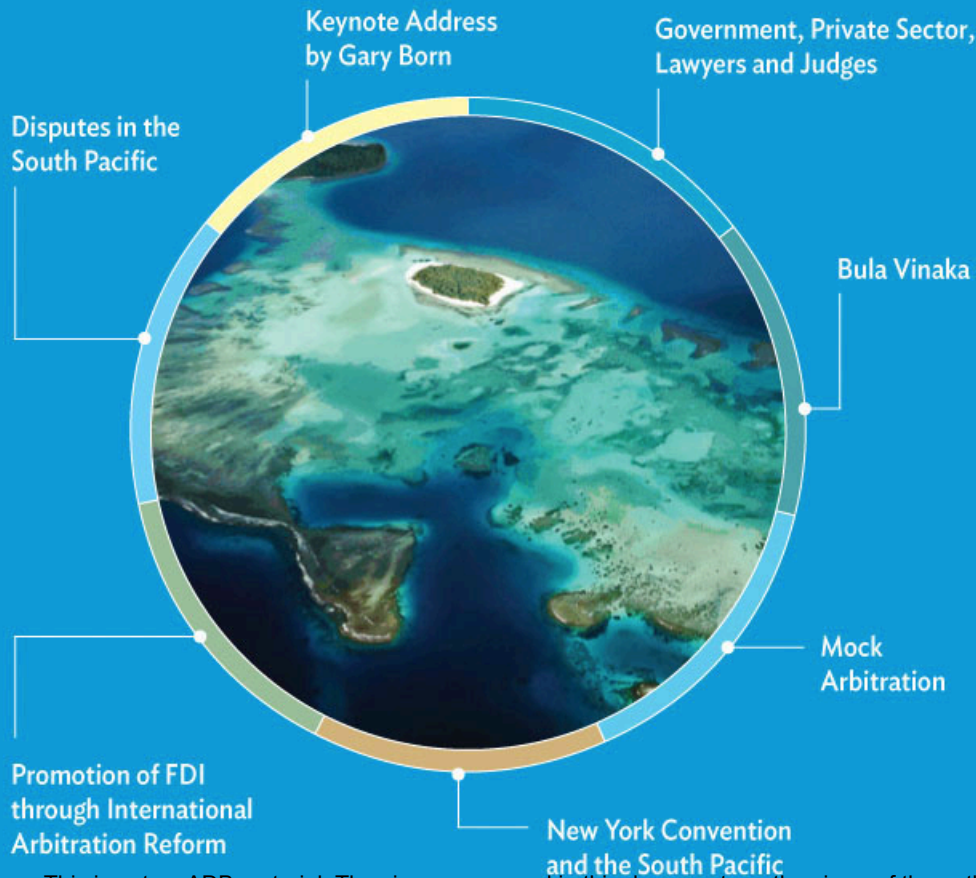


REGIONAL INTERNATIONAL ARBITRATION CONFERENCE

DAWN OF INTERNATIONAL ARBITRATION IN THE SOUTH PACIFIC

12 & 13 February 2018

Westin Denarau Island, Nadi, Fiji



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AD HOC AND INSTITUTIONAL ARBITRATION

Sarah Grimmer

12 February 2018



United Nations
UNCITRAL

It is arbitration that is:

- * administered by an arbitral institution
- * under the institution's arbitration rules or another set of rules

It is arbitration that is:

- * conducted by the arbitral tribunal without the involvement of an arbitral institution
- * pursuant to rules agreed by the parties or laid down by the arbitral tribunal

WHY IS THE DISTINCTION IMPORTANT?

- * Parties' informed decision-making
- * Implications for the court, tribunal, and institutions
- * In some jurisdictions, it has legal implications (Mainland China)
- * Both are recognised by the New York Convention, the UNCITRAL Model Law, Fijian International Arbitration Act 2017

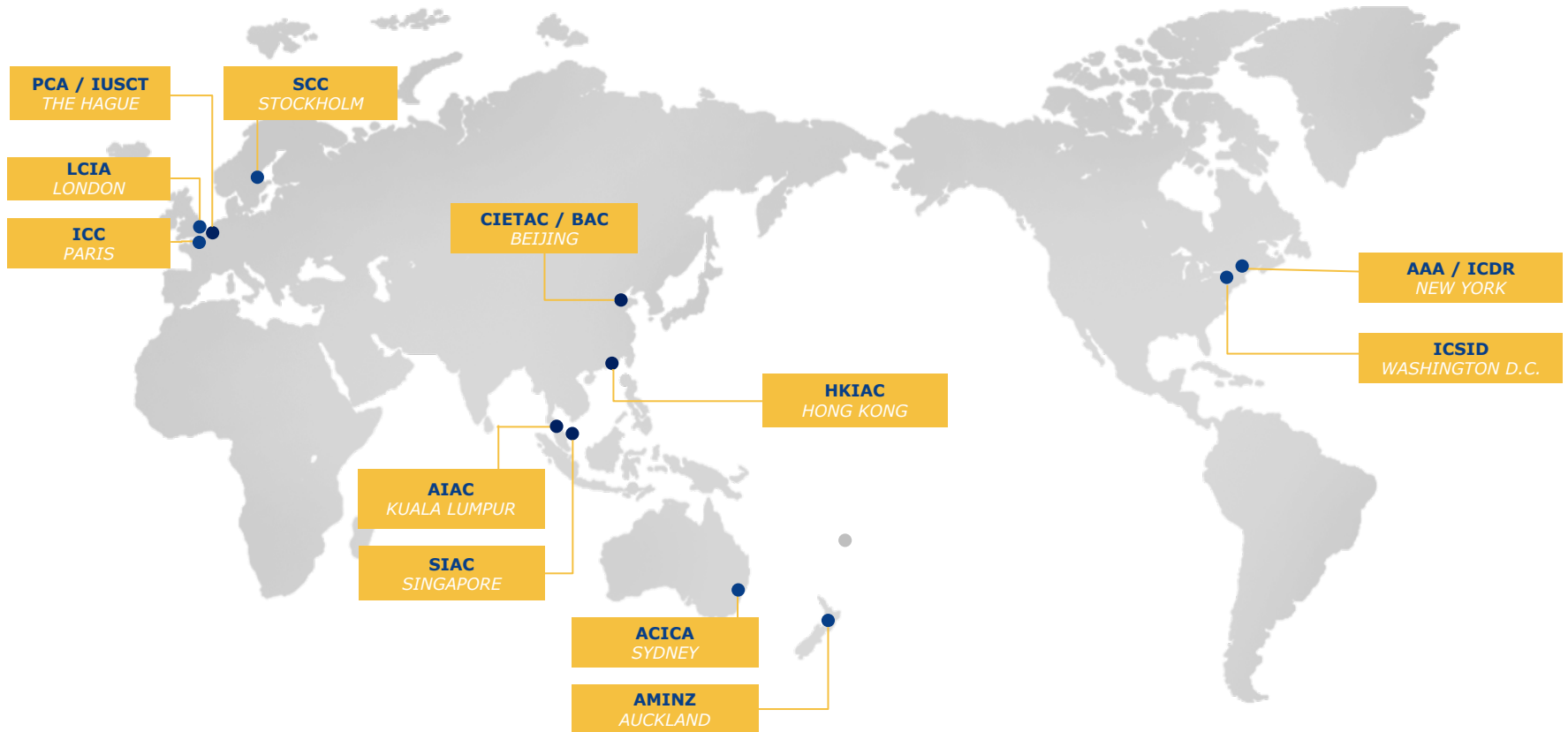
WHAT ARE THE ADVANTAGES OF INSTITUTIONAL ARBITRATION?

- * Tried and tested rules
- * Certainty and predictability when process blocked
- * Administrative support by qualified staff
- * Procedural oversight
- * Institutions better qualified than courts for some decisions
- * “Imprimatur” for award enforcement
- * Develop repositories of information

WHAT ARE THE DISADVANTAGES OF INSTITUTIONAL ARBITRATION?

- * Added cost of the institution
- * Possibility of delay because of the institution
- * Decisions of the institution may give rise to award challenge

ARBITRAL INSTITUTIONS



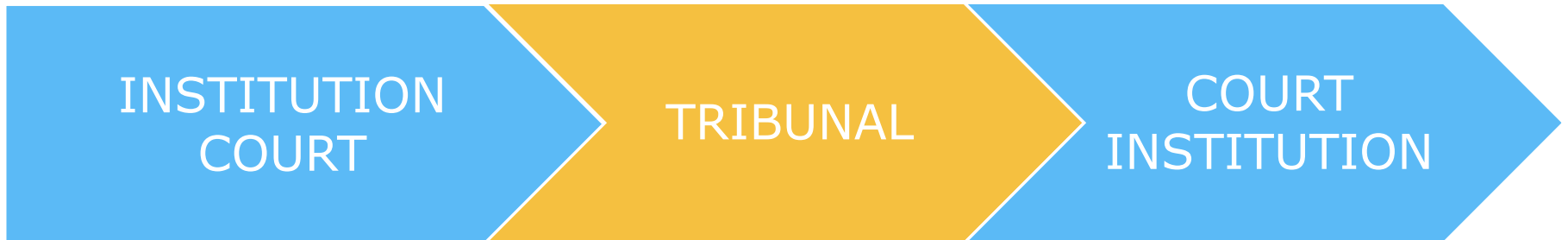
WHAT ARE THE ADVANTAGES OF *AD HOC* ARBITRATION?

- * Parties may develop their own procedure to fit the case
- * Avoids institutional costs
- * Avoids delays that may be attributable to an institution

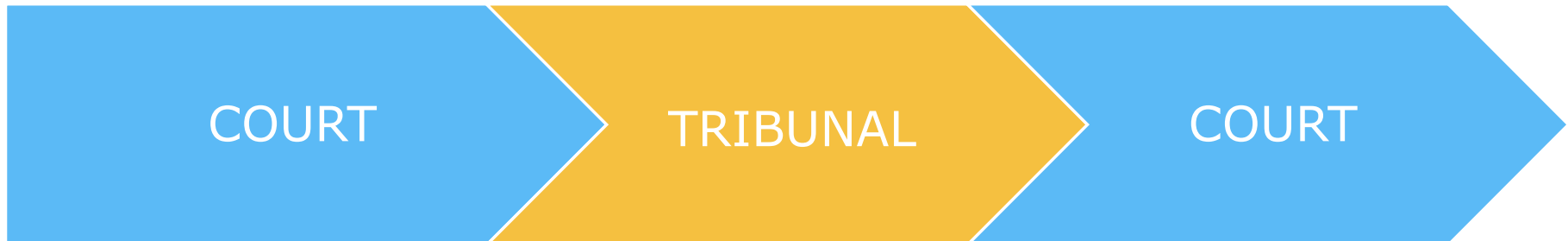
WHAT ARE THE DISADVANTAGES OF *AD HOC* ARBITRATION?

- * Relies more on party cooperation
- * Depends on quality of tribunal
- * Rules may not cover all eventualities

Institutional arbitration:



Ad hoc arbitration:



- * Decide the number of arbitrators
- * Appoint arbitrators
- * Decide on a challenge to an arbitrator
- * Decide to grant expedited proceedings
- * Decide whether to join a party to the proceedings
- * Decide whether to consolidate proceedings
- * Determine the arbitral tribunal's fees
- * Scrutinise/approve tribunal's award

- * Take charge of the proceedings
- * Establish a procedural timetable
- * Issue procedural directions
- * Grant interim measures
- * Rule on jurisdiction
- * Decide the dispute
- * Render award(s)

- * Refer parties to arbitration (Art.12(1))
- * **Appoint arbitrators (Art.16)**
- * **Decide on a challenge to an arbitrator (Art.18)**
- * **Decide whether the tribunal has jurisdiction (Art.22(4))**
- * **Grant interim measures (Art.33)**
- * Provide assistance with gathering evidence (Art.44)
- * Set aside an award (Art.53)
- * Refuse to recognise or enforce an award (Art.54)