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**REGIONAL  
INTERNATIONAL  
ARBITRATION  
CONFERENCE**

**DAWN OF  
INTERNATIONAL  
ARBITRATION  
IN THE  
SOUTH PACIFIC**

**12 & 13 February 2018**

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**INTRODUCTION TO INTERNATIONAL  
ARBITRATION**

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## What is International Commercial Arbitration?

Private, final and binding dispute resolution of commercial disputes between parties from different countries supported by an international legal framework

- Private in that disputes are not resolved within the court system but privately
- Final and binding in that with limited exceptions there is no appeal from an arbitral award and no appeal at all as to merits or law
- Usually commercial disputes as certain types of disputes are not capable of submission to arbitration
- International legal framework: New York Convention and UNCITRAL Model Law

# Where does Arbitration fit in the disputes hierarchy?



- Start with negotiations
- Perhaps escalate to mediation
- Choice of Expert determination;
- Arbitration; or
- Litigation
- But NEVER arbitration AND litigation



# Reasons to Choose Arbitration



## Why Arbitrate?

*“Arbitration is now the principal method of resolving international disputes involving states, individuals, and corporations” (Redfern & Hunter)*

- Neutrality of venue - called the ‘seat’ of the arbitration – but seat and venue can be different
- Choice of Arbitrator(s) – Sole Arbitrator or 3 person panel – expertise?
- Confidentiality of proceedings
- Speed – generally faster than courts, even commercial courts, less hearing days
- New Emergency Arbitrator Procedures

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# Enforcement



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**....but the real reason parties arbitrate**

*Enforceability of an award in 157  
countries thanks to the New York  
Convention*





## Enforcement of an Award vs Judgment

*For example in Australia - Foreign Judgments Regulation 1992 (Cth)*

Only 28 scheduled countries with reciprocity: outside of Commonwealth - Israel, Italy, Germany, Japan, Korea, Poland and Switzerland **but not Australia's largest trading partners China and USA.**

However: unlike an arbitral award limited to money sum judgments only



## **Arbitration is About Party Autonomy**

Parties can choose and tailor the way the dispute resolution process works

Parties might dispense altogether with disclosure/discovery

Parties might choose to 'fast track' their case

Parties might choose to dispense with witness evidence

However what looks simple on the outside is supported by national and international laws and treaties.



## Key Treaty and Model Law

- **Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York) known as the New York Convention**
  - Just 16 Articles
  - No cost, no reporting obligations
- **United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Arbitration 1985; amended in 2006 (Model Law)**
  - 78 States - 109 jurisdictions

# Flexibility of Hearings – Seat and Venue



- \* **Seat and Venue**
- \* Parties can agree to a 'seat' – usually in a neutral country.
- \* However parties can have hearings wherever they agree so as to minimise costs.

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# Questions



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