

Summary of Contents

Introduction	1
Chapter 1	
Overview of International Commercial Arbitration	7
§1.01 History of International Arbitration	7
§1.02 Objectives of International Commercial Arbitration	67
§1.03 Increasing Use of International Commercial Arbitration	91
§1.04 Overview of Contemporary Legal Framework for International Commercial Arbitration	96
§1.05 Theories of International Arbitration	239
§1.06 Overview of Sources of Information About International Arbitration	243
PART I	
INTERNATIONAL ARBITRATION AGREEMENTS	251
Chapter 2	
Legal Framework for International Arbitration Agreements	255
§2.01 Introduction	255
§2.02 Definition of “Agreement to Arbitrate”	266
§2.03 Other Jurisdictional Requirements Affecting Legal Regime Applicable to International Arbitration Agreements	320
§2.04 Relevance of Arbitral Seat to Legal Framework Governing International Arbitration Agreements	371
Chapter 3	
International Arbitration Agreements and Separability Presumption	375
§3.01 Introduction	376
§3.02 Development of Separability Presumption	379
§3.03 Applications of Separability Presumption	432
Chapter 4	
Choice of Law Governing International Arbitration Agreements	507
§4.01 Introduction	508
§4.02 Consequences of Separability Presumption for Choice of Law Applicable to International Arbitration Agreements	510
§4.03 Issues Governed by Law Applicable to International Arbitration Agreements	523
§4.04 Choice-of-Law Rules Selecting Law Applicable to Existence and Substantive Validity of International Arbitration Agreements	525
§4.05 Choice of Law Governing Nonarbitrability	639
§4.06 Choice-of-Law Rules Applicable to Formal Validity of International Arbitration Agreements	657
§4.07 Choice-of-Law Rules Applicable to Capacity to Conclude International Arbitration Agreements	666
§4.08 Choice-of-Law Rules Applicable to Authority to Conclude International Arbitration Agreements	672

§4.09	Choice-of-Law Rules Applicable to Interpretation of International Arbitration Agreements	673
Chapter 5		
Formation, Validity and Legality of International Arbitration Agreements		675
§5.01	Introduction	677
§5.02	Formal Validity of International Arbitration Agreements	697
§5.03	Capacity to Conclude International Arbitration Agreements	765
§5.04	Formation of International Arbitration Agreements	782
§5.05	Incorporation of International Arbitration Agreements	877
§5.06	Substantive Validity of International Arbitration Agreements	893
§5.07	Severability of Invalid Provisions of International Arbitration Agreement	970
§5.08	Failure to Comply with Pre-Arbitration Procedural Requirements	973
§5.09	Existence of "Dispute"	1009
§5.10	Waiver of Right to Arbitrate	1010
Chapter 6		
Nonarbitrability and International Arbitration Agreements		1027
§6.01	Introduction	1028
§6.02	Nonarbitrability in International Arbitration Conventions	1030
§6.03	Nonarbitrability in National Arbitration Legislation	1042
§6.04	Applications of Nonarbitrability Doctrine	1059
§6.05	Choice of Law Governing Nonarbitrability	1131
§6.06	<i>Sua Sponte</i> Consideration of Nonarbitrability Issues by Arbitral Tribunal	1131
§6.07	Judicial "Supervision" of Arbitral Consideration of Public Law Claims	1132
§6.08	Future Directions: Nonarbitrability Doctrine	1133
Chapter 7		
International Arbitration Agreements and Competence-Competence		1139
§7.01	Introduction	1141
§7.02	Power of International Arbitral Tribunals to Consider and Decide Disputes Concerning Their Jurisdiction	1144
§7.03	Allocations of Jurisdictional Competence in Different National Legal Regimes	1169
§7.04	Choice of Law Governing Competence-Competence Issues	1332
§7.05	Timing and Procedural Disposition of Jurisdictional Disputes by Arbitral Tribunal	1334
Chapter 8		
Effects and Enforcement of International Arbitration Agreements		1349
§8.01	Introduction	1349
§8.02	Positive Legal Effects of International Arbitration Agreements: Obligation to Arbitrate in Good Faith	1350
§8.03	Negative Legal Effects of International Arbitration Agreements: Obligation Not to Litigate Arbitrable Disputes	1366
§8.04	Court Orders Enjoining Arbitration: Anti-Arbitration Injunctions	1410
Chapter 9		
Interpretation of International Arbitration Agreements		1423
§9.01	Introduction	1423
§9.02	Scope of Arbitration Agreement	1424

§9.03	International Arbitration Agreements Incorporating Institutional Arbitration Rules	1498
§9.04	Exclusivity of Arbitration Agreement	1503
§9.05	Choice of Law Applicable to Interpretation of International Arbitration Agreement	1504
§9.06	Allocation of Competence to Decide Disputes over Scope of International Arbitration Agreement	1510
Chapter 10		
Parties to International Arbitration Agreements		1515
§10.01	Introduction	1517
§10.02	Legal Bases for Binding Non-Signatories to International Arbitration Agreements	1531
§10.03	Future Directions: Legal Bases for Binding Non-Signatories to International Arbitration Agreements	1599
§10.04	Formal Validity and Non-Signatories	1604
§10.05	Choice of Law Governing Parties to International Arbitration Agreement	1606
§10.06	Allocation of Competence to Determine Parties to Arbitration Agreement	1616
§10.07	Arbitration in Corporate and Partnership Contexts	1619
§10.08	Class Arbitrations	1622
PART II		
INTERNATIONAL ARBITRAL PROCEDURES		1643
Chapter 11		
Legal Framework for International Arbitral Proceedings		1647
§11.01	Introduction	1648
§11.02	Jurisdictional Requirements of International Arbitration Conventions and National Arbitration Legislation	1655
§11.03	Definition and Selection of Arbitral Seat	1657
§11.04	Legal Significance of Arbitral Seat	1669
§11.05	Choice of Procedural Law of Arbitration	1723
Chapter 12		
Selection, Challenge and Replacement of Arbitrators in International Arbitration		1761
§12.01	Selection of Arbitrators	1764
§12.02	Number of Arbitrators	1788
§12.03	Procedures for Selecting Arbitrators	1807
§12.04	Restrictions on Arbitrators' Identities	1868
§12.05	Independence and Impartiality of Arbitrators	1890
§12.06	Procedures for Challenging and Replacing Arbitrators	2054
§12.07	Truncated Tribunal	2097
Chapter 13		
Rights and Duties of International Arbitrators		2105
§13.01	Introduction	2106
§13.02	Status of International Arbitrators	2107
§13.03	International Arbitrator's Contract	2118
§13.04	Obligations of International Arbitrators	2129
§13.05	Remedies for International Arbitrator's Failure to Comply with Obligations	2158
§13.06	Rights of International Arbitrators	2167

§13.07	Role of Presiding Arbitrator	2190
§13.08	Choice of Law Governing International Arbitrators' Obligations, Rights and Protections	2200
§13.09	Proposals for Licensing and Regulation of International Arbitrators	2201
Chapter 14		
Selection of Arbitral Seat in International Arbitration		2205
§14.01	Introduction	2206
§14.02	Importance of Selection of Arbitral Seat	2209
§14.03	Parties' Autonomy to Select Arbitral Seat	2222
§14.04	Interpretation and Validity of Agreement on Arbitral Seat	2230
§14.05	Choice of Law Governing Interpretation and Validity of Agreement on Arbitral Seat	2248
§14.06	Allocation of Competence Over Disputes Concerning Validity or Interpretation of Agreement on Arbitral Seat	2248
§14.07	Default Selection of Arbitral Seat by Arbitral Institution or Arbitral Tribunal in Absence of Agreement by Parties	2255
§14.08	Competence of National Courts to Select Arbitral Seat in Absence of Agreement by Parties	2266
Chapter 15		
Procedures in International Arbitration		2283
§15.01	Introduction	2287
§15.02	Parties' Autonomy to Determine Procedures in International Arbitration	2295
§15.03	Arbitral Tribunal's Discretion to Determine Procedures in International Arbitration	2309
§15.04	Mandatory Procedural Requirements in International Arbitration	2318
§15.05	Waiver of Procedural Rights in International Arbitration	2351
§15.06	Judicial Non-Interference in International Arbitral Proceedings	2353
§15.07	Procedural Conduct of International Arbitral Proceedings	2362
§15.08	Major Procedural Steps in International Arbitral Proceedings	2378
§15.09	Evidentiary Rules and Burden of Proof	2481
§15.10	Arbitrators' Authority to Impose Sanctions	2489
Chapter 16		
Disclosure in International Arbitration		2493
§16.01	Introduction	2494
§16.02	Disclosure Powers of International Arbitral Tribunals	2496
§16.03	Role of National Courts in Obtaining Evidence for Use in International Arbitrations	2570
Chapter 17		
Provisional Relief in International Arbitration		2601
§17.01	Introduction	2604
§17.02	Provisional Measures Ordered by International Arbitral Tribunals	2607
§17.03	Judicial Recognition and Enforcement of Provisional Relief Ordered by Arbitrators	2697
§17.04	Provisional Relief Ordered by National Courts in Aid of International Arbitration	2711

Chapter 18

Consolidation, Joinder and Intervention in International Arbitration	2759
§18.01 Introduction	2760
§18.02 Multi-Party Issues in International Arbitral Proceedings	2765
§18.03 Multi-Contract Issues in International Arbitral Proceedings	2815

Chapter 19

Choice of Substantive Law in International Arbitration	2817
§19.01 Introduction	2820
§19.02 Arbitrators' Authority to Select Applicable Substantive Law	2823
§19.03 Choice of Substantive Law Governing Merits of Parties' Dispute in Absence of Agreement on Applicable Law	2831
§19.04 Choice of Law Governing Merits of Parties' Dispute Pursuant to Choice-of-Law Agreements	2876
§19.05 Interpretation of Choice-of-Law Agreements	2945
§19.06 Choices of Substantive Law in Choice-of-Law Agreements	2958
§19.07 Trade Usages	2984
§19.08 <i>Amiable Composition</i> and <i>Ex Aequo et Bono</i>	2987
§19.09 Minimal Judicial Review of Arbitrators' Choice-of-Law Decisions	2994
§19.10 Procedural Issues in Arbitrators' Choice of Applicable Law	2996
§19.11 Application of Statutes of Limitations in International Arbitration	2997

Chapter 20

Confidentiality in International Arbitration	3001
§20.01 Introduction	3003
§20.02 Confidentiality of International Arbitrations Under International Arbitration Conventions	3006
§20.03 Confidentiality of International Arbitrations Under National Law	3007
§20.04 Confidentiality of International Arbitrations Under Institutional Arbitration Rules	3028
§20.05 Confidentiality Orders by Arbitral Tribunal	3034
§20.06 Confidentiality of Arbitrators' Deliberations	3036
§20.07 Privacy and Confidentiality of Arbitral Hearings	3039
§20.08 Choice of Law Governing Confidentiality in International Arbitration	3040
§20.09 Arbitral Tribunal's Competence with Regard to Confidentiality of the Arbitral Proceedings	3042
§20.10 Future Directions: Confidentiality in International Commercial Arbitration	3043
§20.11 Confidentiality in Investor-State Arbitration	3050

Chapter 21

Legal Representation and Professional Conduct in International Arbitration	3063
§21.01 Parties' Right to Representation in International Arbitration	3066
§21.02 Parties' Exercise of Rights to Representation in International Arbitration	3079
§21.03 Professional Conduct of Legal Representatives in International Arbitration	3081
§21.04 Immunity of Counsel in International Arbitration	3133
§21.05 Standards of Professional Conduct for International Arbitrators	3134

PART III	
INTERNATIONAL ARBITRAL AWARDS	3139
Chapter 22	
Legal Framework for International Arbitral Awards	3143
§22.01 Introduction	3144
§22.02 Applicability of International Arbitration Conventions and National Arbitration Legislation to International Arbitral Awards	3160
§22.03 Limits on Forums for Seeking Recognition or Enforcement of Arbitral Awards	3227
§22.04 Limits on Forums for Seeking Annulment of International Arbitral Awards	3235
Chapter 23	
Form and Contents of International Arbitral Awards	3259
§23.01 Categories of International Arbitral Awards	3260
§23.02 Formal Requirements for International Arbitral Awards	3280
§23.03 Requirement That International Arbitral Awards Be Reasoned	3290
§23.04 Majority Awards and Awards by Presiding Arbitrator	3300
§23.05 Separate, Concurring and Dissenting Opinions	3304
§23.06 Time Limits, Service and Publication of International Arbitral Awards	3313
§23.07 Relief Granted in Arbitral Awards	3321
§23.08 Awards of Costs of Arbitration and Legal Representation	3340
§23.09 Awards of Interest	3358
Chapter 24	
Correction, Interpretation and Supplementation of International Arbitral Awards	3369
§24.01 Introduction	3369
§24.02 <i>Functus Officio</i> Doctrine	3370
§24.03 Correction of International Arbitral Awards	3381
§24.04 Interpretation of International Arbitral Awards	3398
§24.05 Supplementation of International Arbitral Awards	3406
§24.06 Remission of International Arbitral Award to Arbitral Tribunal	3410
§24.07 Revocation or revision of Fraudulently Obtained Arbitral Awards	3412
§24.08 Institutional Appeals from International Arbitral Awards	3417
Chapter 25	
Annulment of International Arbitral Awards	3421
§25.01 Introduction	3422
§25.02 International Limits on Grounds for Annulling International Arbitral Awards	3423
§25.03 Presumptive Obligation to Recognize International Arbitral Awards Under National Arbitration Legislation	3432
§25.04 Grounds for Annulling Arbitral Awards Under National Arbitration Legislation	3447
§25.05 National Arbitration Legislation with Annulment Grounds Which Are More Expansive Than UNCITRAL Model Law	3632
§25.06 National Arbitration Legislation with Annulment Grounds Which Are Less Expansive Than UNCITRAL Model Law	3658
§25.07 Agreements Limiting or Expanding Grounds for Annulling International Arbitral Awards	3660

§25.08	Time Limits Under National Law for Applications to Annul and to Confirm International Arbitral Awards	3676
§25.09	Requirements Under National Law That International Arbitral Awards Be “Final” or “Binding” Before Annulment May Be Sought	3682
§25.10	“Entry of Judgment” Clause	3684
§25.11	Consequences of Annulling International Arbitral Awards	3686
§25.12	Standing to Seek Annulment	3689
Chapter 26		
Recognition and Enforcement of International Arbitral Awards		3691
§26.01	Proof of International Arbitral Awards	3694
§26.02	Procedures for Obtaining Recognition and Enforcement of International Arbitral Awards	3715
§26.03	Presumptive Obligation to Recognize and Enforce International Arbitral Awards	3718
§26.04	Agreements Waiving Rights to Oppose Recognition of Foreign and Non-Domestic Arbitral Awards	3755
§26.05	Grounds for Refusing to Recognize International Arbitral Awards	3760
§26.06	Suspension of Recognition Proceedings Pending Resolution of Application to Annul Award	4081
§26.07	Time Limitations for Seeking Recognition of Awards	4090
Chapter 27		
Preclusion, <i>Lis Pendens</i> and <i>Stare Decisis</i> in International Arbitration		4099
§27.01	Preclusive Effects of International Arbitral Awards in National Court Litigation	4099
§27.02	Preclusive Effects of National Court Judgments and Arbitral Awards in International Arbitration	4147
§27.03	<i>Lis Pendens</i> and International Arbitration	4164
§27.04	Role of Precedent in International Arbitration	4181
Commentaries		4205
Articles		4227
International Agreements		4379
Documents of the United Nations		4383
Statutes		4391
Legislative Materials		4407
Rules, Codes and Guidelines		4411
Miscellaneous		4419
Index of Arbitral Awards		4427
Index of Cases		4475
Subject Index		4793