



Transnational civil litigation and International commercial arbitration

Exercise on Arbitration Clauses

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DRAFTING A VALID ARBITRATION AGREEMENT

- Essential element of any arbitration agreement
 - Agreement to arbitrate - *All disputes arising out of this Agreement shall be finally resolved by arbitration*
- Incidental elements of an arbitration agreement
 - Seat of arbitration - *All disputes arising out of this Agreement shall be finally resolved by arbitration. **The seat of arbitration shall be London, England***
 - *[Any disputes arising from this contract shall be resolved through arbitration in London]. What do you think of such a drafting?*
 - Appointment and numbers of arbitrators - *All disputes arising out of this Agreement shall be finally resolved by arbitration. The seat of arbitration will be in London, England, and the arbitral tribunal shall consist of three arbitrators, one appointed by the claimant and named in the notice of arbitration, the second appointed by the respondent within 14 (fourteen) calendar days of receipt of the notice of arbitration, and the third, who shall act as presiding arbitrator, appointed by the two parties within 14 (fourteen) calendar days of the appointment of the second arbitrator*

DRAFTING A VALID ARBITRATION AGREEMENT

- **Incidental elements of an arbitration agreement**

- Language of arbitration - *All disputes arising out of this Agreement shall be finally resolved by arbitration. The seat of arbitration will be in London, England, and the arbitral tribunal shall consist of three arbitrators, one appointed by the claimant and named in the notice of arbitration, the second appointed by the respondent within 14 (fourteen) calendar days of receipt of the notice of arbitration, and the third, who shall act as presiding arbitrator, appointed by the two parties within 14 (fourteen) calendar days of the appointment of the second arbitrator. **The language of the arbitration shall be English***
- Institutional arbitration - *All disputes arising out of this Agreement shall be resolved by arbitration **under and in accordance with the LCIA Rules, which Rules are deemed to be incorporated by reference into this clause.** The number of arbitrators shall be three. The seat of arbitration shall be London. The language to be used in the arbitral proceedings shall be English*
- Governing law - *All disputes arising out of this Agreement shall be finally resolved by arbitration. The seat of arbitration will be London, England, and the arbitral tribunal shall consist of three arbitrators, one appointed by the claimant and named in the notice of arbitration, the second appointed by the respondent within 14 (fourteen) calendar days of receipt of the notice of arbitration, and the third, who shall act as presiding arbitrator, appointed by the two parties within 14 (fourteen) calendar days of the appointment of the second arbitrator. **The governing law of this agreement, including this arbitration clause, shall be the law of Italy***

DRAFTING A VALID ARBITRATION AGREEMENT

- Objective scope of arbitration agreement
 - Narrow scope
 - *All disputes arising out of this Agreement shall be finally resolved by arbitration.*
 - Broad scope
 - *All disputes arising out of **or in connection with** this Agreement, **including existence, validity, performance and termination thereof**, shall be finally resolved by arbitration.*
 - *All disputes arising out of or in connection with this Agreement (**including a dispute relating to non-contractual obligations arising from or in connection with this Agreement**, or a dispute regarding the existence, validity or termination of this Agreement), shall be finally resolved by arbitration*

MULTI TIER ARBITRATION AGREEMENTS

- **Negotiations before arbitrations**

- *The Parties undertake **to make in good faith every reasonable effort to resolve amicably any dispute** arising from or in connection with this Agreement by means of negotiations between themselves. In the event of the failure of negotiation within [20] working days from the written request submitted by either Party to start negotiations in good faith on a given dispute, the dispute shall be finally settled by arbitration in accordance and under the Rules of Arbitration of the International Chamber of Commerce. The arbitral tribunal shall be composed of three arbitrators appointed in accordance with these Rules, and the seat of arbitration shall be London, England.*

- **Negotiations, mediation and then arbitration**

- *The Parties undertake to make in good faith every reasonable effort to resolve amicably any dispute arising from or in connection with this Agreement by means of negotiations between themselves. In the event of the failure of negotiation within [20] working days from the written request submitted by either Party to start negotiations in good faith on a given dispute, **the parties shall first refer the dispute to proceedings under the ICC Mediation Rules.** If the dispute has not been settled pursuant to the said Rules within [45] days following the filing of a Request for Mediation, the dispute shall be finally settled by arbitration in accordance and under the Rules of Arbitration of the International Chamber of Commerce. The arbitral tribunal shall be composed of three arbitrators appointed in accordance with these Rules and the seat of arbitration shall be London, England.*

PATHOLOGICAL ARBITRATION CLAUSES

- All **disagreement** arising out of or in connection with this agreement **may be** resolved by arbitration. Courts of England shall have exclusive jurisdiction over any **disputes** unresolved
- All disputes arising out of or in connection with this agreement shall be **settled** by means of **negotiations** between parties before an **independent arbitral tribunal** composed of three members
- All disputes arising out of or in connection with this agreement will be **referred to the International Chamber of Commerce**
- All disputes arising out of or in connection with this agreement shall be finally resolved **by litigation before the courts of Italy or by arbitration**
- **Prior to any judicial proceeding**, parties shall submit their disputes to an arbitral tribunal composed of three members. **If the dispute cannot be settled by arbitrators, only the Courts of England will have jurisdiction**