



Selecting the Type of Arbitration,* the Rules and the Seat

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1. Introduction

There are two types of arbitration to be considered when selecting the appropriate process of dispute resolution mechanism for a commercial contract. These are: Ad hoc and Institutional arbitrations. An “*ad hoc*” arbitration is where the parties choose to conduct the arbitration in accordance with rules of procedure that will be adopted either by agreement of the parties or, in default of agreement with procedures laid down by the arbitral tribunal as soon as possible after the commencement of the arbitration, perhaps most conveniently at a preliminary meeting. In ad hoc arbitration, such rules may have been drawn up by some organisation or may be specifically drafted by the parties with or without the assistance of the arbitral tribunal. An “*institutional*” arbitration, on the other hand, is one that is administered by one of the many specialist arbitral institutions around the world, under its own rules of arbitration, which are expressly formulated for cases that are to be administered by the institution concerned

There are advantages and disadvantages to these two types of arbitration, which should be carefully considered when selecting the appropriate type of arbitration for the particular contract. However, judging by the experience of this writer, the advantages of institutional arbitration outweigh those of ad hoc arbitration and the disadvantages are by far fewer. To quote from our President and Moderator for the Session:

“Parties to international contracts (and arbitrators) generally do prefer to avoid national authorities, and rather, entrust the task of managing and policing their arbitrations to a neutral institution. One of the crucial roles of these institutions is to try to keep disputes that have been referred to arbitration out of national courts. If an arbitration is conducted in the country of one of the parties, and there is no institution ensuring that the arbitration stay on track, there is the risk that any number of incidents, including

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