



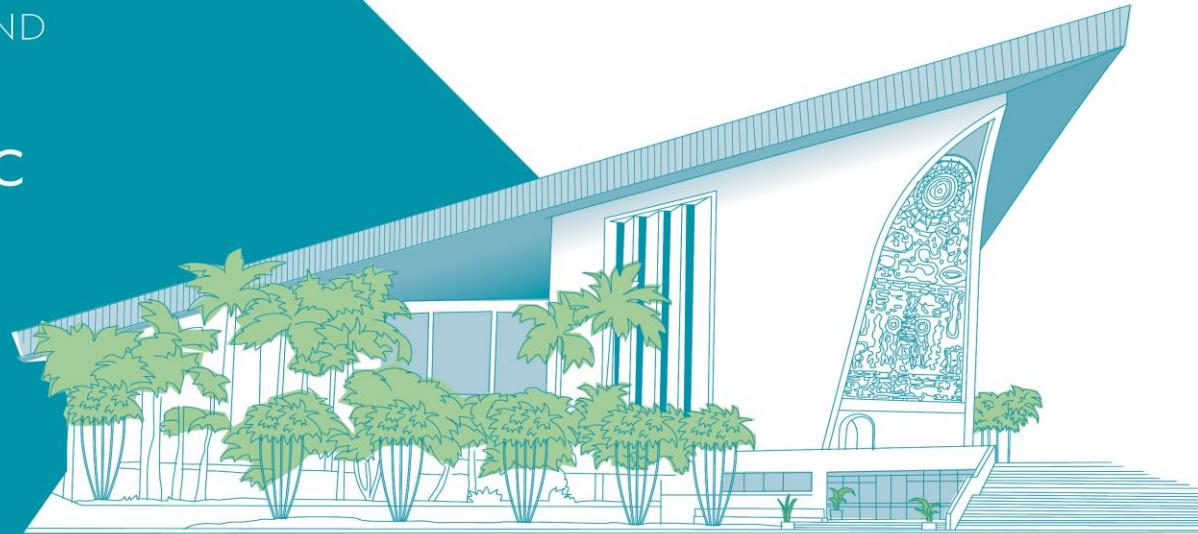
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INTERNATIONAL MEDIATION AND  
ARBITRATION CONFERENCE

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## AD HOC AND INSTITUTIONAL ARBITRATION

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# WHAT IS AD HOC ARBITRATION?

- ▶ 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

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# WHAT IS INSTITUTIONAL ARBITRATION?

- ▶ It is arbitration that is:
  - ▶ administered by an arbitral institution
  - ▶ under the institution's arbitration rules or another set of rules

# ARBITRAL INSTITUTIONS

PCA  
THE HAGUE

SCC  
STOCKHOLM

LCIA  
LONDON

ICC  
PARIS

CIETAC / BAC  
BEIJING

AAA/ICDR  
NEW YORK

ICSID  
WASHINGTON D.C.

HKIAC  
HONG KONG

AIAC  
KUALA LUMPUR

SIAC  
SINGAPORE

ACICA  
SYDNEY

NZIAC  
AUCKLAND

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# 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 and the UNCITRAL Model Law

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# 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

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# WHAT ARE THE DISADVANTAGES OF INSTITUTIONAL ARBITRATION?

- ▶ Added cost of the institution
- ▶ Possibility of delay because of the institution



# WHAT ARE THE ADVANTAGES AND DISADVANTAGES OF AD HOC ARBITRATION

## ► Advantages

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

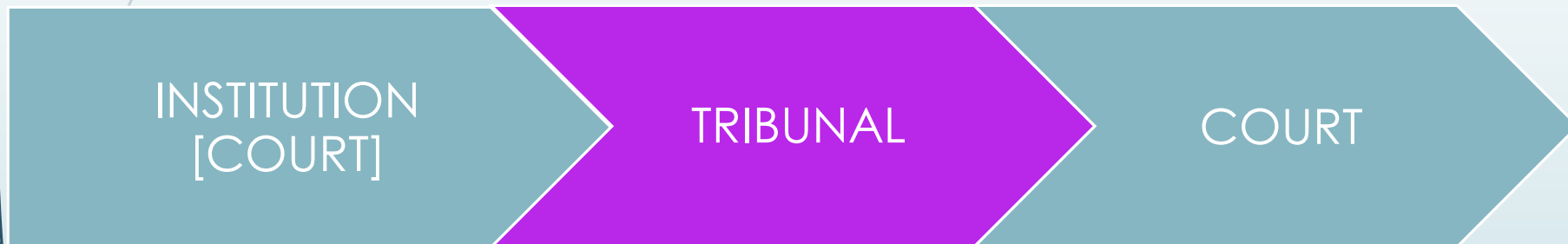
## ► Disadvantages

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

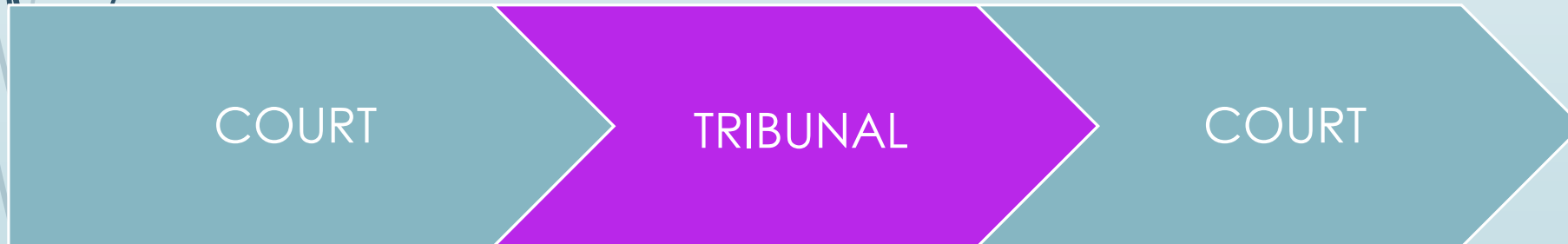


# THE ARBITRATION PROCESS

## ► Institutional Arbitration:



## ► Ad Hoc Arbitration:





# POWERS OF THE INSTITUTION

- ▶ 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

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# POWERS OF THE TRIBUNAL

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



# POWERS OF THE COURTS

- ▶ Refer parties to arbitration
- ▶ **Appoint arbitrators**
- ▶ **Decide on a challenge to an arbitrator**
- ▶ **Decide whether the tribunal has jurisdiction**
- ▶ **Grant interim measures**
- ▶ Provide assistance with gathering evidence
- ▶ Set aside an award
- ▶ Refuse to recognise or enforce an award



# CONCLUDING REMARKS



- ▶ Parties need to consider which entity they wish to give which decision-making power
- ▶ Regardless of type of arbitration, courts are final assessors of validity and enforceability of awards
- ▶ Courts can exist without arbitration but arbitration cannot exist without the courts
- ▶ If Courts have good law to apply, they can apply good law