

# LECTURE FOURTEEN

## Arbitral Institutions

Arbitral Institutions play a central role in the appointment of arbitrators<sup>1</sup> and to a greater or lesser extent, with the accreditation and training of arbitrators as a pre-requisite to panel listing, plus they may prescribe continuing professional development requirements for continued listing, together with complaints and disciplinary procedures as part of a client quality assurance service. In addition, arbitral institutions will invariably provide procedural rules for the conduct of arbitral tribunals and may play an active part in the administration of the arbitral process.<sup>2</sup> Within all of the above, there are a great number of variables. There is no single standard of service provided by such organisations.

Arbitral organisations may be a charitable bodies, educational institutions, non-profit bodies or commercial enterprises. In addition, they may maintain a domestic base only or operate in the global market. Some will specialise in particular activities such as construction or maritime dispute settlement, whilst others will cover the entire range of private dispute settlement. Dispute resolution may simply be part of a wider service provided by the organisation, which is the case with the services provided by trade bodies, who tend to incorporate ADR services into the standard contract forms that they provide for use by members. Some institutions will restrict their activities to arbitration, whilst others have diversified to provide adjudication, conciliation, expert determination and mediation as well. It will come as no surprise that in a spirit of *"If you can't bet them, join them"* that many bar associations around the world also provide arbitration services. In most regions of the world arbitral services tend to be dominated by one or at least a small number of principal providers. Thus in the US the American Arbitration Association (AAA) predominates in general arbitration, though some specialist areas have been cornered by other providers, e.g. labour and financial securities. Nonetheless, with the advent of the internet there has been some fragmentation in the market place.

In a few specialist areas,<sup>3</sup> institutions have attracted the approval of national and supra-nations bodies and offer a virtual monopoly over such dispute settlement services, often supported by legislation. Where an international institutional body is involved, such as international sporting bodies involved in athletics, cricket, football and rugby, an independent arbitral institution may operate an international tribunal for the settlement of disputes within that sport. International investments and securities follow a similar model.

Accordingly, there is no standard model of the services provided by such bodies.

Whilst it is possible for the parties to self appoint a tribunal without reference to an institution, this is rare, since knowledge of who is available in the market and how to approach them directly is quite limited, though clearly repeat players would be in a better position to approach individuals directly. It is not unknown for contracts to name an arbitrator of choice, though this is not advisable without a default provision to cater for situations where the named individual is not available. Even where the arbitrator is appointed directly, where the arbitrator is a member of a professional institution, that institution may well offer complaints procedures in respect of the conduct of its members.

This chapter is restricted to an examination of the role played by selective institutions involved in the provision of services for the settlement of international commercial disputes, with particular reference to those that provide administered arbitration services. The international dimension is significant in that international disputes rely heavily upon arbitral services for the settlement of disputes, since the parties have to take into

<sup>1</sup> See further *The Arbitration Agreement*. The Substantive and Procedural Law of Arbitration. Chapter 4. Hartwell & Spurin 2006.

<sup>2</sup> See further *International Arbitration*. The Substantive and Procedural Law of Arbitration. Chapter 12. Hartwell & Spurin 2006 with regard to the minimum ethical requirements of rules for the governance of arbitral proceedings.

<sup>3</sup> Internet domain name disputes : intellectual property etc.

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account issues with regard to both choice of substantive law and jurisdiction and the complexities of procedural law inherent in such choices.

The central aim of an international arbitration service provider will be to provide sufficient assistance, help and guidance to commerce and industry to enable them to contract on terms that minimise the legal problems otherwise associated with operating in the global market place. Consequently such bodies will provide a form of language to be incorporated into international contracts by the parties, or even standard form contracts with integrated dispute resolution provisions. The International Chamber of Commerce (ICC) has been a market leader in this for over 80 years. Often these bodies will provide tailor made contracts for clients. Thus FIDIC provides a suite of contracts (The Rainbow Suite) for the governance of construction projects, but in addition has collaborated with the World Bank in designing a variant of the FIDIC 2000 standard form contract for all projects financed through the World Bank.

[to be continued]

### EXAM QUESTION

- 1 Consider whether or not the international trader is best advised to adopt the arbitral rules and regulations of an institution, and if so, what considerations should be taken into account when choosing from the wide range of institutions that offer such services?

### FURTHER READING

**National Arbitration Codes.** The Chartered Institute of Arbitrators.  
**ICC Arbitration Rules**  
**International Arbitration.** Holland & Knight  
**International Arbitration.** Prof. G.M.Beresford Hartwell  
**Introduction to International Commercial Arbitration.** Prof. G.M.Beresford Hartwell  
**Towards an International Court.** Prof. G.M.Beresford Hartwell  
**Appeal Processes for Arbitration.** Prof. G.M.Beresford Hartwell