

Business Law

Module 13 [Settlement of International Business Disputes: ADR, Litigation, International Commercial Arbitration]

The module covers basic binding and ADR dispute settlement options, which might be used in the resolution of international commercial disputes. Having provided an overview of varied mechanisms, including a recap on litigation and its potential drawbacks, the module focuses on international commercial arbitration – a mainstream dispute resolution technique in international business.

Basic Notions:

ADR

Pros and cons of ADR

Binding Dispute Settlement Mechanism

Negotiations

Mediation

Conciliation

Dispute Boards

Expertise

Mini-Trial

Litigation

Arbitration

Investment Arbitration

Commercial Arbitration

International Arbitration

Domestic Arbitration

Interstate Arbitration

Institutional Arbitration

Ad-hoc Arbitration

New York Convention on Recognition and Enforcement of Foreign Arbitral Awards

UNCITRAL Model Law on International Arbitration

National Arbitration Law

Arbitration Rules

Arbitration Institution

Precedents in arbitration

Main characteristics of arbitration

Dispute

Settlement

Arbitration agreement (arbitration clause)

Formal requirements to the arbitration clause

Defects in the arbitration clause / pathological arbitration clause

Competence – competence (“positive” and “negative”)

Confidentiality in international arbitration

Court assistance

Formation of the arbitral tribunal

Arbitration Procedure

Applicable procedural law

Applicable substantive law

Mandatory rules of law

Public Policy

Interim measures of protection

Costs of Arbitration

Arbitrators' fees

Annulment (set aside) proceeding

Waivers of annulment in full or in part

Recognition and enforcement of foreign arbitral awards

Conflicts of interest in international arbitration

IBA Guidelines of conflicts of interest in international arbitration and similar developments

Taking evidence in international arbitration

IBA Rules on taking evidence in international arbitration

General Reference Materials:

Black's Law Dictionary Free Online Legal Dictionary 2nd Ed.:

<http://thelawdictionary.org/#ixzz2dKQavCad>

Articles, Book Chapters, Other Overviews and Summaries

Dispute Settlement Handout

Bergsten E, Overview, International Commercial Arbitration, UNCTAD Course on Dispute Settlement, http://unctad.org/en/docs/edmmisc232add38_en.pdf

Caivano, R, The Arbitration Agreement, International Commercial Arbitration, UNCTAD Course on Dispute Settlement, http://unctad.org/en/docs/edmmisc232add39_en.pdf

Garro, A.M., Arbitral Tribunal, International Commercial Arbitration, UNCTAD Course on Dispute Settlement, http://unctad.org/en/docs/edmmisc232add36_en.pdf

Tan, R., Arbitration Proceedings, International Commercial Arbitration, UNCTAD Course on Dispute Settlement, http://unctad.org/en/docs/edmmisc232add36_en.pdf

Jacquet, J-M., Applicable law, International Commercial Arbitration, UNCTAD Course on Dispute Settlement, http://unctad.org/en/docs/edmmisc232add40_en.pdf

Aboul-Enein, M., Making the Award and Termination of Proceedings, International Commercial Arbitration, UNCTAD Course on Dispute Settlement, http://unctad.org/en/docs/edmmisc232add41_en.pdf

Šarčević, P., Recognition and Enforcement of the Award, International Commercial Arbitration, UNCTAD Course on Dispute Settlement, http://unctad.org/en/docs/edmmisc232add37_en.pdf

Correa, R. P., Court Measures, International Commercial Arbitration, UNCTAD Course on Dispute Settlement, http://unctad.org/en/docs/edmmisc232add42_en.pdf

Prelims, NEW YORK CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS – COMMENTARY-, edited by Reinmar Wolff; C.H. Beck-Hart-Homos, 2012 (handout)

Guglya, Leonila, Conflicts of Interest in Arbitration: The News from the Russian Federation. Czech (& Central European) Yearbook of Arbitration, Vol. 1, pp. 107-122, 2011 . Available at SSRN: <http://ssrn.com/abstract=1795642>

Guglya, Leonila, Waiver of Annulment Action in Arbitration: Progressive Development Globally, Realities in and Perspectives for the Russian Federation (Different Beds – Similar Dreams?) Czech (& Central European) Yearbook of Arbitration, Vol. 2, pp. 81-105, April 2012. Available at SSRN: <http://ssrn.com/abstract=2260561>

Dispute Settlement Mechanisms (handout)

Legal Instruments

IBA Guidelines on Conflict on Interests in International Arbitration (handout)

IBA Rules on Taking Evidence in International Arbitration (handout)

UNCITRAL Model Law on International Arbitration 1985, as revised in 2006
http://www.uncitral.org/pdf/english/texts/arbitration/ml-arb/07-86998_Ebook.pdf

ICC Arbitration Rules (2012) (handout)

New York Convention on Recognition and Enforcement of Foreign Arbitral Awards (handout)