



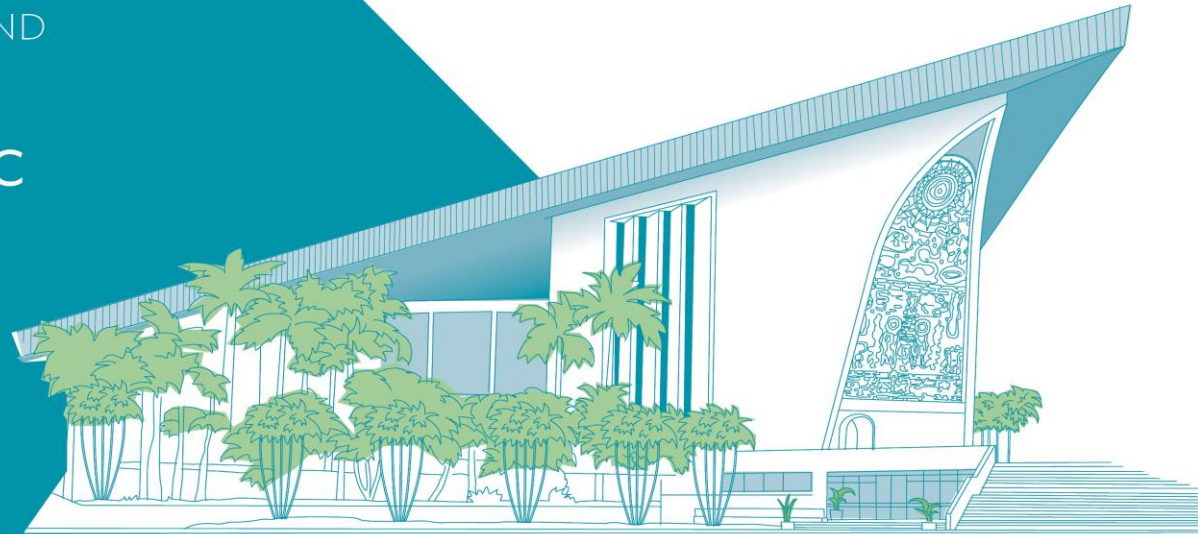
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INTERNATIONAL MEDIATION AND
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CONTRACTING WITH FOREIGN PARTIES & CROSS-BORDER DISPUTE RESOLUTION

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What is Arbitration?

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Arbitration

A procedure in which a dispute is submitted, by agreement of the parties, to one or more arbitrators who make a binding decision on the dispute.

In choosing arbitration, the parties opt for a private dispute resolution procedure instead of going to court.



How is it Different from Litigation?

	Litigation	Arbitration
Authority	Government	Parties
Procedure	Laws & Court Rules	Agreement & Arbitration Rules
Adjudicator	Judge	Arbitrator
Decision Binding?	Yes	Yes
Confidentiality	No	(Yes)
Finality	No	Yes



International Arbitration

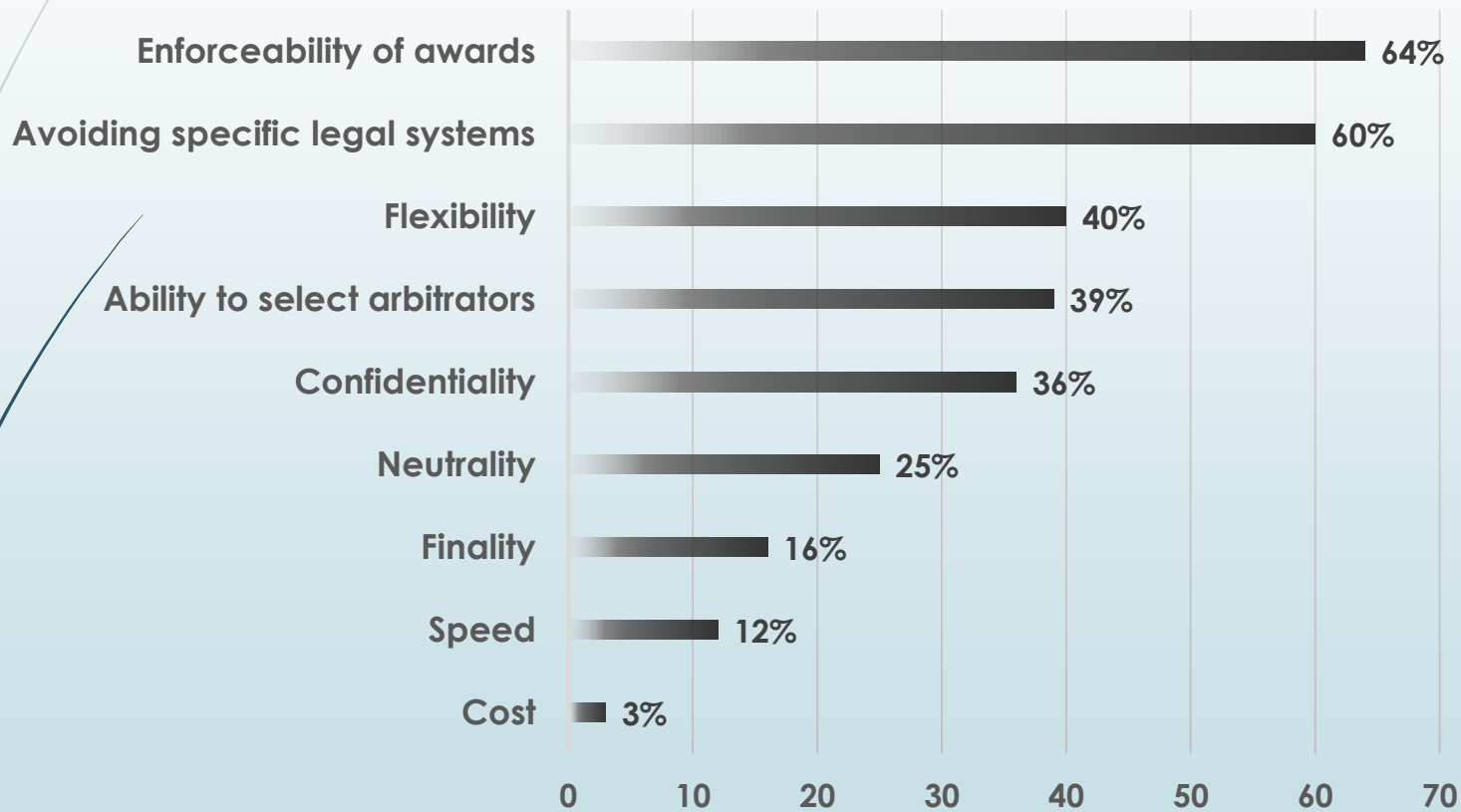
An arbitration is international if:


- (a) the parties to an arbitration agreement have, at the time of the agreement, their places of business in different States;
- (b) (i) place of arbitration, or (ii) place that has the closest connection to the dispute is situated outside the State in which the parties have their places of business;
- (c) the parties have expressly agreed that the subject matter of the arbitration agreement relates to more than one country.

Arbitration v. Litigation: In Cross-Border Disputes

	Litigation	Arbitration
Provisional Measures	Better	-
Evidence Collection	Depends	Depends
Time	-	Better
Cost	Depends	Depends
Procedural Flexibility	-	Better
Enforcement	-	Better
Other Factors	Neutrality, Expertise, Language, Governing Law	

International Arbitration: Perceived Advantages





International Arbitration: Is it Actually More Efficient?

- ▶ Methodology:
Measure time for resolving a commercial dispute between a Singaporean company and a South Korean company through a local first-instance court* or arbitration seated in a third country

- ▶ Assumptions:
 - (i) claim amount is KRW63,968,096 (apx USD56,000)
 - (ii) handled by court in largest business city
 - (iii) claim is disputed on merits
 - (iv) attachment/enforcement on assets in Korea
 - (v) no challenge to arbitration award
 - (vi) no appeal in enforcement proceeding

* More details can be found at: <http://www.doingbusiness.org/en/methodology/enforcing-contracts>

International Arbitration: Is it Actually More Efficient?

Court/ Arbitration	Filing/ Service	Trial/ Decision	Enforcement/ Execution	Total (Months)
Rep Korea	4 to 12 **	5	4	13 to 21
Singapore*	4 to 12 **	4	10 to 12 + 4	22 to 32
U.K.*	4 to 12 **	12	10 to 12 + 4	30 to 40
ICC Exp.	7 to 9		3 to 4 + 4	14 to 17
HKIAC	15 to 17		3 to 4 + 4	22 to 25
HKIAC Exp.	7 to 9		3 to 4 + 4	14 to 17
SIAC	12 to 14		3 to 4 + 4	19 to 22
SIAC Exp.	7 to 9		3 to 4 + 4	14 to 17

* Claim amount of SGD141,654 / GBP58,397 (i.e., 200% of income per capita)

** Assumes Hague Service Convention applies / Singapore is not a signatory

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What is an Arbitration Agreement?

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Arbitration Agreement

- A clause in a contract, by which the parties to a contract agree to submit to arbitration the disputes that may arise in relation to that contract.
- An agreement by which the parties to a dispute that has already arisen agree to submit the dispute to arbitration.

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Arbitration Agreement: Common Components

- Arbitral institution
- Arbitration rules
- Seat/place of arbitration
- Composition of tribunal
- Language of arbitration

... *and* Governing law?


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Arbitration Agreement: Key Considerations

- ▶ Nature, complexity and value of potential claims
- ▶ Speed at which decision is required
- ▶ Multi-party disputes
- ▶ Location of the relevant parties



Applicable laws

- Governing law of the underlying contract
 - Law of the seat/place of arbitration
 - Law of the arbitration agreement
 - Law of the enforcement jurisdiction
- 



Which Arbitration Rules
should I choose?

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Choosing the Right Arbitration Rules

- Who are the parties involved?
- Do the rules cater for the specific needs of the parties?
- What is the reputation and experience of the institution?
- How much institutional involvement will there be?
- How many arbitrators should there be in default of agreement?
- What will the fees and costs be and how are they calculated?



Institutional or Ad-hoc?

- ▶ UNCITRAL Arbitration Rules
- ▶ International Chamber of Commerce (ICC)
- ▶ Singapore International Arbitration Centre (SIAC)
- ▶ Hong Kong International Arbitration Centre (HKIAC)
- ▶ London Court of International Arbitration (LCIA)
- ▶ Australia Centre for International Commercial Arbitration (ACICA)




How to choose your Arbitrator?

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How to choose the Right Arbitrator?

- ▶ Nationality and language
- ▶ Professional qualifications and expertise
- ▶ Temperament and disposition
- ▶ Independence and impartiality
- ▶ Availability
- ▶ Relationship with other arbitrators



Where should your
Arbitration be
seated?

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Choosing the Right Seat

- ▶ Will the courts of the seat intervene in the arbitration?
- ▶ Does the legislation of the seat impose additional rules?
- ▶ Is the subject matter of the dispute arbitrable?
- ▶ To what extent can the arbitral award be challenged/appealed?
- ▶ How enforceable is the arbitral award?



What Makes a Good Seat: The London Principles

- An arbitration law providing a good framework for the process, limiting court intervention and striking the right balance between confidentiality and transparency
- An independent, competent and efficient judiciary
- An independent, competent legal profession with expertise in international arbitration

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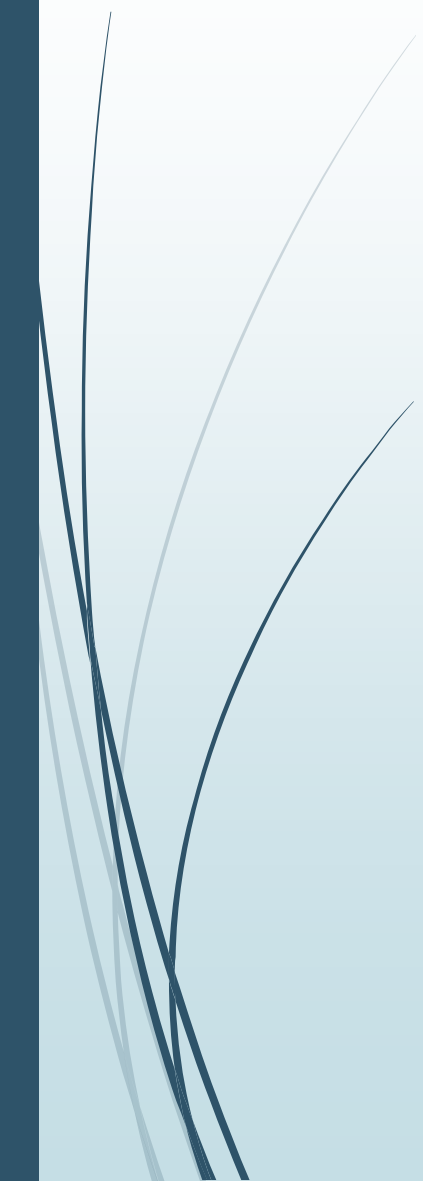
The London Principles

- The right to choose one's legal representative, local or foreign
- Ready access to the country for witnesses and counsel and a safe environment for participants and their documents
- Professional norms embracing diversity of legal and cultural traditions, and ethical principles governing arbitrators and counsel

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The London Principles

- Well-functioning venues for hearings and meetings
- Adherence to treaties for the recognition and enforcement of foreign awards and arbitration agreements



Some Intricate Issues



Other options

- The problem?
- The solution
 - Tiered dispute resolution clauses
 - Negotiations
 - Escalation
 - Mediation
 - Expert determination
 - Hybrid dispute resolution clauses

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Multi party and contract transactions

- ▶ The problem?
- ▶ The solution
 - ▶ Courts
 - ▶ Arbitration
 - ▶ Recent revisions to Rules
- ▶ Third Party Joinder



Expedited arbitration

- The problem?
- The solution
 - Size of Tribunal
 - Controlled timetable
 - No oral hearings
- Recent revisions to Rules
- Legal framework



Emergency Arbitrators

- ▶ The problem?
- ▶ The solution
 - ▶ The Courts
 - ▶ Arbitration Rules
 - ▶ Ex-parte?
 - ▶ The legal framework

Thank you



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