

Table of Contents

Preface	V
Overview	VII
List of Abbreviations	XXXIII
List of Authors	XXXIX

PART 1 INTRODUCTION

§ 1. Best practice in international arbitration: comparative reflections on the UNCITRAL Model Law	1
I. Introduction	3
II. The principles of international commercial arbitration	5
1. International commercial arbitration: A definition	5
2. The legal framework	7
3. The territoriality principle and the place of arbitration	7
4. Ad hoc and institutional arbitration	8
5. Advantages and disadvantages of international commercial arbitration	9
a) Practicability	9
b) Party autonomy and neutrality of the forum	10
c) Efficiency	10
d) Confidentiality	10
e) Cross-border enforcement regime	11
f) Multi-party proceedings and summary judgments	11
III. The arbitration agreement	12
1. The doctrine of separability	12
2. The law governing the arbitration agreement	12
a) Formation and interpretation of the arbitration agreement	12
b) Agency	13
3. The validity of the arbitration agreement	14
a) Capacity	14
b) Arbitrability	14
c) Form	15
d) Arbitration agreements that are invalid, inoperative or incapable of being performed ...	16
e) Termination	16
4. The interpretation and the scope of the arbitration agreement	17
a) Substantive scope (scope <i>ratione materiae</i>)	17
b) Personal scope (scope <i>ratione personae</i>)	18
c) Pathological arbitration clauses	19
d) Multi-tier clauses	19
5. The effect of the arbitration agreement	20
a) Enforcing the arbitration agreement and Kompetenz-Kompetenz	20
b) Anti-suit injunctions and other strategies for enforcing arbitration agreements	21
c) Preclusion of jurisdictional defences	22
d) Binding effect of state court decisions on jurisdiction	23
6. Drafting arbitration clauses: A checklist	23
IV. The arbitral tribunal and the conduct of arbitral proceedings	24
1. The arbitral tribunal	25
a) Constitution and number of arbitrators	25
b) Qualifications, impartiality and independence of the arbitral tribunal	25
c) Procedural issues	26
2. The conduct of the arbitral proceedings	27
a) Request for arbitration, statements of claim and defence, hearings, default	27
b) Equality of arms, fair trial principles and the right to be heard	28
c) Confidentiality	28
d) The arbitral award	28
e) Termination	29
f) Costs	29

Table of Contents

3. Evidence, discovery, disclosure	29
4. The law governing the dispute and lois de police	30
5. Interim relief in arbitration	30
6. Multi-party arbitration	31
V. The review and the enforcement of arbitral awards	32
1. Correction and interpretation of arbitral awards	33
2. Review of arbitral awards before the state courts	33
a) General principles	33
aa) No review of the merits	33
bb) Procedural framework	34
b) Grounds for setting aside arbitral awards	35
aa) Lack of jurisdiction	35
bb) Erroneous denial of jurisdiction	36
cc) Composition of the arbitral tribunal and procedural errors	36
dd) Breach of the right to be heard	37
ee) Public policy	38
3. Enforcement of arbitral awards	39
a) General procedural framework	39
b) Defences to enforcement under article 36 ML	40
c) Stay of enforcement pending setting aside proceedings	41
d) Enforcement of awards that have been set aside	41
4. Preclusion, waiver, estoppel	41
a) Failure to object in arbitral proceedings	41
b) Failure to apply to have the award set aside	41
c) Recognition of foreign decisions, res judicata and estoppel	42
VI. Conclusion	42

PART 2

INTERNATIONAL CONVENTIONS AND TREATIES

§ 2. International Commercial Arbitration: The New York Convention	45
I. General	50
1. General purpose and scope of the New York Convention	50
2. History of the Convention	51
3. Status and implementation of the Convention into the national law of the Contracting States	51
4. Interpretation of the Convention	52
5. Relationship to other sources of law	53
II. Scope of application of the Convention	54
1. General	54
2. Temporal applicability	54
3. Applicability to the recognition and enforcement of arbitral awards	55
a) Overview of the requirements	55
b) The territorial scope of application	55
aa) General	55
bb) Article I(1) s. 1 NYC: Foreign awards ("awards made in the territory of another State")	56
(1) General	56
(2) Determination of the place where the award was made	56
cc) Article I(1) s. 2 NYC: Non-domestic awards ("awards not considered as domestic awards")	57
(1) General	57
(2) Specific applications	58
dd) Applicability to "a-national" or "transnational" awards	60
c) The kinds of awards covered by the Convention	61
aa) General considerations	61
bb) Resolution of a legal dispute	62
cc) Authority derived from the autonomy of the parties	63
dd) Further elements relating to the existence of an "arbitral award"	64
(1) Regarding the arbitral tribunal	64
(2) Regarding the parties	65
(3) Regarding the nature of the legal dispute	65
ee) Requirements with regard to the content of the decision	65

Table of Contents

(1) General considerations – the requirement of a “final and binding” award	65
(2) Partial awards	67
(3) Interim awards	67
(4) Provisional measures	68
(5) Decisions with merely contractual force	69
(6) Extension of scope of application by other law	70
d) Reservations, article I(3) NYC	70
aa) General	70
bb) Reservation of reciprocity (s. 1)	70
cc) Commercial dispute reservation (s. 2)	71
dd) Interaction of both reservations	72
4. Applicability to the recognition of arbitration agreements	72
a) General considerations	72
b) Territorial scope of application	73
c) Application of the reservations to the enforcement of arbitration agreements	74
III. Recognition of Arbitration Agreements	74
1. General	74
a) Structural considerations	74
b) Situations in which article II applies	75
2. Validity of the arbitration agreement	76
a) General principles	76
b) Separability doctrine	78
c) Form of the arbitration agreement	78
aa) The “in writing” requirement of article II NYC	78
bb) Agreement signed by both parties	78
cc) Exchange of letters or telegrams	79
dd) Arbitral clauses contained in general terms and conditions	81
ee) Approaches towards a liberalization of the Convention’s form requirements	82
d) Substantive validity in general	84
aa) Autonomous substantive requirements of article II NYC	84
bb) Determination of the applicable law	84
cc) Provisions on the protection of the weaker party	85
e) Subject matter capable of settlement by arbitration (“objective arbitrability”)	86
f) Capacity of the parties to arbitrate	87
g) Agency	88
h) Effectiveness of the arbitration agreement for and against third parties	88
i) Public policy	89
3. Determination of the scope of the arbitration agreement	89
4. Other objections to the recognition of arbitration agreements, in particular: arbitration agreements “incapable of being performed”	90
5. Cure of defective arbitration agreements, preclusion with regard to the defence of invalidity of the arbitration agreement	92
a) General considerations	92
b) Cure of an initially defective arbitration agreement	92
c) Procedural preclusion	92
d) Good faith	93
6. Referral to arbitration	93
a) General	93
b) Relationship between national court and arbitral tribunal	94
7. More favourable law	95
IV. Recognition and Enforcement of Arbitral Awards	96
1. The obligation to recognize and enforce foreign arbitral awards, article III NYC	96
2. Formal requirements for recognition and enforcement, article IV NYC	97
a) General	97
b) Presentation of the arbitral award, article IV(1)(a) NYC	98
c) Presentation of the arbitration agreement, article IV(1)(b) NYC	98
d) Exceptions to the requirements of article IV(1) NYC	99
e) Submission of a translation, article IV(2) NYC	100
f) More favourable law	100
3. Grounds for refusal of recognition and enforcement of arbitral awards, article V NYC	100
a) General principles	100
aa) Exhaustive grounds for refusal, narrow interpretation	100

Table of Contents

bb) Prohibition of a "révision au fond"	100
cc) Discretion to enforce awards despite the existence of a ground for refusal?	101
dd) Establishing defences and burden of proof	102
ee) Waiver and preclusion	103
(1) General	103
(2) Party agreement (waiver)	103
(3) Failure to make a timely objection to the arbitral tribunal	104
(4) Failure to take recourse against the award in the country of origin	105
(5) Good faith	106
ff) Partial recognition and enforcement	106
gg) Relevance of decisions by the arbitral tribunal or national courts	106
(1) General	106
(2) Decisions by the arbitral tribunal	106
(3) Decisions by national courts	107
b) Lack of a valid arbitration agreement, article V(1)(a) NYC	108
aa) General	108
bb) Form	109
cc) Substantive validity	109
dd) Capacity to conclude an arbitration agreement	110
ee) Objective arbitrability	111
ff) Other defects of the arbitration agreement	111
gg) More favourable law, article VII(1) NYC	111
c) Violation of "due process", article V(1)(b) NYC	112
aa) General principle and applicable standard	112
bb) Elements of "due process"	114
(1) General	114
(2) Proper notice	115
(3) Right to present case	116
cc) Causality	118
dd) Waiver and preclusion	118
d) Excess of the submission to arbitration, article V(1)(c) NYC	118
aa) General	118
bb) Application of incorrect rules to the substance of the dispute	120
cc) Decisions ultra and infra petita	122
dd) Time limits	123
e) Improper composition of the arbitral tribunal and improper proceedings, article V(1)(d) NYC	123
aa) General	123
bb) Applicable standard	123
(1) General principles	123
(2) Party autonomy and mandatory rules of the place of arbitration	124
cc) Limitations to the relevance of procedural irregularities	126
f) Award not yet binding or no longer binding, article V(1)(e) NYC	126
aa) General	126
bb) Award not binding	127
(1) General considerations	127
(2) Formal requirements for the making of the award	129
(3) Confirmation by a court in the country of origin	129
(4) Availability of recourse against the award	130
(5) Party agreement	131
(6) Passing of time limits for enforcement	132
(7) Effects of a merger	132
cc) Award set aside or suspended	133
(1) General principles	133
(2) Jurisdiction	134
(3) Scope of review	135
(4) Enforcement of awards despite an annulment	135
g) Non-arbitrability of the subject matter, article V(2)(a) NYC	138
aa) General principle and applicable law	138
bb) Specific applications	140
h) Violation of public policy, article V(2)(b) NYC	142
aa) General principles	142

Table of Contents

(1) Notion of public policy and applicable law	142
(2) "International" public policy and sufficient connection to the forum	144
(3) Prohibition of a review on the merits	145
(4) Foreign public policy	145
(5) Extent of review of the arbitral award	146
bb) Procedural public policy	146
(1) General considerations	147
(2) Particular applications	149
cc) Substantive public policy	151
4. Adjournment in view of setting-aside proceedings, article VI NYC	152
5. Enforcement procedure for arbitral awards	152
a) General	153
b) Jurisdictional requirements for enforcement, forum non conveniens	155
c) Periods of limitation	155
d) Counterclaims and set-off	156
e) Prohibition of discriminatory provisions	156
6. Alternative means of enforcement	156
a) Enforcement under more favourable law of the Contracting State, article VII(1) NYC ...	156
b) Recognition and enforcement of court decisions granting exequatur of the award	157
c) Other means of enforcement	157
§ 3. Investment Treaty Arbitration	158
I. Introduction	159
II. The general requirements for the protection of investors under IIAs	161
1. The nationality of investors	162
2. The existence of an investment	163
a) General characteristics of an investment	163
b) Link to the territory of the host State	164
c) Legality of the investment	165
d) Specific approval requirements	166
e) Timing of the investment	166
f) The protection of shareholders and indirect investments	167
III. Investor-State arbitration under treaty dispute resolution mechanisms	168
1. Jurisdiction <i>ratione personae</i>	169
2. Jurisdiction <i>ratione materiae</i>	170
3. Jurisdiction <i>ratione temporis</i>	171
4. Additional requirements for the reliance of an investor on the dispute resolution clause in an IIA	172
a) Cooling-off periods	172
b) Prior-recourse to court requirements	172
c) Fork-in-the-road provisions	173
5. Ex-ante consolidation and proceedings involving multiple claimants	174
IV. Substantive protection standards under IIAs	175
1. Protection in the event of an expropriation	175
2. Fair and equitable treatment	177
3. Full protection and security	181
4. National treatment	182
5. Most-Favoured-Nation treatment	182
6. Prohibition of unreasonable or discriminatory measures	184
7. Umbrella clauses	184
V. Conclusion	186

PART 3 COUNTRY REPORTS

§ 4. International Arbitration in Austria	187
I. Introduction	189
1. The legal framework	189
a) Domestic and international arbitration	190
b) Commercial and non-commercial arbitration	190
c) Ad hoc and institutional arbitration	190
d) The territoriality principle, the seat of the arbitration and the <i>lex arbitri</i>	190
e) Arbitration and other ADR mechanisms (mediation, expert determination)	191

Table of Contents

2. The guiding principles of Austrian arbitration law	192
II. The arbitration agreement	193
1. The doctrine of separability	194
2. The law applicable to the arbitration agreement	195
3. The validity of the arbitration agreement (capacity, arbitrability, form)	195
a) Capacity to conclude arbitration agreements	195
b) Arbitrability	196
c) Form of the arbitration agreement	197
d) Termination of the arbitration agreement	198
4. The scope and the interpretation of the arbitration agreement	198
a) Personal scope of the arbitration agreement	199
b) Substantive scope of the arbitration agreement	199
c) Pathological arbitration clauses	200
5. The effect of the arbitration agreement and Kompetenz-Kompetenz	200
a) Enforcing arbitration clauses and Kompetenz-Kompetenz	201
b) Preclusion of jurisdictional defences	201
c) Binding effect of state court decisions on jurisdiction of the arbitral tribunal	201
III. The arbitral tribunal and the conduct of the arbitral proceedings	202
1. The arbitral tribunal, impartiality and independence of the arbitrator	203
a) Duty to disclose	203
b) Grounds for challenge	203
c) Procedural aspects and preclusion of grounds for challenge	203
d) Failure or impossibility to act	204
2. The arbitral proceedings	204
a) The request for arbitration, statements of claim and defence, default	204
b) Equality of arms, fair trial principle and the right to be heard	205
c) Confidentiality	205
d) The arbitral award	206
e) Termination of the arbitration without an award	206
f) The costs of the arbitration	206
3. Evidence, discovery, disclosure	207
4. The law governing the dispute and lois de police	208
a) Choice of law and domestic cases	208
b) Choice of law and lois de police	208
5. Interim relief in arbitration	208
a) Interim relief before state courts	209
b) Interim relief before the arbitral tribunal	209
6. Multi-party arbitration	209
a) Arbitration agreement involving several parties	209
b) Equality of arms and appointment of arbitrators	210
IV. The control and the enforcement of arbitral awards	210
1. Correction and amendment of arbitral awards	210
2. Review of arbitral awards before state courts	210
a) Procedural framework (time limits, competent court, appeal)	211
b) The Grounds for setting aside arbitral awards: An overview	211
c) Invalidity of the arbitration agreement and lack of jurisdiction of the arbitral tribunal ...	211
d) Right to be heard	212
e) Arbitral award ultra petita	212
f) Public policy	212
3. Enforcing arbitral awards	212
a) Enforcement of awards that were set aside	213
b) Set-off and similar defences	213
4. Preclusion of grounds for challenge and defences to enforcement	213
§ 5. International Arbitration in Belgium	214
I. Introduction	215
1. Legal framework	215
a) Domestic and international arbitration	216
b) Commercial and non-commercial arbitration	217
c) The territoriality principle, the seat of the arbitration and the lex arbitri	217
d) Arbitration and other ADR mechanisms (mediation, expert determination)	218
2. The guiding principles of arbitration law	218

Table of Contents

II. The arbitration agreement	219
1. The doctrine of separability	219
2. The applicable law	219
3. The validity of the arbitration agreement (capacity, arbitrability, form)	219
a) Capacity to conclude arbitration agreements	220
b) Arbitrability	220
c) Form of the arbitration agreement	223
d) Termination of the arbitration agreement	224
4. The scope and the interpretation of the arbitration agreement	224
a) Personal scope of the arbitration agreement	224
b) Substantive scope of the arbitration agreement	224
c) Pathological arbitration clauses	225
5. The effect of the arbitration agreement and Kompetenz-Kompetenz	225
a) Enforcing arbitration clauses and Kompetenz-Kompetenz	225
b) Preclusion of jurisdictional defenses	225
c) Binding effect of state court decisions on jurisdiction of the arbitral tribunal	226
III. The arbitral tribunal and the conduct of the arbitral proceedings	227
1. The arbitral tribunal, impartiality and independence of the arbitrator	228
a) Duty to disclose conflicts of interest	228
b) Grounds for challenge	228
c) Procedural aspects and preclusion of grounds for challenge	228
d) Failure or impossibility to act	229
2. The arbitral proceedings	229
a) The request for arbitration	229
b) Equality of arms, fair trial principles and the right to be heard	230
c) Confidentiality	231
d) The arbitral award	231
e) Termination of the arbitration without an award	232
f) The costs of the arbitration	233
3. Evidence, discovery, disclosure	234
4. The law governing the dispute and lois de police	235
a) Choice of law and domestic cases	235
b) Choice of law and lois de police	236
5. Interim relief in arbitration	237
a) Interim relief before state courts	237
b) Interim relief before the arbitral tribunal	237
6. Multi-party arbitration	238
a) Arbitration agreement involving several parties	238
b) Equality of arms and appointment of the arbitrators	238
IV. The control and the enforcement of arbitral awards	239
1. Correction and amendment of arbitral awards	239
2. Review of arbitral awards before the state courts	239
a) Procedural framework (time limits, competent court, appeal)	239
b) Grounds for setting aside arbitral awards: An overview	240
c) Lack of jurisdiction of the arbitral tribunal	241
d) Composition of the tribunal and procedural irregularities	242
e) Public policy	242
3. Enforcing arbitral awards	243
a) General framework	243
b) Enforcement of awards that were set aside	244
4. Preclusion of grounds for challenge and defences to enforcement	245
a) Preclusion due to failure to object in the arbitral proceedings	245
b) Preclusion due to failure to bring a setting-aside application	245
§ 6. International Arbitration in Brazil	246
I. Introduction	247
1. Legal framework	248
a) Domestic and foreign arbitration	248
b) Commercial and non-commercial arbitration	248
c) Ad hoc and institutional arbitration	248
d) The territorial principle, the seat of arbitration and lex arbitri	249
e) Arbitration and other ADR mechanisms (mediation)	249

Table of Contents

2. Guiding principles of Brazilian Arbitration Law	249
II. The arbitration agreement	250
1. The doctrine of separability	251
2. The law applicable to the arbitration agreement	251
3. The validity of the arbitration agreement (capacity, arbitrability, form)	251
a) Capacity to conclude arbitration agreements	251
b) Arbitrability	251
c) Form of the arbitration agreement	252
d) Termination of the arbitration agreement	252
4. The scope and interpretation of the arbitration agreement	253
a) Personal scope of the arbitration agreement	253
b) Substantive scope of the arbitration agreement	253
c) Pathological arbitration clauses	253
5. The effect of the arbitration agreement and Kompetenz-Kompetenz	254
a) Enforcing arbitration clauses and Kompetenz-Kompetenz	254
b) Preclusion of jurisdictional defences	254
c) Binding effect of State Court decisions on jurisdiction of the arbitral tribunal	254
III. The arbitral tribunal and the conduct of the arbitral proceedings	255
1. The arbitral tribunal, impartiality and independence of the arbitrator	255
a) Duty to disclose	255
b) Grounds for challenge	256
c) Procedural aspects and preclusion of grounds for challenge	256
d) Failure or impossibility to act	256
2. Arbitral proceedings	256
a) The request for arbitration	257
b) Equality of arms, fair trial principles and the right to be heard	257
c) Confidentiality	257
d) The arbitral award	257
e) Termination of the arbitration without an award	258
f) Costs of the arbitration	258
3. Evidence, discovery, disclosure	258
4. The law governing the dispute and <i>lois de police</i>	259
5. Interim relief in the arbitration	259
a) Interim relief before State Courts	259
b) Interim relief before the arbitral tribunal	259
6. Multi-party arbitration	260
a) Arbitration agreement involving several parties	260
b) Equality of arms and appointment of the arbitrators	260
IV. Control and enforcement of arbitral awards	260
1. Correction and amendment of arbitral awards	261
2. Review of arbitral awards before State Courts	261
a) Procedural framework (time limit, competent court, appeal)	261
b) Grounds for setting aside arbitral awards: an overview	261
c) Lack of jurisdiction of the arbitral tribunal	262
d) Unlawful composition of the tribunal and other procedural irregularities	262
e) Public policy	262
3. Enforcing arbitral awards	263
a) Enforcement of awards that were set aside	264
b) Fulfilment, set-off and similar defenses	264
4. Preclusion of grounds for challenge and defenses to enforcement	264
§ 7. International Arbitration in China (People's Republic)	265
I. Introduction	267
1. The Legal Framework	268
a) The arbitration law of the PRC	268
b) The civil procedure law of the PRC	268
c) International conventions	269
d) Other relevant statutes	269
2. The principles of the Arbitration Law of PRC	269
a) Principle of free will	269
b) Principle of conforming to the law	269
c) Principle of independent arbitration	269

Table of Contents

d) Principle of single and final award	270
II. Arbitration institution, arbitration tribunal and arbitrators in China	270
1. Arbitration institutions in China	270
2. Arbitration tribunal	271
a) Formation of arbitration tribunal	271
b) Jurisdiction	271
3. Arbitrators	272
a) Qualification requirements	272
b) Responsibilities of arbitrators	272
aa) Civil liability	272
bb) Criminal liability	273
III. The arbitration agreement	275
1. Introduction	275
a) Definition	275
b) Form	275
c) Arbitration clause	275
d) Arbitration agreement	276
e) Arbitration agreement contained in other files	276
2. Essentials of the validity of an arbitration agreement	276
a) Substantial essentials of arbitration agreements	276
b) An expression of the intention to apply for arbitration	276
c) Matters for arbitration	276
d) A designated arbitration commission	277
e) Other requirements	277
f) Formal essentials of arbitration agreements	277
3. Separability of arbitration agreement	278
a) Legislation	278
b) Judicial practice	278
4. Specific contents of arbitration agreement	280
a) The seat of arbitration	280
b) Applicable law	280
c) Applicable arbitration rules	280
d) Applicable substantive law	280
5. Effect of the arbitration agreement	281
a) Effect for parties	281
b) Effect for the court	282
c) Effect for the arbitration institution	282
IV. The arbitration procedure	282
1. Arbitrability	282
2. An important principle: confidentiality	283
3. The arbitration proceedings	283
a) Application and acceptance	283
b) Defence and counterclaim	284
c) The place of arbitration	285
d) Challenge to the jurisdiction (challenge to the validity of the arbitration agreement)	285
e) Interim measures of protection	286
f) Withdrawal of arbitrators	287
g) Hearing and rendering award	287
aa) Preparations before hearing	288
bb) Oral hearing	288
cc) Settlement or mediation	289
dd) Arbitral award	290
h) Summary proceedings	290
i) Fees and costs	291
V. Setting aside of the arbitration award and enforcement of the arbitration award	292
1. Setting aside of the arbitration award	292
a) Grounds for setting aside	292
aa) Grounds for setting aside listed in law	292
bb) Social and public interest	292
b) The competent court for setting aside	293
c) Time limit	293
d) Consequences	293

Table of Contents

2. Enforcement of the arbitration award	294
a) Enforcement of the foreign-related award	294
aa) Grounds for enforcement (or refusal of enforcement)	294
bb) The competent court	295
cc) Time limit	295
dd) Consequences	295
b) Enforcement of the foreign arbitration award	296
aa) Enforcement under the New York Convention	296
(1) Two reservations	296
(2) Grounds for refusal of enforcement	297
(3) The competent court	297
(4) Time limit	298
bb) Enforcement under other international treaties	298
cc) Enforcement where no convention or treaty applies	298
c) The pre-reporting mechanism for disallowing enforcement of the foreign-related award and refusing enforcement of the foreign award	298
§ 8. International Arbitration in England and Wales	299
I. Introduction	300
1. The legal framework	301
a) Domestic and international arbitration	301
b) Commercial and non-commercial arbitration	301
c) Ad hoc and institutional, general commercial and sector-specific arbitration	302
d) The territoriality principle, the seat of the arbitration and the <i>lex arbitri</i>	302
e) Arbitration as compared to ADR and expert determination	303
2. The guiding principles of English arbitration law	305
II. The arbitration agreement	306
1. The doctrine of separability	306
2. The law applicable to the arbitration agreement	307
3. The formation of the arbitration agreement	310
a) General principles of contract law	310
b) Capacity (subjective arbitrability)	310
c) (Objective) Arbitrability	310
d) Formal requirements	310
e) Incorporation by reference	312
4. Termination of the arbitration agreement	312
5. The scope and the interpretation of the arbitration agreement	313
a) Personal scope of the arbitration agreement	313
b) Substantive scope of the arbitration agreement	314
c) Pathological arbitration clauses	315
6. Enforcing arbitration agreements	317
a) Direct enforcement	317
b) Indirect enforcement	321
c) Tactical considerations	322
7. The extent of the principle of <i>Kompetenz-Kompetenz</i>	322
8. Binding effect of state court decisions on jurisdiction of the arbitral tribunal	323
III. The arbitral tribunal and the conduct of the arbitral proceedings	324
1. The arbitral tribunal	325
a) Impartiality, fairness and further duties of the arbitrators	326
b) Grounds for challenging arbitrators	326
c) Procedural aspects and preclusion of grounds for challenge	327
2. The arbitral proceedings	327
a) Commencing the arbitration	327
b) Impartiality and fair trial	328
c) The tribunal's powers with regard to procedural and evidential matters	329
d) Determination of preliminary point of law	330
e) Confidentiality	330
f) The arbitral award	331
g) The costs of the arbitration	332
3. Evidence, discovery, disclosure	333
4. The law governing the dispute and <i>lois de police</i>	334
5. Interim relief in arbitration	335

Table of Contents

a) Interim relief before state courts	335
b) Interim relief before the arbitral tribunal	336
c) Relief by the tribunal or by the courts?	336
6. Multi-party arbitration	336
a) Arbitration agreement involving several parties	337
b) Arbitration agreement and third persons or entities	337
IV. The control, appeal and the enforcement of arbitral awards	337
1. Correction of award or additional award	338
2. Control, appeal and enforcement by the state courts	338
a) Procedural framework	338
b) Grounds for challenging arbitral awards: An overview	339
c) Section 67: Lack of substantive jurisdiction of the arbitral tribunal	340
d) Section 68: Serious irregularity	340
e) Section 69: Appeal on point of law	344
f) Separating section 68 and section 69 applications	347
3. Enforcing arbitral awards	348
a) Domestic and foreign awards under the section 66 procedure	348
b) Enforcement of New York Convention awards	349
aa) Invalidity of the alleged arbitration agreement (section 103(2)(b) AA 1996)	349
bb) Award set aside by the seat courts (section 103(2)(f) AA 1996)	349
cc) Violation of English public policy by recognizing and enforcing the award	351
c) Fulfilment and set-off	351
d) De minimis and waiver considerations	351
4. Preclusion of grounds for challenge and defences to enforcement	352
a) Preclusion due to failure to object in the arbitral proceedings	352
b) Preclusion due to failure to bring a setting-aside application	352
 § 9. International Arbitration in France	353
I. Introduction	354
1. Legal framework	355
a) Domestic and international arbitration	355
b) Commercial and non-commercial arbitration	356
c) Ad hoc and institutional arbitration	356
d) The seat of the arbitration and the lex arbitri	356
e) Arbitration and other ADR mechanisms	357
2. The guiding principles of arbitration law	358
II. The arbitration agreement	358
1. The doctrine of separability	358
2. The law applicable to the arbitration agreement	359
3. The validity of the arbitration agreement (capacity, arbitrability, form)	359
a) Capacity to enter into arbitration agreements	359
b) Arbitrability	360
c) Form of the arbitration agreement	361
d) Termination of the arbitration agreement	361
4. The scope and interpretation of the arbitration agreement	362
a) The scope of the arbitration agreement <i>ratione personae</i>	362
b) The scope of the arbitration agreement <i>ratione materiae</i>	362
c) Pathological arbitration clauses	362
5. The effect of the arbitration agreement and competence-competence	363
a) Enforcing arbitration clauses and competence-competence	363
b) Preclusion of jurisdictional defences	363
c) Binding effect of state court decisions on jurisdiction of the arbitral tribunal	363
III. The arbitral tribunal and the conduct of the arbitral proceedings	364
1. The arbitral tribunal, impartiality and independence of the arbitrator	364
a) Duty to disclose conflicts of interest	365
b) Grounds for challenge	365
c) Procedural aspects and preclusion of grounds for challenge	366
d) Failure or impossibility to act	366
2. The arbitral proceedings	366
a) The request for arbitration	366
b) Equality of arms, principle of fair trial and the right to be heard	367
c) Confidentiality	367

Table of Contents

d) The arbitral award	367
e) Termination of the arbitration without an award	368
f) The costs of the arbitration	368
3. Evidence, discovery, disclosure	368
4. The law governing the dispute and mandatory laws (lois de police)	369
5. Interim relief in arbitration	369
a) Interim relief before state courts	369
b) Interim relief before the arbitral tribunal	370
6. Multi-party arbitration	370
a) Arbitration agreement involving several parties	370
b) Equality of arms and appointment of the arbitrators	370
IV. The control and the enforcement of arbitral awards	371
1. Correction, amendment and other means of redress of arbitral awards	371
2. Review of arbitral awards before the state courts	372
a) Procedural framework (time limits, competent court, appeal)	372
b) Grounds for setting aside arbitral awards: An overview	373
c) Lack of jurisdiction of the arbitral tribunal	373
d) Irregularity in the constitution of the arbitral tribunal	373
e) Non-compliance by the arbitral tribunal with its mandate	374
f) Violation of due process	374
g) International public policy	374
3. Enforcing arbitral awards	375
a) General framework	375
b) Enforcement of awards that were set aside	376
4. Preclusion of grounds for challenge and defences to enforcement	376
§ 10. International Arbitration in Germany	377
I. Introduction	379
1. The legal framework	379
a) Domestic and international arbitration	379
b) Commercial and non-commercial arbitration	379
c) Ad hoc and institutional arbitration	380
d) The territoriality principle, the seat of the arbitration and the lex arbitri	380
e) Arbitration and other ADR mechanisms (mediation, expert determination)	381
2. The guiding principles of German arbitration law	381
II. The arbitration agreement	382
1. The doctrine of separability	382
2. The law applicable to the arbitration agreement	382
3. The validity of the arbitration agreement (capacity, arbitrability, form)	383
a) Capacity to conclude arbitration agreements	383
b) Arbitrability	383
c) Form of the arbitration agreement	384
d) Termination of the arbitration agreement	385
4. The scope and the interpretation of the arbitration agreement	385
a) Personal scope of the arbitration agreement	385
b) Substantive scope of the arbitration agreement	386
c) Pathological arbitration clauses	386
5. The effect of the arbitration agreement and Kompetenz-Kompetenz	387
a) Enforcing arbitration clauses and Kompetenz-Kompetenz	388
b) Preclusion of jurisdictional defences	388
c) Binding effect of state court decisions on jurisdiction of the arbitral tribunal	389
III. The arbitral tribunal and the conduct of the arbitral proceedings	390
1. The arbitral tribunal, impartiality and independence of the arbitrator	390
a) Duty to disclose	391
b) Grounds for challenge	391
c) Procedural aspects and preclusion of grounds for challenge	392
d) Failure or impossibility to act	392
2. The conduct of the arbitral proceedings	392
a) Request for arbitration, statements of claim and defence, hearings, default	392
b) Equality of arms, fair trial principles and the right to be heard	393
c) Confidentiality	394
d) The arbitral award	394

Table of Contents

e) Termination of the arbitration without an award	395
f) The costs of the arbitration	395
3. Evidence, discovery, disclosure	395
4. The law governing the dispute and <i>lois de police</i>	396
a) Choice of law and domestic cases	396
b) Choice of law and <i>lois de police</i>	397
5. Interim relief in arbitration	397
a) Interim relief before state courts	397
b) Interim relief before the arbitral tribunal	398
6. Multi-party arbitration	398
a) Arbitration agreement involving several parties	398
b) Equality of arms and appointment of the arbitrators	399
IV. The control and the enforcement of arbitral awards	399
1. Correction and amendment of arbitral awards	399
2. Review of arbitral awards before the state courts	399
a) Procedural framework (time limits, competent court, appeal)	399
b) Grounds for setting aside arbitral awards: An overview	400
c) Lack of jurisdiction of the arbitral tribunal	400
d) Breach of the right to be heard	401
e) Unlawful composition of the tribunal and other procedural errors	401
f) Public policy	402
3. Enforcing arbitral awards	404
a) Enforcement of awards that were set aside	404
b) Fulfilment, set-off and similar defences	405
4. Preclusion of grounds for challenge and defences to enforcement	405
a) Preclusion due to failure to object in the arbitral proceedings	405
b) Preclusion due to failure to bring a setting-aside application	406
§ 11. International Arbitration in Hong Kong	407
I. Introduction	409
1. The legal framework	409
a) Domestic and international arbitration	410
b) Commercial and non-commercial arbitration	410
c) Ad hoc and institutional arbitration	411
d) The territoriality principle, the seat of the arbitration and the <i>lex arbitri</i>	411
e) Arbitration and other ADR mechanisms (mediation, expert determination)	411
2. The guiding principles of Hong Kong arbitration law	412
II. The arbitration agreement	413
1. The doctrine of separability	413
2. The law applicable to the arbitration agreement	413
3. The validity of the arbitration agreement (capacity, arbitrability, form)	414
a) Capacity to conclude arbitration agreements	414
b) Arbitrability	414
c) Form of the arbitration agreement	414
d) Termination of the arbitration agreement	415
4. The scope and the interpretation of the arbitration agreement	415
a) Personal scope of the arbitration agreement	415
b) Substantive scope of the arbitration agreement	415
c) Pathological arbitration clauses	416
5. The effect of the arbitration agreement and <i>Kompetenz-Kompetenz</i>	417
a) Enforcing arbitration clauses and <i>Kompetenz-Kompetenz</i>	417
b) Preclusion of jurisdictional defences	419
c) Binding effect of state court decisions on jurisdiction of the arbitral tribunal	419
III. The arbitral tribunal and the conduct of the arbitral proceedings	420
1. The arbitral tribunal, impartiality and independence of the arbitrator	420
a) Duty to disclose	421
b) Grounds for challenge	422
c) Procedural aspects and preclusion of grounds for challenge	422
d) Failure or impossibility to act	423
2. The arbitral proceedings	423
a) The request for arbitration	423
b) Equality of arms, fair trial principles and the right to be heard	423

Table of Contents

c) Confidentiality	424
d) The arbitral award	424
e) Termination of the arbitration without an award	424
f) The costs of the arbitration	425
3. Evidence, discovery, disclosure	425
4. The law governing the dispute and <i>lois de police</i>	426
a) Choice of law and domestic cases	426
b) Choice of law and <i>lois de police</i>	427
5. Interim relief in arbitration	427
a) Interim relief before state courts	427
b) Interim relief before the arbitral tribunal	428
6. Multi-party arbitration	428
a) Arbitration agreement involving several parties	429
b) Equality of arms and appointment of the arbitrators	429
IV. The control and the enforcement of arbitral awards	430
1. Correction and amendment of arbitral awards	430
a) Correction	430
b) Interpretation	430
c) Additional award	430
d) Others	430
2. Review of arbitral awards before the state courts	431
a) Procedural framework (time limits, competent court, appeal)	431
aa) Applications to set aside an arbitral award under section 81	431
bb) Challenging arbitral award on the ground of serious irregularity	432
(1) Procedure	432
(2) Remedies	432
(3) Appeal against decision of Court	433
cc) Appeal against arbitral award on question of law	433
(1) Procedure	433
(2) Remedies	434
(3) Amended award	434
dd) Indemnity costs orders for unsuccessful challenges	434
b) Grounds for setting aside arbitral awards: An overview	435
c) Lack of jurisdiction of the arbitral tribunal	435
d) Unlawful composition of the tribunal and other procedural irregularities	435
aa) Unlawful composition of tribunal	435
bb) Inability to present case	436
cc) Incapacity of party or invalidity of arbitration agreement	436
e) Public policy	436
f) Subject matter not arbitrable	437
3. Enforcing arbitral awards	437
a) Non-Convention awards made overseas	438
b) Convention awards	439
c) Mainland awards	440
d) Macao awards	441
e) Enforcement of awards that were set aside	442
f) Fulfilment, set-off and similar defences	443
4. Preclusion of grounds for challenge and defences to enforcement	443
a) Preclusion due to failure to object in the arbitral proceedings	443
b) Preclusion due to failure to bring a setting-aside application	443
V. Immunity	444
1. State immunity	444
2. Crown immunity	445
3. Conclusion	446
§ 12. International Arbitration in India	447
I. Introduction	448
1. The legal framework	449
a) Domestic and international arbitration	450
b) Commercial and non-commercial arbitration	450
c) Ad hoc and institutional arbitration	450
d) The territoriality principle, the seat of the arbitration and the <i>lex arbitri</i>	451

Table of Contents

e) Arbitration and other ADR mechanisms (mediation, expert determination)	452
2. The guiding principles of Indian arbitration law	453
II. The arbitration agreement	454
1. The doctrine of separability	454
2. The law applicable to the arbitration agreement	454
3. The validity of the arbitration agreement (capacity, arbitrability, form)	455
a) Capacity to conclude arbitration agreements	455
b) Arbitrability	455
c) Form of the arbitration agreement	456
d) Termination of the arbitration agreement	456
e) Anti-suit injunctions	457
4. The scope and the interpretation of the arbitration agreement	457
a) Personal scope of the arbitration agreement	457
b) Substantive scope of the arbitration agreement	458
c) Pathological arbitration clauses	458
5. The effect of the arbitration agreement and Kompetenz-Kompetenz	459
a) Enforcing arbitration clauses and Kompetenz-Kompetenz	459
b) Preclusion of jurisdictional defences	460
c) Binding effect of state court decisions on jurisdiction of the arbitral tribunal	460
III. The arbitral tribunal and the conduct of the arbitral proceedings	461
1. The arbitral tribunal	461
a) Appointment of the arbitral tribunal	461
b) Impartiality and independence of the arbitrator	461
c) Grounds for challenge, procedural aspects and preclusion of grounds for challenge	462
d) Failure or impossibility to act	462
2. The arbitral proceedings	463
a) The request for arbitration	463
b) Equality of arms, fair trial principles and the right to be heard	464
c) Confidentiality	464
d) The arbitral award	465
e) Termination of the arbitration without an award	466
f) The costs of the arbitration	466
3. Evidence, discovery, disclosure	466
4. The law governing the dispute	467
a) Choice of law and domestic cases	467
b) Choice of law and international cases	467
5. Interim relief in arbitration	467
a) Interim relief before state courts	467
b) Interim relief before the arbitral tribunal	468
6. Multi-party arbitration	469
a) Arbitration agreement involving several parties	469
b) Equality of arms and appointment of the arbitrators	470
IV. The control and the enforcement of arbitral awards	470
1. Correction and amendment of arbitral awards	470
2. Review of arbitral awards before the state courts	470
a) Procedural framework (time limits, competent court, appeal)	471
b) Grounds for setting aside arbitral awards: An overview	472
c) Lack of jurisdiction of the arbitral tribunal and procedural irregularities	472
d) Public policy	472
3. Enforcing arbitral awards	473
4. Preclusion of grounds for challenge and defences to enforcement	474
§ 13. International Arbitration in the Netherlands	476
I. Introduction	478
1. The legal framework	478
a) Domestic and international arbitration	479
b) Commercial and non-commercial arbitration	480
c) Ad hoc and institutional arbitration	480
d) The territoriality principle, the seat of the arbitration and the <i>lex arbitri</i>	480
e) Arbitration and other ADR mechanisms (mediation, expert determination)	481
2. The guiding principles of Dutch arbitration law	482
II. The arbitration agreement	482

Table of Contents

1. The doctrine of separability	482
2. The law applicable to the arbitration agreement	483
3. The validity of the arbitration agreement (capacity, arbitrability, form)	483
a) Capacity to conclude arbitration agreements	484
b) Arbitrability	485
c) Form of the arbitration agreement	486
d) Termination of the arbitration agreement	486
4. The scope and the interpretation of the arbitration agreement	486
a) Personal scope of the arbitration agreement	487
b) Substantive scope of the arbitration agreement	488
c) Pathological arbitration clauses	488
5. The effect of the arbitration agreement and Kompetenz-Kompetenz	489
a) Enforcing arbitration clauses and Kompetenz-Kompetenz	489
b) Preclusion of jurisdictional defences	490
c) Binding effect of state court decisions on jurisdiction of the arbitral tribunal	490
III. The arbitral tribunal and the conduct of the arbitral proceedings	490
1. The arbitral tribunal, impartiality and independence of the arbitrator	492
a) Duty to disclose	492
b) Grounds for challenge	493
c) Procedural aspects and preclusion of grounds for challenge	494
d) Failure or impossibility to act	494
2. The arbitral proceedings	494
a) The request for arbitration	495
b) Equality of arms, fair trial principles and the right to be heard	495
c) Confidentiality	496
d) The arbitral award	497
e) Termination of the arbitration without an award	497
f) The costs of the arbitration	498
3. Evidence, discovery, disclosure	499
4. The law governing the dispute and lois de police	499
a) Choice of law and domestic cases	499
b) Choice of law and lois de police	500
5. Interim relief in arbitration	500
a) Interim relief before state courts	500
b) Interim relief before the arbitral tribunal	500
6. Multi-party arbitration	501
a) Arbitration agreement involving several parties	501
b) Equality of arms and appointment of the arbitrators	501
IV. The Control and the Enforcement of Arbitral Awards	501
1. Correction and amendment of arbitral awards	503
2. Review of arbitral awards before the state courts	503
a) Procedural framework (time limits, competent court, appeal)	503
b) Grounds for setting aside arbitral awards: An overview	504
c) Lack of jurisdiction of the arbitral tribunal	504
d) Unlawful composition of the tribunal and other procedural irregularities	505
e) Public Policy	505
3. Enforcing arbitral awards	506
a) Enforcement of awards that were set aside	507
b) Fulfilment, set-off and similar defences	507
4. Preclusion of grounds for challenge and defences to enforcement	507
a) Preclusion due to failure to object in the arbitral proceedings	508
b) Preclusion due to failure to bring a setting-aside application	508
§ 14. International Arbitration in the Russian Federation	509
I. Introduction	511
1. Arbitrazh courts and arbitral tribunals	512
2. The legal framework	512
a) Domestic and international arbitration	512
b) Commercial and non-commercial arbitration	513
c) Ad hoc and institutional arbitration	513
d) The territoriality principle, the seat of the arbitration and the lex arbitri	513
e) Arbitration and other ADR mechanisms (mediation, expert determination)	514

Table of Contents

3. The guiding principles of Russian arbitration law	514
II. The arbitration agreement	514
1. The doctrine of separability	515
2. The law applicable to the arbitration agreement	515
3. The validity of the arbitration agreement (capacity, arbitrability, form)	516
a) Capacity to conclude arbitration agreements	516
b) Arbitrability	516
c) Non-arbitrability	516
aa) Non-arbitrability of disputes connected with immovable property	516
bb) Non-arbitrability of corporate disputes	517
d) Form of the arbitration agreement	518
e) Termination of the arbitration agreement	519
4. The scope and the interpretation of the arbitration agreement	519
a) Scope of the arbitration agreement	519
b) The interpretation of the arbitration agreement	520
c) Pathological arbitration clauses	520
5. The effect of the arbitration agreement and Kompetenz-Kompetenz	521
III. The arbitral tribunal and the conduct of the arbitral proceedings	521
1. The arbitral tribunal, impartiality and independence of the arbitrator	522
a) Duty to disclose	522
b) Grounds for challenge	523
c) Procedural aspects and preclusion of grounds for challenge	524
d) Failure or impossibility to act	524
2. The arbitral proceedings	524
a) The request for arbitration	525
b) Equality of arms, fair trial principles and the right to be heard	525
c) Confidentiality	526
d) The arbitral award	526
e) Termination of the arbitration without an award	527
f) The costs of the arbitration	527
3. Evidence, discovery, disclosure	528
4. The law governing the dispute and lois de police	529
a) Choice of law and domestic cases	529
b) Choice of law and lois de police	530
5. Interim relief in arbitration	530
a) Interim relief before state courts	530
b) Interim relief before the arbitral tribunal	531
6. Multi-party arbitration	531
a) Arbitration agreement involving several parties	531
b) Equality of arms and appointment of the arbitrators	532
IV. The control and the enforcement of arbitral awards	532
1. Correction and amendment of arbitral awards	533
2. Review of arbitral awards before the state courts	533
a) Procedural framework (time limits, competent court, appeal)	533
b) Grounds for setting aside arbitral awards: An overview	534
c) Invalidity of arbitration agreement	534
d) Violation of due process and absence of proper notice about the proceedings	534
e) Lack of authority of the arbitral tribunal	535
f) Unlawful composition of the tribunal and other procedural irregularities	535
g) The non-arbitrability of the original dispute	536
h) Public policy	536
3. Enforcing arbitral awards	537
a) General framework	537
b) Enforcement of awards that were set aside	538
c) Fulfilment, set-off and similar defences	538
4. Preclusion of grounds for challenge and defences to enforcement	538
a) Preclusion due to failure to object in the arbitral proceedings	538
b) Preclusion due to failure to bring a setting-aside application	539
§ 15. International Arbitration in Singapore	540
I. Introduction	541
1. The legal framework	542

Table of Contents

a) Domestic and International Arbitrations	542
b) Commercial and non-commercial arbitration	543
c) Ad hoc and Institutional Arbitration	544
d) The territoriality principle, the seat of the arbitration and the <i>lex arbitri</i>	545
e) Arbitration and other ADR Mechanisms (Mediation, Expert Determination)	546
2. The guiding principles of Singapore arbitration law	547
II. The arbitration agreement	547
1. The doctrine of separability	548
2. The law applicable to the arbitration agreement	548
3. The validity of the arbitration agreement (capacity, arbitrability, form)	548
a) Capacity to conclude arbitration agreements	549
b) Arbitrability	549
c) Form of the arbitration agreement	550
d) Termination of the arbitration agreement	550
4. The scope and the interpretation of the arbitration agreement	550
a) Personal scope of the arbitration agreement	551
b) Substantive scope of the arbitration agreement	551
c) Pathological arbitration clauses	552
5. The effect of the arbitration agreement and <i>Kompetenz-Kompetenz</i>	552
a) Enforcing arbitration clauses and <i>Kompetenz-Kompetenz</i>	552
b) Preclusion of jurisdictional defences	552
c) Binding effect of state court decisions on jurisdiction of the arbitral tribunal	553
III. The arbitral tribunal and the conduct of the arbitral proceedings	553
1. The arbitral tribunal, impartiality and independence of the arbitrator	553
a) Duty to disclose	554
b) Grounds for challenge	554
c) Procedural aspects and preclusion of grounds for challenge	554
d) Failure or impossibility to act	555
2. The arbitral proceedings	555
a) The request for arbitration	555
b) Equality of arms, fair trial principles and the right to be heard	555
c) Confidentiality	556
d) The arbitral award	556
e) Termination of the arbitration without an award	557
f) The costs of the arbitration	557
3. Evidence, discovery, disclosure	558
4. The law governing the dispute and <i>lois de police</i>	558
a) Choice of law and domestic cases	559
b) Choice of law and <i>lois de police</i>	559
5. Interim relief in arbitration	559
a) Interim relief before Singapore courts	559
b) Interim relief before the arbitral tribunal	560
6. Multi-party arbitration	561
a) Arbitration agreement involving several parties	561
b) Equality of arms and appointment of the arbitrators	561
IV. The control and the enforcement of arbitral awards	562
1. Correction and amendment of arbitral awards	562
2. Review of arbitral awards before the state courts	562
a) Procedural framework (time limits, competent court, appeal)	562
b) Grounds for setting aside arbitral awards: An overview	563
c) Lack of jurisdiction of the arbitral tribunal	563
d) Unlawful composition of the tribunal and other procedural irregularities	564
e) Public policy	564
3. Enforcing arbitral awards	565
a) Enforcement of awards that were set aside	566
b) Fulfilment, set-off and similar defences	566
4. Preclusion of grounds for challenge and defences to enforcement	567
a) Preclusion due to failure to object in the arbitral proceedings	567
b) Preclusion due to failure to bring a setting-aside application	567

Table of Contents

§ 16. International Arbitration in Spain	568
I. Introduction	569
1. Legal framework	570
a) Domestic and international arbitration	570
b) Commercial and non-commercial arbitration	570
c) Ad hoc and institutional arbitration	571
d) The territoriality principle, the seat of the arbitration, and the <i>lex arbitri</i>	571
e) Arbitration and other ADR mechanisms	572
2. The guiding principles of Spanish arbitration law	572
II. The arbitration agreement	573
1. The doctrine of separability	573
2. The law applicable to the arbitration agreement	573
3. The validity of the arbitration agreement	574
a) Capacity to conclude arbitration agreements	574
b) Arbitrability	575
c) Form of the arbitration agreement	575
d) Termination of the arbitration agreement	576
4. The scope and the interpretation of the arbitration agreement	577
a) Personal scope of the arbitration agreement	577
b) Substantive scope of the arbitration agreement	578
c) Pathological arbitration clauses	578
5. The effect of the arbitration agreement and <i>Kompetenz-Kompetenz</i>	578
a) Enforcing arbitration clauses and <i>Kompetenz-Kompetenz</i>	579
b) Preclusion of jurisdictional defences	579
c) Binding effect of state court decisions on jurisdiction of the arbitral tribunal	580
III. The arbitral tribunal and the conduct of the arbitral proceedings	580
1. The arbitral tribunal, impartiality and independence of the arbitrator	580
a) Duty to disclose conflicts of interest	581
b) Grounds for challenge	581
c) Procedural aspects and preclusion of grounds for challenge	581
d) Failure or impossibility to act	581
2. The arbitral proceedings	581
a) The request for arbitration	581
b) Parties' right to defence and the principle of equality	581
c) Confidentiality	582
d) The arbitral award	582
e) Termination of the arbitration without an award	582
f) The costs of the arbitration	583
3. Evidence, discovery, disclosure	583
4. The law governing the dispute	584
a) Choice of law and domestic cases	584
b) Choice of law and international <i>lois de police</i>	584
5. Interim relief in arbitration	584
a) Interim relief before state courts	585
b) Interim relief before the arbitral tribunal	585
6. Multi-party arbitration	585
a) Arbitration agreement involving several parties	585
b) Equality of arms and appointment of the arbitrators	585
IV. The control and the enforcement of arbitral awards	586
1. Correction and amendment of arbitral awards	586
2. Review of arbitral awards before the state courts	586
a) Procedural framework (time limits, competent court, appeal)	586
b) Grounds for setting aside arbitral awards: An overview	587
c) Lack of jurisdiction of the arbitral tribunal	587
d) Composition of the tribunal and procedural irregularities	588
e) Public policy	589
3. Enforcing arbitral awards	590
a) General framework	590
b) Enforcement of awards that were set aside	591
c) Fulfilment, set-off and similar defences	592

Table of Contents

4. Preclusion of grounds for challenge and defences to enforcement	592
a) Preclusion due to failure to object in the arbitral proceedings	592
b) Preclusion due to failure to bring a setting-aside application	593
§ 17. International Arbitration in Sweden	594
I. Introduction	595
1. Legal framework	596
a) Domestic and international arbitration	596
b) Commercial and non-commercial arbitration	597
c) Ad hoc and institutional arbitration	597
d) The territoriality principle, the seat of the arbitration and the <i>lex arbitri</i>	597
e) Arbitration and other ADR mechanisms (mediation, expert determination)	597
2. The guiding principles of Swedish arbitration law	598
II. The arbitration agreement	599
1. The doctrine of separability	599
2. The law applicable to the arbitration agreement	599
3. The validity of the arbitration agreement (capacity, arbitrability, form)	599
a) Capacity to conclude arbitration agreements	600
b) Arbitrability	600
c) Form of the arbitration agreement	601
d) Termination of the arbitration agreement	601
4. The scope and the interpretation of the arbitration agreement	601
a) Personal scope of the arbitration agreement	602
b) Substantive scope of the arbitration agreement	603
c) Pathological arbitration clauses	603
5. The effect of the arbitration agreement and <i>Kompetenz-Kompetenz</i>	604
a) Enforcing arbitration clauses and <i>Kompetenz-Kompetenz</i>	604
b) Preclusion of jurisdictional defences	605
c) Binding effect of state court decisions on jurisdiction of the arbitral tribunal	606
III. The arbitral tribunal and the conduct of the arbitral proceedings	606
1. The arbitral tribunal, impartiality and independence of the arbitrator	607
a) Duty to disclose	607
b) Grounds for challenge	608
c) Procedural aspects and preclusion of grounds for challenge	608
d) Failure or impossibility to act	609
2. The arbitral proceedings	609
a) The request for arbitration	610
b) Equality of arms, fair trial principles and the right to be heard	610
c) Confidentiality	611
d) The arbitral award	611
e) Termination of the arbitration	611
f) The costs of the arbitration	612
3. Evidence, discovery, disclosure	612
4. The law governing the dispute and <i>lois de police</i>	613
5. Interim relief in arbitration	613
a) Interim relief before state courts	614
b) Interim relief before the arbitral tribunal	614
6. Multi-party arbitration	614
a) Arbitration agreement involving several parties	614
b) Equality of arms and appointment of the arbitrators	615
IV. The control and the enforcement of arbitral awards	615
1. Correction and amendment of arbitral awards	615
2. Review of arbitral awards before the state courts	616
a) Procedural framework (time limits, competent court, appeal)	616
b) Grounds for review of arbitral awards: An overview	617
c) Non-arbitrable dispute	617
d) Public policy	617
e) Award not made in writing or not signed by the arbitrators	617
f) Lack of valid arbitration agreement	618
g) Expiration of the time limit and excess of mandate	618
h) Arbitral proceedings should not have taken place in Sweden	618
i) Improper appointment of arbitrators	618

Table of Contents

j) Unauthorized arbitrator	619
k) Other procedural irregularities	619
3. Enforcing arbitral awards	621
a) Enforcement of awards that were set aside	621
b) Fulfilment, set-off and similar defences	621
4. Preclusion of grounds for challenge and defences to enforcement	621
a) Preclusion due to failure to object in the arbitral proceedings	622
b) Preclusion due to failure to bring a setting-aside application	622
§ 18. International Arbitration in Switzerland	623
I. Introduction	625
1. Switzerland's position in international arbitration	626
2. Legal framework	626
a) Domestic and international arbitration	627
b) Commercial and non-commercial arbitration	627
c) Ad hoc and institutional arbitration	628
d) The territoriality principle, the seat of the arbitration and the <i>lex arbitri</i>	629
e) Arbitration and other ADR mechanisms (mediation, expert determination)	631
3. The guiding principles of Swiss international arbitration law	631
II. The arbitration agreement	631
1. The doctrine of separability	632
2. The law applicable to the arbitration agreement	632
3. The validity of the arbitration agreement (capacity, arbitrability, form)	632
a) Capacity to conclude arbitration agreements	633
b) Arbitrability	634
c) Form of the arbitration agreement	635
d) Termination of the arbitration agreement	635
4. The scope and the interpretation of the arbitration agreement	635
a) Personal scope of the arbitration agreement	637
b) Substantive scope of the arbitration agreement	638
c) Pathological arbitration clauses	638
5. The effect of the arbitration agreement and <i>Kompetenz-Kompetenz</i>	638
a) The principle of <i>Kompetenz-Kompetenz</i> : Examination of jurisdiction by the arbitral tribunal	639
b) Examination of jurisdiction by the state courts	639
c) Parallel proceedings in particular	640
d) Judicial review	641
e) Burden of proof	641
III. The arbitral tribunal and the conduct of the arbitral proceedings	641
1. The arbitral tribunal: impartiality and independence of the arbitrator	642
a) Duty to disclose conflicts of interest	642
b) Grounds for challenge	643
c) Procedural aspects and preclusion of grounds for challenge	644
d) Failure or impossibility to act	644
2. The arbitral proceedings	644
a) The request for arbitration	644
b) Equality of arms, fair trial principles and the right to be heard	646
c) Confidentiality	646
d) The arbitral award	646
e) Termination of the arbitration without an award	647
f) The costs of the arbitration	648
3. Evidence, discovery, disclosure	648
4. The law governing the dispute and <i>lois de police</i>	649
5. Interim relief in arbitration	649
a) Interim relief before state courts	650
b) Interim relief before the arbitral tribunal	650
6. Multi-party arbitration	650
a) Arbitration agreement involving several parties	651
b) Equality of arms and appointment of the arbitrators	651
IV. The control and the enforcement of arbitral awards	652
1. Correction and amendment of arbitral awards	652
2. Review of arbitral awards before the state courts	652

Table of Contents

a) Procedural framework (time limits, competent court, appeal)	652
b) Grounds for setting aside arbitral awards: An overview	652
c) Lack of jurisdiction of the arbitral tribunal	654
d) Composition of the tribunal and procedural irregularities	654
e) Public policy	656
3. Enforcing arbitral awards	657
a) General framework	657
b) Enforcement of awards that were set aside	658
c) Fulfilment, set-off and similar defences	658
4. Preclusion of grounds for challenge and defences to enforcement	658
a) Preclusion due to failure to object in the arbitral proceedings	658
b) Preclusion due to failure to bring a setting-aside application	659
§ 19. International Arbitration in the U.S.	660
I. Introduction	661
1. The legal framework	662
a) Domestic and international arbitration	663
b) Commercial and non-commercial arbitration	664
c) Ad hoc and institutional arbitration	664
d) The territoriality principle, the seat of the arbitration and the <i>lex arbitri</i>	665
e) Arbitration and other ADR mechanisms (mediation, expert determination)	665
2. The guiding principles of U.S. arbitration law	666
II. The arbitration agreement	666
1. The doctrine of separability (severability)	667
2. The law applicable to the arbitration agreement	667
3. The validity of the arbitration agreement (capacity, arbitrability, form)	667
a) Capacity to conclude arbitration agreements	667
b) Arbitrability	667
c) Form of the arbitration agreement	669
d) Termination of the arbitration agreement	669
4. The scope and the interpretation of the arbitration agreement	669
a) Personal scope of the arbitration agreement	669
b) Substantive scope of the arbitration agreement	670
c) Pathological arbitration clauses	670
5. The effect of the arbitration agreement and <i>Kompetenz-Kompetenz</i>	671
a) Enforcing arbitration clauses and <i>Kompetenz-Kompetenz</i>	671
b) Preclusion of jurisdictional defences	673
c) Binding effect of state court decisions on jurisdiction of the arbitral tribunal	674
III. The arbitral tribunal and the conduct of the arbitral proceedings	674
1. The arbitral tribunal, impartiality and independence of the arbitrators	675
a) Duty to disclose	675
b) Grounds for challenge	676
c) Procedural aspects and preclusion of grounds for challenge	677
d) Failure or impossibility to act	677
2. The arbitral proceedings	677
a) The request for arbitration	678
b) Equality of arms, fair trial principles and the right to be heard	678
c) Confidentiality	678
d) The arbitral award	678
e) Termination of the arbitration without an award	679
f) The costs of the arbitration	679
3. Evidence, discovery, disclosure	680
4. The law governing the dispute and <i>lois de police</i>	681
5. Interim relief in arbitration	682
a) Interim relief before state courts	682
b) Interim relief before the arbitral tribunal	683
6. Multi-party arbitration	683
a) Arbitration agreement involving several parties	684
b) Equality of the parties and appointment of the arbitrators	684
IV. The control and the enforcement of arbitral awards	685
1. Correction and amendment of arbitral awards	685
2. Review of arbitral awards before the state courts	686

Table of Contents

a) Procedural framework (time limits, competent court, appeal)	687
b) Grounds for setting aside arbitral awards: An overview	687
c) Lack of jurisdiction of the arbitral tribunal	688
d) Unlawful composition of the tribunal and other procedural irregularities	689
e) Public policy	689
3. Enforcing arbitral awards	689
a) Enforcement of awards that were set aside	690
b) Fulfilment, set-off and similar defences	691
4. Preclusion of grounds for challenge and defences to enforcement	691
a) Preclusion due to failure to object in the arbitral proceedings	691
b) Preclusion due to failure to bring a setting-aside application	692
Index	693