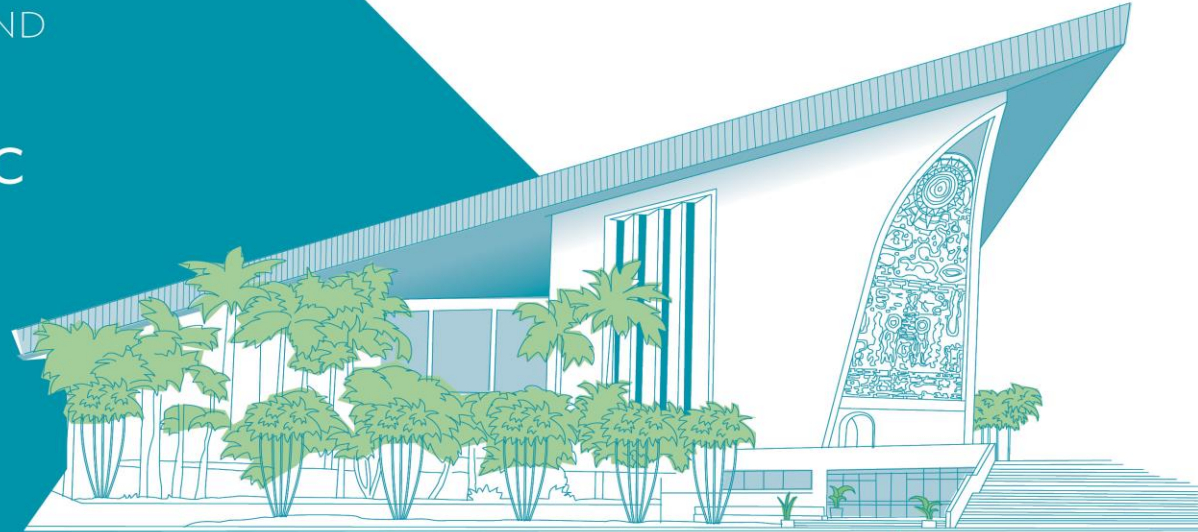




INTERNATIONAL MEDIATION AND
ARBITRATION CONFERENCE

2nd South Pacific International Arbitration Conference

25–26 March 2019
Stanley Hotel, Port Moresby
Papua New Guinea



DRAFTING OF ARBITRATION AGREEMENTS

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25-26 March 2019

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ICC STANDARD ARBITRATION CLAUSE

(Art. II NY Convention & Art. 7 UNCITRAL MODEL LAW:
an agreement in writing)

“All disputes arising out of or in connection with the present contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules.”

Recommendations:

place of arbitration
language of arbitration
applicable law

Additional indications:

Number of arbitrator (1 or 3)
Many other options
(cf. IBA guidelines for drafting
arbitration clauses)

ICC clause can be included in:

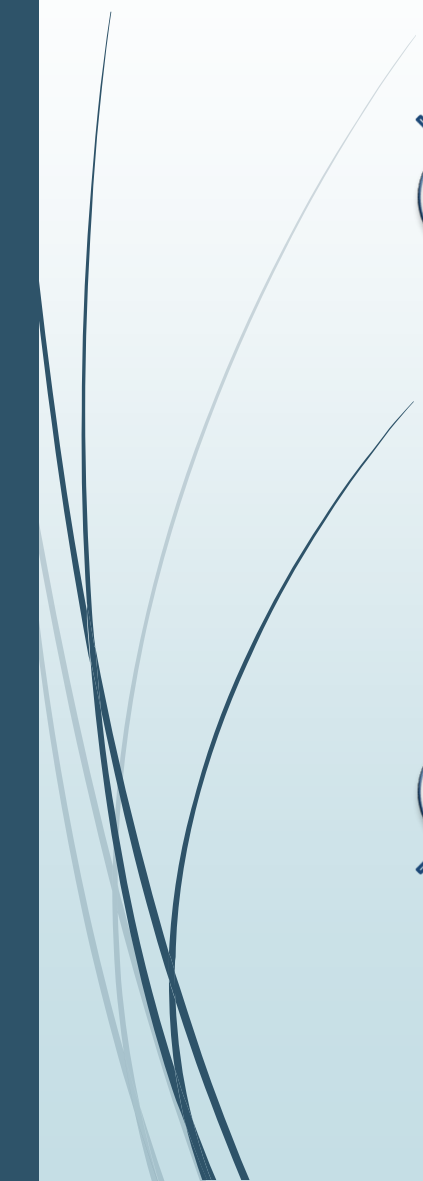
commercial contracts
ICC model contracts
general conditions (i.e. FIDIC)
BITs (reference to ICSID, ICC or both)

Possibility to opt out from Emergency
Arbitrator and Expedited Procedure

Possible escalation clauses :
optional or mandatory recourse to
ICC Mediation Rules
before arbitration or at the same time




BASIC OPTIONS

- 
- Institution (if any)
 - Place of arbitration
 - Number of arbitrators
 - Language of arbitration
 - Applicable law



ADVANCED OPTIONS

- 
- Method of constitution of the arbitral tribunal
 - Multi-tiered dispute resolution procedure
 - Confidentiality
 - Enforceability
 - Multi-party considerations
 - Modified time limits
 - Remedies/cost allocation



“HYBRID” ARBITRATION AGREEMENTS?

“Any and all such disputes shall be finally resolved by arbitration before the Singapore International Arbitration Centre in accordance with the Rules of Arbitration of the International Chamber of Commerce then in effect and the proceedings shall take place in Singapore and the official language shall be English [...].”

Insigma Technology Co Ltd v Alstom Technology Ltd [2009] SGCA 24, 2 June 2009:

“The role of the SIAC in the present case is precisely that of an administrator of arbitration proceedings to be conducted under the ICC Rules. The choice of a hybrid form of arbitration is a matter of agreement between the parties and is wholly consistent with the policy considerations we have noted [...] above.”



Insigma Technology Co Ltd v Alstom Technology Ltd [2009] SGCA 24, 2 June 2009

- ▶ *“Any dispute shall be settled by amicable negotiation between [the] two Parties. In case both Parties fail to reach [an] amicable agreement, all dispute [sic] out of in connection with the contract shall be settled by the Arbitration Committee at Singapore under the rules of The International Chamber of Commerce [the ICC Rules] of which awards shall be final and binding [on] both parties . . .”*
- ▶ Alstom initially commenced an ICC arbitration, requesting that the arbitral proceedings (“the ICC Arbitration”) be conducted in Singapore, under the ICC Rules, at the premises of the SIAC.
- ▶ Insigma objected in his answer to the ICC’s jurisdiction, arguing that the SIAC could administer the arbitration under the ICC Rules (=excluding its own rules). SIAC confirmed that it could. The case before ICC was withdrawn (at the suggestion of Insigma) and arbitration proceedings commenced at SIAC.
- ▶ Insigma then argued before the arbitral tribunal and, when the award was rendered, in setting aside proceedings before the Courts of Singapore that the “hybrid” arbitration clause was invalid and void for uncertainty.
- ▶ In a judgment dated June 2, 2009, the Singapore Court of Appeal upheld such “hybrid” arbitration clause, which provided that all disputes should be resolved by arbitration before the SIAC in accordance with the Rules of Arbitration of the ICC”



“HYBRID” ARBITRATION AGREEMENT?

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HKL Group Co Ltd v Rizq International Holdings Pte Ltd [2013] SGHCR 5, 19 February 2013:

“[...] given the defect in the arbitration clause, I impose the condition that parties obtain the agreement of the SIAC or any other arbitral institution in Singapore to conduct a hybrid arbitration applying the ICC rules, with liberty to apply should they fail to secure any such agreement.”



TWEAKS IN THE STANDARD CLAUSE

*“All disputes arising out of or in connection with the present contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by [**one or three arbitrators**] appointed in accordance with the said Rules. (depending upon the dispute, its complexity and the amount in dispute please choose either one or three arbitrators).*

*The law governing the contract shall be [**laws of Papua New Guinea/Singapore/English**] Law – (please choose either of these or any other laws of a country, depending on the particularities of the transaction)*

*The place (seat) of arbitration shall be [**Port Moresby/ Singapore / London, United Kingdom**] – (please choose either of these or any other city [country], depending on the particularities of the transaction)*

*The language of the arbitration shall be [**English**].”*

Other points you may wish to consider:

- Multi-tier arbitration clause with a provision for mediation (you will see these clauses on the ICC weblink provided above)
- Method of constitution of the arbitral tribunal (if it's a sole arbitrator- you may choose that *“The parties shall jointly nominate the sole arbitrator, failing which the ICC Court shall appoint a sole arbitrator on behalf of the parties.”* If it's three arbitrators, then you may choose that *“Each side shall nominate a co-arbitrator and the two co-arbitrators once confirmed shall jointly nominate the President of the arbitral tribunal”*)



Thank you!

Questions?



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