GETTING THE DEAL THROUGH

Arbitration

in 47 jurisdictions worldwide

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2009

Published by
GLOBAL ARBITRATION REVIEW
in association with:

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GLOBAL ARBITRATION REVIEW
THE INTERNATIONAL JOURNAL OF PUBLIC AND PRIVATE ARBITRATION

United States

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Laws and institutions

1 International multilateral conventions

Is your country a contracting state to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards? Since when has the Convention been in force? Were any declarations or notifications made under articles I, X and XI of the Convention? What other multilateral conventions relating to arbitration is your country a party to?

The New York Convention entered into force in the US on 29 December 1970. US courts apply the New York Convention, on the basis of reciprocity, to the recognition and enforcement of awards made in the territory of contracting states, where disputes arise out of legal relationships considered to be commercial under the national law of the US. The New York Convention is codified at chapter 2 of the Federal Arbitration Act (the FAA), 9 USC sections 201-208. The US is also a party to the Inter-American Convention on International Commercial Arbitration (the Panama Convention), which entered into force in the US on 27 October 1990, and the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (the ICSID Convention), which entered into force in the US on 14 October 1966.

2 International bilateral agreements

Do bilateral agreements relating to arbitration exist with other countries?

The US is party to numerous bilateral and multilateral treaties with other countries, including bilateral investment treaties requiring arbitration and regulating the recognition and enforcement of awards. The US Department of State's 'Treaties in Force' database includes a list of US bilateral and multilateral treaties on record as being in force as of 1 January of each year. (See www.state.gov/s/l/treaty/treaties/2007/index.htm.)

3 Domestic arbitration law

What are the primary domestic sources of law relating to domestic and foreign arbitral proceedings, and recognition and enforcement of awards?

In the US, arbitration of disputes and enforcement of arbitral awards is governed by both federal and state statutory and common law:

- the FAA, 9 USC. section 1 et seq, (www.adr.org/sp.asp?id=29568) governs contracts involving commerce as defined under federal law; and
- state arbitration statutes, most of which are based largely on the Uniform Arbitration Act. The Revised Uniform Arbitration Act (the RUAA) was approved for enactment in 2000 (www.law.upenn.edu/bll/ulc/uarba/arbitrat1213.htm).

The US Supreme Court has held that the FAA calls for the application, in state as well as federal courts, of federal substantive law regarding arbitration, and pre-empts state laws restrictive of arbitration. (*Southland Corp v Keating*, 465 US 1, 16 (1984).) The FAA applies to all domestic and international commercial transactions within Congress' power to regulate commerce. Chapter 1 of the FAA governs domestic arbitrations and awards and applies to international arbitration to the extent it is not in conflict with the New York Convention. Chapters 2 and 3 of the FAA govern arbitrations within the New York and Panama Conventions, respectively. FAA, section 202 defines an international arbitration as one arising out of a commercial relationship and involving at least one non-US citizen, or, if entirely between US citizens, one involving property located abroad, performance or enforcement abroad, or 'some other reasonable relation with one or more foreign states'. Individual state statutes also address domestic and international arbitration.

4 Domestic arbitration and UNCITRAL

Is your domestic arbitration law based on the UNCITRAL Model Law? What are the major differences between your domestic arbitration law and the UNCITRAL Model Law?

US domestic arbitration law, the cornerstone of which is the FAA, enacted in 1925, is not based on the UNCITRAL Model Law on International Commercial Arbitration. Under US law, in contrast to the Model Law (article 16(1)), the issue of arbitrability may only be referred to the arbitral tribunal where there is clear and unmistakeable evidence from the arbitration agreement that the question of arbitrability is to be decided by the arbitral tribunal. US arbitration law otherwise approaches the enforcement of arbitration agreements and awards in a manner comparable to the Model Law.

5 Mandatory provisions

What are the mandatory domestic arbitration law provisions on procedure from which parties may not deviate?

As US courts have often observed, 'arbitration is a creature of contract', thus arbitral tribunals are bound by the parties' agreement regarding procedure, applicable arbitral rules, and considerations of due process. FAA, section 10(a), provides that a court may vacate an arbitral award on various procedural grounds, including arbitrator misconduct or partiality, arbitrators' refusal to hear material evidence, and where the arbitrators have exceeded their powers.

In 2008, the US Supreme Court rejected an arbitration agreement that expanded judicial review to allow for vacatur of an arbitral award where the arbitrator's conclusions of law are erroneous, holding that federal courts may consider only the grounds for vacatur set forth in the FAA. (*Hall Street Assocs, LLC v Mattel, Inc*, 128 S. Ct. 1396 (2008).) The California Supreme Court shortly thereafter side-

stepped *Hall Street*, ruling that parties may contract for expanded judicial review of arbitral awards based on state procedural law, such as the California arbitration statute. (*Cable Connection, Inc v DirecTV, Inc*, 44 Cal.4th 1334 (2008).) As a practical consequence of these decisions, the scope of judicial review of an arbitral award may depend on whether a federal or state court undertakes that review. Parties may thus wish to preserve or exclude rights to obtain judicial review under state arbitration law.

6 Substantive law

Is there any rule in your domestic arbitration law that provides the arbitral tribunal with guidance as to which substantive law to apply to the merits of the dispute?

Arbitral tribunals in the US generally enforce parties' choices concerning the substantive law governing their dispute. Under US law, choice-of-law clauses in international agreements are 'prima facie valid' and are judicially enforceable unless shown to be 'unreasonable under the circumstances.' Judicial enforcement of state choice-of-law provisions is subject in some jurisdictions to a requirement that the chosen state have a substantial relationship to the parties or the transaction, or that the parties have a reasonable basis in their choice of law. The US Supreme Court has held that, in harmonising a choice-of-law provision and an arbitration clause specifying application of particular rules, the choice-of-law provision may not be read to include special state rules limiting the authority of arbitrators. (*Mastrobuono v Shearson Lehman Hutton, Inc*, 514 US 52 (1995).) In the absence of a choice-of-law provision, tribunals must select the applicable substantive law pursuant to the conflict of laws rules deemed appropriate.

7 Arbitral institutions

What are the most prominent arbitral institutions in your country?

The most prominent US arbitral institutions are as follows:

American Arbitration Association (AAA)
1633 Broadway
New York
NY 10019
United States
www.adr.org

The AAA is the foremost US arbitral institution. Parties frequently contract to resolve domestic disputes under the AAA Commercial Arbitration Rules (the AAA Commercial Rules). AAA's International Arbitration Rules (the AAA International Rules) are designed for use in international arbitrations. In administering arbitrations, the AAA exercises a limited supervisory role. Arbitrator appointments are frequently made using a list procedure. The AAA International Rules provide that the tribunal must apply the substantive law chosen by the parties and that, absent the parties' agreement or the tribunal's determination otherwise, the language of the arbitration is that of the arbitration agreement. Under both the AAA Commercial and International Rules, if the parties do not agree on the place of arbitration, it is set by the AAA (or, under the International Rules, by the tribunal). If the place of the hearing is not specified in the contract, it is set by the arbitrator. Filing and case service fees are based on the amount in dispute. Arbitrators' fees are determined by the AAA case administrator in cooperation with the parties, based on the arbitrators' stated rate of compensation and the size and complexity of the case. Both the AAA Commercial and International Rules allow arbitrators to direct parties to produce documents and other information.

International Institute for Conflict Prevention and Resolution (CPR)
575 Lexington Avenue
New York
NY 10022
United States
www.cpradr.org

CPR is another important US arbitration institution. CPR publishes the Non-Administered Arbitration Rules used in domestic disputes and the CPR Rules for Non-Administered Arbitration of International Disputes. CPR assists parties in appointing and selecting arbitrators and rules on challenges to arbitrators. All arbitrators must be independent and impartial. The tribunal must apply the substantive law chosen by the parties, and, absent the parties' agreement, must establish the place of arbitration based upon the parties' contentions and the circumstances of the arbitration. Arbitrators must be fully compensated on a reasonable basis and, subject to contrary agreement, the tribunal is empowered to apportion costs, including attorneys' fees, incurred by the parties, among the parties, taking into account the circumstances of the case, the parties' conduct during the proceeding, and the result of the arbitration.

ICSID
ICSID, an arm of the World Bank, is an institution dedicated to the resolution of investor-state disputes through conciliation and arbitration procedures. It is based at:
1818 H Street NW
Washington, DC
20433
United States
www.worldbank.org/icsid/

Arbitration agreement

8 Arbitrability

Are there any types of disputes that are not arbitrable?

US courts have determined that most commercial disputes are arbitrable under the FAA, in particular those involving international transactions and federal antitrust, securities and intellectual property claims. Some states restrict the arbitration of particular disputes, such as employment or franchise disputes, or allow arbitration only when certain criteria are satisfied, but such restrictions may be subject to federal pre-emption if they involve interstate commerce.

9 Requirements

What formal and other requirements exist for an arbitration agreement?

An arbitration agreement must be in writing, and also valid, irrevocable and enforceable under the contract law of the US state governing the agreement. Courts have held, however, that the FAA pre-empts state law restricting the formation or validity of arbitration agreements. Formal requirements concerning the arbitration agreement may, under appropriate circumstances and under certain rules, be deemed waived. US courts generally enforce arbitration clauses contained in standard terms and conditions, subject to considerations of procedural fairness. The FAA does not address the ability of US government entities to enter into arbitration agreements, although restrictions may be imposed by federal or state statutes.

10 Enforceability

In what circumstances is an arbitration agreement no longer enforceable?

FAA, section 2, provides that arbitration agreements are enforceable 'save upon such grounds as exist at law or in equity for the revocation of any contract'. General contract law grounds for challenging the validity of arbitration agreements include duress, fraudulent inducement, fraud, illegality, lack of capacity of a party, unconscionability and waiver of the right to arbitrate. Validity may also be contested on the basis that the subject matter of the dispute is not arbitrable. Contract law-based challenges to the enforceability of arbitration agreements have been considerably limited by the separability doctrine, under which arbitration agreements are viewed by courts as separate and distinct from the contracts in which they are included. A challenge to the validity of the contract as a whole, and not specifically to the arbitration clause, must be considered by the arbitrator, not the court. (*Buckeye Check Cashing, Inc v Cardegna*, 546 US 440 (2006).) Thus, where a party claims that it was fraudulently induced into entering a contract, or that a contract is void as illegal, US courts must enforce an arbitration agreement contained in that contract absent evidence that the arbitration agreement itself is tainted by fraud or illegality.

11 Third parties

In which instances can third parties or non-signatories be bound by an arbitration agreement?

Arbitration agreements are generally enforceable only against contracting parties. Under various legal theories, however, third parties or non-signatories can sometimes be bound by, and benefit under, an arbitration agreement. A non-signatory may be bound where it is found to be an alter ego of a party to the arbitration agreement (if it dominates and controls the actions of the signatory party, using its control to work fraud or injustice), and by the doctrines of agency, assignment, assumption, estoppel and incorporation by reference. Non-signatories may also invoke arbitration agreements to their benefit using third-party beneficiaries principles.

12 Groups of companies

Do courts and arbitral tribunals in your jurisdiction extend an arbitration agreement to non-signatory parent or subsidiary companies of a signatory company, provided that the non-signatory was somehow involved in the conclusion, performance or termination of the contract in dispute, under the 'group of companies' doctrine?

US courts have generally rejected the group of companies doctrine. Courts do bind non-signatory group affiliate companies to arbitration agreements based on the principles of alter ego, agency, assignment, assumption, estoppel, incorporation by reference and third-party beneficiaries.

13 Multiparty arbitration agreements

What are the requirements for a valid multiparty arbitration agreement?

A valid multiparty arbitration agreement generally must be in writing and evince the assent of all parties to be bound to arbitrate disputes. The FAA does not specifically address the question of whether the consolidation of arbitration proceedings is allowed, though federal courts typically refuse consolidation absent the parties' express agreement. RUAA, section 10, however, permits a court to order consolidation of separate proceedings in certain situations such as where the claims arise in substantial part from the same transaction or series of related transactions and common issues of law or fact exist, unless the parties have agreed otherwise. Where class arbitration is not clearly precluded by a contract's arbitration clause, the question of whether class arbitration is permissible is a question for the arbitrators to decide. (*Green Tree Fin Corp v Bazzle*, 539 US 444.) AAA Commercial Rules, R-15 provides that in multiparty arbitrations, the AAA may appoint all of the arbitrators, unless the parties agree otherwise.

Constitution of arbitral tribunal

14 Appointment of arbitrators

Are there any restrictions as to who may act as an arbitrator?

Neither the FAA nor the RUAA includes specific provisions governing arbitrator qualifications. Where the parties' arbitration agreement stipulates arbitration rules, those rules may set arbitrator requirements. It is common practice for US arbitral institutions to nominate arbitrators from their own rosters or panels of arbitrators. US codes of judicial conduct typically prohibit a judge from acting as an arbitrator or otherwise performing judicial functions in a private capacity unless authorised by law.

15 Appointment of arbitrators

Failing prior agreement of the parties, what is the default mechanism for the appointment of arbitrators?

FAA, section 5 and RUAA, section 11, empower courts to appoint an arbitrator if the arbitration agreement or applicable arbitration rules provide no appointment method, or if the appointment method fails. FAA, section 5 and AAA Commercial Rules, R-15 state that, absent the parties' contrary agreement, a single arbitrator will normally be appointed.

16 Challenge and replacement of arbitrators

On what grounds and how can an arbitrator be challenged and replaced? Please discuss in particular the grounds for challenge and replacement, and the procedure, including challenge in court.

Neither the FAA nor the RUAA expressly provides for the pre-award challenge or removal of an arbitrator. Generally, an agreement to arbitrate before a particular arbitrator may not be disturbed. Pre-award removal of an arbitrator may occur when the court concludes that one party has deceived the other, that unforeseen intervening events have frustrated the intent of the parties, or that the unmistakable partiality of the arbitrator frustrates the parties' explicitly stated contractual intent to submit their dispute to a neutral arbitrator. Institutional rules typically provide for the challenge and replacement of arbitrators on grounds of partiality, inability to perform his or her function, incapacity or death.

17 Relationship between parties and arbitrators

What is the relationship between parties and arbitrators?

FAA, section 10(a)(2), states that an award may be vacated where there was 'evident partiality' in an arbitrator, for example, an interest in the outcome of the dispute, or where the arbitrator has personal or business ties with a party. RUAA, section 11(b), bars an individual with a material interest in the outcome of a proceeding from serving as a neutral arbitrator. RUAA, section 12, imposes disclosure requirements on all arbitrators. US courts generally require an arbitrator to disclose facts that might suggest arbitrator bias to a reasonable person. The AAA and CPR rules require that arbitrators disclose any facts that may call into question his or her impartiality or independence. AAA International Rules, article 7, states that an arbitrator at

all times must remain independent of the parties. In domestic arbitrations, however, US courts have historically accepted three-member tribunals composed of two non-neutral party-nominated arbitrators and a neutral chairman. The American Bar Association/AAA Code of Ethics for Arbitrators in Commercial Disputes establishes a waiveable presumption that party-appointed arbitrators are neutral and provides that arbitrators should observe fundamental standards of ethical conduct.

AAA Commercial and International Rules (R-51; article 32) provide that an arbitrator's compensation shall be based upon his or her stated rate of compensation. The International Rules also look to the size and complexity of the case. Compensation of neutral arbitrators is arranged through the AAA's administrator. The FAA does not address an arbitrator's liability. US courts have determined, however, that an arbitrator is immune from civil liability for acts within the scope of the arbitral process. RUAA, section 14, provides generally for arbitrators' and arbitral institutions' immunity from civil suit. AAA Commercial and International Rules (R-48(d); article 35) immunise both arbitrators and the AAA from liability, except, under the International Rules, in the case of conscious and deliberate wrongdoing (article 35).

Jurisdiction

18 Court proceedings despite arbitration agreement

What is the procedure for disputes over jurisdiction if court proceedings are initiated despite an existing arbitration agreement, and what time limits exist for jurisdictional objections?

A US court may enforce a valid arbitration agreement falling within the FAA's terms by staying judicial proceedings concerning a dispute that is referable to arbitration or compelling arbitration (FAA, sections 3-4, 206, 303). FAA, sections 4 and 6, establish an expedited procedural regime for actions to enforce arbitration agreements, under which motions are decided without an evidentiary hearing, upon affidavit and documentary evidence alone. Where the making of an arbitration agreement is at issue, however, a jury trial may be required (FAA, section 4). Many state arbitration statutes permit parties to seek orders compelling arbitration or staying court proceedings in derogation of an arbitration agreement. A party moving to stay court proceedings must not be in default in proceeding with arbitration, namely it must not have waived its rights under the arbitration agreement by participating in the litigation. Some US courts have granted anti-suit injunctions against parties that have commenced foreign litigation in derogation of agreements to arbitral disputes in the US.

19 Jurisdiction of arbitral tribunal

What is the procedure for disputes over jurisdiction of the arbitral tribunal once arbitral proceedings have been initiated and what time limits exist for jurisdictional objections?

Under federal law, arbitral tribunals may determine issues of arbitrability only where clear and unmistakable evidence exists that the parties intended to arbitrate arbitrability. (*First Options of Chicago, Inc v Kaplan*, 514 US 938, 944 (1995).) Accordingly, if the parties wish to confer upon arbitrators the competence to decide their own jurisdiction, the parties should so stipulate in the arbitration agreement. Certain US courts, in particular the Court of Appeals for the Second Circuit, which embraces New York, have held that reference in an arbitration provision to institutional arbitration rules that allow the arbitrators to rule on their own jurisdiction (eg, AAA Commercial Rules R-7(a); International Rules, article 15(1)) presents clear and unmistakable evidence of intent to submit jurisdictional questions to the arbitrators. As a practical matter, US courts do not commonly consider interlocutory challenges to tribunals' jurisdictional decisions; the usual course is for courts to review the tribunal's jurisdiction de novo on a motion to vacate an award. The AAA Commercial and International Rules (R-7(c); article 15(3)) require that a party object to jurisdiction or arbitrability no later than when filing a statement of defence to the relevant claim.

Arbitral proceedings

20 Place and language of arbitration

Failing prior agreement of the parties, what is the default mechanism for the place of arbitration and the language of the arbitral proceedings?

In the absence of an agreement between the parties concerning the place of arbitration, a US district court may generally compel arbitration within its own judicial district. State arbitration statutes and institutional arbitration rules usually permit arbitral tribunals to determine the place of arbitration (eg, AAA International Rules, article 13). Under US law and most institutional arbitration rules, tribunals need not hold hearings at the place of arbitration. US statutes do not regulate the language of the arbitration. In the absence of an express provision, the language of the arbitration is generally that of the document containing the arbitration agreement, subject to the power of the arbitrators to determine otherwise based upon the circumstances of the arbitration (eg, AAA International Rules, article 14).

21 Commencement of arbitration

How are arbitral proceedings initiated?

Arbitration agreements may specify how to initiate arbitration or may refer to institutional rules (eg, AAA Rules, R-4; AAA International Rules, article 2). Certain state arbitration laws specify how arbitration is to be initiated (eg, New York Civil Practice Law and Rules (New York CPLR), section 7503(c); RUAA, section 9). State procedural requirements, however, may be pre-empted by federal law.

22 Hearing

Is a hearing required and what rules apply?

There is no requirement to hold a hearing in all cases, though arbitral procedures must generally comply with due process requirements. Under FAA, section 10(a)(3), awards may be vacated for arbitral misconduct where arbitrators refuse to postpone a hearing or hear material evidence, or otherwise prejudice a party's rights. Institutional rules also contain due process requirements, although AAA Commercial Rules, R-30(c) permits the parties to waive oral hearings.

23 Evidence

By what rules is the arbitral tribunal bound in establishing the facts of the case? What types of evidence are admitted and how is the taking of evidence conducted?

Federal law grants parties and tribunals wide autonomy to choose arbitration procedures. Discovery is available in arbitration, subject to the parties' agreement, although generally on a more limited basis than in US judicial proceedings. FAA, section 7, permits an arbitral tribunal to summon witnesses and compel production of documents. Some state laws contain procedural requirements regarding, for example, cross-examination (eg, New York CPLR, article 75). RUAA, section 17, provides tribunals with broad discovery powers, including, for example, the power to order depositions. The AAA

Commercial Rules state that the parties shall produce such evidence as the arbitrator may deem necessary, and although conformity to legal rules of evidence is not necessary, the arbitrator must take into account applicable principles of legal privilege. (AAA Commercial Rules, R-31.) The AAA International Rules grant tribunals discretion in assessing evidence (article 16) and stipulate that testimony may also be presented in the form of written statements signed by witnesses. (Article 20(5).) Party-appointed expert witnesses are commonly used and institutional rules allow arbitral tribunals to appoint independent experts (eg, AAA International Rules, article 22). There is generally no rule against party officers testifying. Reference to the IBA Rules on the Taking of Evidence in International Commercial Arbitration is increasingly common in international arbitral proceedings.

24 Court involvement

In what instances can the arbitral tribunal request assistance from a court and in what instances may courts intervene?

Discovery orders issued by arbitral tribunals, summoning witnesses and directing document production before the tribunal under FAA, section 7, may be enforced or challenged by petition to the appropriate district court, subject to that court's jurisdictional requirements. Section 7 applies to both parties and non-parties, although most federal courts have ruled that arbitrators cannot compel pre-hearing discovery from non-parties and that district courts may not enforce arbitral subpoenas served on non-parties outside of their geographical jurisdiction. Most state arbitration statutes provide that tribunals' orders may be enforced by state courts.

25 Confidentiality

Is confidentiality ensured?

The FAA does not provide for confidentiality of proceedings or awards. Arbitration agreements may include a confidentiality requirement explicitly or by reference to appropriate institutional rules. The AAA Commercial Rules provide for privacy of hearings (R-23), whereas AAA International Rules impose confidentiality requirements on tribunals and the AAA (article 34). The CPR Rules place a duty of confidentiality on parties, tribunals and CPR itself (R-18). Without a confidentiality agreement, however, parties are free to disclose information about their arbitration. Confidentiality agreements do not generally prevent disclosure of information required by law, for example, to comply with applicable securities regulations, or in proceedings to enforce an arbitral award.

Interim measures

26 Interim measures by the courts

What interim measures may be ordered by courts before and after arbitration proceedings have been initiated?

The FAA does not address interim measures in arbitration. Courts in some jurisdictions have held that, under the FAA and the New York Convention, they lack the power to issue interim measures until the arbitral tribunal issues an award (eg, *McCreary Tire & Rubber Co v CEAT SpA*, 501 F.2d 1032 (3d Cir. 1974)). Other courts have ordered interim measures where it is clear that the party seeking judicial assistance is not attempting to bypass arbitration (eg, *Borden, Inc v Meiji Milk Prods Co Ltd*, 919 F.2d 822 (2d Cir. 1990)). State legislation has also expanded the ability of courts to grant interim relief. New York CPLR, section 7502, was amended in 2005 to allow provisional remedies, such as attachment orders and preliminary injunctions, in connection with pending or soon-to-be-commenced arbitration proceedings, both inside and outside New York state, whether or not the arbitration is subject to the New York Convention. Similarly, RUAA, section 8, allows a party to request interim measures from a court before an arbitrator is appointed, without waiving its right to arbitration.

27 Interim measures by the arbitral tribunal

What interim measures may the arbitral tribunal order after it is constituted? In which instances can security for costs be ordered by an arbitral tribunal?

US courts typically accept arbitral tribunals' powers to order interim relief, including for security for costs, although some courts have required the parties' express agreement to such powers. RUAA, section 8, expressly allows tribunals to order interim measures to protect the effectiveness of the arbitration proceeding. Institutional rules typically permit arbitral tribunals to order interim measures (eg, AAA Commercial Rules, R-34; AAA International Rules, article 21). Some institutional rules provide for expedited procedures for granting interim or emergency measures before the constitution of the tribunal (eg, AAA International Rules, article 37, CPR Rules and CPR International Rules R-14).

Awards

28 Decisions by the arbitral tribunal

Failing party agreement, is it sufficient if decisions by the arbitral tribunal are made by a majority of all its members or is a unanimous vote required? What are the consequences if an arbitrator refuses to take part in a vote or sign the award?

The FAA does not address whether a majority or unanimity are required for an arbitral award, but section 7 permits a tribunal majority to summon witnesses or require document production. Many state statutes authorise majority awards. Under RUAA, section 13, the tribunal's powers must be exercised by a majority (though all of them must conduct the hearing) and under RUAA, section 19, the award must be signed by 'any arbitrator who concurs'. Institutional rules commonly provide for majority awards, although some require reasons when an arbitrator fails to sign an award (eg, AAA International Rules, article 26(1)). A dissenting arbitrator's refusal to sign an award typically does not prevent the award from being made.

29 Form and content requirements

What form and content requirements exist for an award? Does the award have to be rendered within a certain time limit?

To be enforceable, an arbitral award must be in writing and state the date and place where it is made. Under federal law, awards must be 'final and definite' regarding the issues covered, but need not be signed, nor provide reasons for the award. State laws often require awards to be signed by the arbitrator and a copy to be delivered to each party (eg, New York CPLR, section 7507). Institutional arbitration rules also require a signed award; further, it is common for international institutional rules to require an award to provide reasons upon which the award is based. (AAA International Rules, article 27.2.) The FAA does not set a time limit for making the award. Under RUAA, section 19, the award must be made within the time limit specified by the parties, or, if none is specified, within the time limit set by the court; the court may, and the parties may agree to, extend the time limit.

30 Date of award

For what time limits is the date of the award decisive and for what time limits is the date of delivery of the award decisive?

Parties may apply to confirm New York Convention awards under

FAA, section 207, within three years, or any award under FAA, section 9, within one year, after the award is 'made' (ie, from when the tribunal renders its decision). Some courts have held that these provisions do not constitute statutes of limitations. The drafters of the RUAA specifically rejected a provision limiting a motion to confirm an award to a one-year period in favour of application of the relevant state statute of limitations for execution on a judgment. A party must move to vacate, modify or correct an award under FAA, section 12, within three months of the date on which the award is filed or delivered; the RUAA provides that such a motion must be made within 90 days after the movant receives notice of the award.

31 Types of awards

What types of awards are possible and what types of relief may the arbitral tribunal grant?

In addition to final awards, partial or interim awards are permitted. Awards must definitively dispose of discrete issues to be enforceable. Consent awards are equally enforceable as other awards. Subject to the parties' agreement, the power of tribunals to order relief is broad. Tribunals may award damages, declarations, injunctions, specific performance, punitive or exemplary damages (although these may be limited by some institutional rules), interest and costs. Institutional rules confirm tribunals' broad powers, for example, AAA Commercial Rules, R-43 allows the grant of any 'just and equitable' relief that is within the scope of the parties' agreement.

32 Termination of proceedings

By what other means than an award can proceedings be terminated?

If continuing arbitration becomes unnecessary or impossible, or if the claimant fails to proceed with the arbitration, the tribunal may terminate the proceeding. Settling parties may terminate the arbitration proceeding, and may request, but cannot compel, unless applicable procedural rules require, a consent award to be issued.

33 Cost allocation and recovery

How are the costs of the arbitral proceedings allocated in awards? What costs are recoverable?

Arbitrators' powers to allocate arbitration costs between the parties generally are not restricted by statute. Institutional rules often provide that a tribunal may in the award apportion the expenses of the arbitration as they deem appropriate (eg, AAA Commercial Rules, R-43(c)). The traditional US practice that each party bears its own legal costs in litigation is frequently followed in domestic arbitration practice, although applicable institutional rules may provide otherwise. In international arbitrations, institutional rules generally allow tribunals to award the prevailing party its 'reasonable costs of legal representation' (eg, AAA International Rules, article 31(d)).

34 Interest

May interest be awarded for principal claims and for costs and at what rate?

Individual state statutes govern the availability and rate of interest in arbitration. US courts usually enforce tribunals' interest awards for pre-award and pre-entry of judgment periods. Post-judgment interest may also be available in accordance with applicable state law.

Proceedings subsequent to issuance of award

35 Interpretation and correction of awards

Does the arbitral tribunal have the power to correct or interpret an award on its own or at the parties' initiative? What time limits apply?

The FAA does not specifically allow the tribunal to modify or correct the award at their own initiative. Certain courts have nonetheless indicated that awards may be corrected by the tribunal, and institutional arbitration rules normally allow the tribunal to interpret or correct an award at a party's request (eg, AAA International Rules, article 30). Certain state laws allow the tribunal to modify awards (eg, RUAA, section 20). FAA, section 11, permits federal courts, upon a party's motion within three months of the award, to modify or correct awards in the event of 'evident material' miscalculations or descriptions, decisions by the tribunal on matters not submitted to them, and imperfections of form not affecting the dispute's merits.

36 Challenge of awards

How and on what grounds can awards be challenged and set aside?

The scope of judicial review of arbitral awards is limited and, in practice, courts accord arbitral awards considerable deference. Awards may be set aside under FAA, section 10(a), and most state statutes on the grounds of corruption or fraud, evident partiality of an arbitrator, arbitrator misconduct or refusal to hear material evidence, due process concerns, or where arbitrators exceed their powers or fail to make a mutual, final and definite award. Although the Supreme Court's 2008 decision in *Hall Street Assocs v Mattel, Inc* cast doubt on the continued ability of courts to vacate awards on the ground of 'manifest disregard of the law', at least one federal appellate court has since ruled that arbitral awards may be vacated on the FAA ground that arbitrators exceeded their powers, where arbitrators are 'fully aware of the existence of a clearly defined governing legal principle, but refuse to apply it, in effect, ignoring it'. International arbitration awards may be set aside on the grounds contained in article V of both the New York and Panama Conventions.

37 How many levels of appeal are there? How long does it generally take until a challenge is decided at each level? Approximately what costs are incurred at each level? How are costs apportioned among the parties?

In the federal system and in most states, there is one appeal as of right and a second level of discretionary appeal. A judicial appeal can take months or years. Unless otherwise agreed, each party bears its own costs of representation, which can be substantial.

38 Recognition and enforcement

What requirements exist for recognition and enforcement of domestic and foreign awards, what grounds exist for refusing recognition and enforcement, and what is the procedure?

Federal and state jurisdictions in the US espouse a pro-arbitration policy that encourages judicial enforcement of domestic and foreign arbitral awards. FAA, sections 10 and 207, provide limited exceptions to enforceability paralleling those set forth in article V of . Confirmation of an award permits the entry of a judgment of the confirming court in the same terms as the award; this judgment can be enforced throughout the US under the full faith and credit clause of the Constitution.

Update and trends

Although the FAA restricts discovery in arbitration, under 28 USC section 1782, a federal district court may, upon the application of any interested person, order a person who resides in or is found in that district to give his or her testimony or produce a document for use in a proceeding in a foreign or international tribunal. Since the US Supreme Court's ruling in *Intel Corp v Advanced Micro Devices, Inc* (542 US 241 (2004)) broadening the scope of section 1782, courts have been divided as to whether section 1782 applies to discovery in aid of international arbitration. It is likely that courts will continue to disagree on the issue of whether a private arbitral proceeding constitutes a 'tribunal' under the statute.

39 What is the attitude of domestic courts to the enforcement of foreign awards set aside by the courts at the place of arbitration?

In a controversial 1990s ruling, a federal court refused to recognise the decision of an Egyptian court nullifying an arbitral award, finding that to do so would violate US public policy in favour of arbitration and would reward a party's breach of an express contractual agreement not to take any appeal from the arbitration award (*Chromalloy Aeroservices v Egyptian Arab Republic*, 939 F. Supp. 907 (D.D.C. 1996)). Courts in several more recent cases, in contrast, have recognised judgments annulling awards, where those judgments were issued by competent courts in the place of arbitration (eg, *Termorio SA ESP v Electranta SP*, 487 F.3d 928 (D.C. Cir. 2007)). Generally, a US court does not have to provide any deference to a foreign court's order purporting to vacate an award if that court is not one with primary jurisdiction.

40 Cost of enforcement

What costs are incurred in enforcing awards?

Unless otherwise specified by contract, a party seeking enforcement must pay the costs associated with its action to confirm the award, as well as any subsequent costs relating to the award's enforcement as a judgment in US jurisdictions other than the confirming jurisdiction.

Other

41 Judicial system influence

What dominant features of your judicial system might exert an influence on an arbitrator from your country?

US domestic arbitration practice may be influenced by US litigation practice, in which extensive document discovery, witness depositions (including of company officers), and hearings with significant cross-examination of witnesses and legal argument are common. The use of expert witnesses is also widespread. International arbitration practice is less influenced by US litigation practice.

42 Regulation of activities

What particularities exist in your jurisdiction that a foreign practitioner should be aware of?

There is a tendency among courts in certain jurisdictions, especially in California, to scrutinise terms of arbitration agreements in consumer and employment contracts, sometimes refusing to enforce such agreements on the grounds of unconscionability, lack of mutuality, and other contract law grounds. There are no judicial decisions addressing the issue of whether parties may be represented in US-venued arbitration by foreign-licensed counsel, but the American Bar Association has recommended a rule (adopted in several states) authorising the temporary practice of law by foreign lawyers in arbitral proceedings.

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