

International Arbitration Agreement Drafting Guideline

1. Whether institutional or ad hoc
2. Selection of arbitration rules and model clauses
 - a. If rules are not incorporated, it is important to set time limits in the arbitration clause itself in order to prevent time waste at the outset of the proceedings
3. Place of arbitration (arbitral seat)
4. Arbitrators
 - a. Number of arbitrators
 - b. Method of selection/replacement of arbitrators
 - c. Appointing authority in ad hoc
5. Language of arbitration
6. Rules of law governing the contract and any subsequent disputes
7. Optional elements:
 - a. Authority of arbitral tribunal with respect to provisional measures
 - b. Document production
 - i. Pay attention to those privileged document (could be exempted from production)
 - c. Confidentiality issues
 - d. Allocation of costs and fees
 - i. Bear equally by each party
 - ii. Allocation by the arbitral tribunal to any party that deemed reasonable
 - iii. Allocated by arbitrator to the prevailing party
 - e. Qualifications required of arbitrators
 - f. Time limits
 - i. Arbitral tribunal shall be allowed to extend the time for the interest of justice or the complexity of the case requires extension
 - g. Finality of arbitration
 - i. Scope of judicial review should be limited
8. Drafting guidelines for multi-tier dispute resolution
 - a. Specify a period of time for negotiation/mediation before submitting to arbitration (it's like condition precedent) triggered by a defined and undisputable event (i.e. a written request)
 - b. The clause should avoid the trap of rendering arbitration permissive, not mandatory
 - c. Define disputes submitted to negotiation/mediation the same as to arbitration
9. Drafting guidelines for multiparty arbitration agreement
 - a. Arbitrator(s) appointed jointly by the parties – not each party appoints one arbitrator

- b. Joinder/intervention procedural complexities must be addressed
10. Multi-contract arbitration agreement
- a. Clauses in each contract should be compatible
 - i. It is essential each contract specifies the same set of rules, place of arbitration and number of arbitrators
 - b. Whether consent to consolidation of arbitral proceedings commenced under the related contracts

