TABLE OF CONTENTS

Foreword v
Preface vii
Acknowledgments xi
Abbreviations xxvii
Table of Cases xxx
Table of Arbitration Awards xxxviii
Table of Statutes xliv
Table of Major Arbitration Conventions xlviii
Table of International Arbitration Rules l
Table of Civil Codes lv
Table of Treaties lvii
Tables of Directives, European Regulations and Civil Procedure Rules lviii

CHAPTER 1—INTRODUCTION Para.

1. Key Elements of International Arbitration
   (a) Generally 1-01
   (b) A brief historical overview 1-03
   (c) Significant features of arbitration 1-07
      The agreement to arbitrate 1-08
      The importance of the arbitration agreement 1-11
      Enforcement of the arbitration agreement 1-12
      Powers conferred by the arbitration agreement 1-13
      The choice of arbitrators 1-14
      The decision of the arbitral tribunal 1-16
      The enforcement of the award 1-18
      Summary 1-19
   (d) The meaning of “international” 1-20
      International and domestic arbitrations contrasted 1-21
   (e) The relevant criteria 1-24
      The international nature of the dispute 1-25
      The nationality of the parties 1-27
      The Model Law criteria: a combined approach 1-29
   (f) The meaning of “commercial” 1-31
   (g) Anatomy of a simple arbitration clause 1-34
      Arbitrability 1-35
      Is there any need for a dispute? 1-36
      Existing and future disputes 1-37
      Arising out of or in connection with this agreement 1-38
      Shall be referred to and determined by arbitration 1-39
Table of Contents

Other matters 1–40

2. Why Arbitrate?
   (a) The principle reasons 1–41
      A choice of a “neutral” forum and a “neutral” tribunal 1–42
      An enforceable decision 1–43
   (b) Subsidiary reasons 1–44
   (c) Perceived disadvantages of arbitration 1–45
      Costs 1–46
      Limited powers of arbitrators 1–47
      No joinder of parties 1–48
      Conflicting awards 1–49
      International arbitration or national litigation? 1–50
   (d) Confidentiality 1–53
      The Classical Position 1–55
      The current trend 1–56
      The award 1–58
      Confidentiality in investor/state arbitrations 1–61
      Revisions to rules of arbitration 1–64
      LCIA Rules 1–65
      The WIPO Arbitration Rules 1–66
      Conclusion 1–68
   (e) Alternative Dispute Resolution 1–69
      Introduction 1–71
      What is meant by ADR? 1–73
      How does ADR work? 1–74
      Mediation 1–75
      Conciliation 1–76
      The UNCITRAL Conciliation Rules 1–79
      The UNCITRAL Model Law on Conciliation 1–80
      Dispute Resolution Centres 1–81
      Mini-trial 1–82
      Mediation/Arbitration (Med/Arb.) 1–83
      The neutral listener agreement 1–84
      “Last offer” or “baseball” arbitration 1–85
      Court-annexed ADR 1–86
      Expert Determination (including adjudication and Dispute Review
       Boards) 1–87
      The enforceability of agreements for expert determination 1–89
      Why has ADR developed as it has? 1–91
      Business and cultural considerations 1–92
      ADR—future perspectives 1–94
      The need for judicial control 1–95
      ADR and Arbitration combined 1–96
      Amiable compositeur, equity clauses, “ex aqueo et bono” 1–96

3. What Kind of Arbitration?
   (a) Introduction 1–97
   (b) Institutional and ad hoc arbitration 1–99
   (c) Institutional arbitration—advantages and disadvantages 1–100
      Advantages 1–102
      Disadvantages 1–103
   (d) Ad hoc arbitration—advantages and disadvantages 1–104
      Advantages 1–107
      Disadvantages 1–108
   (e) Arbitral Institutions
Table of Contents

What to look for in an arbitral institution 1–109
A degree of permanency 1–110
Modern rules of arbitration 1–111
Qualified staff 1–112
Reasonable charges 1–113
Some well known institutions
   The International Chamber of Commerce 1–114
   The LCIA 1–117
   The American Arbitration Association 1–118
   The WIPO Arbitration Centre 1–119
   Domain names 1–120
(f) Arbitrations involving a state or state entity
   ICSID 1–121
   ICSID—an international institution 1–126
   ICSID's Additional Facility 1–128
   The Permanent Court of Arbitration ("the PCA") 1–129
4. Claims Commissions and Tribunals 1–130
(a) The Iran–United States Claims Tribunal 1–131
(b) The United Nations Compensation Commission 1–132
(c) The Holocaust Tribunals 1–133
5. Regulation of International Arbitration 1–134
(a) Generally 1–138
   State participation in the arbitral process 1–139
(b) The role of national law 1–141
   Bilateral Investment Treaties 1–142
   International Conventions generally 1–144
   The Geneva Protocol of 1923 1–145
   The Geneva Convention of 1927 1–146
   The New York Convention of 1958 1–147
   Conventions after 1958 1–149
   Regional conventions 1–150
   The Model Law 1–151
(d) Practice—national or international 1–152
   How procedure is determined 1–154
6. Summary 1–158

Chapter 2—Applicable Laws

1. Introduction 2–01
(a) Generally 2–05
(b) No legal vacuum 2–02
(c) A complex interaction of laws 2–04
2. The Law Governing the Arbitration 2–05
(a) Introduction 2–08
(b) What is the lex arbitri? 2–09
(c) The content of the lex arbitri 2–12
(d) Procedural rules and lex arbitri 2–14
(e) The seat theory 2–19
(f) Is the lex arbitri a procedural law? 2–20
(g) Choice of a foreign procedural law 2–22
(h) Where an award is made 2–25
(i) De-localisation 2–25
Table of Contents

The arguments considered 2–27
The position in reality 2–28
(j) The “seat” theory and lex arbitri 2–29

3. The Law Applicable to the Substance
(a) Generally 2–31
Crossing national frontiers 2–33
(b) The autonomy of the parties 2–34
Recognition by international conventions 2–35
Time of choice 2–36
Restrictions on party autonomy 2–37
The choices 2–38
(c) National law 2–40
Choice of a system of national law 2–41
Precluding unfair treatment 2–43
Stabilisation clauses 2–44
Summary 2–45
(d) Public International Law and General Principles of Law 2–46
(e) Concurrent laws, combined laws and the “trone commum” doctrine 2–48
The Libyan oil nationalisation arbitrations 2–50
(f) Transnational law (including Lex Mercatoria; the UNIDROIT Principles; the Shari’ah; international development law and trade usages)
Introduction 2–57
The lex mercatoria 2–59
The list method 2–61
The functional method 2–62
UNIDROIT Principles 2–65
The Shari’ah 2–67
International Development Law 2–68
Trade usages 2–70
Authority to apply non-national law 2–71
(g) Equity and good conscience 2–73

4. Conflict Rules and the Search for Applicable Law
(a) Generally 2–75
(b) Implied or tacit choice 2–76
Choice of forum as choice of law 2–78
(c) Conflict rules 2–79
Does an international arbitral tribunal have a lex fori? 2–80
International conventions, rules of arbitration and national laws 2–82
(d) Conclusion 2–84

5. The Law Governing the Agreement to Arbitrate
(a) Summary 2–93

CHAPTER 3—ARBITRATION CLAUSES AND SUBMISSION AGREEMENTS

1. Background
(a) Generally 3–01
(b) Categories of arbitration agreements 3–02
(c) International conventions
The Geneva Treaties 3–04
(d) International standards 3–05

2. The Validity of an Arbitration Agreement
(a) Formal validity—the need for writing 3–07
Table of Contents

(b) A defined legal relationship 3–10
(c) Arbitrability 3–12
   Patents, Trademarks and Copyrights 3–15
   Antitrust and competition laws 3–16
   Securities transactions 3–19
   Bribery and corruption 3–20
   Fraud 3–23

3. The Parties to an Arbitration Agreement
   (a) Capacity 3–25
      Natural persons 3–26
      Corporations 3–27
      States and State Agencies 3–28
   (b) Third parties to the arbitration agreement 3–30
      Piercing the corporate veil within groups of companies 3–31
      Assignment, agency and succession 3–34
      Assignment 3–35
      Arbitration Agreements concluded by Agents 3–36
      Succession and Novation 3–36

4. Analysis of an Arbitration Agreement
   (a) Scope 3–37
      Forms of Wording 3–38
   (b) Basic Elements 3–42
      A valid arbitration agreement 3–45
      The number of arbitrators 3–46
      Establishment of the arbitral tribunal 3–47
      Ad hoc or institutional arbitration 3–48
      Filling vacancies in the tribunal 3–49
      Place of arbitration 3–51
      Governing law 3–52
      Default clauses 3–53
      Language 3–54
      Entry of judgment and rule of court clauses 3–55
      Other procedural matters 3–56
   (c) Submission agreements 3–57
      Generally 3–58
      Drafting a submission agreement 3–59
      An illustration 3–60
   (d) Separability 3–60
   (e) Summary 3–65

5. Defective Arbitration Clauses 3–67
   (a) Inconsistency 3–68
   (b) Uncertainty 3–69
   (c) Inoperability 3–71
   (d) Repudiation and waiver of arbitration agreements 3–72

6. Multi-Party Arbitrations 3–73
   (a) Generally 3–73
      Several parties to one contract 3–74
      Several contracts with different parties 3–77
   (b) String Arbitrations 3–80
   (c) Concurrent Hearings 3–81
   (d) Court ordered consolidation 3–82
   (e) Consolidation by consent
      Under an arbitration agreement 3–84
      Under institutional rules 3–85
CHAPTER 4—THE ESTABLISHMENT AND ORGANISATION OF AN ARBITRAL TRIBUNAL

1. Background
   (a) Generally 4-01
   (b) Commencement of an arbitration 4-03
      Time-limits 4-04
      Statutory time-limits 4-05
      Contractual time-limits 4-07
   (c) Commencement of an arbitration under the applicable law 4-09
   (d) Commencement of an arbitration under institutional rules 4-10
   (e) Selecting an arbitral tribunal 4-12
   (f) Sole arbitrators and multi-arbitrator tribunal 4-14
      Sole arbitrators 4-15
      Two arbitrators 4-16
      Three arbitrators 4-17
      Four or more arbitrators 4-19

2. Appointment of Arbitrators
   (a) Generally 4-21
   (b) Agreement of the parties 4-22
   (c) Arbitral institution 4-25
   (d) List system 4-26
   (e) Existing arbitrators 4-28
   (f) Professional institution 4-29
   (g) Trade association 4-30
      Designation by the Secretary-General of the PCA 4-36

3. Qualities Required in International Arbitrators
   (a) Generally 4-39
   (b) Restrictions imposed by the parties 4-40
   (c) Restrictions imposed by the applicable law 4-41
   (d) Professional qualifications 4-42
      Sole arbitrator 4-43
      Three arbitrators 4-44
   (a) Language 4-45
   (b) Experience and outlook 4-46
   (c) Education and training 4-47
   (d) Interviewing prospective arbitrators 4-50

4. Impartiality and Independence of Arbitrators
   (a) Generally 4-52
   (b) Independence and/or Impartiality 4-54
      Impartiality distinguished from neutrality 4-56
      Nationality 4-58
   (c) Disclosure 4-61
      Governmental agencies 4-65
   (d) Communication with the parties 4-66

5. Challenge and Replacement of Arbitrators
   (a) Generally 4-67
   (b) Grounds for challenge 4-68
   (c) Procedure for challenge 4-72
      Challenges under the ICSID Rules 4-74
   (d) Waiver 4-76
   (e) Filling a vacancy 4-78
   (f) Truncated tribunals 4-79
   (g) Procedure following the filling of a vacancy 4-82
      Transcripts 4-83
Table of Contents

(h) Insuring against a vacancy 4–85

6. The Organisation of the Arbitral Tribunal
   (a) Generally 4–86
   (b) Meetings and hearings 4–87
      Meetings and hearings at which the parties are present 4–88
      Fixing dates for hearings 4–89
      Avoiding local public holidays 4–90
      Length of hearing 4–91
   (c) Administrative aspects 4–94
      Arbitration centres 4–96
      Arbitral institutions 4–97
      Universities, clubs and other institutions 4–98
      Hotels 4–99
      Interpreters 4–100
      Verbatim records 4–101
      Hearing hours 4–103
      Relations between the parties and the arbitral tribunal 4–106
      Functions of the presiding arbitrator 4–107
   (d) The role of an administrative secretary or registrar 4–108
      Institutional arbitrations 4–109
      Who to appoint 4–110

7. Fees and Expenses of the Arbitral Tribunal 4–113
   (a) Who fixes fees 4–114
   (b) Commitment or cancellation fees 4–115
   (c) Methods of assessing fees 4–117
      The ad valorem method 4–118
      The “time spent” method 4–119
      The “fixed fee” method 4–120
   (d) Negotiating arbitrators’ fees 4–121
   (e) Expenses of the arbitral tribunal 4–122
      The reimbursement method 4–123
      The per diem method 4–124
      The ICSID method 4–125
   (f) Securing payment of the fees and expenses of the arbitral tribunal 4–126

CHAPTER 5—POWERS, DUTIES AND JURISDICTION OF AN ARBITRAL TRIBUNAL

1. Background
   (a) Generally 5–01
   (b) Practical considerations 5–02

2. Powers of Arbitrators
   (a) Generally 5–03
   (b) Powers conferred by the parties
      Directly 5–04
      Indirectly 5–05
   (c) Powers conferred by operation of law 5–07

3. Duties of Arbitrators
   (a) Generally 5–11
   (b) Duties imposed by the parties 5–12
   (c) Duties imposed by law
      Duty to act with due care 5–15
      Duty to act with due diligence 5–23
      Duty to act judicially 5–24
<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>(d) Ethical duties</td>
<td>5-27</td>
</tr>
<tr>
<td>4. Jurisdiction</td>
<td></td>
</tr>
<tr>
<td>(a) Generally</td>
<td>5-30</td>
</tr>
<tr>
<td>(b) Challenges to jurisdiction</td>
<td>5-31</td>
</tr>
<tr>
<td><em>Partial challenge</em></td>
<td>5-32</td>
</tr>
<tr>
<td><em>Total challenge</em></td>
<td>5-35</td>
</tr>
<tr>
<td>(c) The autonomy (or separability) of the arbitration clause</td>
<td>5-36</td>
</tr>
<tr>
<td><em>Who judges?</em></td>
<td>5-38</td>
</tr>
<tr>
<td><em>Competence/Competence</em></td>
<td>5-39</td>
</tr>
<tr>
<td><em>Competence</em></td>
<td>5-43</td>
</tr>
<tr>
<td><em>Limitations on jurisdiction</em></td>
<td>5-44</td>
</tr>
<tr>
<td><em>Award made without jurisdiction</em></td>
<td>5-45</td>
</tr>
<tr>
<td>(d) Court control</td>
<td>5-46</td>
</tr>
<tr>
<td><em>Concurrent control</em></td>
<td>5-47</td>
</tr>
<tr>
<td><em>The choices open to the arbitral tribunal</em></td>
<td>5-48</td>
</tr>
<tr>
<td>(e) Procedural aspects of resolving issues of jurisdiction</td>
<td>5-52</td>
</tr>
<tr>
<td><em>The time at which issues of jurisdiction should be raised</em></td>
<td>5-53</td>
</tr>
<tr>
<td>(f) Options open to the respondent</td>
<td>5-54</td>
</tr>
<tr>
<td><em>Boycott the arbitration</em></td>
<td>5-55</td>
</tr>
<tr>
<td><em>Raise objections with the arbitral tribunal</em></td>
<td>5-56</td>
</tr>
<tr>
<td><em>Application to a national court</em></td>
<td>5-57</td>
</tr>
<tr>
<td><em>Attacking the award</em></td>
<td>5-59</td>
</tr>
<tr>
<td><em>The combined approach</em></td>
<td>5-60</td>
</tr>
<tr>
<td><em>Form of court intervention</em></td>
<td>5-61</td>
</tr>
<tr>
<td>(g) International agreements on the jurisdiction of national courts</td>
<td>5-62</td>
</tr>
</tbody>
</table>

**CHAPTER 6—THE CONDUCT OF THE PROCEEDINGS**

1. Background
   (a) Generally
   (b) Party autonomy
   (c) Restrictions on party autonomy
       *Equality*                                | 6-05 |
       *Public policy*                          | 6-06 |
       *Arbitration rules*                     | 6-07 |
       *Third parties*                         | 6-08 |
   (d) Adversarial and inquisitorial processes

2. Choice of the Place of Arbitration
   (a) Generally
   (b) The law governing the arbitration
       *The lex arbitri*                        | 6-14 |
       *Local restrictions on arbitrators and party representatives* | 6-17 |
       *Ethical and other duties*              | 6-18 |
   (c) Enforceability                        | 6-19 |
   (d) Meetings need not all be held at the seat of arbitration
   (e) Where should as award be “made”?     | 6-20 |
   (f) Changing the seat of arbitration      | 6-21 |
       *Agreement inoperative or incapable of being performed* | 6-22 |

3. Preliminary steps
   (a) Generally
       *Conduct of preliminary meetings*       | 6-23 |
       *Representation at preliminary meetings* | 6-24 |
       *Adjournment of preliminary meetings*  | 6-25 |
Table of Contents

Matters to be determined at preliminary meetings 6–31
UNCITRAL Notes on Organizing Arbitral Proceedings 6–32
(b) Other preliminary issues 6–33
  Applicable laws 6–34
  Separation of liability and quantum 6–35
  Separation and other issues 6–37
(c) Expedited remedies 6–39
  Pre-arbitral referee 6–40
  Expedited formation of the arbitral tribunal 6–42
  “Fast track” arbitrations 6–43
(d) Avoiding delay and disruption 6–46
  Special procedures in small cases 6–47

4. Written Submissions
(a) Generally 6–48
  The function of written submissions 6–49
  The need to avoid ambiguity 6–51
(b) Written pleadings in institutional arbitration 6–52
  Definition of the issues 6–55
  Terminology 6–56
  Time-limits 6–58
  Admissibility of counterclaim 6–59

5. Evidence
(a) Generally 6–61
  Common and civil law procedures 6–62
  Admissibility 6–65
  Burden of proof 6–67
  Methods of presenting evidence 6–68
(b) Production of documents 6–69
  Favourable and unfavourable documents 6–70
  Common law practice 6–71
  Civil law practice 6–73
  Practice in international arbitrations 6–74
  Disputed document requests 6–76
  Documents in the possession of third parties 6–79
  Presentation of documents 6–80
  Translations 6–82
(c) Testimony of witnesses 6–83
  Presentation of witness evidence 6–85
  Evidentiary weight of witness evidence 6–88
  Taking evidence overseas 6–89
(d) Expert evidence 6–90
  Experts appointed by the arbitral tribunal 6–91
  Power to appoint experts 6–92
  Presentation of expert evidence 6–94
  Alternative methods of presenting expert evidence 6–96
  Admissibility of expert evidence 6–98
  Categories of expert evidence 6–99
(e) Inspection of the subject-matter of the dispute 6–100
  Power of the arbitral tribunal to inspect the subject-matter 6–101
  Procedure for inspection 6–102
  Inspection under institutional rules of arbitration 6–103

6. Hearings
(a) Generally 6–104
(b) Organisation of the hearing 6–105

xxi
Table of Contents

Representation 6–107
Pre-hearing conferences 6–109
Revised ICSID Rules 6–111
(c) Procedure at hearings 6–112
International practice 6–113
Examination of witnesses 6–115
Who has the last word? 6–118
(d) Ex parte hearings 6–119
Refusal to participate 6–120
Procedure in ex parte hearings 6–121

7. Proceedings after the Hearing
(a) Generally 6–123
(b) Post-hearing briefs 6–124
(c) New evidence 6–125

Chapter 7—The Role of National Courts During the Proceedings

1. Introduction
   (a) The increasing independence of arbitration 7–01
   (b) Limitations on independence 7–03
   (c) A relay race 7–04
2. At the Beginning of the Arbitration
   (a) Enforcing the arbitration agreement 7–07
   (b) Establishing the arbitral tribunal 7–08
   (c) Challenges to jurisdiction 7–09
3. During the Arbitral Proceedings
   (a) Interim measures: powers of the arbitral tribunal 7–10
      (1) No powers 7–11
      (2) Inability to act prior to the formation of the tribunal 7–13
      (3) An order can only affect the parties to the arbitration 7–14
      (4) Enforcement difficulties 7–15
      (5) No ex parte application 7–16
   (b) Interim measures: powers of the competent court 7–18
      Incompatibility with the arbitration agreement? 7–19
      Should application be made to a national court or to the arbitrators? 7–21
   (c) Measures relating to the attendance of witnesses and preservation of evidence 7–24
   (d) Measures aimed at preserving the status quo 7–28
   (e) Interim relief in respect of parallel proceedings 7–33
   (f) Security for costs 7–39
4. At the end of the Arbitration
   (a) Judicial control of the proceedings and the award 7–41
5. Conclusion 7–42

Chapter 8—The Award

1. Background
   (a) Generally 8–01
      Achieving the intended result 8–04
      Definition of award 8–05
      “Order” or “Award” 8–07
   (b) Remedies 8–09

xxii
Table of Contents

Monetary compensation 8–10
Punitive damages and other penalties 8–11
Specific performance 8–14
Restitution 8–15
Injunctions 8–17
Declaratory relief 8–18
Rectification 8–19
Adaptation of contracts and filling gaps 8–20
Interest and costs 8–24
(c) How an arbitral tribunal reaches its decision 8–25
Majority voting 8–31
The bargaining process 8–35

2. Categories of Awards
(a) Generally 8–39
(b) Final awards 8–40
(c) Partial and interim awards 8–41
Issues concerning the applicable law 8–43
Separation of liability and quantum 8–44
Limitation clauses in contract 8–45
(d) Default awards 8–46
(e) Consent awards 8–48

3. Validity of Awards
(a) Generally 8–52
(b) Form of the award 8–53
The law governing the arbitration 8–55
The introductory section of a award 8–56
Signatures 8–57
Language of the award 8–58
(c) Contents of the award 8–59
The arbitration agreement 8–60
Unambiguous 8–61
Effective determination of the issues 8–62
Reasons 8–63
Different ways of giving reasons 8–65
(d) Time-limits 8–66
The disadvantages of mandatory time-limits 8–68
Non-mandatory provisions 8–69
(e) Notification of awards 8–70
(f) Registration or deposit of awards 8–71

4. Other considerations
(a) Res judicata effect of award 8–72
Existing disputes 8–73
Subsequent disputes 8–74
Effect of award on third parties 8–75
(b) Separate, concurring and dissenting opinions 8–76
Dissenting opinions 8–77
The position in natural laws 8–78
The position under institutional rules 8–79
The practice in ICC arbitrations 8–80
Practice at the Iran-United States Claims Tribunal 8–81
When and how should dissenting opinions be given in international arbitrations? 8–82
(c) Interest 8–84
(d) The basis upon which interest can be awarded 8–85
Table of Contents

How much interest to award 8–86
Compound interest 8–87
Enforcing awards that carry interest 8–89
Post-award interest 8–90
(e) Costs 8–91
Costs of the arbitration 8–92
Costs of the parties 8–93
Assessing the costs of the parties 8–95
Requirements imposed by national law 8–97
(f) Proceedings after the award 8–98
Under national law 8–99
Under rules of arbitration 8–100
Review procedures other than by national courts 8–103
Review procedure under the ICSID Rules 8–105
Publication of awards 8–106

CHAPTER 9—CHALLENGE OF ARBITRAL AWARDS

1. Background 9–01
   (a) The purpose of challenge 9–02
   (b) The meaning of challenge 9–03
   (c) Introductory remarks 9–04
2. Methods of challenge 9–07
   (a) Internal challenge 9–08
   (b) Correction and interpretation of awards; additional awards 9–11
   (c) Recourse to the courts 9–12
3. Grounds for Challenge 9–13
   (a) Lack of jurisdiction 9–16
   (b) Other grounds for challenge 9–16
4. Grounds for Challenge under the Model Law 9–18
   (a) Incapacity: invalid agreement to arbitrate 9–20
   (b) Lack of due process 9–21
   (c) Issues of jurisdiction 9–26
   (d) Further procedural issues 9–28
      Summary 9–29
   (e) Arbitrability 9–30
   (f) Public policy 9–32
   (g) Conclusion 9–34
5. Substantive Grounds for Challenge 9–35
   (a) Mistakes of Law 9–42
   (b) Mistake of fact 9–42
6. Place, Time and Effects of Challenge 9–45
   (a) Place of challenge 9–45
   (b) Time-limits 9–46
   (c) The effects of a successful challenge 9–47

CHAPTER 10—RECOGNITION AND ENFORCEMENT OF ARBITRAL AWARDS

1. Background 10–01
   (a) Performance of awards 10–03
      Commercial and other pressures 10–04
      Arbitrator’s duty to render an enforceable award 10–06
      Enforcement by court proceedings 10–07
Table of Contents

The general principles governing recognition and enforcement 10-09
The difference between recognition and enforcement 10-10
Recognition 10-11
Enforcement 10-12
(b) Place of recognition and enforcement 10-14
   Forum shopping 10-16
(c) Methods of recognition and enforcement 10-17
(d) Time-limits 10-18
(e) Consequences of refusal of recognition or enforcement 10-19

2. The Role of International Conventions
   (a) Generally 10-20
   (b) The Geneva Treaties
      The Geneva Protocol of 1923 10-21
      The Geneva Convention of 1927 10-22
   (c) The New York Convention 10-23
      Enforcing the agreement to arbitrate 10-24
      Enforcing foreign awards 10-25
      The first reservation: reciprocity 10-26
      The second reservation: commercial relationships 10-28
      Recognition and enforcement under the New York Convention 10-31
      Formalities 10-32

3. Refusal of Recognition and Enforcement
   (a) Generally 10-33
   (b) Grounds for refusal 10-36
   (c) First ground for refusal: incapacity; invalid arbitration agreement 10-38
   (d) Second ground: no proper notice of appointment of arbitrator or of the proceedings; lack of due process 10-39
   (e) Third ground: jurisdictional issues 10-41
   (f) Fourth ground: composition of tribunal or procedure not in accordance with arbitration agreement or the relevant law 10-43
   (g) Fifth ground: award not binding; suspended or set aside 10-45
   (h) Arbitrability 10-50
   (i) Public policy 10-51
   (j) The Washington Convention 10-55
   (k) Refusal of recognition an enforcement under regional conventions
      The European Convention of 1961 10-56
      The Moscow Convention 10-57
      The Panama Convention 10-58
      The Amman Convention 10-60
      Other regional conventions 10-61
   (l) The defence of state immunity
      Jurisdictional immunity 10-63
      Immunity from execution 10-64

4. Practical Considerations
   (a) An “entry of judgment” clause 10-68
   (b) Enforcing under the New York Convention or a more favourable treaty or local law
      Enforcement as a “domestic” award 10-73
      Enforcement as an obligation 10-74
   (c) Options open to the successful party: a checklist 10-75
   (d) Options open to the unsuccessful party: a checklist 10-76
      To challenge or not? 10-77
   (e) The need for local advice 10-79
## Table of Contents

### Chapter 11—Arbitration Under Investment Treaties

1. Introduction 11-01  
2. Jurisdictional Issues  
   (a) Existence of an applicable treaty 11-05  
   (b) Protected investors 11-06  
      - Natural persons 11-07  
      - Legal entities 11-08  
   (c) Protected Investments 11-09  
   (d) Other jurisdictional issues 11-12  
3. Law Applicable to the Substance of the Dispute 11-19  
4. The Merits of the Dispute 11-23  
   (a) “Fair and equitable treatment” and the international minimum standard 11-24  
   (b) Full protection and security 11-28  
   (c) No arbitrary or discriminatory measures impairing the investment 11-30  
   (d) No expropriation without prompt, adequate and effective compensation 11-31  
      - Indirect expropriation 11-32  
      - Acts contrary to undertakings and assurances granted to investors may constitute expropriation 11-33  
      - The purpose of the host state’s measures does not affect their characterisation 11-34  
      - Compensation standard 11-36  
   (e) National and “most favoured nation” treatment 11-37  
   (f) Free transfer of funds related to investments 11-39  
   (g) Observance of specific investment undertakings 11-40  
5. Remedies under Bits 11-42  
   (a) Expropriation remedies 11-43  

### Appendices

- **Appendix A** – The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards  
- **Appendix B** – UNCITRAL Model Law of International Commercial Arbitration  
- **Appendix C** – UNCITRAL Arbitration Rules  
- **Appendix D** – UNCITRAL Notes on Organizing Arbitral Proceedings  
- **Appendix E** – IBA Rules on the Taking of Evidence in International Commercial Arbitration  
- **Appendix F** – IBA Guidelines on Conflicts of Interest in International Arbitration  
- **Appendix G** – ICDR International Arbitration Rules  
- **Appendix H** – International Chamber of Commerce Rules of Arbitration  
- **Appendix I** – ICSID Rules of Procedure for the Institution of Conciliation and Arbitration Proceedings  
- **Appendix J** – LCIA Arbitration Rules  
- **Appendix K** – Model Arbitration Clauses for International Contracts  
- **Appendix M** – Scoreboard of Adherence to Transnational Arbitration Treaties  

Index 643