main page, which Lexis Advance requires browsing through the topical headings for International Law, Dispute Resolution, and Arbitration and Mediation. Both platforms offer an online tutorial to assist users with retrieving arbitration materials. Reports of International Arbitral Awards RIAA , available in print, in HeinOnline, and on the United Nations website, publishes arbitration decisions; however, it is limited to disputes between state parties and does not consider disputes involving private individuals or entities. Publishing of these decisions is not always comprehensive. Arbitral awards and related commentary can also be found in international arbitration law yearbooks and journals, such as the ones listed below.

Chapter 4 : Dispute Resolution - ICC - International Chamber of Commerce

Arbitration Rules. Current as of 1 March , the ICC Rules of Arbitration are used all around the world to resolve disputes. They define and regulate the management of cases submitted to our International Court of ArbitrationÂ®.

The SICC is intended to be the Asian centre for resolving international commercial disputes, in particular, international banking and financial disputes. Whilst Singapore has for some time enjoyed success as the leading regional centre for international arbitration, financial institutions have traditionally been resistant to arbitration, preferring litigation as their chosen method of dispute resolution. Accordingly, the SICC may be attractive to financial institutions as a new forum for international banking and financial disputes. The Singapore High Court has seen several high profile international banking and financial disputes in recent years. These include suits brought by Filipino, Taiwanese and Chinese investors against different international banks and a suit brought by a Singapore public-listed infrastructure company against a Middle Eastern-based bank arising out of credit facilities for a construction project in Libya. The number of cross-border disputes involving financial institutions is only set to increase as the Singapore government continues to actively promote Singapore as a major Asian financial centre. Singapore is home to over financial institutions offering a myriad of products and services across various asset classes. This includes over banks, a growing number of which have also chosen to base their operational headquarters in Singapore to service their regional group activities. Singapore is the third largest foreign exchange centre globally and the largest foreign exchange centre in Asia Pacific. Singapore is also ranked the largest over the counter OTC interest rate derivatives centre in Asia Pacific excluding Japan by turnover. Given this trend, the Singapore High Court may face increasingly technical and complex international banking and financial disputes. These features are discussed in more detail below. The judges of the SICC comprise both the local judiciary and a panel of international judges. The inaugural panel of eleven international judges contains both civilian and common law jurists from around the globe. Anselmo Reyes, former judge of the Court of First Instance in Hong Kong in charge of the construction and arbitration list and the commercial and admiralty list. Advantages of the SICC Rules and practice directions have been specifically formulated for the SICC and will provide it with the framework to hear cross-border commercial disputes. Some of the salient features are: Joinder of third parties â€" Unlike arbitration, the SICC has the power to join third parties to an action, even if the third parties are not parties to a written jurisdiction agreement and do not consent to being joined as a party. Arguably the SICC will not exercise this power if the third party will be in breach of an arbitration agreement. In any event, a State or the sovereign of a State may not be made a party to an action in the SICC whether by joinder or otherwise unless it has submitted to the jurisdiction of the SICC under a written jurisdiction agreement. As with arbitration, the SICC may allow parties to choose to apply alternative rules of evidence, with which they may be more familiar. The SICC may, upon the application of a party, order that any question of foreign law be determined on the basis of submissions, without requiring formal proof by experts. Confidentiality of Proceedings - Proceedings will generally take place in open court, but parties will have the option to apply for the proceedings to be confidential. In deciding to make a confidentiality order, the SICC will take into account whether: Right of Appeal - Decisions of the SICC may be appealed to the Singapore Court of Appeal, although parties will be allowed to contractually exclude or limit this right of appeal. If the parties agree in writing to waive, limit or vary the right to appeal against any judgment or order of the SICC, then an appeal may be brought only to the extent as agreed between the parties. Enforcement The Supreme Court of Judicature Amendment Act stipulates that parties who have agreed to submit to the jurisdiction of the SICC shall, unless expressly stated otherwise, also be considered to have agreed to submit to the exclusive jurisdiction of the SICC, to carry out any SICC judgment without undue delay and to waive any recourse to any court or tribunal outside Singapore against any SICC judgment and the enforcement of such a judgment. Their enforceability in a foreign jurisdiction would be dependent on the principles governing the recognition

of foreign judgments in that jurisdiction. This is a possible disadvantage of an SICC judgment compared to an arbitral award. The current disparity between the enforceability of SICC judgments and arbitration awards may restrict the circumstances in which parties will prefer the SICC to situations where enforcement will take place in Singapore itself, or in a country where parties are relatively confident a Singapore judgment will be enforced. For multi-party disputes involving jurisdictions that allow enforcement of Singapore judgments, the SICC may be preferred to arbitration.

Chapter 5 : Home - International Commercial Arbitration Guide - LibGuides at Cornell University

The International Court of Arbitration is an institution for the resolution of international commercial disputes. The International Court of Arbitration is part of the International Chamber of Commerce.

Amsterdam will soon be joining the likes of London , Dubai and Singapore when the new Netherlands Commercial Court opens its doors. This court shall be specialised in hearing complex international commercial cases. The Netherlands Commercial Court will offer parties to business and trade disputes a forum where they can litigate in English before neutral, specialist commercial judges, right in the heart of Europe. Legal proceedings in English English is indisputably the language of global business. Commercial contracts are frequently drafted in English, parties from countries with different languages communicate with each other in English. But when it comes to litigation, parties to cross-border disputes can be forced to conduct court proceedings in a language which they do not understand. The Dutch judiciary has decided to embrace English as the leading commercial language, establishing an English speaking court, the Netherlands Commercial Court here in Amsterdam. The court will provide an alternative to parties who want to litigate in English, but wish to avoid expensive forums such as London or the United States. The Netherlands Commercial Court is also an alternative for those parties who do not want to submit to arbitration, where proceedings are costly and outcomes may not be as predictable as before national courts. Procedural law in The Netherlands Dutch procedural law is recognised for being efficient, pragmatic and cost-effective. These orders can be attained with relative ease to prevent assets located in the Netherlands from being removed from the jurisdiction or otherwise disposed of pending the completion of proceedings. While such injunctions can be quite difficult to secure in English speaking common law jurisdictions, the Dutch courts award these arrest orders quite readily, giving plaintiffs in Dutch proceedings a high degree of security and certainty regarding their ability to execute a judgment if it is handed down in their favour. This makes The Netherlands a particularly attractive forum for claimants with a cause of action against a Dutch defendant. The Netherlands are also an ideal forum for litigation in which the defendant or its assets are not located in the Netherlands. It is little known that Dutch court judgments are amongst the most widely enforceable judgments worldwide. Thanks to instruments such as the Brussels Regulation , the Lugano Convention and the Hague Convention on the recognition and enforcement of foreign judgments in civil and commercial matters, Dutch court judgments are easily enforceable in over 30 other jurisdictions, including 5 outside the European Union. This makes a Dutch judgment enforceable and valuable well beyond the borders of The Netherlands. Why the Netherlands Commercial Court? Netherlands Commercial Court - the pros Specialized Dutch judges English or Dutch as the language of proceedings Effective and shorter proceedings Ability to bifurcate proceedings into a merits and quantification of damages phase Evidence may be tendered in French, German, English or Dutch, saving time and translation costs No risk of high adversary party costs award if its claim are dismissed Paperless litigation Recovery options prejudgment seizure Commercial Court or arbitration? Arbitration has become an extremely popular method of dispute resolution in international commercial matters for a number of reasons: The Netherlands Commercial Court will offer parties the ability to litigate in English before experienced judges with technical and commercial expertise and experience and to have their matter heard by the courts of a legal system which is unrivalled in terms of independence, efficiency and impartiality. Why litigate in The Netherlands? Dutch court judgments are easily enforceable in over 30 other jurisdictions, including the entire European Union and 5 other States on the basis of EU regulations, or bilateral or multilateral treaties. Planning of the Netherlands Commercial Court A launch date in is reported to be highly unlikely. Before the summer break, several members of the Senate Justice and Security Committee asked for clarification on certain issues in the pending NCC legislation. Notwithstanding the delays in the launch of the NCC, support for the first fully English language commercial court in the Netherlands remains strong. NCC and commercial litigation in the media and other resources.

DOWNLOAD PDF INTERNATIONAL COMMERCIAL ARBITRATION AND THE COURTS

Chapter 6 : American International Commercial Arbitration Court

International commercial arbitration is an alternative method of resolving disputes between private parties arising out of commercial transactions conducted across national boundaries that allows the parties to avoid litigation in national courts.

Chapter 7 : The International Commercial Arbitration Court

The new Singapore International Commercial Court (SICC) was officially launched on 5 January The SICC is intended to be the Asian centre for resolving international commercial disputes, in particular, international banking and financial disputes.

Chapter 8 : ICC International Court of ArbitrationÂ® - ICC - International Chamber of Commerce

International Commercial Arbitration is an arbitration where the matter involved is a cross-border dispute and the parties do not want to get into filing of case in national courts. International Commercial Arbitration, in this manner helps the parties get rid of the long and technical procedure of the courts.

Chapter 9 : International arbitration - Wikipedia

International Chamber of Commerce (ICC) Founded in and located in Paris, the Arbitration Court of the ICC is the leading and most renowned institution for administering international commercial arbitration cases in France, as well as Europe as a whole.