

ARBITRATION

What are the advantages of arbitration?

- Unlike court proceedings, the parties to arbitration are subject to duties of confidentiality, and arbitration proceedings are usually held in private.
- The procedure used in arbitration is flexible; the tribunal must tailor the process to the particular dispute, and the parties also have power to agree procedures that are efficient and speedy.
- The parties have the ability to choose a tribunal with expertise relevant to the particular dispute, with all the advantages this can bring.
- In arbitration, the parties have the ability to refer their disputes to a neutral forum, other than one of the parties' national courts. This can be helpful where parties are wary of referring disputes to the "home" courts of their contracting partner. The parties' ability to select the number and identity of arbitrators can further maximise neutrality.
- The tribunal's award is binding in nature, and options for challenging the award are very limited (although this can also be a disadvantage to the party who considers that a dispute has been wrongly determined).
- An arbitration award is relatively easy to enforce both domestically and abroad, provided that the country in which you want to enforce the award is party to a relevant convention. This is one of the major factors in favour of arbitration as opposed to litigation or other ADR methods.
- An arbitration clause can bring a degree of certainty to the forum for raising disputes, without the need to consider complex issues of jurisdiction. This is particularly useful in the case of cross-border disputes.
- It is usually cheaper and speedier than litigation.

What are the disadvantages of arbitration?

- The flexibility which is a feature of

arbitration procedures can also be a disadvantage, in that the lack of certainty can lead to an increase in time and costs of the arbitration, for example, if there is a dispute about whether a particular document is privileged, or the extent to which parties should disclose electronically stored documents.

- It may not be appropriate for multi-party disputes or class-action litigation.
- Although an arbitral tribunal can determine claims and defences summarily (for example, by disposing of meritless claims), in practice they may be less willing than a court to do so. Arbitration may not therefore be appropriate if the claim involved is simple and involves just one defendant, in which case a party may prefer to issue court proceedings and apply for summary judgment.
- An arbitration award, although persuasive, does not give rise to any binding precedent or *res judicata* vis a vis other parties. Therefore, where a final and generally binding ruling is required, for instance, on the meaning of a standard form contract, litigation in court may be preferable.
- Although often cheaper than litigation, this is not always the case when tribunal costs and administrative fees are taken into account.
- While arbitration can represent a speedier means of dispute resolution than the courts, there can be substantial delays if the process involves busy arbitrators, or as a result of the arbitrators' limited powers of coercion when compared with those of the courts.
- If the arbitrator determines a dispute wrongly, the opportunities for challenging or appealing the award are very limited.

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