

01 笔记

为什么人们选择仲裁？

In today's globalized world, businesses frequently engage in international transactions, leading to an inevitable rise in disputes. The international nature of this work means that parties from different jurisdictions often find themselves embroiled in disagreements, necessitating a resolution mechanism that is efficient and effective. Arbitration emerges as a favored choice for many in this context for several compelling reasons.

Firstly, the costs associated with litigating in a foreign jurisdiction can be prohibitively high. Legal systems vary significantly from one country to another, and navigating these complexities can lead to substantial expenses. Arbitration, on the other hand, often provides a more cost-effective solution, as it typically involves fewer procedural delays and streamlined processes.

Moreover, litigation introduces a significant degree of uncertainty. Businesses entering foreign courts face unpredictable legal environments, leading to potential delays and unfavorable outcomes. This unpredictability fuels a sense of inherent distrust in the judicial systems of foreign countries. By opting for arbitration, parties can mitigate these risks. Arbitration is generally perceived as a more neutral ground, and the choice of arbitrators can align with the specific expertise relevant to the dispute, fostering greater confidence in the outcome.

Additionally, the concept of "home town justice" can further complicate matters in litigation. Parties may fear that a local court will favor the domestic party, creating an imbalance in the resolution process. Arbitration promotes a more impartial atmosphere, helping to level the playing field and ensuring that both parties are treated fairly, regardless of their geographical origins.

仲裁的历史 History of International Arbitration

International arbitration has a rich and evolving history, tracing back to the early formation of societies where mechanisms for resolving conflicts were essential. Most early civilizations developed systems of arbitration for settling disputes, which primarily utilized domestic laws and procedures, signifying that dispute resolution was mostly confined within national boundaries.

国际仲裁有着丰富且不断发展的历史，可以追溯到社会的早期形成，在这些社会中，解决冲突的机制至关重要。大多数早期文明都发展了解决争端的仲裁制度，主要利用国内法律和程序，这意味着争端解决大多局限于国界内。

However, in the 1920s, many European countries faced significant challenges regarding arbitration agreements, particularly failing to recognize agreements that submitted parties to arbitration for future disputes. Consequently, there was uncertainty, as these agreements did not adequately prevent domestic courts from assuming jurisdiction over cases.

然而，在 20 世纪 20 年代，许多欧洲国家在仲裁协议方面面临重大挑战，特别是未能承认将当事人未来争议提交仲裁的协议。因此，存在不确定性，因为这些协议没有充分阻止国内法院对案件行使管辖权。

To address these issues, significant international efforts culminated in the establishment of the **1923 Geneva Protocol on Arbitration Clauses** and the **1927 Geneva Convention on the Execution of Foreign Arbitral Awards**, both adopted by the **League of Nations**. These frameworks offered much-needed clarity and legitimacy to arbitration agreements, facilitating smoother arbitration processes.

为了解决这些问题，国际社会做出了重大努力，最终制定了1923年《日内瓦仲裁条款议定书》和1927年《执行外国仲裁裁决日内瓦公约》，两者均由国际联盟通过。这些框架为仲裁协议提供了急需的明确性和合法性，促进了仲裁过程的顺利进行。

The establishment of the **International Chamber of Commerce (ICC)** in 1923 marked another pivotal moment, as it adopted its first rules of arbitration and formed the **Court of Arbitration**, promoting the use of arbitration for international disputes.

1923年国际商会（ICC）的成立标志着另一个关键时刻，它通过了第一条仲裁规则并组建了仲裁法院，促进了国际争端的仲裁。

Throughout the mid-20th century, multiple international organizations influenced the push for uniform procedural rules in arbitration. A landmark achievement was the adoption of the **1958 New York Convention** by the **United Nations**, which laid the foundational principles for modern international commercial arbitration, enhancing enforceability across jurisdictions.

整个 20 世纪中叶，多个国际组织影响了仲裁统一程序规则的推动。一项里程碑式的成就是联合国通过了1958年《纽约公约》，该公约奠定了现代国际商事仲裁的基本原则，增强了跨司法管辖区的可执行性。

Furthermore, the development of the **UNCITRAL Arbitration Rules** provided comprehensive guidelines for arbitral procedures, and the adoption of the **UNCITRAL Model Law** by various jurisdictions aimed to harmonize arbitration laws worldwide, further solidifying the role of international arbitration in the global legal landscape.

此外，《联合国国际贸易法委员会仲裁规则》的制定为仲裁程序提供了全面的指引，各司法管辖区采用《联合国国际贸易法委员会示范法》旨在协调全球仲裁法，进一步巩固国际仲裁在全球法律格局中的作用。

In summary, the history of international arbitration reflects a gradual shift from domestic-centric dispute resolution systems to frameworks that facilitate fair and effective international arbitration, responding to the needs of an increasingly interconnected world.

综上所述，国际仲裁的历史反映了从以国内为中心的争议解决体系逐渐转向促进公平有效的国际仲裁的框架，以满足日益互联的世界的需求。

仲裁的优势 Advantages of International Arbitration

International arbitration presents a compelling mechanism for dispute resolution in an increasingly globalized world, offering numerous advantages that distinguish it from traditional litigation in local courts.

国际仲裁在日益全球化的世界中提供了一种引人注目的争议解决机制，具有与当地法院传统诉讼不同的众多优势。

One significant benefit of international arbitration is the neutral dispute forum it provides. This neutrality removes the perceived biases associated with local courts, ensuring that disputes are resolved in an impartial setting. Furthermore, parties in arbitration have the ability to choose applicable laws and arbitrators, which helps guard against parochial prejudices that could influence court-based resolutions.

国际仲裁的一大好处是它提供中立的争议论坛。这种中立性消除了与当地法院相关的明显偏见，确保纠纷在公正的环境中得到解决。此外，仲裁当事人可以选择适用的法律和仲裁员，这有助于防止可能影响法院解决方案的狭隘偏见。

Another advantage is the ability to avoid multiplicity in lawsuits. In international contexts, disputes may arise across different jurisdictions, leading to potential litigious complexities. Arbitration streamlines this process, allowing for a singular resolution without the need for multiple lawsuits in various jurisdictions.

另一个优点是能够避免诉讼的重复性。在国际背景下，不同司法管辖区可能会出现争议，从而导致潜在的诉讼复杂性。仲裁简化了这一过程，允许单一解决方案，而无需在不同司法管辖区提起多项诉讼。

The enforceability of arbitral awards is also a significant advantage, as they are readily enforceable in many jurisdictions. This is greatly facilitated by the widespread acceptance of the New York Convention , which has been ratified by 157 states, thereby enhancing the credibility of arbitration outcomes.

仲裁裁决的可执行性也是一个显着的优势，因为它们在许多司法管辖区都很容易执行。《纽约公约》得到了 157 个国家的广泛接受，这极大地促进了这一点，从而提高了仲裁结果的可信度。

The expertise of arbitrators represents another critical benefit. Unlike local courts, which may not always have specialized knowledge regarding complex subjects, arbitrators in international arbitration are often highly qualified professionals with extensive experience in the relevant fields.

仲裁员的专业知识是另一个重要优势。与当地法院可能并不总是具备复杂主题的专业知识不同，国际仲裁中的仲裁员往往是在相关领域拥有丰富经验的高素质专业人士。

Moreover, arbitration awards generally enjoy a sense of finality ; they are not subject to appeal except under limited circumstances. This finality provides parties with closure and reduces the likelihood of prolonged disputes.

而且，仲裁裁决一般具有终局性；除有限情况外，不得对他们提出上诉。这种最终确定性为各方提供了终结，并减少了长期争议的可能性。

Party autonomy in the arbitration process allows parties to customize procedural frameworks, effectively removing bottlenecks that could otherwise cause unnecessary delays. This flexibility, combined with the potential for cost and time savings, makes arbitration an attractive option despite its initial expenses, such as hiring legal counsel and paying arbitration fees to administering institutions.

仲裁过程中的当事人自主权允许当事人定制程序框架，有效消除可能导致不必要延误的瓶颈。这种灵活性，再加上节省成本和时间的潜力，使仲裁成为一种有吸引力的选择，尽管其初始费用包括聘请法律顾问和向管理机构支付仲裁费。

Lastly, while confidentiality is a paramount concern for many disputing parties, arbitration typically offers greater privacy than court proceedings. However, it is important to note that this confidentiality is not absolute, especially during enforcement stages where recourse to local courts may be necessary if a losing party fails to honor the award.

最后，虽然保密性是许多争议方最关心的问题，但仲裁通常比法庭诉讼提供更多的隐私。然而，值得注意的是，这种保密性并不是绝对的，特别是在执行阶段，如果败诉方未能履行裁决，可能需要诉诸当地法院。

In summary, international arbitration serves as a vital and effective alternative to litigation, providing a range of advantages that cater to the needs of parties engaged in cross-border disputes.

综上所述，国际仲裁是诉讼的重要而有效的替代方案，具有一系列优势，可以满足跨境争议当事人的需求。

仲裁的劣势 Disadvantages of International Arbitration

International arbitration, while often preferred for its various advantages, does have significant disadvantages that parties must consider. One primary concern is the competence of arbitrators. In some cases, arbitrators may lack the necessary expertise in the specific legal or technical areas pertinent to the dispute, which can adversely affect the quality of the decision made.

国际仲裁虽然因其各种优点而常常受到青睐，但也有当事人必须考虑的重大缺点。其中一个主要问题是仲裁员的能力。在某些情况下，仲裁员可能缺乏与争议相关的特定法律或技术领域的必要专业知识，这可能会对决策的质量产生不利影响。

Another issue is the availability of qualified arbitrators. A limited pool can create delays and prolong the resolution process, potentially leading to dissatisfaction among the parties involved. This ties into broader concern regarding the legal experience of arbitrators. While many arbitrators are well-versed in general arbitration practice, some may not have adequate training or experience in specialized fields, potentially impacting the arbitration's outcome.

另一个问题是合格仲裁员的可用性。有限的资源池可能会造成延误并延长解决过程，可能会导致有关各方的不满。这与对仲裁员法律经验的更广泛关注有关。虽然许多仲裁员精通一般仲裁实践，但有些仲裁员可能在专业领域没有足够的培训或经验，这可能会影响仲裁结果。

The process can also become overly formal , resulting in a procedural atmosphere that resembles traditional litigation instead of being the more flexible alternative many parties seek. As a result, the arbitration can become time-consuming , leading to prolonged disputes that drain resources.

该过程也可能变得过于正式，导致类似于传统诉讼的程序氛围，而不是许多当事方寻求的更灵活的替代方案。因此，仲裁可能会变得耗时，导致纠纷旷日持久，耗尽资源。

Moreover, the costs associated with arbitration can be substantial. Expensive arbitrators' fees, combined with administrative costs and potential delays, can lead to an overall financial burden for the parties involved.

此外，与仲裁相关的费用可能很高。昂贵的仲裁员费用，加上行政成本和潜在的延误，可能会给相关各方带来整体经济负担。

Variability in procedure is another significant drawback, as differing arbitration rules can create unpredictability. The facilities used for arbitration may not always meet the necessary standards, which can hinder the effectiveness and comfort of the proceedings.

程序的可变性是另一个重大缺点，因为不同的仲裁规则可能会产生不可预测性。用于仲裁的设施可能并不总是符合必要的标准，这可能会影响仲裁程序的有效性和舒适性。

Arbitrators also possess limited powers compared to judges, which can restrict their ability to enforce decisions or implement remedies effectively. Finally, the lack of precedent in arbitration means that decisions typically do not create binding guidelines for future disputes, resulting in uncertainty for parties involved in similar issues down the line.

与法官相比，仲裁员的权力也有限，这可能会限制他们有效执行裁决或实施补救措施的能力。最后，仲裁缺乏先例意味着裁决通常不会为未来的争议制定具有约束力的指导方针，从而导致参与类似问题的各方产生不确定性。

Overall, while international arbitration serves as a viable option for dispute resolution, these disadvantages warrant careful consideration by parties before proceeding with arbitration as a

preferred method.

总体而言，虽然国际仲裁是解决争议的可行选择，但各方在将仲裁作为首选方法之前需要仔细考虑这些缺点。

国际商事仲裁法律框架 Legal Framework for International Commercial Arbitration

International commercial arbitration operates within a complex, multi-tier legal framework designed to provide a comprehensive and effective dispute resolution mechanism. This framework ensures that arbitration is conducted consistently across various jurisdictions while allowing flexibility to cater to specific needs of international commercial transactions.

国际商事仲裁在复杂的多层法律框架内运作，旨在提供全面有效的争议解决机制。该框架确保仲裁在不同司法管辖区一致进行，同时允许灵活地满足国际商业交易的特定需求。

The framework is composed of three main components:

该框架由三个主要组件组成：

1. International Arbitration Conventions 国际仲裁公约：

The cornerstone of international arbitration, these conventions facilitate the enforcement of arbitration agreements and arbitral awards across borders. The most prominent example is the New York Convention , which has been ratified by 157 states and plays a pivotal role in promoting the recognition and enforcement of international arbitral awards.

这些公约是国际仲裁的基石，促进仲裁协议和仲裁裁决的跨境执行。最突出的例子是《纽约公约》 ，该公约已得到157个国家的批准，在促进国际仲裁裁决的承认和执行方面发挥着举足轻重的作用。

2. National Arbitration Legislation 国家仲裁立法：

Individual countries enact their own arbitration laws, which govern how arbitration is conducted within their jurisdiction. Key examples include the UNCITRAL Model Law and the Federal Arbitration Act (FAA) in the United States. These laws provide a legal framework for arbitration proceedings, ensuring that they adhere to international standards while addressing local legal specifics.

各个国家/地区制定自己的仲裁法，规定仲裁在其管辖范围内的进行方式。主要例子包括《贸易法委员会示范法》和美国的《联邦仲裁法》(FAA)。这些法律为仲裁程序提供了法律框架，确保仲裁程序遵守国际标准，同时解决当地法律细节。

3. Institutional Arbitration Rules 机构仲裁规则：

Various arbitration institutions (e.g., the International Chamber of Commerce (ICC), Singapore International Arbitration Centre (SIAC), American Arbitration Association (AAA/ICDR), Permanent Court of Arbitration (PCA), and United Nations Commission on International Trade Law (UNCITRAL)) have developed their own set of procedural rules. These rules outline how

arbitration proceedings should be managed, providing parties with a structured and reliable approach to resolving disputes.

各仲裁机构（如国际商会（ICC）、新加坡国际仲裁中心（SIAC）、美国仲裁协会（AAA/ICDR）、常设仲裁法院（PCA）、联合国国际贸易法委员会（UNCITRAL））制定了自己的一套程序规则。这些规则概述了仲裁程序应如何管理，为当事人提供结构化且可靠的解决争议的方法。

The arbitration agreement, which incorporates specific institutional arbitration rules, forms the foundation of the arbitration process. This agreement allows parties to predetermine various aspects of the arbitration, such as the choice of applicable laws, the arbitration forum, and the selection of arbitrators.

仲裁协议包含具体的机构仲裁规则，构成仲裁程序的基础。该协议允许双方预先确定仲裁的各个方面，例如适用法律的选择、仲裁地和仲裁员的选择。

By combining these elements, the contemporary legal framework for international commercial arbitration ensures that disputes are resolved in a fair, efficient, and enforceable manner, reflecting the needs of global commerce.

通过结合这些要素，当代国际商事仲裁的法律框架确保以公平、高效和可执行的方式解决争议，反映了全球商业的需求。

国际仲裁条约

International arbitration conventions form the backbone of the international dispute resolution framework, each offering unique provisions that enhance the efficiency, neutrality, and enforceability of arbitration decisions.

国际仲裁公约构成了国际争议解决框架的支柱，每个公约都提供了独特的条款，以提高仲裁决定的效率、中立性和可执行性。

1958年纽约公约 New York Convention of 1958

The New York Convention is recognized as the first comprehensive legal framework for international arbitration. It replaced the Geneva protocol and convention, abolishing the double exequatur requirement, which mandated that an award be first enforced where it was made before being enforced elsewhere. This innovation significantly reduced costs and procedural burdens. Furthermore, the New York Convention shifts the burden of proof to the party resisting enforcement, promoting fairness and efficiency. It is the anchor law for the UNCITRAL Model Law and is vital for the recognition and enforcement of international arbitration agreements and awards.

《纽约公约》被公认为第一个全面的国际仲裁法律框架。它取代了《日内瓦议定书》和《日内瓦公约》，废除了双重执行令要求，该要求规定裁决必须首先在作出的地方执行，然后再在其他地方执行。这项创新显着降低了成本和程序负担。此外，《纽约公约》将举证责任转移给了抵制执行的一

方，促进了公平和效率。它是《联合国国际贸易法委员会示范法》的基础法，对于国际仲裁协议和裁决的承认和执行至关重要。

1975 年美洲公约（巴拿马公约） Inter-American Convention (Panama Convention) 1975

The Panama Convention, ratified by the United States and most South and Central American nations, mirrors the New York Convention with some differences. Notably, if parties do not specify any arbitration rules, the Inter-American Commercial Arbitration Commission rules will govern the proceedings, ensuring a structured framework for dispute resolution in the Americas.

美国和大多数南美洲和中美洲国家批准的《巴拿马公约》与《纽约公约》相似，但存在一些差异。值得注意的是，如果当事人未指定任何仲裁规则，则美洲商事仲裁委员会的规则将管辖诉讼程序，从而确保美洲争议解决的结构化框架。

1961 年欧洲国际商事仲裁公约 European Convention on International Commercial Arbitration 1961

Entering into force in January 1964, this convention solidifies the validity of international arbitration agreements within most European states (excluding the UK, the Netherlands, and Finland) and several non-EU nations like Russia, Cuba, and Burkina Faso. It limits the intervention of national courts, thereby expanding the autonomy of the disputing parties.

该公约于 1964 年 1 月生效，巩固了大多数欧洲国家（不包括英国、荷兰和芬兰）以及俄罗斯、古巴和布基纳法索等几个非欧盟国家内国际仲裁协议的有效性。它限制了国家法院的干预，从而扩大了争议各方的自主权。

ICSID 公约 ICSID Convention

Born from the procedural successes of the Havana Charter, the ICSID Convention focuses on resolving investment disputes between foreign investors and host states. It provides a procedural framework without imposing specific outcome standards or protections, allowing for case-by-case settlements. The World Bank's endorsement and dissemination to member states mark its significance in international arbitration.

ICSID 公约源于《哈瓦那宪章》的程序性成功，重点解决外国投资者与东道国之间的投资争端。它提供了一个程序框架，没有强加具体的结果标准或保护，允许逐案解决。世界银行的认可和向成员国的传播标志着其在国际仲裁中的重要性。

北美自由贸易协定 (NAFTA) North American Free Trade Agreement (NAFTA)

Signed in 1992 by Canada, Mexico, and the United States, NAFTA aimed to eliminate tariffs and non-tariff barriers by 2008. Chapter Eleven of NAFTA specifically protects cross-border investors and facilitates the settlement of investment disputes. After 67 disputes over 27 years, NAFTA was

replaced by the USMCA in March 2020, continuing the legacy of fostering free trade and resolving trade disputes among the member countries.

NAFTA于1992年由加拿大、墨西哥和美国签署，旨在到2008年消除关税和非关税壁垒。NAFTA第十一章专门保护跨境投资者并促进投资争端的解决。经过27年的67场争端后，NAFTA于2020年3月被USMCA取代，延续了促进自由贸易和解决成员国之间贸易争端的传统。

These conventions collectively enhance the appeal of international arbitration by ensuring fairness, efficiency, and enforceability, making it a preferred method for international dispute resolution.

这些公约通过确保公平性、效率和可执行性，共同增强了国际仲裁的吸引力，使其成为国际争议解决的首选方式。

仲裁类型

Ad hoc arbitration and **administered (institutional) arbitration** represent two primary approaches to dispute resolution through arbitration. Ad hoc arbitration is characterized by its flexible nature, with the parties retaining control over the rules and procedures. In contrast, administered arbitration involves a formal institution that provides a predefined structure and set of rules, which can offer advantages such as administrative support, appointment of arbitrators, and management of fees. Each type of arbitration has its unique benefits, depending on the needs and preferences of the disputing parties.

临时仲裁和管理（机构）仲裁是通过仲裁解决争议的两种主要方法。临时仲裁的特点是灵活，当事人保留对规则和程序的控制权。相比之下，管理仲裁涉及一个提供预定义结构和一套规则的正式机构，可以提供行政支持、仲裁员任命和费用管理等优势。每种类型的仲裁都有其独特的优势，具体取决于争议双方的需求和偏好。

仲裁机构

Arbitration institutions are organizations headquartered at various global locations, offering either commercial or international dispute resolution services. These institutions include well-known entities like the Permanent Court of Arbitration (PCA), the International Centre for Settlement of Investment Disputes (ICSID), the Hong Kong International Arbitration Centre (HKIAC), the Singapore International Arbitration Centre (SIAC), the London Court of International Arbitration (LCIA), the Asian International Arbitration Centre (AIAC), the International Chamber of Commerce (ICC), and the China International Economic and Trade Arbitration Commission (CIETAC).

仲裁机构是总部位于全球各地的组织，提供商业或国际争议解决服务。这些机构包括常设仲裁法院（PCA）、国际投资争端解决中心（ICSID）、香港国际仲裁中心（HKIAC）、新加坡国际仲裁中心

(SIAC)、伦敦国际仲裁中心 (SIAC) 等知名机构。国际仲裁院 (LCIA)、亚洲国际仲裁中心 (AIAC)、国际商会 (ICC) 和中国国际经济贸易仲裁委员会 (CIETAC)。

- 程序规则：这些机构制定并运行一套可供当事人采用的程序规则，为仲裁提供结构化的法律框架。
- Model Clauses : They offer standard model clauses that parties can include in contracts, specifying that any disputes will be resolved by arbitration.

示范条款：它们提供各方可以包含在合同中的标准示范条款，规定任何争议将通过仲裁解决。

Example clause:

"Any dispute, controversy, difference or claim arising out of or relating to this contract, including the existence, validity, interpretation, performance, breach or termination thereof or any dispute regarding non-contractual obligations arising out of or relating to it shall be referred to and finally resolved by arbitration administered by the Hong Kong International Arbitration Centre (HKIAC) under the HKIAC Administered Arbitration Rules in force when the Notice of Arbitration is submitted."

- Administrative Services : These institutions provide comprehensive administrative services, such as facilitating communications, organizing hearings, and handling financial aspects.
行政服务：这些机构提供全面的行政服务，例如促进沟通、组织听证会和处理财务方面。
- Venues and Appointing Authority : They offer venues for arbitration hearings and act as appointing authorities, selecting qualified arbitrators when parties cannot agree.
地点和指定机构：他们提供仲裁听证会的场所并充当指定机构，在当事人无法达成一致时选择合格的仲裁员。
- Specialized Services : For instance, HKIAC provides Tribunal Secretary Services to assist tribunals in managing their caseloads.
专业服务：例如，HKIAC 提供仲裁庭秘书服务，以协助仲裁庭管理案件量。

主要仲裁机构

- HKIAC : Established in 1985 to address the growing need for dispute resolution in Asia, HKIAC was initially funded by the Hong Kong Government and business community. Today, it is financially self-sufficient and operates independently.

HKIAC : HKIAC 成立于 1985 年，旨在满足亚洲日益增长的争议解决需求，最初由香港政府和商界资助。如今，它在财务上自给自足并独立运营。

- ICC : The ICC is widely renowned for its detailed arbitration rules and extensive administrative support, handling a significant volume of cases each year. The International Court of Arbitration of the ICC was established in 1923 and is based in Paris. Despite its name, the ICC Court is not a court in the traditional sense. It administers arbitrations that can be seated anywhere in the world. Unique among arbitral institutions, the ICC does not maintain a list of arbitrators, thereby providing greater flexibility in choosing arbitrators tailored to the specific needs of each dispute. An important feature of the ICC is that its secretariat scrutinizes awards before they are finalized by the arbitration tribunal, ensuring high-quality decision-making. Arbitrators' fees within the ICC are based on a percentage of the dispute amount, making it a financially predictable option for parties.

国际商会：国际商会以其详细的仲裁规则和广泛的行政支持而闻名，每年处理大量案件。国际商会国际仲裁院成立于 1923 年，总部设在巴黎。尽管名称如此，但国际刑事法院并不是传统意义上的法院。它管理的仲裁可以在世界任何地方进行。国际商会在仲裁机构中独一无二，它不保留仲裁员名单，因此可以更灵活地根据每个争议的具体需求选择仲裁员。国际商会的一个重要特点是，其秘书处在仲裁庭最终确定裁决之前对其进行审查，以确保高质量的决策。国际商会内仲裁员的费用按争议金额的一定百分比计算，这使其成为当事人在财务上可预测的选择。

- LCIA : Known for its flexible rules aligned with common law practices, the LCIA administers a wide array of disputes and is favored in common law jurisdictions. Founded in 1892, the LCIA is headquartered in London. Unlike the ICC, the LCIA maintains a comprehensive database of arbitrators and calculates arbitrators' fees on an hourly basis. The LCIA rules allow for the intervention of third parties, providing greater flexibility and inclusivity in the arbitration process. The LCIA's extended presence includes LCIA India (established in 2009) and DIFC-LCIA in Dubai, expanding its reach and accessibility.

LCIA : LCIA 以其符合普通法惯例的灵活规则而闻名，负责管理广泛的争议，并在普通法司法管辖区受到青睐。LCIA 成立于 1892 年，总部位于伦敦。与 ICC 不同，LCIA 维护着一个全面的仲裁员数据库，并按小时计算仲裁员费用。LCIA 规则允许第三方介入，为仲裁过程提供了更大的灵活性和包容性。LCIA 的延伸业务包括 LCIA 印度分部（成立于 2009 年）和迪拜 DIFC-LCIA，扩大了其覆盖范围和可达性。

- SIAC : With its expedited processes and provisions for emergency arbitrators, SIAC has become a leading institution in Asia, offering efficient and rapid dispute resolution services. Established in 1991 and based in Singapore, SIAC is renowned for its efficient and effective administration of arbitration proceedings. Its strategic location and well-regarded facilities make it a preferred choice for parties involved in Asia-related disputes.

SIAC : 凭借其快捷的流程和紧急仲裁员的规定，SIAC 已成为亚洲领先的机构，提供高效、快速的争议解决服务。SIAC 成立于 1991 年，总部位于新加坡，以其高效且有效的仲裁程序管理而闻名。其战略位置和备受推崇的设施使其成为涉及亚洲相关争端各方的首选。

- CIETAC : CIETAC is the primary arbitration institution in China, notable for resolving international trade disputes and issues within the Chinese legal and business context. CIETAC, established in 1956, has its headquarters in Beijing along with sub-commissions in Shenzhen, Shanghai, Tianjin, and Chongqing. CIETAC's long-standing presence and extensive network in China make it a leading institution for resolving economic and trade disputes in the region.

CIETAC : CIETAC 是中国的主要仲裁机构，以解决中国法律和商业背景下的国际贸易纠纷和问题而闻名。贸仲委成立于1956年，总部设在北京，在深圳、上海、天津、重庆等地设有分会。贸仲委在中国的长期存在和广泛的网络使其成为解决该地区经济和贸易争端的领先机构。

- PCA : The PCA specializes in disputes involving states, state entities, intergovernmental organizations, and private parties. It is instrumental in facilitating arbitration and other resolution forms in public international law disputes.

PCA : PCA 专门处理涉及国家、国家实体、政府间组织和私人当事方的争议。它有助于促进国际公法纠纷中的仲裁和其他解决形式。

These institutions play a crucial role in the field of international arbitration by providing the necessary infrastructure, expertise, and procedural support to ensure fair and efficient dispute resolution across various jurisdictions.

These arbitration institutions provide structured, fair, and efficient mechanisms for the resolution of international disputes, each offering unique advantages that cater to the diverse needs of parties worldwide. Understanding their operations and strengths is crucial for choosing the appropriate institution for any given arbitration case.

Hong Kong as a Seat of Arbitration 香港作为仲裁地

The Hong Kong International Arbitration Centre (HKIAC) underscores the city's prominence as a global arbitration hub, highlighted by its statement on June 19, 2020. The adoption of the UNCITRAL Model Law without changes reaffirms Hong Kong's adherence to international arbitration standards. Arbitral tribunals in Hong Kong operate with full independence in adjudicating cases, supported by HKIAC's pool of independent specialists.

香港国际仲裁中心（HKIAC）在 2020 年 6 月 19 日的声明中强调了香港作为全球仲裁中心的地位。《联合国国际贸易法委员会示范法》的通过未经修改，再次确认了香港对国际仲裁标准的遵守。香港仲裁庭在裁决案件时完全独立运作，并得到 HKIAC 独立专家库的支持。

Hong Kong also boasts a cadre of specialist judges dedicated to arbitration, and the city's highest court provides a strong judicial structure for overseeing arbitration matters. The Interim Measures Arrangement further enhances procedural capabilities, ensuring protective measures are effectively managed.

香港还拥有一批致力于仲裁的专业法官，香港最高法院也为监督仲裁事务提供了强大的司法结构。《临时措施安排》进一步增强程序能力，确保保护措施得到有效管理。

Despite political challenges, including the 2018 protests, HKIAC has maintained its activities, evidencing resilience and a commitment to providing uninterrupted arbitration services.

尽管面临政治挑战，包括 2018 年的抗议活动，HKIAC 仍维持其活动，展现出韧性和提供不间断仲裁服务的承诺。

2018 HKIAC Administered Arbitration Rules : The 2018 rules introduced several measures to improve efficiency in handling complex arbitrations: Consolidation of multiple arbitrations, management of single arbitrations under multiple contracts , joinder of additional parties , and concurrent conduct of multiple arbitrations all contribute to streamlined processes and reduced procedural complexity.

2018年HKIAC机构仲裁规则：2018年规则引入了多项措施来提高处理复杂仲裁的效率：多个仲裁的合并、多个合同下单一仲裁的管理、其他当事人的合并以及多个仲裁的同时进行都有助于简化流程并降低程序复杂性。

These rules reflect contemporary developments in international arbitration: The integration of alternative dispute resolution methods (such as arb-med-arb), recognition of third-party funding arrangements , and a strong emphasis on the effective use of technology illustrate a modern approach to arbitration.

这些规则反映了国际仲裁的当代发展：替代性争议解决方法（例如 arb-med-arb）的整合、对第三方资助安排的认可以及对技术有效利用的高度重视体现了现代仲裁方法。

Specific provisions in the rules promote technological integration 规则中促进技术融合的具体规定:

- Article 3.1 enables the delivery of documents through an online repository .
第 3.1 条允许通过在线存储库交付文件。
- Article 13.1 encourages arbitral tribunals to leverage technology for greater efficiency.
第 13.1 条鼓励仲裁庭利用技术来提高效率。

Tribunal Secretary Appointments: HKIAC legal staff’ s appointments as tribunal secretaries in 2021 further bolster Hong Kong's arbitration credentials: Out of 20 appointments, 18 were for arbitrations under the HKIAC Administered Arbitration Rules , and 2 were under the UNCITRAL Arbitration Rules , showcasing the trust placed in HKIAC’ s expertise and the robustness of its administered arbitration framework.

审裁处秘书任命：HKIAC 法律人员将于 2021 年任命为仲裁庭秘书，进一步增强香港的仲裁资格：在 20 项指定中，18 项是根据HKIAC 机构仲裁规则进行仲裁，2 项是根据UNCITRAL 仲裁规则进行仲裁，显示了对 HKIAC 专业知识及其稳健性机构仲裁框架的信任。

Collectively, these elements not only illustrate Hong Kong's preeminence as a seat of arbitration but also highlight its ongoing efforts to stay abreast of global arbitration trends, ensuring fairness, efficiency, and adaptability in dispute resolution.

总的来说，这些要素不仅体现了香港作为仲裁地的卓越地位，也突显了香港不断努力跟上全球仲裁趋势，确保争议解决的公平性、效率和适应性。

法院的地位

The role of courts in the international arbitration landscape is nuanced and varies across different legal frameworks and conventions. Courts are primarily involved in supporting the arbitration process, ensuring enforcement, and intervening only in specified circumstances to maintain the integrity and efficiency of the arbitration proceedings.

法院在国际仲裁领域的作用是微妙的，并且因不同的法律框架和公约而异。法院主要参与支持仲裁程序、确保执行，并仅在特定情况下进行干预，以维护仲裁程序的完整性和效率。

ICSID Convention

Under the ICSID Convention, a copy of the arbitral award must be sent to the competent court to facilitate enforcement. This ensures that the award is recognized and executed in accordance with local judicial systems.

根据ICSID公约，仲裁裁决的副本必须发送给有管辖权的法院以便于执行。这确保了该裁决根据当地司法系统得到承认和执行。

New York Convention

Article V of the New York Convention outlines the circumstances under which courts can enforce or refuse to enforce arbitral awards. The primary role of the court is to enforce the arbitral awards, but they can refuse enforcement based on specific grounds, such as the invalidity of the arbitration agreement or the award being contrary to public policy.

《纽约公约》第五条概述了法院可以执行或拒绝执行仲裁裁决的情况。法院的主要作用是执行仲裁裁决，但法院可以基于特定理由拒绝执行，例如仲裁协议无效或裁决违反公共政策。

UNCITRAL Model Law

The UNCITRAL Model Law, adopted by many jurisdictions to harmonize arbitration practices, specifically designates courts or other authorities to perform certain functions such as appointing arbitrators, handling challenges, terminating proceedings, and setting aside awards. Article 6 requires minimal court intervention, promoting the autonomy of arbitration proceedings while ensuring judicial support where necessary.

许多司法管辖区为协调仲裁实践而采用的《贸易法委员会示范法》专门指定法院或其他机构履行某些职能，例如指定仲裁员、处理质疑、终止程序和撤销裁决。第六条要求尽量减少法院干预，促进仲裁程序的自主性，同时确保必要时的司法支持。

Hong Kong Arbitration Ordinance (Cap 609)

The Hong Kong Arbitration Ordinance aims to facilitate fair and speedy dispute resolution by arbitration, minimizing unnecessary expense and court interference. It deviates from the Model Law in some areas, such as replacing Article 1 and introducing provisions on confidentiality and mediator arbitrators. The ordinance includes opt-in provisions for domestic arbitrations, further tailoring the arbitration process to local needs.

香港仲裁条例旨在促进通过仲裁公平、迅速地解决争议，最大限度地减少不必要的费用和法院干预。它在某些方面与《示范法》有所不同，例如取代了第1条并引入了有关保密和调解员仲裁员的规定。该条例包括国内仲裁的选择加入条款，进一步根据当地需求调整仲裁程序。

Singapore International Arbitration Act

This Act allows an arbitral tribunal to rule on its own jurisdiction at any stage of the proceedings. If a party disputes the tribunal's jurisdiction, they may appeal to the High Court within 30 days of the ruling. Further appeal to the Court of Appeal is permitted only with the High Court's permission, ensuring that jurisdictional challenges are handled efficiently.

该法允许仲裁庭在程序的任何阶段就自己的管辖权作出裁决。如果一方对仲裁庭的管辖权有异议，可以在裁决后30天内向高等法院提出上诉。只有在高等法院许可的情况下才可以向上诉法院进一步上诉，以确保有效处理管辖权质疑。

Each of these frameworks illustrates the balance between supporting the arbitration process and preserving party autonomy while providing necessary judicial oversight to ensure fairness and enforceability in international arbitration. The courts' roles in these conventions and laws highlight their importance in maintaining the credibility and reliability of arbitral awards globally.

每个框架都说明了支持仲裁程序和维护当事人自主权之间的平衡，同时提供必要的司法监督以确保国际仲裁的公平性和可执行性。法院在这些公约和法律中的作用凸显了它们在维护全球仲裁裁决的可信度和可靠性方面的重要性。

国际仲裁理论

International arbitration operates under several theoretical frameworks, each offering a unique perspective on the source and nature of an arbitrator's authority and the role of state law and party autonomy in arbitration proceedings. These theories provide a foundation for understanding the dynamics and complexities involved in the arbitration process.

国际仲裁在多种理论框架下运作，每种理论框架都对仲裁员权力的来源和性质以及国家法律和当事人意思自治在仲裁程序中的作用提供了独特的视角。这些理论为理解仲裁过程中涉及的动态和复杂性提供了基础。

- The Jurisdictional Theory : According to this theory, the power of an arbitrator is derived from and regulated by domestic law. It supports the notion that states possess and exercise complete supervision over commercial arbitration conducted within their jurisdictions. This theory helps to explain the power, duties, and immunity of arbitrators, as well as the circumstances under which state intervention in arbitration might occur. However, it tends to overlook the important aspect of party autonomy in selecting arbitrators.

管辖权理论：根据这一理论，仲裁员的权力源自国内法并受国内法管辖。它支持国家对其管辖范围内进行的商业仲裁拥有并行使全面监督的观点。该理论有助于解释仲裁员的权力、义务和豁免，以及国家干预仲裁的情况。然而，它往往忽视了仲裁员选择中当事人意思自治的重要方面。

- The Contractual Theory : The Contractual Theory posits that an arbitrator's power is fundamentally contractual, originating from a valid arbitration agreement between the parties involved. Based on this perspective, arbitration should be conducted in accordance with the parties' will and intentions, reflecting their mutual agreement. Nevertheless, this theory tends to neglect the constraints imposed by domestic laws on the freedom of arbitration.

契约理论：契约理论认为，仲裁员的权力从根本上来说是契约性的，源自有关各方之间有效的仲裁协议。从这个角度来看，仲裁应当按照当事人的意愿和意图进行，体现双方的一致。然而，这一理论往往忽视了国内法对仲裁自由的限制。

- The Mixed or Hybrid Theory : This theory represents a synthesis, acknowledging both the judicial powers of the state and the principle of party autonomy in contract. It is based on the belief that contract and judicature can coexist in a workable blend, allowing for an effective arbitration process that respects both state authority and the autonomy of the parties involved.

混合或混合理论：这一理论代表了一种综合，既承认国家的司法权，又承认合同当事人意思自治的原则。它基于这样的信念：合同和司法可以以可行的方式共存，从而允许有效的仲裁程序尊重国家权威和有关各方的自主权。

- The Autonomous Theory : The Autonomous Theory advocates for maximum party autonomy in arbitration. It asserts that parties should have the ultimate freedom to decide whether they wish to submit their disputes to arbitration and how arbitration should be conducted. This theory emphasizes the primary aim and function of arbitration—to provide a flexible and autonomous method of dispute resolution that aligns with the parties' preferences and objectives.

自治理论：自治理论主张仲裁中当事人的最大自治权。它主张，当事人应拥有最终自由决定是否愿意将争议提交仲裁以及如何进行仲裁。该理论强调仲裁的主要目的和功能——提供一种符合当事人偏好和目标的灵活、自主的争议解决方法。

Each of these theories offers valuable insights into the nature of international arbitration and the balance between state influence and party autonomy. Understanding these theoretical

frameworks can help navigate the complex landscape of arbitration, ensuring that the process aligns with both legal requirements and the parties' expectations.

这些理论都为国际仲裁的性质以及国家影响力与当事人意思自治之间的平衡提供了宝贵的见解。了解这些理论框架有助于驾驭复杂的仲裁格局，确保仲裁过程符合法律要求和当事人的期望。

02 笔记

可分离性推定

The principle of separability presumption, or the autonomy of the arbitration clause, is a cornerstone in international arbitration law. This concept maintains that an arbitration clause within a contract is independent of the main contract itself. This autonomy ensures that any invalidity affecting the main contract does not automatically invalidate the arbitration agreement.

可分离性推定原则，或者说仲裁条款的自主性，是国际仲裁法的基石。这一概念认为合同中的仲裁条款独立于主合同本身。这种自主权确保了影响主合同的任何无效性不会自动使仲裁协议无效。

The separability presumption is a fundamental principle in international arbitration which asserts that an arbitration agreement is independent and separable from its underlying contract. This principle is crucial for maintaining the integrity and enforceability of arbitration agreements, even when the main contract is disputed.

可分离性推定是国际仲裁的一项基本原则，它主张仲裁协议与其基础合同是独立且可分离的。即使主合同存在争议，这一原则对于维护仲裁协议的完整性和可执行性至关重要。

It is widely accepted that an arbitration agreement stands on its own, separate from the underlying contract. Commercial parties generally expect and intend for their arbitration agreements to remain valid and binding despite any issues with the main contract. This expectation ensures that arbitration can proceed uninterrupted.

核心原则：

人们普遍认为仲裁协议独立于基础合同之外。尽管主合同存在任何问题，商业当事人通常期望并打算其仲裁协议仍然有效并具有约束力。这种期望确保仲裁能够不间断地进行。

Autonomy of Arbitration Clause : The separability presumption is a widely acknowledged principle in international law and is consistently applied in international arbitration decisions. The writings of leading scholars on international arbitration, regulations by international bodies, and various treaties reinforce this principle. Furthermore, it is embedded in the national arbitration laws of many countries.

仲裁自主条款：可分离性推定是国际法中广泛认可的原则，并一貫适用于国际仲裁裁决。国际仲裁领域顶尖学者的著作、国际机构的规定以及各种条约都强化了这一原则。此外，它已被纳入许多国家的国家仲裁法中。

Case Examples :

1. **Elf Aquitaine v National Iranian Oil Company (1982)**

- This case highlighted the rigorous standards required to impeach an arbitration agreement under the doctrine of separability.
本案凸显了根据可分性原则弹劾仲裁协议所需的严格标准。
- The arbitration clause can only be nullified through direct impeachment, necessitating evidence specific to the arbitration agreement itself.
仲裁条款只能通过直接弹劾才能无效，需要提供仲裁协议本身的具体证据。
- Challenges must present distinct facts specific to the arbitration clause and cannot merely stem from the primary contract's invalidity.
质疑必须提出针对仲裁条款的明确事实，而不能仅仅源于主合同的无效性。

2. Fiona Trust & Holding Corp. v Privalov [2007] UKHL 40 at [35]

- This landmark decision reinforced that arbitration clauses are autonomously valid, irrespective of issues affecting the main contract's validity.
这一具有里程碑意义的裁决强调了仲裁条款独立有效，无论影响主合同有效性的问题如何。
- It confirmed that allegations undermining the main contract do not suffice to invalidate the arbitration agreement.
它确认，破坏主合同的指控不足以使仲裁协议无效。

The separability presumption strengthens the arbitration process by ensuring its independence and effectiveness. It prevents parties from undermining arbitration agreements through claims against the main contract, thus preserving the integrity and reliability of arbitration as a dispute resolution mechanism.

可分离性推定通过确保仲裁程序的独立性和有效性来加强仲裁程序。它防止当事人通过对主合同提出索赔来破坏仲裁协议，从而维护了仲裁作为争议解决机制的完整性和可靠性。

Consequences : One of the key consequences of this principle is that the invalidity of the underlying contract does not necessarily affect the arbitration agreement. Additionally, the arbitration agreement and the underlying contract may be governed by different laws, further protecting the arbitration process from disputes about the main contract.

结果：该原则的关键后果之一是基础合同的无效并不一定影响仲裁协议。此外，仲裁协议和基础合同可能受不同的法律管辖，进一步保护仲裁程序免受主合同纠纷的影响。

仲裁中可分离性的法律框架 Legal Framework of Separability in Arbitration

The principle of separability is essential in international arbitration, ensuring that arbitration agreements remain enforceable even if the underlying contract faces challenges. This principle is supported by a comprehensive legal framework encompassing international treaties and national legislation.

可分离性原则在国际仲裁中至关重要，确保即使基础合同面临挑战，仲裁协议仍然可执行。这一原则得到了涵盖国际条约和国家立法的综合法律框架的支持。

International Treaties 国际条约

1. New York Convention

The New York Convention of 1958 is a cornerstone document in international arbitration, establishing critical guidelines for the recognition and enforcement of arbitration agreements and awards.

纽约公约：

1958 年《纽约公约》是国际仲裁的基石文件，为承认和执行仲裁协议和裁决制定了关键准则。

- Article II(3) mandates that courts must refer the involved parties to arbitration unless the arbitration agreement is found to be null and void, inoperative, or incapable of being performed.

第二条第（3）款规定，除非仲裁协议被认定无效、无效或无法履行，否则法院必须将当事人提交仲裁。

- Article II also broadens the concept of "arbitrability," meaning subject matters capable of settlement by arbitration, and includes clauses in contracts as well as exchanges of letters or telegrams under the definition of "agreement in writing," even if unsigned.

第二条还扩大了“可仲裁性”的概念，即能够通过仲裁解决的标的物，并包括合同中的条款以及“书面协议”定义下的信件或电报，即使未签署。

- Article V protects against the enforcement of invalid arbitration agreements, specifying that recognition and enforcement may be refused if the agreement is not valid under the applicable law or under the law of the country where the award was made.

第五条防止无效仲裁协议的执行，规定如果该协议根据适用的法律或裁决作出国的法律无效，则可以拒绝承认和执行。

2. ICSID

The ICSID Convention offers a procedural framework for resolving investment disputes between foreign investors and host states, ensuring an independent assessment separate from the contractual arrangements.

ICSID 公约为解决外国投资者与东道国之间的投资争端提供了程序框架，确保独立于合同安排进行评估。

3. Investment Treaties

Investment treaties underpin procedural legitimacy in the arbitration of disputes, affirming the separability of arbitration agreements through various international trade agreements and bilateral investments.

投资条约巩固了争端仲裁的程序合法性，通过各种国际贸易协定和双边投资确认了仲裁协议的可分离性。

National Legislation 国家立法

1. UNCITRAL Model Law

The UNCITRAL Model Law aligns closely with the New York Convention's definitions, particularly in its treatment of arbitration agreements.

《贸易法委员会示范法》与《纽约公约》的定义密切一致，特别是在对仲裁协议的处理方面。

- Article 7, Option I expands on the definition of "in writing," certifying that content recorded in any form, such as electronic communications and exchanges of claims and defenses, qualify as valid arbitration agreements. It further clarifies that references in contracts to documents containing arbitration clauses are sufficient if the reference integrates the clause as part of the contract.

第7条选项I扩展了“书面”的定义，证明以任何形式记录的内容，例如电子通信以及索赔和答辩的交换，都有资格作为有效的仲裁协议。它进一步澄清，如果引用将条款纳入合同的一部分，则在合同中引用包含仲裁条款的文件就足够了。

2. Hong Kong Arbitration Ordinance (Cap. 609)

The Hong Kong Arbitration Ordinance adopts Option I of the UNCITRAL Model Law, reinforcing the principle that arbitration agreements need not be signed.

香港仲裁条例采纳了《联合国国际贸易法委员会示范法》的选项一，强化了仲裁协议无需签署的原则。

It validates agreements documented in any form, provided they are recorded by one of the parties or by an authorized third party, adding a layer of flexibility and robustness to arbitration laws in Hong Kong.

它可以验证以任何形式记录的协议，只要这些协议是由一方或授权的第三方记录的，从而为香港仲裁法增添了一层灵活性和稳健性。

Practical Applications 实际应用

• Shifting Burden of Proof

Under the New York Convention, the burden of proving the invalidity of an arbitration agreement lies with the party resisting enforcement, promoting judicial efficiency and encouraging the use of arbitration.

根据《纽约公约》，仲裁协议无效的证明责任由拒绝执行的一方承担，以提高司法效率并鼓励使用仲裁。

• Arbitrability 可仲裁性:

Arbitration provides a broader scope for subject matters capable of settlement, promoting alternative resolution mechanisms over traditional courts.

仲裁为能够解决的标的问题提供了更广泛的范围，促进了传统法院之外的替代解决机制。

- Written Agreement Requirement 书面协议要求:

The flexible definition of written agreements as per the New York Convention and UNCITRAL Model Law ensures that arbitration agreements are widely recognized, even when traditional documentation methods are circumvented.

《纽约公约》和《贸易法委员会示范法》对书面协议的灵活定义确保了仲裁协议得到广泛认可，即使传统的文件方法被规避。

The separability presumption in arbitration law ensures that arbitration agreements remain effective and enforceable, independent of the validity of the underlying contract. Backed by robust frameworks established through international treaties like the New York Convention, ICSID, investment treaties, and reinforced by national legislation such as the UNCITRAL Model Law and Hong Kong Arbitration Ordinance, this principle promotes confidence in international arbitration as a reliable dispute resolution mechanism.

仲裁法中的可分离性推定确保仲裁协议保持有效和可执行，独立于基础合同的有效性。这一原则得到《纽约公约》、ICSID、投资条约等国际条约建立的强有力框架的支持，并得到《贸易法委员会示范法》和《香港仲裁条例》等国家立法的强化，增强了人们对国际仲裁作为可靠争议解决机制的信心。

法律框架 Legal Framework

International arbitration operates within a structured legal framework that delineates various aspects of the arbitration process, including the law of the arbitration agreement and the law of the seat. Understanding how these laws apply is fundamental for the validity, conduct, and supervision of the arbitration process.

国际仲裁在一个结构化的法律框架内运作，该框架界定了仲裁程序的各个方面，包括仲裁协议的法律和所在地的法律。了解这些法律如何适用对于仲裁程序的有效性、实施和监督至关重要。

Law of the Arbitration Agreement

The law governing the arbitration agreement primarily addresses its validity and enforceability. Determining the applicable law is crucial but often lacks a clear consensus. Two prominent tests, derived from significant legal cases, offer methodologies for resolving conflicts regarding the applicable law.

仲裁协议法：管辖仲裁协议的法律主要解决其有效性和可执行性。确定适用的法律至关重要，但往往缺乏明确的共识。源自重大法律案例的两个著名测试提供了解决适用法律冲突的方法。

Sulamerica 案-三步测试

The Sulamerica case offers a three-step approach to determining the law applicable to an arbitration agreement

Sulamerica 案提供了确定仲裁协议适用法律的三步法

1. Express Choice :

The first step is to identify if there is an express choice of law governing the arbitration agreement. This explicit designation simplifies the process of determining the applicable law.
第一步是确定是否明确选择了管辖仲裁协议的法律。这种明确的指定简化了确定适用法律的过程。

2. Implied Choice :

If there is no express choice, the second step looks at the governing law of the contract itself. An express choice of governing law for the contract is a strong indication that the same law is intended to govern the arbitration agreement.

如果没有明确的选择，第二步着眼于合同本身的管辖法律。明确选择合同适用法律明确表明仲裁协议适用同一法律。

3. Closest and Most Real Connection :

If no implied choice is apparent, the analysis moves to the system of law with which the arbitration agreement has its closest and most real connection. This step considers various factors to determine the most appropriate legal system.

如果没有明显的默示选择，则分析转向与仲裁协议有最密切、最真实联系的法律体系。此步骤考虑各种因素以确定最合适的做法。

Enka-改进的三步测试

The Enka case introduced modifications to the Sulamerica test, emphasizing the law of the seat of arbitration

Enka案对Sulamerica测试进行了修改，强调仲裁地法律

1. No Express Choice

When there is no express choice of law governing the arbitration agreement, there is a "strong presumption" that the parties have impliedly chosen the law of the seat of arbitration.

当仲裁协议没有明确选择适用的法律时，可以“强烈推定”当事人默示选择了仲裁地的法律。

2. Implied Choice

The presumption leans towards the law of the seat rather than the law governing the contract. This assumes that the parties intended for the seat's legal framework to govern the arbitration process.

该推定倾向于所在地法，而不是管辖合同的法律。这假设双方打算让仲裁地的法律框架来管辖仲裁程序。

3. Closest Connection

Similar to the Sulamerica test, this step assesses the law with the closest and most significant connection to the arbitration agreement.

与南美洲测试类似，此步骤评估与仲裁协议有最密切、最重要联系的法律。

Law of the Seat

The law of the seat of arbitration governs the conduct of the arbitration proceedings. This includes procedural aspects and the scope of court supervision. The choice of the seat can significantly impact the arbitration process, as it dictates how and to what extent local courts can intervene.

仲裁程序的进行适用仲裁地的法律。这包括程序方面和法院监督的范围。仲裁地的选择可能会对仲裁过程产生重大影响，因为它决定了当地法院可以干预的方式和程度。

The legal framework underpinning international arbitration is essential for ensuring that arbitration agreements are valid, binding, and enforceable. By applying structured tests such as those from the Sulamerica and Enka cases, parties can ascertain the appropriate legal regime governing both the arbitration agreement and the proceedings. This framework promotes predictability, fairness, and efficiency in international arbitration.

支持国际仲裁的法律框架对于确保仲裁协议有效、具有约束力和可执行性至关重要。通过应用 Sulamerica 和 Enka 案件等结构化测试，当事人可以确定管辖仲裁协议和仲裁程序的适当法律制度。该框架促进了国际仲裁的可预测性、公平性和效率。

仲裁协议的有效性和基本要求 Validity and Essential Requirements for Arbitration Agreements

Arbitration agreements are foundational in ensuring that certain disputes between parties are resolved outside of traditional court systems. To ensure their enforceability and effectiveness, these agreements must meet specific essential requirements.

仲裁协议是确保当事人之间的某些争议在传统法院系统之外得到解决的基础。为了确保其可执行性和有效性，这些协议必须满足特定的基本要求。

基本要求

The core elements necessary for a valid arbitration agreement include an obligation and a right .
有效仲裁协议的核心要素包括义务和权利。

1. Obligation : The agreement must explicitly establish that certain disputes will be resolved by arbitration. This creates a binding commitment between the parties to utilize arbitration for resolving specified types of disputes.

义务：协议必须明确规定某些争议将通过仲裁解决。这在双方之间产生了具有约束力的承诺，即利用仲裁来解决特定类型的争议。

2. Right : The agreement should provide parties with the unequivocal right to demand arbitration when a dispute covered by the clause arises. This ensures mutual consent and enforceability.

权利：协议应明确规定当当事人在出现该条款所涵盖的争议时要求仲裁的权利。这确保了双方同意和可执行性。

例子

Several formulations can serve as effective arbitration clauses, such as:

有几种表述可以作为有效的仲裁条款，例如：

- "Arbitration: in London if necessary"
“仲裁：如有必要，在伦敦”
- "suitable arbitration clause"
“适当的仲裁条款”
- "All disputes under this transaction shall be arbitrated in the usual manner."
“本次交易项下的所有争议均应按通常方式进行仲裁。”

其他重要元素

While the essential components of obligation and right form the backbone of arbitration agreements, several additional elements play a crucial role in defining and structuring the arbitration process.

虽然义务和权利的基本组成部分构成了仲裁协议的支柱，但其他几个要素在定义和构建仲裁过程中发挥着至关重要的作用。

1. Seat : This refers to the legal jurisdiction where the arbitration will take place. The law of the seat often influences various procedural aspects and may determine the governing legal framework.

所在地：这是指仲裁进行的司法管辖区。所在地的法律通常会影响各个程序方面，并可能决定管辖法律框架。

2. Applicable Rules : Refers to the set of institutional or procedural rules that will govern the arbitration. This could be rules from established arbitration institutions like the ICC, LCIA, SIAC, etc., or any other agreed-upon procedural guidelines.

适用规则：指管辖仲裁的一套机构或程序规则。这可以是国际商会 (ICC)、伦敦国际仲裁院 (LCIA)、新加坡国际仲裁中心 (SIAC) 等既定仲裁机构的规则，或任何其他商定的程序指南。

3. Arbitrators : Specifies the number of arbitrators and the method of their appointment. This could range from a single arbitrator to a panel, and the method of selection is crucial to ensure impartiality and expertise.

仲裁员：指定仲裁员的人数及其任命方法。范围可以从单个仲裁员到专家组，选择方法对于确保公正性和专业知识至关重要。

4. Scope : Defines the extent of disputes covered by the arbitration clause. A well-drafted clause will clearly specify which types of disputes are subject to arbitration.

范围：定义仲裁条款涵盖的争议范围。精心起草的条款将明确规定哪些类型的争议需要仲裁。

5. Language : The arbitration's conducting language must be established to avoid ambiguities and ensure clear communication between parties.

语言：仲裁的进行语言必须确定以避免歧义并确保当事人之间的清晰沟通。

6. Governing Law : Refers to the substantive law governing the arbitration agreement itself. This could differ from the law governing the underlying contract and the law of the seat.

适用法律：指管辖仲裁协议本身的实体法。这可能与管辖基础合同的法律和所在地的法律不同。

The law of the seat often has default provisions that can apply to some of these elements if not explicitly detailed in the agreement. This highlights the importance of clearly defining these elements within the arbitration agreement to align with the parties' expectations and intentions.

如果协议中没有明确详细说明，所在地的法律通常有默认条款，这些条款可以适用于其中一些要素。这凸显了在仲裁协议中明确定义这些要素以符合当事人的期望和意图的重要性。

By including these essential requirements and additional important elements, parties can craft robust and enforceable arbitration agreements. These agreements not only provide a clear framework for resolving disputes but also ensure that arbitration remains a preferred and effective alternative to litigation. Ensuring that these components are meticulously addressed can prevent ambiguities and foster a smoother arbitration process, enhancing mutual trust and confidence in the chosen method of dispute resolution.

通过纳入这些基本要求和其他重要要素，当事人可以制定稳健且可执行的仲裁协议。这些协议不仅为解决争议提供了明确的框架，而且确保仲裁仍然是诉讼的首选和有效替代方案。确保这些组成部分得到精心解决可以防止歧义并促进仲裁过程更加顺利，从而增强对所选争议解决方法的相互信任和信心。

Any dispute, controversy, difference or claim arising out of or relating to this contract, including the existence, validity, interpretation, performance, breach or termination thereof or any dispute regarding non-contractual obligations arising out of or relating to it shall be referred to and finally resolved by arbitration administered by the Hong Kong International Arbitration Centre (HKIAC) under the HKIAC Administered Arbitration Rules in force when the Notice of Arbitration is submitted.

The law of this arbitration clause shall be ... (Hong Kong law). The seat of arbitration shall be (Hong Kong). The number of arbitrators shall be ... (one or three). The arbitration proceedings shall be conducted in ... (insert language).

多层和单层条款

In the realm of international arbitration, certain contractual provisions such as multi-tier clauses and sole-option clauses play a pivotal role in defining the dispute resolution process. Understanding these clauses' intricacies can streamline the path to resolution and avoid pitfalls that may lead to further complications.

在国际仲裁领域，某些合同条款（例如多层次条款和单一选择条款）在定义争议解决程序方面发挥着关键作用。了解这些条款的复杂性可以简化解决方案并避免可能导致进一步复杂化的陷阱。

Multi-Tier Clauses

Multi-tier clauses mandate a structured sequence of dispute resolution steps, typically involving negotiation and possibly mediation before resorting to arbitration. For these clauses to be effective, they must be crafted with specificity.

多层次条款规定了一系列结构化的争议解决步骤，通常包括在诉诸仲裁之前进行谈判和可能的调解。为了使这些条款有效，它们必须具体制定。

- **Timelines :** Precise timelines should be clearly defined to indicate when the parties can cease negotiation or mediation and proceed to arbitration.
时间表：应明确规定准确的时间表，以表明双方何时可以停止谈判或调解并进行仲裁。
- **Problems with Vague Clauses :** Clauses that require "good faith" negotiations without clear benchmarks can be problematic. Phrases like "if no resolution is possible" or "may be submitted to arbitration" lack the certitude needed to compel action, and the absence of fixed timelines might result in prolonged and unresolved negotiations.

含糊条款的问题：要求“善意”谈判而没有明确基准的条款可能会出现问题。“如果无法解决”或“可能提交仲裁”之类的措辞缺乏强制采取行动所需的确定性，而且缺乏固定的时间表可能会导致谈判旷日持久且悬而未决。

Example of Poor Drafting :

- “The dispute shall be resolved by good faith negotiations between the parties. If no resolution is possible, it may be submitted to binding arbitration.”

“争议应由双方真诚协商解决。如果无法解决，可以提交具有约束力的仲裁。”

- Issues :

- Ambiguity in "good faith" negotiations.
“善意” 谈判中的模糊性。
- Indefinite terms like "if no resolution is possible."
不定术语，例如 “如果无法解决” 。
- Non-committal language such as "may be," and lack of specific timelines, potentially leading to stalled disputes.
诸如 “可能是” 之类的不置可否的语言以及缺乏具体时间表，可能会导致争端陷入僵局。

Sole-Option Clauses

A sole-option clause grants one party the discretion to choose between litigation and arbitration.

单选条款赋予一方当事人在诉讼和仲裁之间进行选择的自由裁量权。

Example :

- "The courts of Hong Kong have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement. Notwithstanding this provision, any dispute shall, at the option of the Finance Parties, be referred to and finally resolved by arbitration under the HKIAC Administered Arbitration Rules."
- “香港法院对解决因本协议引起的或与本协议相关的任何争议拥有专属管辖权。尽管有此规定，任何争议均应根据财务方的选择，提交香港国际仲裁中心仲裁并最终解决。管理仲裁规则。”

- Key Considerations :

主要考虑因素：

- The clause must clearly state which party holds the option—in this instance, "the Finance Parties."
该条款必须明确说明哪一方拥有该选择权——在本例中为 “财务方” 。
- This ability to choose can be strategically beneficial, offering flexibility to the party granted the sole option.
这种选择能力在战略上是有利的，为获得唯一选择权的一方提供了灵活性。

Both multi-tier and sole-option clauses, when drafted precisely, can greatly benefit the dispute resolution process. They provide strategic pathways and flexibility, ensuring that disputes can be resolved efficiently and with due consideration to the parties' preferences and circumstances.

多层次条款和单项条款如果起草得当，都可以极大地有利于争议解决过程。它们提供战略途径和灵活性，确保纠纷能够有效解决，并适当考虑各方的偏好和情况。

缺陷条款 Pathological Clauses

The principle of upholding arbitration agreements is encapsulated in the notion that courts should strive to reflect the parties' intention to resolve disputes through arbitration, rather than allowing inconsistencies in the wording or operation of the arbitration clause to undermine that intent. This principle was reinforced in *Marnell Corrao Assoc. Inc. v Sensation Yachts Ltd [2000] 15 PRNZ 608.*

支持仲裁协议的原则概括为这样一种观念，即法院应努力反映当事人通过仲裁解决争议的意图，而不是允许仲裁条款的措辞或操作不一致而损害该意图。这一原则在Marnell Corrao Assoc案中得到了强化。

Pathological Clauses refer to those with significant flaws, such as:

- Nonexistent Arbitral Institutions, Rules, or Arbitrators : At times, clauses may refer to entities or rules that do not exist.
不存在的仲裁机构、规则或仲裁员：有时，条款可能指不存在的实体或规则。
- Internally Contradictory Agreements : Some arbitration clauses may simultaneously provide for both arbitration and litigation, creating confusion.
内部矛盾的协议：一些仲裁条款可能同时规定仲裁和诉讼，造成混乱。
- Non-Mandatory Arbitration Agreements : Clauses allowing parties to submit disputes to arbitration without mandating it (e.g., *Anzen Limited v Hermes One Limited [2016] UKPC 1.*).
非强制仲裁协议：允许当事人将争议提交仲裁而不强制仲裁的条款（例如，*Anzen Limited v Hermes One Limited [2016] UKPC 1*）。

Despite these potential issues, courts often try to uphold such agreements if the parties' intent to arbitrate can be discerned. For instance:

- In *Lucky-Goldstar*, the clause stipulated arbitration in a third country under its rules and the International Commercial Arbitration Association, which was upheld as valid.
*Lucky-Goldstar*案中，该条款规定根据其规则和国际商事仲裁协会在第三国进行仲裁，维持有效。
- In *Insigma v Alstom*, arbitration was to be conducted before the Singapore International Arbitration Centre, following International Chamber of Commerce rules; this too was held valid.
*Insigma*诉*Alstom*案中，仲裁应根据国际商会规则在新加坡国际仲裁中心进行；这也被认为是有效的。
- Similarly, *Chinalight International v Tata International* directed disputes to the Singapore International Economic and Trade Arbitration Commission under US arbitration rules, and was deemed valid.
同样，*中轻国际*诉*塔塔国际*一案根据美国仲裁规则将争议提交新加坡国际经济贸易仲裁委员会，并被视为有效。

Several factors can render arbitration agreements invalid:

- Lack of Consent : Agreements entered into under duress, mistake, or fraud.
未经同意：在胁迫、错误或欺诈下签订的协议。
- Invalidity Under Specific National Laws : Certain national legal frameworks, like PRC law, may invalidate agreements.
特定国家法律下的无效：某些国家法律框架（例如中华人民共和国法律）可能会使协议无效。
- Unconscionability : Clauses that limit a weaker party’s access to legal representation or provide disproportionate rights to one party regarding the selection of tribunal members.
不合理性：限制弱势一方获得法律代表的机会或在选择仲裁庭成员方面向一方提供不成比例的权利的条款。
- Asymmetric Arbitration Agreements : Certain jurisdictions do not recognize agreements that impose imbalanced obligations on the parties.
不对称仲裁协议：某些司法管辖区不承认对当事人施加不平衡义务的协议。
- Waiver : Parties may waive their right to arbitrate, thus invalidating the agreement.
放弃：当事人可以放弃仲裁权，从而使协议无效。

Ultimately, the courts' emphasis on upholding arbitration agreements signifies a strong commitment to respecting the autonomy of contractual parties and minimizing judicial intervention, except where fairness and public policy demand otherwise.

最终，法院对维护仲裁协议的重视表明了对尊重合同当事人的自主权和尽量减少司法干预的坚定承诺，除非公平和公共政策另有要求。

BNA v BNB

In the case of BNA v BNB , the arbitration agreement contained specific clauses regarding governing law and dispute resolution. Clause 14.1 designated the laws of the People’s Republic of China (PRC) as the governing law, while clause 14.2 specified that disputes would be resolved by the Singapore International Arbitration Centre (SIAC) in Shanghai.

在BNA v BNB案中，仲裁协议包含有关适用法律和争议解决的具体条款。第14.1条指定中华人民共和国（PRC）法律为管辖法律，而第14.2条则规定争议将由位于上海的新加坡国际仲裁中心（SIAC）解决。

PRC law posed significant constraints, as it does not permit foreign arbitral institutions like SIAC to administer arbitration with a PRC seat or without foreign elements. This legal backdrop set the stage for judicial analysis when determining the seat of arbitration.

中国法律构成了重大限制，因为它不允许像新加坡国际仲裁中心这样的外国仲裁机构在中国仲裁地或没有外国因素的情况下进行仲裁。这一法律背景为确定仲裁地时的司法分析奠定了基础。

The High Court identified Singapore as the seat of arbitration, with Shanghai serving simply as the venue. According to the SIAC Rules, Singapore was explicitly designated as the seat. The

phrase “in Shanghai” was interpreted not to indicate PRC as the seat. The Court emphasized the distinction between a “law district” like Singapore and Shanghai, reinforcing their decision.

高等法院将新加坡指定为仲裁地，上海仅作为仲裁的实际地点。根据SIAC规则，新加坡被明确指定为仲裁地。“在上海”一词被解释为不表明所在地为中华人民共和国。法院强调了新加坡和上海等“法律区域”之间的区别，强化了他们的裁决。

Conversely, the Court of Appeal ruled that Shanghai was indeed the seat of arbitration. The Respondent's counsel conceded that “arbitration in Shanghai” typically meant Shanghai as the seat but argued that contextual indicators suggested otherwise. Two main arguments were presented:

相反，上诉法院裁定上海确实是仲裁地。被申请人的律师承认，“在上海仲裁”通常意味着上海作为仲裁地，但辩称上下文指标表明并非如此。提出了两个主要论点：

1. Neutral Seat Argument

- Counsel pointed out that the parties intended a neutral seat; PRC was not neutral whereas Singapore was.
律师指出，双方意图获得中立席位；中国不是中立的，而新加坡是中立的。
- The Court ruled that the parole evidence rule barred the admission of pre-contractual negotiations for determining context.
法院裁定，假释证据规则禁止接受合同前谈判以确定背景。

2. Validity Argument

- It made little sense for parties to choose an arbitration seat in PRC, knowing it would invalidate their agreement.
当事人选择在中国仲裁是没有意义的，因为他们知道这会使他们的协议无效。
- However, the Court declared there was no proof that the parties were aware of PRC’s legal impact on the arbitration agreement’s validity.
然而，法院宣称，没有证据表明双方当事人了解中国对仲裁协议有效性的法律影响。

The case illustrated the complexities involved in international arbitration agreements, particularly regarding the interpretation of terms and the importance of jurisdictional legal frameworks. The differing decisions underscored the nuanced judicial approaches to resolving ambiguities in arbitration agreements, where procedural rules, contextual understanding, and legal consequences significantly influence outcomes.

该案说明了国际仲裁协议的复杂性，特别是在条款解释和管辖法律框架的重要性方面。不同的判决强调了解决仲裁协议中的模糊性的微妙司法方法，其中程序规则、上下文理解和法律后果对结果产生重大影响。

国际仲裁框架下的不可仲裁性 Non-Arbitrability under International Arbitration Frameworks

Non-Arbitrability under the New York Convention

The New York Convention stipulates conditions under which arbitration agreements and awards may be recognized and enforced. A fundamental aspect of this is the concept of non-arbitrability, where certain disputes are deemed incapable of settlement through arbitration. The Convention specifies that an arbitration agreement will be recognized if it pertains to a subject matter “capable of settlement by arbitration.” Conversely, an award need not be recognized or enforced if the dispute’s subject matter is deemed non-arbitrable under the law of the enforcing jurisdiction. Non-arbitrability typically includes matters involving public rights, state interests, or third-party concerns that necessitate state control. Examples include criminal matters, matrimonial and succession disputes, antitrust issues, and bankruptcy.

《纽约公约》规定了仲裁协议和裁决得到承认和执行的条件。其中一个基本方面是不可仲裁性的概念，即某些争议被认为无法通过仲裁解决。该公约规定，如果仲裁协议涉及“能够通过仲裁解决”的标的物，则该仲裁协议将得到承认。相反，如果根据执行管辖区的法律，争议主题被视为不可仲裁，则无需承认或执行裁决。不可仲裁性通常包括涉及公共权利、国家利益或需要国家控制的第三方关注的事项。例子包括刑事事务、婚姻和继承纠纷、反垄断问题和破产。

Jurisdictional Variations in Non-Arbitrability

Different jurisdictions have their specific laws defining non-arbitrable subject matters:

- Swiss Law : Article 177(1) of the Swiss Law on Private International Law allows arbitration for any dispute involving an economic interest, indicating a broad scope of arbitrability.
瑞士法律：《瑞士国际私法》第 177(1) 条允许对涉及经济利益的任何争议进行仲裁，表明可仲裁范围广泛。
- Germany : The 1998 German version of the UNCITRAL Model Law states that any claim involving an economic interest is arbitrable in arbitrations seated in Germany.
德国：1998 年德国版《联合国国际贸易法委员会示范法》规定，任何涉及经济利益的索赔均可在德国进行仲裁。
- Intellectual Property (IP) Rights : The arbitrability of intellectual property disputes varies globally.
 - United States : Historically, patent disputes were considered non-arbitrable.
美国：从历史上看，专利纠纷被认为是不可仲裁的。
 - European Union : EU law does not allow arbitration for disputes concerning the validity or existence of registered IP rights.
欧盟：欧盟法律不允许对有关注册知识产权的有效性或存在性的争议进行仲裁。

- Hong Kong : Since 2017, Hong Kong law has allowed arbitration for all disputes involving IP rights, including registered rights (Part 11A, Arbitration Ordinance).
香港：自2017年起，香港法律允许对所有涉及知识产权的争议进行仲裁，包括注册权利（《仲裁条例》第11A部分）。
- Singapore : Followed a similar approach to Hong Kong in 2019, allowing broader arbitrability for IP disputes.
新加坡：2019年采取了与香港类似的做法，允许更广泛的知识产权纠纷仲裁。

These nuances highlight the variations in arbitration laws globally and underscore the importance of understanding specific jurisdictional constraints when drafting arbitration agreements or seeking enforcement of awards. By recognizing these differences, parties can better navigate the complexities of international arbitration and avoid potential pitfalls related to non-arbitrability.

这些细微差别凸显了全球仲裁法的差异，并强调了在起草仲裁协议或寻求执行裁决时了解具体管辖权限制的重要性。通过认识到这些差异，当事人可以更好地应对国际仲裁的复杂性，并避免与不可仲裁性相关的潜在陷阱。

Competence-Competence

The Competence-Competence Principle is a cornerstone of international arbitration, signifying the arbitral tribunal's authority to determine its own jurisdiction, including adjudicating disputes over the very existence, validity, legality, and scope of the arbitration agreement. This principle is crucial for maintaining the efficiency and autonomy of the arbitration process.

管辖权原则是国际仲裁的基石，标志着仲裁庭有权确定自己的管辖权，包括对仲裁协议的存在、有效性、合法性和范围等争议进行裁决。这一原则对于维持仲裁程序的效率和自主性至关重要。

Competence-Competence enjoys near-universal acceptance, enshrined in international arbitration conventions, national legislation, judicial decisions, institutional rules, and international arbitral awards. This widespread endorsement underscores its importance in fostering a consistent and streamlined approach to handling jurisdictional challenges in arbitration.

管辖权原则几乎得到普遍接受，并被载入国际仲裁公约、国家立法、司法判决、机构规则和国际仲裁裁决中。这种广泛的认可强调了其在促进一致和简化的方法来处理仲裁中的管辖权挑战方面的重要性。

Key Provision (Art 16(1), UNCITRAL Model Law) : Article 16(1) of the UNCITRAL Model Law explicitly states, “The arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement.” This provision emphasizes that the arbitration clause within a contract is to be treated as an agreement independent of the other terms of the contract. Hence, even if the contract itself is

declared null and void, the arbitration clause remains inherently valid. This approach prevents parties from attempting to undermine the arbitration process by challenging the validity of the overarching contract.

主要条款（《贸易法委员会示范法》第 16(1) 条）：《贸易法委员会示范法》第16条第(1)款明确规定：“仲裁庭可以就自己的管辖权作出裁决，包括对仲裁协议的存在或有效性提出异议。”该规定强调合同中的仲裁条款应被视为独立于合同其他条款的协议。因此，即使合同本身被宣告无效，仲裁条款仍然有效。这种方法可以防止当事人试图通过质疑总体合同的有效性来破坏仲裁程序。

The principle of Competence-Competence upholds the integrity and autonomy of the arbitration mechanism, ensuring that disputes, including those about the tribunal's jurisdiction, are resolved within the arbitration framework rather than through external judicial intervention. This principle is pivotal for the smooth functioning of international arbitration and instills confidence among parties in the arbitral process.

管辖权原则维护了仲裁机制的完整性和自治性，确保包括仲裁庭管辖权在内的争议在仲裁框架内得到解决，而不是通过外部司法干预。这一原则对于国际仲裁的顺利运作至关重要，并增强了当事人对仲裁程序的信心。

仲裁公约的影响和执行

Understanding the effects and enforcement mechanisms of international arbitration conventions is critical for comprehending how these conventions facilitate effective dispute resolution.

了解国际仲裁公约的影响和执行机制对于理解这些公约如何促进有效的争议解决至关重要。

Court Obligations

One significant effect of international arbitration conventions is the requirement for courts to stay any ongoing judicial proceedings and refer disputes to arbitration if there is a pre-existing arbitration agreement between the parties. This mandate helps uphold the integrity and intention of arbitration agreements, ensuring that disputes are resolved through the agreed-upon arbitration process rather than through litigation.

国际仲裁公约的一项重要影响是，如果双方之间已有仲裁协议，则要求法院中止任何正在进行的司法程序并将争议提交仲裁。这一授权有助于维护仲裁协议的完整性和意图，确保争议通过商定的仲裁程序而不是通过诉讼解决。

Recognition of Court Judgments

Courts are generally reluctant to recognize or enforce judgments obtained in breach of an arbitration agreement. Such judgments may not be recognized, reflecting the judiciary's respect for arbitration agreements and the arbitration process. This principle discourages parties from

bypassing arbitration to seek court judgments, thus reinforcing the primacy of arbitration as the chosen method of dispute resolution.

法院通常不愿意承认或执行违反仲裁协议而作出的判决。此类判决不一定会被承认，体现了司法机关对仲裁协议和仲裁程序的尊重。这一原则阻止当事人绕过仲裁寻求法院判决，从而强化了仲裁作为争议解决方式的首要地位。

Antisuit Injunctions

Antisuit injunctions are another enforcement tool used in the context of arbitration. Courts can issue these injunctions to restrain parties from initiating or continuing litigation in violation of an arbitration agreement. By doing so, the courts prevent parties from undermining the arbitration process and ensure that disputes are resolved in the forum agreed upon by the parties.

禁诉令是仲裁中使用的另一种执行工具。法院可以发布这些禁令，以限制当事人违反仲裁协议提起或继续诉讼。通过这样做，法院可以防止当事人破坏仲裁程序，并确保争议在当事人同意的论坛上得到解决。

Damages for Breach

If a party breaches the obligation to refer disputes to arbitration as stipulated in an arbitration agreement, the non-breaching party can seek damages. This provision acts as a deterrent against ignoring arbitration agreements and encourages compliance with the commitment to resolve disputes through arbitration.

如果一方违反仲裁协议约定的将争议提交仲裁的义务，守约方可以要求损害赔偿。该规定对忽视仲裁协议起到了威慑作用，并鼓励遵守通过仲裁解决争议的承诺。

In summary, the effects and enforcement mechanisms of international arbitration conventions—such as court obligations to stay proceedings, non-recognition of court judgments in breach of arbitration agreements, availability of antisuit injunctions, and the possibility of claiming damages for breach—are instrumental in maintaining the efficacy and reliability of arbitration as a preferred method for resolving international disputes. These measures ensure that arbitration agreements are honored and that the arbitration process remains a robust and effective framework for dispute resolution.

综上所述，国际仲裁公约的效力和执行机制，例如法院中止诉讼的义务、不承认违反仲裁协议的法院判决、禁诉令的可用性以及因违约而要求损害赔偿的可能性等，在仲裁中发挥着重要作用。保持仲裁作为解决国际争端首选方法的有效性和可靠性。这些措施确保仲裁协议得到遵守，并确保仲裁程序仍然是一个稳健有效的争议解决框架。

仲裁当事人 Parties in Arbitration

In the realm of arbitration, **the privity of contract principle** dictates that arbitration agreements apply solely to the parties involved in the contract. Understanding who qualifies as a party to the arbitration is ultimately determined by the applicable contract law.

在仲裁领域，合同相对性原则规定仲裁协议仅适用于合同当事人。了解谁有资格成为仲裁当事人最终由适用的合同法决定。

However, certain situations may allow non-signatories to be bound by arbitration agreements. For instance:

然而，在某些情况下，非签署方可能会受到仲裁协议的约束。

- When an agent executes a contract on behalf of its principal.
当代理人代表其委托人执行合同时。
- If a signatory has apparent or ostensible authority to bind a non-signatory party.
如果签署方具有明显或表面上的权力来约束非签署方。
- Through implied consent , such as when a non-signatory performs under an unsigned agreement.
通过默示同意，例如当非签署方根据未签署的协议执行时。
- When a signatory is acting as a third-party beneficiary under the contract.
当签字人作为合同项下的第三方受益人时。

仲裁中的多方交易 Multi-Party Transactions in Arbitration

The complexity of modern commercial transactions often involves multiple parties and contracts, leading to three primary forms of multi-party arbitration:

现代商业交易的复杂性往往涉及多个当事人和合同，导致多方仲裁的三种主要形式：

1. **Consolidation 合并:** This process combines separate arbitrations into a single proceeding to avoid inconsistent judgments and streamline the dispute resolution process. For example, two distinct arbitrations, Arbitration 1 and Arbitration 2, could be consolidated into one comprehensive arbitration.
该流程将单独的仲裁合并为一个程序，以避免判决不一致并简化争议解决流程。例如，两个不同的仲裁（仲裁 1 和仲裁 2）可以合并为一个综合仲裁。
2. **Joinder 加入:** Joinder allows additional parties to be included in an ongoing arbitration. For instance, in a dispute involving Party 1 and Party 2, Party 3 can be joined to ensure all relevant parties are involved in the resolution process.
合并允许额外的当事人参与正在进行的仲裁。例如，在涉及第一方和第二方的争议中，第三方可以加入，以确保所有相关方都参与解决过程。

3. Multi-Contract Arbitration 多合同仲裁: This involves arbitrating disputes from multiple related contracts in a single arbitration proceeding. For example, disputes arising from Contracts 1, 2, and 3 might be addressed together, enhancing efficiency and consistency.
- 这涉及在单个仲裁程序中对多个相关合同的争议进行仲裁。例如，合同 1、2 和 3 引起的争议可以一起解决，从而提高效率和一致性。

Despite these methods, the risk of incompatible arbitration clauses remains a significant concern. Different contracts may have distinct arbitration agreements, leading to procedural conflicts. For instance:

尽管有这些方法，仲裁条款不兼容的风险仍然是一个重大问题。不同的合同可能有不同的仲裁协议，从而导致程序冲突。例如：

- A Sale and Purchase Agreement (SPA) might stipulate arbitration under ICC Rules with the seat in Paris and proceedings in English.
买卖协议 (SPA) 可能规定根据国际商会规则进行仲裁，仲裁地点位于巴黎，程序采用英语。
- A connected Guarantee Agreement might require arbitration under SIAC Rules with the seat in Singapore and proceedings in Chinese.
关联担保协议可能需要根据新加坡国际仲裁中心规则进行仲裁，仲裁地位于新加坡，并以中文进行程序。

Such discrepancies can complicate multi-party disputes and require careful consideration and possibly preemptive measures to ensure that arbitration clauses across related contracts align.

这种差异可能会使多方争议复杂化，需要仔细考虑并可能采取先发制人的措施，以确保相关合同中的仲裁条款保持一致。

In conclusion, understanding the roles and applicability of arbitration agreements to parties, along with managing multi-party and multi-contract arbitrations efficiently, is crucial. These principles help in creating a streamlined, fair, and manageable dispute resolution process in the complex landscape of international arbitration.

总之，了解仲裁协议对当事人的作用和适用性，以及有效管理多方和多合同仲裁至关重要。这些原则有助于在复杂的国际仲裁环境中创建精简、公平且易于管理的争议解决流程。

03 笔记

仲裁和谈判

Negotiation and arbitration are two distinct but related processes used in dispute resolution. Negotiation is defined as an interactive communication process involving two or more parties aiming to coordinate behavior or allocate resources in a mutually beneficial manner. As Russell Korobkin states in *Negotiation Theory and Practice*, negotiation occurs when parties lacking identical interests attempt to make themselves better off through cooperation rather than acting alone.

谈判和仲裁是争议解决中使用的两个不同但相关的程序。谈判被定义为涉及两方或多方的交互式沟通过程，旨在以互惠互利的方式协调行为或分配资源。正如拉塞尔·科罗布金（Russell Korobkin）在《谈判理论与实践》中所说，当缺乏相同利益的各方试图通过合作而不是单独行动来使自己变得更好时，谈判就会发生。

Negotiation is characterized by the high degree of control that parties maintain over both the process and the outcome. It is a non-binding alternative to litigation, where parties actively attempt to resolve disagreements before engaging in more formal dispute resolution mechanisms like mediation or arbitration.

谈判的特点是各方对过程和结果保持高度控制。它是诉讼的一种不具约束力的替代方案，各方在参与调解或仲裁等更正式的争议解决机制之前，积极尝试解决分歧。

In contrast, arbitration involves a formal process where arbitrators hear the parties' arguments and impose a final, binding decision. Here, the parties relinquish control over the outcome while still retaining some control over the process by selecting the arbitrators and procedural rules.

相比之下，仲裁涉及正式程序，仲裁员听取双方的论点并做出最终的、具有约束力的决定。在这里，双方放弃对结果的控制，同时仍然通过选择仲裁员和程序规则保留对过程的部分控制。

One of the main differences between negotiation and arbitration lies in the degree of control over the process and outcome. In negotiation, parties have full control and autonomy, allowing them to craft agreements tailored to their specific needs. However, when third-party intervention is introduced, such as in mediation or arbitration, parties sacrifice some level of control. In mediation, they surrender control over the process but retain control over the outcome. In arbitration, they relinquish control over the outcome itself, which becomes binding based on the arbitrator's decision.

谈判与仲裁的主要区别之一在于对过程和结果的控制程度。在谈判中，各方拥有完全的控制权和自主权，使他们能够根据自己的具体需求制定协议。然而，当引入第三方干预时，例如在调解或仲裁中，当事人会牺牲一定程度的控制权。在调解中，他们放弃对过程的控制，但保留对结果的控制。在仲裁中，他们放弃对结果本身的控制，结果根据仲裁员的决定而具有约束力。

The negotiation process typically follows several stages:

谈判过程通常分为几个阶段：

1. Preparation

Preparation is fundamental to successful negotiation. It involves both internal and external aspects. Internally, negotiators must clearly understand their own situation and interests. This means identifying their desired outcomes, the relative importance of these outcomes, the minimum acceptable agreement, and the ideal negotiation results. Externally, attention must be given to the likely desires, requirements, and alternatives of the opposing negotiator. This holistic understanding allows for a strategy that synthesizes competing interests and aids in finding common ground during negotiations.

准备工作是成功谈判的基础。它涉及内部和外部两个方面。对内，谈判者必须清楚地了解自己的处境和利益。这意味着确定他们期望的结果、这些结果的相对重要性、可接受的最低协议以及理想的谈判结果。从外部来看，必须关注对方谈判者可能的愿望、要求和替代方案。这种整体理解允许制定综合竞争利益的战略，并有助于在谈判过程中找到共同点。

2. Exchange of Information

Once negotiations begin, the parties engage in the exchange of information. This involves both acquiring and disclosing information. Acquiring information means seeking direct insights into the counterpart's goals, alternatives, and potential best and worst-case scenarios. Indirect sources can also provide valuable insights into the counterpart's strengths, weaknesses, and positions on key issues. Disclosing information, on the other hand, requires strategic decision-making. Negotiators must choose what to reveal and how to frame it to persuade the opposing side without undermining their position.

一旦谈判开始，双方就会交换信息。这涉及获取和披露信息。获取信息意味着直接了解对方的目标、替代方案以及潜在的最佳和最坏情况。间接来源还可以提供有关对方的优势、劣势以及在关键问题上的立场的宝贵见解。另一方面，披露信息需要战略决策。谈判者必须选择透露什么内容以及如何表达以说服对方而不损害他们的立场。

3. Agreement Proposals

With the gathered information, parties move on to making agreement proposals. This phase typically starts with an initial offer, setting the stage for subsequent bargaining. The initial offer is critical as it reveals what might be acceptable to the proposing party and can shape the overall negotiation dynamic. An overly aggressive or too weak first offer can either dissuade the counterpart or disadvantage the proposer. Following the initial offer, counteroffers are made, further refining the parties' positions and working towards a mutually acceptable outcome. Cultural considerations are particularly vital in international negotiations, as they can influence the acceptance and interpretation of offers.

根据收集到的信息，各方继续制定协议提案。此阶段通常从初步报价开始，为后续讨价还价奠定基础。最初的报价至关重要，因为它揭示了提议方可能接受的内容，并可以塑造整体谈判动态。过于激

进或太弱的首次报价可能会劝阻对方或使提议者处于不利地位。初步报价后，双方会提出还价，进一步完善双方的立场并努力达成双方都能接受的结果。文化因素在国际谈判中尤为重要，因为它们会影响报价的接受和解释。

4. Resolution and Agreement

Negotiations inevitably conclude with either an agreement or an impasse. If an agreement is reached, it is formally documented through a settlement agreement or an amendment to existing contracts. If no agreement is realized, known as an impasse, parties typically turn to other dispute resolution mechanisms such as mediation, conciliation, arbitration, or even litigation. An impasse can result from several factors, like the unavailability of mutually beneficial terms, high costs of agreement relative to benefits, time constraints, or rigid positions that parties are unwilling to compromise on.

谈判不可避免地会以达成协议或陷入僵局而告终。如果达成协议，将通过和解协议或现有合同修正案正式记录在案。如果达不成协议，即陷入僵局，各方通常会诉诸其他争议解决机制，如调解、和解、仲裁，甚至诉讼。僵局可能由多种因素造成，例如无法达成互惠互利的条款、相对于利益的高协议成本、时间限制或各方不愿妥协的僵化立场。

Understanding these stages of negotiation helps in managing the process effectively, aiming to reach optimal outcomes while being prepared for any eventualities like impasses. This structured approach ensures that negotiators remain focused and strategic, leveraging information and communication to resolve disputes practically and efficiently.

了解谈判的这些阶段有助于有效管理流程，旨在达到最佳结果，同时为任何可能发生的情况（如僵局）做好准备。这种结构化方法可确保谈判者保持专注和战略性，利用信息和沟通切实有效地解决争端。

Arbitration is chosen for its binding nature and finality, offering a clear resolution even if it means parties must accept an externally imposed decision, a stark contrast to the autonomy preserved in negotiation.

选择仲裁是因为其具有约束力和终局性，即使这意味着当事人必须接受外部强加的决定，也能提供明确的解决方案，这与谈判中保留的自主权形成鲜明对比。

In summary, while negotiation is a flexible and autonomous process allowing parties to control both method and outcome, arbitration provides a structured and binding resolution mechanism when negotiations fail, emphasizing the trade-off between control and finality in dispute resolution.

综上所述，谈判是一个灵活、自主的过程，允许当事人控制方法和结果，而仲裁在谈判失败时提供了一种结构化的、有约束力的解决机制，强调争议解决的控制权和最终性之间的权衡。

Negotiation is a critical skill in both personal and professional settings, involving an interactive communication process where two or more parties aim to reach a mutually beneficial agreement. As Russell Korobkin outlines in *Negotiation Theory and Practice*, negotiation is driven by parties' attempts to coordinate behavior or allocate resources to improve their positions compared to acting alone.

谈判是个人和专业环境中的一项关键技能，涉及互动沟通过程，其中两方或多方旨在达成互惠互利的协议。正如拉塞尔·科罗布金（Russell Korobkin）在《谈判理论与实践》中概述的那样，与单独行动相比，谈判是由各方尝试协调行为或分配资源以改善其地位所驱动的。

To excel in negotiation, one must employ effective techniques, such as the following:

为了在谈判中脱颖而出，必须采用有效的技巧，例如：

1. Prepare, Prepare, Prepare :

Enter negotiations well-prepared by clarifying your goals, understanding the other party's needs, and consulting relevant experts like accountants or attorneys. Thorough preparation often determines the success of the negotiation.

通过阐明您的目标、了解对方的需求并咨询会计师或律师等相关专家，为谈判做好充分准备。充分的准备往往决定了谈判的成败。

2. Pay Attention to Timing :

Timing can significantly impact negotiations. Seek the right moments to press for what you want and ensure you look your best when doing so. However, avoid pushing too hard to maintain long-term relationships.

时机会对谈判产生重大影响。寻找合适的时机来实现你想要的目标，并确保你在这样做时展现出最好的状态。然而，避免为了维持长期关系而太过努力。

3. Leave Behind Your Ego :

Successful negotiators don't care about who gets credit. Instead, they focus on making the other side feel that the final agreement was their idea, fostering a collaborative environment.成功的谈判者并不关心谁获得了荣誉。相反，他们专注于让对方觉得最终协议是他们的想法，从而营造协作环境。

4. Ramp Up Your Listening Skills :

Being a good listener is crucial. Let the other side speak first to set the stage for negotiation. This maxim often works in your favor by revealing valuable insights and expectations.

做一个好的倾听者至关重要。让对方先发言，为谈判做好准备。这句格言通常会通过揭示有价值的见解和期望而对你有利。

5. If You Don't Ask, You Don't Get :

Aim high with your justifiable price and be convincing, yet avoid ultimatums. This approach ensures you negotiate from a position of strength.

设定合理的价格目标并具有说服力，但要避免发出最后通牒。这种方法可确保您在谈判中处于优势地位。

6. Anticipate Compromise :

Expect to make concessions and be prepared for them. Never accept the first offer, even if it's better than expected. Practice showing polite disappointment and explore what more you can achieve.

期望做出让步并为此做好准备。永远不要接受第一个报价，即使它比预期的要好。练习表现出礼貌的失望，并探索你还能取得什么成就。

7. Offer and Expect Commitment :

Commit to delivering on the deal and ensure the other side does the same. Be cautious of deals where the commitment is not evident, as they may unravel.

承诺履行协议并确保对方也这样做。对承诺不明显的交易要小心，因为它们可能会破裂。

8. Don't Absorb Their Problems :

Address the other party's issues without letting them become your own. Find creative solutions to their problems, like finding alternative funding sources if budget constraints are presented.

解决对方的问题，不要让它们成为你自己的问题。寻找创造性的解决方案来解决他们的问题，例如在预算有限的情况下寻找替代资金来源。

9. Stick to Your Principles :

Uphold your personal and business values without compromise. If a deal crosses these boundaries, it might be one you can afford to walk away from.

毫不妥协地维护您的个人和商业价值观。如果一笔交易跨越了这些界限，你可能可以放弃它。

10. Close with Confirmation :

Recap the discussions at the end of meetings to ensure mutual understanding. Follow up with written correspondence to solidify agreements and prevent loose ends.

在会议结束时回顾讨论，以确保相互理解。跟进书面信函以巩固协议并防止出现问题。

By integrating these techniques, negotiators can navigate complex discussions successfully, ensuring fair and beneficial outcomes for all parties involved. Understanding when and how to employ these strategies will make you a more effective negotiator, capable of reaching agreements that stand the test of time.

通过整合这些技术，谈判者可以成功地引导复杂的讨论，确保所有参与方获得公平和有益的结果。了解何时以及如何采用这些策略将使您成为更有效的谈判者，能够达成经得起时间考验的协议。

合同谈判的要求 Requirements to Negotiate in Contracts

Negotiation clauses are vital components of contracts, establishing a framework for parties to resolve disputes through dialogue before resorting to more formal dispute resolution mechanisms such as arbitration.

谈判条款是合同的重要组成部分，为双方在诉诸仲裁等更正式的争议解决机制之前通过对话解决争议建立了一个框架。

Friendly Negotiations

One common approach requires parties to engage in friendly negotiations to resolve any disputes arising from the agreement. This ensures that parties first attempt to settle their differences amicably before escalating to arbitration. For example, a contract clause might state: "The parties will attempt in the first instance to resolve all disputes arising out of or relating to this Agreement (Disputes) through friendly consultations." This emphasizes the importance of initial direct communication to find a mutually beneficial solution.

一种常见的做法是要求双方通过友好谈判来解决因协议而产生的任何争议。这确保了双方在升级至仲裁之前首先尝试友好解决分歧。例如，合同条款可能规定：“双方将首先尝试通过友好协商解决因本协议引起的或与本协议相关的所有争议（争议）。”这强调了最初直接沟通以找到互利解决方案的重要性。

Another variation might include a pre-arbitration requirement, specifying: "Before any arbitration is commenced pursuant to this Article, the Parties must endeavor to reach an amicable settlement of the dispute through friendly negotiations." This mandates an effort to settle disputes through direct discussions before initiating arbitration procedures.

另一种变化可能包括仲裁前要求，具体规定：“在根据本条开始任何仲裁之前，双方必须努力通过友好谈判达成和解争端。”这要求在启动仲裁程序之前通过直接讨论来解决争端。

Amicable Negotiation

Amicable negotiation clauses further emphasize the commitment to resolve disputes in good faith. An example clause might state: "In the event any dispute with respect to or in connection with the construction and performance of this Agreement, the Parties shall first negotiate in good faith or mediate through a third party to resolve the dispute." This type of clause may also include a specific timeframe, such as a 30-day resolution period: "In the event the Parties fail to resolve the dispute through the methods above-mentioned within 30 days after any Party's request for resolution of the dispute, any Party shall submit the relevant dispute to arbitration."

友好谈判条款进一步强调了善意解决争端的承诺。示例条款可能规定：“如果发生与本协议的解释和履行有关的任何争议，双方应首先真诚协商或通过第三方调解解决争议。”此类条款还可能包括具体的时间范围，例如 30 天的解决期限：“如果在任何一方提出解决争议请求后 30 天内，双方未能通过上述方法解决争议，任何一方均应将有关争议提交仲裁。”

Additionally, these clauses often extend efforts to both the duration and post-performance periods of the contract: "The Parties agree that, both during and after the performance of their responsibilities under this Agreement each of them will make bona fide efforts to resolve any disputes arising between them by amicable negotiations."

此外，这些条款通常将努力延伸到合同的持续期间和履行后的时期：“双方同意，在履行本协议项下的责任期间和之后，双方将做出善意的努力来解决任何争议他们之间通过友好谈判产生的。”

Negotiation Clauses in Investment Treaties

International treaties also integrate negotiation clauses to manage state-to-state disputes. For instance, the Hong Kong – Australia Bilateral Investment Treaty includes a clause in Article 11 specifying the process for resolving disputes: "If any dispute arises between the Contracting Parties relating to the interpretation or application of this Agreement, the Contracting Parties shall in the first place try to settle it by negotiation."

国际条约还纳入谈判条款来管理国家间争端。例如，《香港-澳大利亚双边投资条约》第11条规定了争议解决程序：“如果缔约双方就本协议的解释或适用发生任何争议，缔约双方应首先地方尝试通过谈判解决。”

Moreover, the treaty provides a six-month resolution period: "If the Contracting Parties fail to reach a settlement of the dispute by negotiation within 6 months of one Contracting Party seeking in writing such negotiation, it may be referred by them to such person or body as they may agree on or, at the request of either Contracting Party, shall be submitted for decision to a tribunal of three arbitrators." This clause outlines a clear protocol for transitioning from negotiations to arbitration if an agreement cannot be reached within the specified period.

此外，该条约规定了六个月的解决期限：“如果缔约方在其中一方提出书面谈判请求后6个月内未能通过谈判解决争端，则该缔约方可以将争议提交给该人或应由他们商定的机构或根据任何缔约方的要求，提交由三名仲裁员组成的仲裁庭作出裁决。”本条款概述了如果在指定期限内无法达成协议则从谈判过渡到仲裁的明确协议。

Negotiation requirements in contracts and treaties serve an essential role in fostering initial efforts to resolve disputes amicably. These clauses not only encourage direct communication and good faith efforts but also provide structured paths toward arbitration when necessary, ensuring a comprehensive approach to dispute resolution.

合同和条约中的谈判要求对于促进友好解决争端的初步努力发挥着重要作用。这些条款不仅鼓励直接沟通和善意努力，而且在必要时提供结构化的仲裁路径，确保采用全面的争议解决方法。

Arbitration vs Negotiation

Arbitration and negotiation are essential alternative dispute resolution methods, each with distinct characteristics and advantages. Understanding their differences is crucial for selecting the most appropriate method based on the specific needs of the parties involved.

仲裁和谈判是重要的替代性争议解决方式，各有其独特的特点和优势。了解它们的差异对于根据相关各方的具体需求选择最合适的方法至关重要。

Negotiation 谈判

Negotiation is defined as an interactive communication process in which two or more parties attempt to coordinate behavior or allocate resources to their mutual benefit. According to Russell Korobkin in *Negotiation Theory and Practice*, negotiation is particularly valuable because it allows parties to maintain full control over both the process and outcome of their dispute resolution efforts.

谈判被定义为一种交互式沟通过程，其中两方或多方法试图协调行为或分配资源以实现互惠互利。根据 Russell Korobkin 在《谈判理论与实践》中的观点，谈判特别有价值，因为它允许各方保持对其争议解决努力的过程和结果的完全控制。

In negotiation:

- Control : Parties retain complete autonomy over how discussions unfold and what resolution they reach.
控制：各方对讨论如何展开以及达成什么解决方案保留完全的自主权。
- Procedural Framework : There is no mandatory procedural framework, providing flexibility in how negotiations are conducted.
程序框架：没有强制性的程序框架，为谈判的进行方式提供了灵活性。
- Regulations : No statutory requirements or regulations dictate the negotiation process.
法规：没有法定要求或法规规定谈判过程。
- Decision-Maker : No third-party decision-maker is involved, keeping the resolution entirely within the hands of the disputants.
决策者：没有第三方决策者参与，决议完全掌握在争议者手中。
- Binding Nature : The settlement reached through negotiation is binding as a matter of contract law if it is formally recorded as a contract.
约束力：通过谈判达成的和解如果正式记录为合同，则具有合同法约束力。

Arbitration 仲裁

Arbitration, on the other hand, is a more formal dispute resolution process where an impartial third party (the arbitrator or tribunal) hears the arguments from both sides and renders a binding decision. This method is governed by a well-defined legal and procedural framework which ensures a structured process.

另一方面，仲裁是一种更正式的争议解决程序，公正的第三方（仲裁员或仲裁庭）听取双方的论点并做出具有约束力的决定。该方法受明确定义的法律和程序框架管辖，确保流程结构化。

In arbitration:

- Control : Parties relinquish control over the outcome, although they may still influence the process by selecting arbitrators and procedural rules.
控制：当事人放弃对结果的控制，尽管他们仍然可以通过选择仲裁员和程序规则来影响过程。

- Procedural Framework : Arbitration operates within an established procedural framework, often outlined by domestic arbitration laws and international treaties or conventions.
程序框架：仲裁在既定的程序框架内进行，通常由国内仲裁法和国际条约或公约概述。
- Legal Framework : The process is governed by specific legal standards both domestically and internationally, ensuring a consistent approach across jurisdictions.
法律框架：该流程受国内和国际特定法律标准管辖，确保跨司法管辖区采取一致的方法。
- Decision-Maker : A neutral decision-maker (tribunal) is appointed to manage the proceedings and render a final decision.
决策者：任命一名中立的决策者（仲裁庭）来管理诉讼程序并做出最终决定。
- Binding Nature : Arbitral awards are final and binding, providing certainty and enforceability akin to a court judgment.
约束力：仲裁裁决是终局的且具有约束力，提供类似于法院判决的确定性和可执行性。

By comparing these two methods, it is evident that negotiation offers greater flexibility and control to the parties, making it ideal for situations where both parties seek to reach a mutually agreeable solution without third-party interference. On the other hand, arbitration provides a structured and binding resolution, which is often necessary when negotiations fail to resolve the dispute. The choice between arbitration and negotiation depends on the specific circumstances of the dispute and the preferences of the parties involved.

通过比较这两种方法可以看出，谈判为双方提供了更大的灵活性和控制力，非常适合双方寻求在没有第三方干预的情况下达成双方都同意的解决方案的情况。另一方面，仲裁提供了结构化且具有约束力的解决方案，当谈判未能解决争议时，仲裁通常是必要的。选择仲裁还是谈判取决于争议的具体情况和当事人的偏好。

仲裁协议和调解协议

Arbitration and mediation/conciliation are two prominent forms of Alternative Dispute Resolution (ADR), each offering distinct mechanisms and outcomes. Understanding their fundamental differences is crucial for effective dispute resolution strategy.

仲裁和调停/和解是替代性争议解决 (ADR) 的两种主要形式，每种形式都提供不同的机制和结果。了解它们的根本差异对于有效的争议解决策略至关重要。

Arbitration agreements are designed to produce a binding decision imposed on the parties by the arbitrator. This final third-party decision resolves the dispute definitively, making arbitration a binding process. Institutions like the ICC, AAA, ICDR, ICSID, and WIPO follow strict procedures to ensure that arbitration leads to a conclusive outcome.

仲裁协议旨在产生仲裁员对双方具有约束力的决定。第三方的最终决定最终解决了争议，使仲裁成为一个具有约束力的程序。国际商会 (ICC)、美国仲裁协会 (AAA)、ICDR、解决投资争端中心 (ICSID) 和世界知识产权组织 (WIPO) 等机构遵循严格的程序以确保仲裁得出结论性结果。

In contrast, conciliation and mediation agreements focus on facilitating a consensual settlement without imposing a binding decision. Mediators or conciliators engage with the parties to help them negotiate and reach a mutual agreement, but they do not have the authority to resolve the dispute decisively. These non-binding processes are valuable in creating dialogue and fostering mutual understanding, but they do not provide the finality that arbitration offers.

相比之下，和解和调解协议的重点是促进协商一致解决，而不强加具有约束力的决定。调解员或调解员与各方接触，帮助他们进行谈判并达成共同协议，但他们无权果断解决争端。这些不具约束力的程序对于建立对话和促进相互理解很有价值，但它们并不能提供仲裁所提供的终局性。

Leading arbitral institutions have adopted rules for conciliation or mediation to complement their arbitration frameworks. However, the legislative regimes governing mediation and conciliation differ significantly from those overseeing international arbitration agreements and awards. Notably, these ADR forms lack provisions for enforcing third-party decisions, highlighting their consensual nature.

领先的仲裁机构已采用调解或调停规则来补充其仲裁框架。然而，管辖调解和调解的立法制度与监督国际仲裁协议和裁决的立法制度有很大不同。值得注意的是，这些 ADR 表格缺乏执行第三方决定的条款，凸显了其协商一致的性质。

大陆和香港的调解

Mediation in China and Hong Kong exemplifies the cultural and procedural significance of non-binding ADR mechanisms. In China, mediation has thrived from antiquity to modern times, not due to institutional efficiency or legal stipulations, but because it emphasizes harmony, a core value meaningful to every individual. This cultural approach underscores the societal acceptance and effectiveness of mediation in China.

中国和香港的调解体现了非约束性 ADR 机制的文化和程序意义。在中国，调解从古至今蓬勃发展，并不是因为制度效率或法律规定，而是因为它强调和谐，这是对每个人都有意义的核心价值观。这种文化方式强调了调解在中国的社会接受度和有效性。

In Hong Kong, the Mediation Ordinance addresses the time, costs, acrimony, and uncertainty associated with traditional litigation, promoting mediation as a preferred alternative. By reducing litigation burdens and enhancing efficiency, mediation plays a vital role in maintaining Hong Kong's status as a leading financial and business center. It also contributes to building a harmonious community, aligning with the broader goals of justice and societal cohesion. Mediation's importance is underscored by its inclusion in official discussions in jurisdictions like the United Kingdom, Australia, Canada, and Mainland China.

在香港，《调解条例》解决了与传统诉讼相关的时间、费用、激烈和不确定性，推动调解成为首选替代方案。通过减轻诉讼负担和提高效率，调解对于维持香港作为主要金融和商业中心的地位发挥着至

关重要的作用。它还有助于建设和谐社区，与正义和社会凝聚力的更广泛目标保持一致。在英国、澳大利亚、加拿大和中国大陆等司法管辖区，调解被纳入官方讨论，凸显了其重要性。

In summary, while arbitration provides a binding and final resolution to disputes, mediation and conciliation emphasize consensual agreement and dialogue. Both forms of ADR play essential roles in the global legal landscape, offering parties flexible and culturally sensitive options for resolving conflicts.

总之，仲裁为争议提供了具有约束力的最终解决方案，而调解和调处则强调协商一致和对话。这两种形式的 ADR 在全球法律格局中都发挥着重要作用，为各方提供灵活且具有文化敏感性的解决冲突的选择。

香港的调解

Mediation in Hong Kong is recognized as a voluntary, confidential, and private dispute resolution process where a neutral mediator helps parties to negotiate and reach their own settlement agreements. Importantly, the mediator cannot impose a settlement but is tasked with overcoming any impasse and encouraging the parties to reach an amicable resolution.

香港的调解被认为是一种自愿、保密和私人的争议解决程序，中立的调解员帮助各方进行谈判并达成自己的和解协议。重要的是，调解员不能强行达成和解，但其任务是克服任何僵局并鼓励各方达成友好解决方案。

The framework for mediation in Hong Kong is provided by the Hong Kong Mediation Ordinance, which was last amended in 2013. This legislative framework is complemented by the Hong Kong Mediation Accreditation Association, responsible for regulating and accrediting mediators.

香港的调解框架由《香港调解条例》规定，该条例最后一次修订于 2013 年。香港调解评审协会负责监管和评审调解员，对这一立法框架进行了补充。

The government's support for mediation is evident from the initiatives outlined in the 2007-08 Policy Address, where the Chief Executive announced the formation of a cross-sector working group led by the Secretary for Justice. This group was tasked with developing plans to employ mediation more effectively in resolving both high-end commercial disputes and smaller local issues. The results were detailed in the 2010 Working Group Report, which made 48 recommendations across regulatory frameworks, training and accreditation, and public education.

政府对调解的支持，从《2007-08年度施政报告》中概述的举措可见一斑。行政长官在该报告中宣布成立一个由律政司司长领导的跨界别工作小组。该小组的任务是制定计划，以更有效地利用调解来解决高端商业纠纷和较小的当地问题。2010 年工作组报告详细介绍了调查结果，该报告在监管框架、培训和认证以及公共教育方面提出了 48 项建议。

In some cases, consideration of mediation is mandated before trial, with courts taking into account the conduct of parties concerning mediation when deciding on cost sanctions. The

relevant rules, such as Order 62 Rule 5(1)(aa) and Rule 5(1)(e) of the Rules of High Court (RHC), emphasize the reasonableness of actions taken by parties and enable the court's intervention in facilitating ADR processes.

在某些情况下，审判前必须考虑调解，法院在决定费用制裁时会考虑当事人在调解方面的行为。相关规则，例如《高等法院规则》第 62 号命令第 5(1)(aa) 条规则和第 5(1)(e) 条规则，强调当事人采取行动的合理性，并允许法院介入以促进ADR 流程。

Enforcing mediated settlement agreements, particularly for international commercial disputes, remains a challenge. The 2013 Mediation Ordinance aims to enhance Hong Kong's role as a leading center for dispute resolution. However, the lack of an effective method for cross-border enforcement presents an impediment. This raises crucial questions about the enforceability of Mediated Settlement Agreements abroad, especially when compared to arbitration, which benefits from the New York Convention's robust framework for international enforceability.

执行调解和解协议，特别是国际商业纠纷的和解协议，仍然是一个挑战。2013年《调解条例》旨在加强香港作为争议解决主要中心的地位。然而，缺乏有效的跨境执法方法是一个障碍。这就提出了关于调解和解协议在国外的可执行性的关键问题，特别是与仲裁相比，仲裁受益于《纽约公约》强有力的国际可执行性框架。

Under the Hong Kong Mediation Ordinance (Cap. 620), mediation is defined as a structured process facilitated by impartial individuals who assist the parties in identifying issues, exploring options, communicating effectively, and reaching an agreement to resolve the dispute. This structured yet flexible approach underlines mediation's growing importance in Hong Kong's dispute resolution landscape.

根据《香港调解条例》（第 620 章），调解被定义为由公正人士推动的结构化程序，协助当事人识别问题、探讨选择、有效沟通并达成协议解决争议。这种结构化而灵活的方法突显了调解在香港争议解决领域日益重要的地位。

调解

Mediation is a dynamic, structured, and interactive process where a neutral third party assists disputing parties in resolving conflicts through the use of specialized communication and negotiation techniques. In mediation, all participants are encouraged to actively participate, making it a "party-centered" process focused primarily on their needs, rights, and interests. The mediator employs a wide variety of techniques to steer the process in a constructive direction, helping parties find their optimal solution.

调解是一个动态的、结构化的、互动的过程，中立的第三方通过使用专门的沟通和谈判技术协助争议各方解决冲突。在调解中，鼓励所有参与者积极参与，使其成为一个“以当事人为中心”的过程，主要关注他们的需求和权利和利益。调解员采用多种技术来引导进程朝建设性方向发展，帮助各方找到最佳解决方案。

The role of the mediator is both facilitative and evaluative. As a facilitator, the mediator manages the interaction between the parties, ensuring that communication remains open and constructive. While in an evaluative capacity, the mediator analyzes issues and relevant norms, engaging in "reality-testing" to help parties understand the implications of their positions. However, the mediator refrains from providing prescriptive advice, instead allowing the parties to arrive at their resolutions independently.

调解员的作用既是促进性的，又是评估性的。作为调解人，调解员管理各方之间的互动，确保沟通保持开放和建设性。在发挥评估作用时，调解员分析问题和相关规范，进行“现实测试”，帮助各方了解其立场的含义。然而，调解员不会提供规定性建议，而是允许各方独立达成解决方案。

Mediation is a powerful tool in conflict resolution, balancing the needs and interests of the parties involved while promoting a cooperative and solution-oriented environment.

调解是解决冲突的有力工具，可以平衡有关各方的需求和利益，同时促进合作和以解决方案为导向的环境。

调解的好处

Mediation offers numerous advantages in dispute resolution, making it a preferred option over traditional litigation in many cases. Here are the detailed benefits.

调解在争议解决方面具有众多优势，使其在许多情况下成为优于传统诉讼的首选。以下是详细的好处。

1. Cost

Although a mediator may charge fees similar to those of an attorney, the mediation process usually takes significantly less time than court proceedings. While legal cases can drag on for months or years, mediation often reaches a resolution in just a few hours. This reduction in time results in lower overall costs, as less money is spent on hourly fees and other expenses.

尽管调解员可能会收取与律师类似的费用，但调解过程通常比法庭诉讼所需的时间要少得多。虽然法律案件可能会拖延数月或数年，但调解通常会在短短几个小时内达成解决方案。时间的减少导致总体成本降低，因为每小时费用和其他费用花费更少。

2. Confidentiality

Mediation processes are strictly confidential, which is in sharp contrast to public court hearings. Only the disputing parties and the mediator are privy to what transpires, ensuring privacy.

调解过程是严格保密的，这与公开法庭听证会形成鲜明对比。只有争议双方和调解员才了解所发生的情况，确保隐私。

Confidentiality is so crucial that mediators generally cannot be compelled to testify about the mediation in court. In many cases, mediators also destroy their notes after mediation concludes.

The primary exceptions to this confidentiality involve situations of child abuse or actual or threatened criminal activities.

保密至关重要，因此一般不能强迫调解员在法庭上就调解情况作证。在许多情况下，调解员也会在调解结束后销毁他们的笔记。这种保密性的主要例外涉及虐待儿童或实际或威胁的犯罪活动的情况。

3. Control

Mediation gives the disputing parties more control over the outcome, unlike court cases where the judge or jury decides the resolution. This increased control often results in solutions that are more acceptable to both parties. Judges and juries are limited by law in the range of solutions they can provide, whereas mediation can yield more creative and tailored agreements.

与法官或陪审团决定解决方案的法庭案件不同，调解使争议各方对结果有更多的控制权。这种增强的控制通常会产生双方都更容易接受的解决方案。法官和陪审团能够提供的解决方案范围受到法律的限制，而调解可以产生更具创造性和量身定制的协议。

4. Compliance

Agreements reached through mediation usually have high compliance rates because they are mutually agreed upon by the parties involved. This collaborative nature reduces the need for attorneys to enforce the agreement, subsequently lowering costs. Moreover, the mediated agreement is legally binding and enforceable in court if necessary.

通过调解达成的协议通常具有较高的遵守率，因为它们是有关各方共同同意的。这种协作性质减少了律师执行协议的需要，从而降低了成本。此外，调解协议具有法律约束力，必要时可在法庭上强制执行。

5. Mutuality

The willingness of parties to enter mediation typically indicates a readiness to work toward a resolution together. This mutual willingness promotes a better understanding of each party's perspective and addresses underlying issues of the dispute. Mediation's collaborative approach also helps maintain or restore the relationships between parties that existed before the conflict. 各方参与调解的意愿通常表明愿意共同努力寻求解决方案。这种相互意愿促进了更好地理解各方的观点并解决了争端的根本问题。调解的协作方法还有助于维持或恢复冲突前各方之间的关系。

6. Support

Mediators are professionals trained to manage challenging situations and act as neutral facilitators during the dispute resolution process. They guide the parties through constructive dialogue and help them consider a broader range of solutions. This ability to "think outside the box" often leads to innovative and effective resolutions to disputes.

调解员是经过培训的专业人员，能够管理具有挑战性的情况，并在争议解决过程中充当中立的调解人。他们通过建设性对话引导各方，并帮助他们考虑更广泛的解决方案。这种“跳出框框思考”的能力往往会有创新且有效的争议解决方案。

By exploring these benefits, it becomes evident why mediation is an attractive alternative to litigation. It not only saves time and costs but also ensures privacy, control, compliance, and

support, all while preserving relationships and promoting mutual understanding.

通过探索这些好处，调解为何是诉讼的有吸引力的替代方案就变得显而易见了。它不仅节省时间和成本，还确保隐私、控制、合规性和支持，同时维护关系并促进相互理解。

香港调解条例下的调解保密 Confidentiality under the Hong Kong Mediation Ordinance

The Hong Kong Mediation Ordinance places a significant emphasis on the confidentiality of mediation communications, as outlined in Section 8. This provision underscores the importance of keeping mediation discussions private to foster an open and honest dialogue between the parties.

正如第 8 条所述，《香港调解条例》非常强调调解通讯的保密性。该条款强调了将调解讨论保密以促进双方之间公开和诚实对话的重要性。

General Principle 一般原则

Under the ordinance, any mediation communication is regarded as confidential. This means that, generally, no participant in the mediation process is permitted to disclose any communication that occurs during the mediation.

根据该条例，任何调解通讯均被视为保密。这意味着，一般来说，调解过程中的任何参与者都不得披露调解期间发生的任何通信。

Exceptions to Confidentiality

However, the ordinance does allow for certain exceptions where disclosure is permissible:

然而，该条例确实允许允许披露的某些例外情况：

1. Disclosure with Consent :

- Disclosure is allowed if every party involved in the mediation consents to it.
如果参与调解的各方均同意，则允许披露。
- The mediator(s) involved in the process must also consent.
参与该过程的调解员也必须同意。
- Additionally, if the communication was made by a third party (neither a mediation party nor the mediator), that third party must consent to the disclosure.
此外，如果通信是由第三方（既不是调解方也不是调解员）进行的，则该第三方必须同意披露。

2. Public Domain Exception :

- If the information has already been made public (through lawful means), it may be disclosed. However, information that is public solely due to unlawful disclosure cannot be further disclosed under this exception.
如果该信息已经公开（通过合法途径），则可以予以披露。然而，仅因非法披露而公开的信息在此例外情况下不能进一步披露。

3. Legal Procedures :

- Disclosure is permitted if the information is otherwise subject to discovery during civil proceedings or other similar legal mandates requiring document disclosure.
如果信息在民事诉讼或其他需要披露文件的类似法律授权期间可能被发现，则允许披露。

4. Safety and Well-being :

- Disclosure is allowed if there are reasonable grounds to believe that it is necessary to prevent injury to an individual or to avert serious harm to the well-being of a child.
如果有合理的理由相信有必要防止对个人造成伤害或避免对儿童的福祉造成严重伤害，则允许披露。

This stringent approach to confidentiality in mediation is designed to create a safe space for parties to communicate openly and honestly, without fear that their statements will be disclosed outside the mediation context. It ensures that mediation remains an effective tool for dispute resolution by maintaining the trust and integrity of the mediation process.

这种严格的调解保密方法旨在为各方公开、诚实地沟通创造一个安全的空间，而不必担心他们的陈述会在调解范围之外被披露。它通过维护调解过程的信任和诚信，确保调解仍然是解决争议的有效工具。

调解与仲裁的互动 Interaction between Mediation and Arbitration

Both Hong Kong and Singapore have established mechanisms to integrate mediation within the framework of arbitration proceedings, providing parties with a combined approach to dispute resolution. This integration aims to take advantage of the benefits of both mediation and arbitration, offering a flexible and efficient process for resolving disputes.

香港和新加坡均建立了将调解纳入仲裁程序框架的机制，为当事人提供综合解决争议的方法。这种整合旨在充分利用调解和仲裁的优势，为解决争议提供灵活高效的流程。

Singapore - Arb-Med-Arb Protocol (AMA Protocol)

In Singapore, the innovative Arb-Med-Arb Protocol is a joint effort by the Singapore International Arbitration Centre (SIAC) and the Singapore International Mediation Centre (SIMC). According to this Protocol, parties who initiate arbitration can decide to pause the arbitration process and attempt mediation through SIMC. If the mediation succeeds, the settlement agreement is then

referred back to SIAC, where it is formalized as a consent award, thus giving it the same enforceability as an arbitral award.

在新加坡，创新的 Arb-Med-Arb 协议是新加坡国际仲裁中心 (SIAC) 和新加坡国际调解中心 (SIMC) 的共同努力。根据该协议，发起仲裁的当事人可以决定暂停仲裁程序并尝试通过SIMC进行调解。如果调解成功，和解协议将被送回 SIAC，并在那里正式形成同意裁决，从而使其具有与仲裁裁决相同的可执行性。

Hong Kong - Arbitration Ordinance (AO)

In Hong Kong, the Arbitration Ordinance provides a similar integration of mediation within arbitration, commonly referred to as Arb-Med-Arb. Under this framework, the same arbitration tribunal can conduct mediation at the request of the parties involved. If the mediation results in a successful settlement, the agreement is documented as a consent award. Conversely, if mediation fails, the tribunal is required to disclose any confidential information shared during the private mediation sessions to all parties involved in the arbitration.

在香港，《仲裁条例》规定了类似的调解与仲裁的整合，通常称为 Arb-Med-Arb。在此框架下，同一仲裁庭可以应当事人的请求进行调解。如果调解成功解决，该协议将被记录为同意书。相反，如果调解失败，仲裁庭必须向参与仲裁的所有各方披露在私人调解会议期间共享的任何机密信息。

By allowing arbitration and mediation to work in tandem, both Hong Kong and Singapore enhance the flexibility and effectiveness of their dispute resolution processes, aligning with global trends toward more adaptive and responsive legal frameworks.

通过允许仲裁和调解同时发挥作用，香港和新加坡都增强了争议解决程序的灵活性和有效性，符合全球趋势，即更具适应性和响应性的法律框架。

Gao Haiyan & Anr v Keeneye Holdings Limited & Anr

Gao Haiyan & Anr v Keeneye Holdings Limited & Anr presents a case where international arbitration and its complexities, especially concerning the enforcement of arbitral awards across jurisdictions, were put to the test.

高海燕诉Keeneye Holdings Limited & Anr案提出了一个国际仲裁及其复杂性，尤其是跨司法管辖区执行仲裁裁决的复杂性受到考验的案例。

By two share transfer agreements (STAs), Gao transferred shares in a Hong Kong company, which owned a coal mine in the PRC, to Keeneye. Governed by PRC law and including an arbitration agreement for the Xian Arbitration Commission (XAC), disputes arose with Keeneye upholding the validity of the STAs while Gao sought their revocation.

通过两份股权转让协议 (STA)，高将一家在中国拥有一座煤矿的香港公司的股份转让给Keeneye。该协议受中国法律管辖，并包括西安仲裁委员会 (XAC) 的仲裁协议，与 Keenee 维持 STA 的有效性，而高寻求撤销 STA 产生争议。

During the arbitration involving arbitrators Jiang, Zhou, and Liu, a private mediation session at a Xian hotel raised concerns. With Zhou, Pan (XAC General Secretary), and a Keeneye associate present, a settlement proposal was made but not accepted by Keeneye. Arbitration continued without immediate complaints about the mediation, leading to a ruling favoring Gao.

在涉及仲裁员蒋、周和刘的仲裁期间，西安一家酒店的私人调解会议引起了关注。在周、潘（西飞集团秘书长）和一位Keeneye同事在场的情况下，提出了和解建议，但Keeneye没有接受。仲裁继续进行，没有立即对调解提出投诉，最终做出了有利于高的裁决。

Keeneye's application to the Xian Intermediate Court claimed bias due to Pan's mediation role; however, the court found no rule violation, denying the application. Gao's enforcement move in Hong Kong faced Keeneye's opposition, arguing bias and public policy breaches.

Keeneye向西安中院提出的申请声称，由于潘的调解作用而存在偏见；然而，法院认为没有违反规则，因而驳回了该申请。高在香港的执法行动遭到基尼的反对，认为存在偏见并违反公共政策。

The Hong Kong Court of Appeal focused on two aspects:

香港上诉法院主要关注两个方面：

- Waiver : Parties must address arbitration rule non-compliance promptly; Keeneye's delay precluded the arbitral tribunal from handling the complaint.
弃权：当事人必须立即解决不遵守仲裁规则的问题；基尼的拖延导致仲裁庭无法处理该申诉。
- Appearance of Bias : Recognized the cultural and procedural differences in mediation between PRC and Hong Kong. The Xian Court's compliance with PRC rules and the need for Hong Kong's enforcement to adhere to fundamental justice principles led to the decision in favor of Gao, overturning the initial refusal of enforcement.

偏见的出现：认识到中国与香港之间调解的文化和程序差异。西安法院遵守中国的规则，以及香港执行需要遵守基本司法原则，导致了对高胜诉的判决，推翻了最初拒绝执行的决定。

This case highlights international arbitration's procedural nuances and the importance of timely objections within the arbitration process. The decision underscores a balance between respecting different legal norms and maintaining fairness in arbitral award enforcement across jurisdictions.

本案凸显了国际仲裁程序上的细微差别以及在仲裁过程中及时提出异议的重要性。该决定强调了尊重不同法律规范和维护跨司法管辖区仲裁裁决执行公平性之间的平衡。

商业合同和条约中的调解条款

Mediation clauses in both commercial contracts and treaties aim to facilitate the resolution of disputes through structured, peaceful means. These clauses stipulate the procedures and guidelines to follow when parties face conflicts, setting the stage for cooperative problem-solving before resorting to more adversarial and costly measures like litigation or arbitration.

商业合同和条约中的调解条款旨在促进通过结构化、和平的方式解决争端。这些条款规定了当事方面临冲突时应遵循的程序和准则，为在诉诸诉讼或仲裁等更具对抗性和成本更高的措施之前合作解决问题奠定了基础。

Sample Mediation Clauses in Commercial Contracts

1. **Mediation After Negotiation Failure :** In the event of a dispute, parties agree to first attempt resolution through negotiation. If unsuccessful within forty-five days (or a mutually agreed longer period), the dispute will be submitted to mediation under the Commercial Mediation Rules of the American Arbitration Association (AAA). Costs of mediation are shared equally, but each party bears its own related expenses. Parties commit to participate in good faith for at least thirty days following the initial mediation session, facilitating constructive dialogue and potential resolution.

发生争议时，双方同意首先通过协商解决。如果在四十五天内（或双方商定的更长期限）未能成功，争议将根据美国仲裁协会 (AAA) 的商业调解规则提交调解。调解费用均摊，但各方自行承担相关费用。各方承诺在初次调解会议后至少三十天内真诚参与，以促进建设性对话和可能的解决方案。

2. **Written Dispute Notice:** A party can issue a written dispute notice with a brief description of the issue, activating the mediation process. Following the notice, representatives from both sides have thirty days to resolve the issue through mediation. The mediator is selected by mutual agreement, and the Company is responsible for the mediator's fees, promoting a fair and balanced mediation environment.

书面争议通知：一方可以发出书面争议通知并简要描述问题，启动调解程序。通知发出后，双方代表有三十天的时间通过调解解决问题。调解员由双方协商选定，公司负责调解员费用，促进公平、平衡的调解环境。

Sample Mediation Clauses in Treaties

1. **Central American Free Trade Agreement (Article 10.15) :** This clause emphasizes initial dispute resolution through consultation and negotiation, potentially utilizing non-binding third-party procedures such as conciliation and mediation. It encourages the parties to engage in dialogue before escalation, promoting amicable settlements.
- 中美洲自由贸易协定（第 10.15 条）：该条款强调通过协商和谈判初步解决争议，可能会利用调解和调停等不具约束力的第三方程序。它鼓励各方在事态升级之前进行对话，促进友好解决。
2. **Investment Agreement for the COMESA Common Investment Area (Article 26) :** The agreement mandates a six-month cooling-off period during which parties must seek a mediator's assistance to resolve disputes. This cooling-off period provides time for reflection and reconciliation, unless the parties mutually agree on an alternative dispute settlement method.

COMESA 共同投资区投资协议（第 26 条）：该协议规定了六个月的冷静期，在此期间各方必须寻求调解员的协助来解决争端。冷静期为反思和和解提供了时间，除非双方共同商定替代的争端解决方法。

These mediation clauses highlight the preference for resolving disputes amicably, efficiently, and confidentially, providing a neutral forum that minimizes costs and preserves business relationships.

这些调解条款强调了友好、高效和保密地解决争议的偏好，提供了一个中立的论坛，最大限度地降低成本并维护业务关系。

投资者与国家争端和国际协议的调解

Mediation has become a pivotal mechanism in resolving investor-state disputes, with numerous international bodies and conventions enhancing its effectiveness and enforceability.

调解已成为解决投资者与国家争端的关键机制，众多国际机构和公约增强了其有效性和可执行性。

ICSID Services

The International Centre for Settlement of Investment Disputes (ICSID) plays a crucial role in supporting mediation efforts. ICSID provides comprehensive services, including:

解决投资争端国际中心（ICSID）在支持调解工作方面发挥着至关重要的作用。ICSID 提供全面的服务，包括：

- Facilities and Administrative Services : ICSID assists parties throughout the mediation process by offering dedicated staff to manage logistics and coordination.
设施和行政服务：ICSID 通过提供专门的工作人员来管理后勤和协调，在整个调解过程中为各方提供协助。
- Mediator Identification : Helps parties to identify qualified mediators tailored to their specific dispute needs.
调解员识别：帮助当事人确定适合其特定争议需求的合格调解员。
- Facilitation : Ensures effective communication between parties and the mediator, handling all organizational aspects of mediation sessions.
协助：确保当事人和调解员之间的有效沟通，处理调解会议的所有组织方面。
- Financial Management : Manages all financial aspects related to the mediation process.
财务管理：管理与调解过程相关的所有财务方面。
- Global Conference Facilities : Utilizes state-of-the-art facilities at the World Bank's offices worldwide, providing an optimal environment for mediation sessions.
全球会议设施：利用世界银行世界各地办事处最先进的设施，为调解会议提供最佳环境。

- Customizable Services : Parties can choose the specific services they need, enhancing the flexibility and efficiency of the process.

可定制的服务：各方可以选择他们需要的具体服务，提高流程的灵活性和效率。

调解和解协议执行公约 Convention on the Enforcement of Mediated Settlement Agreements

The international framework for enforcing mediated settlement agreements is set to be significantly strengthened with the introduction of the Singapore Mediation Convention. This development marks a milestone in the field of international dispute resolution.

随着《新加坡调解公约》的出台，执行调解和解协议的国际框架将得到显著加强。这一进展标志着国际争端解决领域的一个里程碑。

UNCITRAL Approval

- Final Drafts Approval : In June at the 51st session of the United Nations Commission on International Trade Law (UNCITRAL), final drafts for the Convention on the Enforcement of Mediation Settlements and corresponding Model Law were approved.
最终草案批准：6月，联合国国际贸易法委员会（UNCITRAL）第51届会议批准了《执行调解和解公约》及相应示范法的最终草案。
- Singapore Mediation Convention : Expected to be officially named and signed in Singapore in 2019.
新加坡调解公约：预计2019年在新加坡正式命名并签署。

Ratification Process 批准程序

- Requirement : The Convention comes into force once ratified by at least three member states.
要求：该公约一旦获得至少三个成员国批准即生效。
- UNCITRAL Working Group II : The approval culminated years of effort by UNCITRAL Working Group II, aiming to create an international regime to enforce mediated settlements.
贸易法委员会第二工作组：该批准是贸易法委员会第二工作组多年努力的结果，旨在建立一个执行调解和解的国际制度。
- Similarity to New York Convention : The Convention is aimed at providing a regime similar to the 1958 New York Convention for the enforcement of arbitral awards.
与《纽约公约》的相似之处：该公约旨在提供类似于1958年《纽约公约》的仲裁裁决执行制度。
- Benefits : This framework is expected to enhance the appeal of mediation for international parties, offering cost efficiencies and supporting the global enforceability of mediated agreements.
好处：该框架预计将增强调解对国际当事人的吸引力，提供成本效率并支持调解协议的全球可执行性。

By providing a neutral and structured environment, along with an effective enforcement framework, international mediation through ICSID services and the forthcoming Singapore Mediation Convention represents a significant advancement in resolving investor-state disputes.

通过提供中立和结构化的环境以及有效的执行框架，通过 ICSID 服务进行的国际调解以及即将出台的新加坡调解公约代表了解决投资者与国家争端方面的重大进步。

调解和仲裁的区别

In commercial and international disputes, mediation and arbitration are two prominent methods utilized for resolving conflicts. Both approaches serve to offer alternative pathways compared to traditional litigation, promoting efficiency, neutrality, and enforceability.

在商业和国际纠纷中，调解和仲裁是解决冲突的两种重要方法。与传统诉讼相比，这两种方法都提供了替代途径，提高了效率、中立性和可执行性。

Mediation

Mediation involves the appointment of a neutral mediator who aids the parties in reaching a resolution. Unlike other dispute resolution methods, mediation is a party-driven process, meaning the parties have significant control and flexibility. The mediator assists in facilitating discussions and negotiations, but the parties ultimately control the outcome. They can accept or reject the proposed mediated settlement agreement.

调解涉及任命一名中立调解员，帮助各方达成解决方案。与其他争议解决方法不同，调解是一个当事人驱动的过程，这意味着当事人拥有显著的控制权和灵活性。调解员协助促进讨论和谈判，但各方最终控制结果。他们可以接受或拒绝拟议的调解和解协议。

In certain jurisdictions, mediation is guided by a statutory framework that establishes the legal context and rules for the process. The mediated settlement agreement, once accepted by the parties, is enforceable as a contract. However, the enforceability of such agreements has been further enhanced with the introduction of the Singapore Convention, which provides a uniform framework for the cross-border enforcement of mediated settlements.

在某些司法管辖区，调解受法定框架的指导，该框架规定了流程的法律背景和规则。调解达成的和解协议一旦被当事人接受，即可作为合同强制执行。然而，随着《新加坡公约》的出台，此类协议的可执行性得到了进一步增强，该公约为调解和解的跨境执行提供了统一框架。

Arbitration

Arbitration involves the appointment of a neutral tribunal to adjudicate the dispute. The parties have the autonomy to agree on the procedural rules governing the arbitration, providing a flexible and tailored process. However, they must also comply with the mandatory laws of the

legal seat of the arbitration, which sets the legal context and boundaries for the arbitration process.

仲裁涉及任命一个中立法庭来裁决争议。当事人可以自主商定仲裁程序规则，提供灵活且量身定制的程序。然而，他们还必须遵守仲裁合法所在地的强制性法律，该法律为仲裁程序设定了法律背景和边界。

Arbitration benefits from a well-established international and domestic framework that supports its efficacy and fairness. One of the key advantages of arbitration is the finality of the arbitral award. Unlike court decisions, arbitral awards are final and binding on the parties. Furthermore, they are enforceable internationally under the New York Convention, which has been ratified by numerous countries, ensuring that arbitral awards can be more readily recognized and enforced across national boundaries.

仲裁受益于支持其有效性和公平性的完善的国际和国内框架。仲裁的主要优势之一是仲裁裁决的终局性。与法院判决不同，仲裁裁决

Both mediation and arbitration provide effective means of resolving disputes outside traditional court systems, each with distinct features tailored to the needs and preferences of the parties involved. Mediation emphasizes flexibility and party control, while arbitration ensures finality and international enforceability.

调解和仲裁都提供了在传统法院系统之外解决争议的有效手段，每种手段都有根据相关各方的需求和偏好量身定制的独特特征。调解强调灵活性和当事人控制，而仲裁则确保最终结果和国际可执行性。

调解与审判

When resolving disputes, parties can choose between mediation and trial. Each method offers different advantages and drawbacks, impacting the control over outcomes, confidentiality, prejudice, flexibility, and cost.

解决纠纷时，当事人可以选择调解和审判。每种方法都有不同的优点和缺点，影响对结果的控制、保密性、偏见、灵活性和成本。

Control over Outcome

In mediation, a neutral mediator helps the disputing parties find mutually acceptable solutions without making judgments. This process empowers the parties to retain control over the outcome and specific terms of settlement. Conversely, in a trial, the judge evaluates the evidence and makes a binding decision, resulting in the parties relinquishing control over the final decision.

在调解中，中立的调解员帮助争议双方找到双方都能接受的解决方案，而无需做出判断。这一过程使双方能够保留对结果和具体和解条款的控制权。相反，在审判中，法官评估证据并做出具有约束力的决定，导致各方放弃对最终决定的控制权。

Confidentiality

Mediation offers privacy and confidentiality in discussions, with the option to keep settlement terms confidential. Additionally, should mediation fail, any ensuing trial will be held before a different judge to maintain impartiality. In contrast, court trials are public events, where hearings and proceedings are open to public scrutiny.

调解在讨论中提供隐私和保密性，并且可以选择对和解条款保密。此外，如果调解失败，随后的审判将由不同的法官进行，以保持公正。相比之下，法庭审判是公共活动，听证会和诉讼程序都接受公众监督。

Without Prejudice

Mediation discussions are conducted “without prejudice,” meaning statements made during mediation are not admissible as evidence should the dispute progress to trial. This encourages open and honest dialogue aimed at resolution. However, in a trial, everything said can be used as evidence, potentially influencing the case's outcome.

调解讨论是在“不带偏见”的情况下进行的，这意味着如果争议进入审判阶段，调解期间做出的陈述将不被采纳为证据。这鼓励旨在解决问题的公开和诚实的对话。然而，在审判中，所说的一切都可以作为证据，潜在地影响案件的结果。

Flexibility

Mediation is a more flexible and informal process compared to the structured and formal nature of court trials. This flexibility allows for a process tailored to the needs of the parties involved and can adapt more easily to their specific circumstances.

与法庭审判的结构化和正式性质相比，调解是一个更加灵活和非正式的过程。这种灵活性允许根据相关各方的需求定制流程，并且可以更轻松地适应其具体情况。

Cost

Engaging in mediation generally incurs lower costs, as it tends to be quicker and less expensive than preparing for and participating in a trial. Trials, on the other hand, involve court hearing fees, and additional legal costs accumulate from pre-trial preparations and the trial process itself.

参与调解通常会产生较低的成本，因为它往往比准备和参与审判更快、更便宜。另一方面，审判涉及法庭听证费，以及审前准备和审判过程本身积累的额外法律费用。

By understanding these key differences, parties can make informed decisions on choosing the most appropriate dispute resolution method that aligns with their priorities and the nature of their conflict. Mediation's flexibility, confidentiality, and cost-effectiveness make it an attractive option, while the formal and public nature of trials offers decisive judgments in a structured legal framework.

通过了解这些关键差异，各方可以做出明智的决定，选择符合其优先事项和冲突性质的最合适的争议解决方法。调解的灵活性、保密性和成本效益使其成为一种有吸引力的选择，而审判的正式和公开性则在结构化的法律框架中提供了决定性的判断。

Mediation vs. Conciliation

Mediation and conciliation are two prominent methods of conflict resolution that involve the assistance of a third party to facilitate the settlement of disputes. Despite their similarities in seeking amicable solutions, the roles and approaches of the third-party facilitator differ significantly between the two methods.

调停和和解是解决冲突的两种主要方法，涉及第三方的协助以促进争端的解决。尽管两者在寻求友好解决方案方面有相似之处，但第三方协调员的角色和方法在两种方法之间存在显著差异。

Common Aspects

Both mediation and conciliation aim to resolve conflicts in a manner that avoids the adversarial nature of litigation. They focus on voluntary participation, confidentiality, and preserving relationships between the disputing parties.

调解和和解都旨在以避免诉讼对抗性的方式解决冲突。他们注重自愿参与、保密和维护争议双方之间的关系。

Role of the Third-Party

- **Conciliator :** In conciliation, the third-party facilitator, known as the conciliator, plays an active role in driving the resolution process. The conciliator not only facilitates discussion but also actively proposes solutions and recommendations to end the dispute. The parties may choose to accept or reject these proposals, but the conciliator's active involvement can streamline the process and help bridge gaps between conflicting positions.

调解员：在调解中，第三方调解员（称为调解员）在推动解决过程中发挥着积极作用。调解员不仅促进讨论，还积极提出解决方案和建议以结束争议。各方可以选择接受或拒绝这些建议，但调解员的积极参与可以简化流程并有助于弥合冲突立场之间的差距。

- **Mediator :** In contrast, a mediator assists the parties in navigating their conflict but refrains from proposing solutions. The mediator's primary function is to facilitate communication, help identify underlying interests, and empower the parties to explore potential solutions independently. The mediator's goal is to guide the parties towards a mutually acceptable agreement that they craft themselves, enhancing the likelihood of lasting resolution.

调解员：相反，调解员协助各方解决冲突，但不提出解决方案。调解员的主要职能是促进沟通，帮助确定潜在利益，并授权各方独立探索潜在的解决方案。调解员的目标是引导各方达成自己制定的双方都能接受的协议，从而提高持久解决问题的可能性。

Process Focus

- Conciliation : The process is more facilitator-driven, with the conciliator exercising significant control over the proceedings. This approach can be advantageous in situations where parties are unable or unwilling to communicate effectively on their own.

过程更多地由调解人驱动，调解人对诉讼程序行使重要控制权。在各方无法或不愿意自行有效沟通的情况下，这种方法可能会很有优势。

- Mediation : This method is party-driven, allowing disputing parties to retain control over the outcome. The mediator’s role is to create a conducive environment for open dialogue, fostering a sense of ownership and commitment to the solution among the parties.

调解：这种方法是由当事人驱动的，允许争议各方保留对结果的控制权。调解人的作用是创造一个有利于公开对话的环境，培养各方的主人翁意识和对解决方案的承诺。

Examples

- ICSID Conciliation Rules : The International Centre for Settlement of Investment Disputes (ICSID) provides specific guidelines for the conciliation process in investor-State disputes. These rules articulate the conciliator's role and the procedural aspects to ensure a fair and efficient resolution.

ICSID 调解规则：国际投资争端解决中心 (ICSID) 为投资者与国家争端的调解程序提供具体指南。这些规则阐明了调解员的角色和程序方面，以确保公平有效的解决方案。

In summary, while both mediation and conciliation aim to resolve disputes amicably, the main difference lies in the degree of involvement and the role played by the third-party facilitator. Understanding these distinctions can help parties choose the most appropriate method for their specific conflict resolution needs.

综上所述，调解与和解的目的都是友好解决纠纷，但主要区别在于第三方调解人的参与程度和所扮演的角色。了解这些区别可以帮助各方选择最适合其特定冲突解决需求的方法。

其他ADR形式

商业合同专家裁决

Expert determination is a specialized method of dispute resolution included in commercial contracts to address specific categories of conflicts. It involves selecting an expert appointed by or for the parties, who renders a binding decision on particular issues, typically involving their field of specialty. This mechanism is particularly effective for resolving issues requiring technical or specialized knowledge.

专家裁决是商业合同中包含的一种专门的争议解决方法，用于解决特定类别的冲突。它涉及选择由当事人指定或为当事人指定的专家，专家就特定问题（通常涉及其专业领域）做出具有约束力的决定。

该机制对于解决需要技术或专业知识的问题特别有效。

Applications of Expert Determination

- Accounting or Financial Calculations : An accountant may be called upon to resolve disputes related to complex financial calculations.
会计或财务计算：可能会要求会计师解决与复杂财务计算相关的争议。
- Quality Assessment : Industry experts can be tasked with evaluating the quality of products or services.
质量评估：行业专家可以负责评估产品或服务的质量。
- Oil and Gas : A geologist can estimate reserves, providing critical insights for disputes in the energy sector.
石油和天然气：地质学家可以估算储量，为能源领域的争议提供重要见解。
- Construction : Architects or engineers may assess construction projects to resolve technical discrepancies.
建筑：建筑师或工程师可以评估建筑项目以解决技术差异。

专家裁决和仲裁

Expert determination differs significantly from arbitration. National legal systems often draw a clear distinction between the two:

- Arbitration : Involves adjudicative procedures that resolve broader legal disputes, such as breaches of contracts or statutory protections and their consequences.
仲裁：涉及解决更广泛的法律纠纷的裁决程序，例如违反合同或法定保护及其后果。
- Expert Determination : Relies on the expert's own investigations and application of their existing expertise. It does not require formal adjudicative procedures and is focused on resolving narrowly-defined factual or technical issues.
专家裁决：依赖于专家自己的调查和对其现有专业知识的应用。它不需要正式的裁决程序，而是专注于解决狭义的事实或技术问题。

The nature of disputes addressed through expert determination typically involves specific, defined issues that fall within the expertise of the selected professional. This contrasts with arbitral proceedings, which generally address broader legal questions and interpretations.

通过专家裁决解决的争议的性质通常涉及属于所选专业人员专业知识范围内的具体、明确的问题。这与仲裁程序形成鲜明对比，仲裁程序通常解决更广泛的法律问题和解释。

In summary, expert determination provides an efficient and specialized approach to resolving technical disputes within commercial contracts. By leveraging the knowledge of domain-specific experts, this method ensures that decisions are informed by the highest level of professional insight, tailored to the particular technicalities of each case.

总之，专家裁决为解决商业合同中的技术争议提供了一种高效且专业的方法。通过利用特定领域专家的知识，该方法可确保决策基于最高水平的专业洞察力，并针对每个案例的特定技术细节进行定制。

Mini Trials

Mini trials represent an alternative dispute resolution method designed to efficiently and informally address conflicts without the need for full-scale litigation. This approach provides parties with a realistic preview of their case's possible outcome, often facilitating settlements and reducing the need for prolonged legal proceedings.

小型审判代表了一种替代性争议解决方法，旨在高效、非正式地解决冲突，而无需进行全面诉讼。这种方法为当事人提供了对其案件可能结果的现实预览，通常有助于和解并减少漫长的法律诉讼的需要。

Mini trials are structured to quickly and succinctly present each party's case, focusing on the key issues and evidence. The goal is to provide a clear picture of the strengths and weaknesses of each side's argument, fostering an environment conducive to settlement.

小型审判的结构是为了快速、简洁地陈述各方的案件，重点关注关键问题和证据。目标是清楚地了解各方论点的优缺点，营造有利于解决的环境。

During a mini trial, each party presents a brief summary of their case to a "judge" or a panel of "judges" who are usually senior executives or legal professionals. The presentations are concise, focusing on the most critical aspects of the case. This streamlined process allows both parties to gauge the likely outcome of a full trial, making it easier to proceed towards an amicable resolution.

在小型审判期间，各方向“法官”或通常是高级管理人员或法律专业人士的“法官小组”提交案件的简要摘要。陈述简洁明了，重点关注案例中最关键的方面。这种简化的流程使双方能够评估全面审判的可能结果，从而更容易达成友好解决方案。

The decisions made in mini trials are typically non-binding. This means that while the judge or panel provides an advisory opinion, it does not carry the legal weight of a court ruling. The primary purpose of this non-binding decision is to guide the parties towards a settlement by offering insights into how a formal trial might resolve their dispute.

小型试验中做出的决定通常不具有约束力。这意味着，虽然法官或陪审团提供咨询意见，但它不具有法院裁决的法律效力。这项不具约束力的决定的主要目的是通过提供有关正式审判如何解决争议的见解来指导双方达成和解。

Similar to mediation, mini trials aim to encourage settlement without resorting to binding rulings. However, unlike mediation, which primarily involves a neutral mediator facilitating discussions, mini trials include a more formal, albeit brief, examination of each party's case, often conducted in a quasi-judicial manner.

与调解类似，小型审判旨在鼓励和解，而不诉诸有约束力的裁决。然而，与主要涉及中立调解人促进讨论的冥想不同，小型审判包括对各方案件进行更正式但简短的审查，通常以准司法方式进行。

In summary, mini trials are a strategic tool in dispute resolution, offering an efficient and low-cost means to evaluate and potentially resolve conflicts. By providing an advisory ruling, they help parties realistically assess their positions, often leading to quicker settlements and reduced legal expenses.

总之，小型审判是解决争议的战略工具，为评估和潜在解决冲突提供了一种高效且低成本的手段。通过提供咨询裁决，他们帮助当事人现实地评估自己的立场，通常会导致更快的和解并减少法律费用。

"Baseball" or "Final Offer" Arbitration

Certain forms of Alternative Dispute Resolution (ADR) narrow the decision-making authority, focusing on structured and predictable outcomes. "Baseball" arbitration and "high/low" arbitration are among such forms, offering unique methods that minimize the arbitral discretion.

某些形式的替代性争议解决 (ADR) 缩小了决策权限，侧重于结构化和可预测的结果。“棒球” 仲裁和“高/低” 仲裁属于此类形式，提供了最大限度减少仲裁自由裁量权的独特方法。

Baseball Arbitration

"Baseball" arbitration, named after a practice in Major League Baseball salary disputes, is a streamlined approach where each party submits their "final offer" or "best offer" in a sealed envelope after their submissions. The arbitrator or tribunal tasked with resolving the dispute is then limited to selecting one of the two offers without modification. This method compels each party to make reasonable and realistic proposals, as the tribunal can only choose between the two final offers presented.

“棒球” 仲裁以美国职业棒球大联盟薪资纠纷中的惯例命名，是一种简化的方法，各方在提交后在密封的信封中提交“最终报价”或“最佳报价”。负责解决争议的仲裁员或法庭仅限于选择两个报价中的一个而不进行修改。这种方法迫使各方提出合理且现实的建议，因为仲裁庭只能在提出的两个最终报价之间进行选择。

Key characteristics include:

1. Narrow Decision-Making Authority : The arbitrator's role is constrained, as they do not make an independent judgment based on the applicable law.

决策权狭窄：仲裁员的作用受到限制，因为他们不能根据适用的法律做出独立的判断。

2. Final Offer Submissions : Parties submit their best or final offers at the conclusion of their arguments.

最终报价提交：双方在争论结束时提交最佳或最终报价。

3. Selection Process : The tribunal selects one of the submitted offers as the resolution, encouraging fair and balanced proposals from both sides.

选择过程：仲裁庭选择其中一项提交的报价作为解决方案，鼓励双方提出公平、平衡的提案。

High/Low Arbitration

In high/low arbitration, the parties predetermine a minimum and maximum award range. Regardless of the arbitrator's decision, the final award will fall within the defined range, providing a safety net for both parties and reducing the risk of extreme outcomes.

在高/低仲裁中，当事人预先确定最小和最大裁决范围。无论仲裁员如何决定，最终裁决都将落在规定的范围内，为双方提供安全网并降低出现极端结果的风险。

Key characteristics include:

1. Agreed Award Range : Parties establish minimum and maximum amounts that can be awarded.

商定的奖励范围：各方确定可奖励的最低和最高金额。

2. Limited Arbitrator Discretion : The arbitrator's decision must adhere to the pre-agreed range, ensuring predictability and managing expectations.

有限的仲裁员自由裁量权：仲裁员的决定必须遵守预先商定的范围，确保可预测性并管理期望。

These arbitration methods are particularly beneficial in disputes where parties seek a quick resolution and wish to minimize the uncertainty and costs associated with more traditional, open-ended arbitration proceedings. They offer structured approaches that balance fairness and efficiency while providing assurance against unpredictable awards.

这些仲裁方法对于当事人寻求快速解决并希望最大限度地减少与更传统的、开放式仲裁程序相关的不确定性和成本的争议特别有利。他们提供结构化的方法，平衡公平和效率，同时提供不可预测的奖励的保证。

国内和国际仲裁

The landscape of arbitration is defined by the distinction between international and domestic agreements, influenced significantly by instruments like the New York Convention and the UNCITRAL Model Law. These frameworks primarily facilitate international arbitration, ensuring a clear and coherent process for disputes with a foreign or international element.

仲裁的格局是根据国际和国内协议之间的区别来定义的，并受到《纽约公约》和《贸易法委员会示范法》等文书的显著影响。这些框架主要促进国际仲裁，确保具有外国或国际因素的争议有一个清晰、一致的程序。

International Applicability

The New York Convention, similar to other international arbitration conventions, is specifically designed for arbitration agreements that involve a foreign or international element, thereby excluding purely domestic agreements. This differentiation extends to national legal regimes where international or foreign arbitration agreements are subject to unique legislative and/or judicial oversight distinct from domestic agreements. The UNCITRAL Model Law similarly limits its scope to international matters as established in Article 1(3).

与其他国际仲裁公约类似，《纽约公约》是专门为涉及外国或国际因素的仲裁协议而设计的，因此排除了纯粹的国内协议。这种区别延伸到国家法律制度，其中国际或外国仲裁协议受到与国内协议不同的独特立法和/或司法监督。《贸易法委员会示范法》同样将其范围限制为第1条第(3)款规定的国际事务。

Purpose

The aim of these regulations is to streamline and support the international arbitration process without affecting the governance of domestic arbitration matters. This approach ensures that international arbitrations are conducted under a harmonized framework, fostering cross-border trade and investment by providing reliable dispute resolution mechanisms.

这些规定的目的是在不影响国内仲裁事项治理的情况下简化和支持国际仲裁程序。这种方法确保国际仲裁在统一的框架下进行，通过提供可靠的争议解决机制促进跨境贸易和投资。

Singapore's Dual Arbitration Regime

Singapore exemplifies a jurisdiction with a dual arbitration regime, wherein international and domestic arbitrations are governed under separate legal frameworks:

新加坡是具有双重仲裁制度的司法管辖区的典范，其中国际和国内仲裁受不同的法律框架管辖：

1. International Arbitrations

- Governed by the International Arbitration Act (Cap 143A) (IAA), which incorporates the UNCITRAL Model Law and includes amendments to further facilitate arbitration proceedings.
受《国际仲裁法》（第143A章）(IAA)管辖，该法纳入了《贸易法委员会示范法》并包括进一步便利仲裁程序的修正案。
- Applies when an international element is present, typically when one of the parties is not a Singapore entity.
适用于存在国际因素的情况，通常当其中一方不是新加坡实体时。

- Parties have the option to choose between the IAA and the Arbitration Act (AA).
当事人可以选择《IAA》和《仲裁法》(AA)。

- The IAA features minimal court intervention and no general right of appeal.
IAA的特点是法院干预最少，并且没有一般上诉权。

2. Domestic Arbitrations

- Governed by the Arbitration Act (Cap 10) (AA).
受《仲裁法》（第 10 章）(AA) 管辖。
- Court intervention is more accessible under the AA, including a limited right to appeal on questions of law.
根据《AA》，法院干预更容易，包括就法律问题提出上诉的有限权利。

Both Acts provide a procedural framework to conduct arbitrations, respecting the principle of party autonomy. In instances where parties have not agreed on specific arbitral rules, the tribunals hold the power to determine the procedures, enabling flexibility and efficiency in the arbitration process.

这两项法案都提供了进行仲裁的程序框架，尊重当事人意思自治的原则。在当事人未就具体仲裁规则达成一致的情况下，仲裁庭有权确定仲裁程序，从而使仲裁过程具有灵活性和效率。

Understanding these nuanced differences helps in navigating the international arbitration landscape, ensuring an appropriate legal framework is applied based on the nature (international or domestic) of the arbitration agreement. This framework supports a fair and efficient resolution of disputes, fostering international trade and investment confidence.

了解这些细微差别有助于驾驭国际仲裁格局，确保根据仲裁协议的性质（国际或国内）应用适当的法律框架。该框架支持公平有效地解决争端，增强国际贸易和投资信心。

商业仲裁和投资仲裁

Commercial Arbitration

Commercial arbitration is often governed by institutional rules that mandate consideration of relevant trade usages, which can significantly differ across various legal cultures globally. For instance, Article 21.2 of the new ICC Rules requires tribunals to account for trade practices which may vary widely between countries and regions. Confidentiality is a cornerstone of commercial arbitration, keeping proceedings private. However, commercial arbitrations occasionally reference public investment arbitration awards to bolster legal arguments, highlighting the increasing interplay between the two forms of arbitration.

商业仲裁通常受强制考虑相关贸易惯例的机构规则管辖，而这些惯例在全球不同的法律文化中可能存在显著差异。例如，新的国际商会规则第21.2条要求仲裁庭考虑不同国家和地区之间可能存在巨大差异的贸易惯例。保密性是商业仲裁的基石，保证诉讼程序的私密性。然而，商业仲裁偶尔会引用公共投资仲裁裁决来支持法律论据，这凸显了两种仲裁形式之间日益增强的相互作用。

Investment Arbitration

Investment arbitration involves more complex legal cultural differences, largely due to the distinct roles that governments and state institutions play. These roles could range widely

depending on whether the state operates under a western-style democracy or a more authoritarian regime. Investment arbitration proceedings are typically public, offering greater transparency but potentially more exposure for the parties involved. Claimants, usually foreign investors, have the option to pursue disputes either through commercial arbitration under their agreement with a government agency or via investment treaty claims directly against the government, as evidenced by cases like *Vivendi v. Argentina*. Many investment treaties include umbrella clauses that escalate breaches of contract to breaches of the treaty itself, providing broader protection for investors.

投资仲裁涉及更复杂的法律文化差异，这在很大程度上是由于政府和国家机构所扮演的不同角色造成的。这些角色的范围可能很大，具体取决于国家是在西式民主还是更专制的政权下运作。投资仲裁程序通常是公开的，提供更大的透明度，但也可能为相关各方带来更多的曝光。索赔人（通常是外国投资者）可以选择根据与政府机构达成的协议通过商业仲裁或通过直接针对政府的投资条约索赔来解决争议，*维旺迪诉阿根廷*等案件就是证明。许多投资条约都包含保护伞条款，将违约行为升级为违反条约本身，从而为投资者提供更广泛的保护。

Interaction Between Commercial and Investment Arbitration

Despite their differences, commercial and investment arbitration proceedings can coexist, especially in complex scenarios such as the expropriation of construction projects. Claimants often have the flexibility to choose between resolving a commercial dispute per the dispute resolution clause of their investment agreement or pursuing an investment treaty claim against the government directly. The convergence of practices in both domains has given rise to what is termed “investcommercial arbitration,” reflecting the increasingly blurred lines between commercial and investment arbitration practices.

尽管存在差异，但商业仲裁程序和投资仲裁程序可以共存，特别是在征用建设项目等复杂情况下。索赔人通常可以灵活地选择是根据投资协议的争议解决条款解决商业争议，还是直接向政府提出投资条约索赔。这两个领域实践的融合催生了所谓的“投资商业仲裁”，反映出商业仲裁实践和投资仲裁实践之间的界限日益模糊。

In summary, while commercial arbitration focuses on the relevance of trade practices and maintains a high level of confidentiality, investment arbitration deals with broader governmental and institutional roles, often in a public forum. Both types of arbitration, however, intersect and influence each other, contributing to the evolving landscape of international dispute resolution.

总之，商业仲裁侧重于贸易惯例的相关性并保持高度机密性，而投资仲裁则涉及更广泛的政府和机构角色，通常是在公共论坛上。然而，这两种类型的仲裁相互交叉和影响，促进了国际争议解决格局的不断演变。

04 笔记

双边投资条约（BIT）项下涉及中国投资者的著名仲裁案件概览

The realm of international arbitration has seen a significant number of disputes involving Chinese investors and host states, governed by Bilateral Investment Treaties (BITs). These cases highlight the various challenges and outcomes faced by investors in different jurisdictions, providing insights into the evolving landscape of international investment law.

国际仲裁领域存在大量涉及中国投资者和东道国的争议，并受双边投资条约（BIT）管辖。这些案例凸显了不同司法管辖区的投资者面临的各种挑战和结果，为国际投资法不断演变的格局提供了见解。

1. 中国-秘鲁双边投资协定 China-Peru BIT (2007) :

In 2007, a Chinese investor filed a claim against Peru, challenging the actions of Peruvian tax authorities. The tribunal rendered an award in 2011 in favor of the Chinese investor, underscoring the importance of fair administrative practices in host countries.

2007年，一名中国投资者向秘鲁提出索赔，质疑秘鲁税务机关的行为。仲裁庭于 2011 年做出了有利于中国投资者的裁决，强调了东道国公平行政做法的重要性。

2. 中蒙双边投资协定 China-Mongolia BIT (2010) :

China Heilongjiang initiated a claim against Mongolia in 2010 regarding breaches related to an iron ore license. The tribunal, however, declined jurisdiction. The claimants are currently pursuing a set-aside application in New York, demonstrating the complexities of jurisdictional challenges in arbitral proceedings.

2010年，中国黑龙江省就铁矿石许可证违规行为向蒙古提出索赔。然而，仲裁庭拒绝了管辖权。索赔人目前正在纽约提出撤销申请，这表明仲裁程序中管辖权质疑的复杂性。

3. 香港-澳大利亚双边投资协定 HK-Australia BIT (2011)

Philip Morris Asia Limited brought a claim against Australia under the Hong Kong-Australia BIT in 2011. The tribunal dismissed the claim, highlighting jurisdictional hurdles that investors must overcome in international arbitration.

菲利普莫里斯亚洲有限公司于2011年根据香港-澳大利亚双边投资协定向澳大利亚提出索赔。仲裁庭驳回了该索赔，凸显了投资者在国际仲裁中必须克服的司法障碍。

4. 中国-比利时双边投资协定 China-Belgium BIT (2012)

The Chinese Ping An insurance company filed a claim against Belgium in 2012 concerning the nationalization and sale of a Belgian bank amid the 2008 financial crisis. An award rendered in 2015 dismissed the claim on jurisdictional grounds, reflecting the complexities in disputes arising from financial crises.

2012年，中国平安保险公司就2008年金融危机期间一家比利时银行的国有化和出售向比利时提出索赔。2015年作出的裁决以管辖权为由驳回了索赔，反映出金融危机引发的纠纷的复杂性。

5. 中国-老挝双边投资协定 China-Laos BIT (2013)

In 2013, a Macao-based investor lodged a claim against Laos over adverse tax policies. The tribunal affirmed that the BIT applied to Macao and that it held jurisdiction over expropriation claims, eventually rendering an award in favor of the state in 2019.

2013年，一位澳门投资者就老挝不利的税收政策提出索赔。仲裁庭确认双边投资协定适用于澳门，并对征收索赔拥有管辖权，最终于2019年做出了有利于澳门的裁决。

6. 中国-也门双边投资协定 China-Yemen BIT (2014)

Beijing Urban Construction Group Co Ltd pursued a claim against Yemen in 2014. The proceedings were suspended in 2018 following an agreement between the parties, demonstrating how negotiations can play a role in arbitration processes (ICSID Case No. ARB/14/30).

北京城建集团有限公司于2014年向也门提出索赔。在双方达成协议后，诉讼程序于2018年暂停，这表明谈判如何在仲裁程序中发挥作用（ICSID案件编号：ARB/14/30）。

7. 中国-坦桑尼亚双边投资协定 China-Tanzania BIT (2015)

A Hong Kong-based bank brought a claim against Tanzania in 2015 related to an agreement for constructing a power plant, illustrating the investment disputes in infrastructure projects (ICSID Case No. ARB/15/41).

一家香港银行于2015年就一份发电厂建设协议向坦桑尼亚提出索赔，说明了基础设施项目的投资争议（ICSID案件编号：ARB/15/41）。

8. 中国-尼日利亚双边投资协定 China-Nigeria BIT (2018)

In 2018, a Chinese investor, deprived of rights under the China-Nigeria BIT, filed a claim over investments in Ogun State's free trade zone. In 2021, an award favored the investor, marking a rare instance where moral damages were included in the tribunal's jurisdiction.

2018年，一名被剥夺了中尼双边投资协定规定权利的中国投资者对奥贡州自由贸易区的投资提出了索赔。2021年，一项有利于投资者的裁决，标志着仲裁庭将精神损害纳入管辖范围的罕见案例。

9. 中国-芬兰双边投资协定 China-Finland BIT (2021)

Most recently, in 2021, a Chinese investor lodged a claim against Finland after his business center was raided on suspicion of facilitating illegal immigration. This case remains pending, emphasizing ongoing disputes and the continuous interpretation of BITs.

最近，2021年，一名中国投资者在其商业中心因涉嫌为非法移民提供便利而遭到突击搜查后，向芬兰提出索赔。此案仍在悬而未决，强调了持续的争议和双边投资条约的持续解释。

These cases collectively highlight the critical role of BITs in protecting international investments, the jurisdictional challenges faced by investors, and the evolving nature of arbitral awards, which sometimes include unprecedented damage claims.

这些案例共同凸显了双边投资条约在保护国际投资、投资者面临的管辖权挑战以及仲裁裁决不断变化的性质（有时包括前所未有的损害索赔）方面关键作用。

中国的条约计划及香港的投资保障重点

China and Hong Kong have developed extensive and distinct treaty programmes to protect their investors' interests on the international stage. This overview highlights the evolution of China's Bilateral Investment Treaties (BITs) and the specific investment protections in place for Hong Kong-based investors.

中国和香港已制定广泛而独特的条约计划，以在国际舞台上保护其投资者的利益。本概览重点介绍中国双边投资条约的演变，以及为香港投资者提供的具体投资保护。

China's Treaty Programme

China has established a comprehensive network of over 140 BITs aimed at safeguarding Chinese investments abroad. These treaties have evolved through three distinct generations, each offering varied levels of protection.

中国已经建立了一个由140多个双边投资条约组成的全面网络，旨在保护中国的海外投资。这些条约经历了三代不同的发展，每一代都提供了不同程度的保护。

1. First Generation BITs (1982-1989) :

The initial treaties provided minimal investment protections, primarily focusing on determining compensation for expropriation. This narrow scope significantly limited the ability of Chinese investors to engage in investment arbitration under these BITs.

最初的条约提供了最低限度的投资保护，主要侧重于确定征用的赔偿。这种狭窄的范围极大地限制了中国投资者根据这些双边投资条约进行投资仲裁的能力。

2. Second Generation BITs (1990-1997)

Following China's accession to the ICSID Convention, these BITs allowed arbitration at ICSID for disputes over compensation for expropriation. While this marked progress, the protections remained limited primarily to expropriation-related issues.

在中国加入ICSID公约后，这些双边投资条约允许在ICSID对征用补偿争议进行仲裁。虽然这是一个显著的进步，但保护仍然主要限于与征用有关的问题。

3. Third Generation BITs (1998-present) :

These BITs represent a more robust framework by removing the restrictive "amount of compensation for expropriation" clause, thereby offering stronger protections for Chinese investors. However, the number of these advanced treaties is limited, with most being with African states.

这些双边投资条约通过取消限制性的“征用补偿金额”条款，为中国投资者提供了更强有力的保护，代表了一个更强大的框架。然而，这些先进的条约数量有限，大多数是与非洲国家。

Hong Kong Investment Protection Highlights

As a Special Administrative Region, Hong Kong enjoys a high degree of autonomy, including the authority to manage its own foreign affairs as stipulated by Article 13 of the Basic Law.

香港作为特别行政区，享有高度自治权，包括《基本法》第十三条所规定的自行管理外交事务的权力。

1. Bilateral Investment Treaties (BITs) :

Hong Kong has entered into 20 BITs, providing critical protections under international law. These treaties protect Hong Kong-based investors from expropriation, nationalization, denial of justice, and other forms of undue government interference in host countries.

香港已签署20项双边投资条约，根据国际法提供重要保护。这些条约保护以香港为基地的投资者免受东道国政府没收、国有化、拒绝司法公正和其他形式的不当干预。

2. BIT Partners

Hong Kong's BIT partners include a diverse group of 20 countries: Australia, Austria, BLEU (Belgium-Luxembourg Economic Union), Canada, Chile, Denmark, Finland, France, Germany, Italy, Japan, Korea, Kuwait, Netherlands, Mexico, New Zealand, Sweden, Switzerland, Thailand, UK, and UAE.

香港的双边投资条约伙伴包括二十个不同的国家，包括澳洲、奥地利、卢森堡经济联盟、加拿大、智利、丹麦、芬兰、法国、德国、意大利、日本、韩国、科威特、荷兰、墨西哥、新西兰、瑞典、瑞士、泰国、英国和阿联酋。

This dual approach by China and Hong Kong signifies a strategic effort to safeguard investments and promote a stable, predictable international investment environment for their investors.

中国和香港的这种双重做法标志着一种战略性的努力，以保护投资，并为投资者创造一个稳定、可预测的国际投资环境。

中国条约对香港和澳门等特别行政区的适用性

The question of whether bilateral investment treaties (BITs) signed by the People's Republic of China (PRC) automatically extend to its Special Administrative Regions (SARs) like Hong Kong and Macau is a complex and contested issue. This matter came to the forefront in the landmark case, *Sanum v. Laos*.

由中华人民共和国（PRC）签署的双边投资条约（BIT）是否自动延伸至香港和澳门等特别行政区（SAR）是一个复杂而有争议的问题。这一问题在具有里程碑意义的萨努姆诉老挝案中成为焦点。

Case Example: Sanum v. Laos

In this case, the Lao government argued that the China-Laos BIT does not extend to Macau and thereby a Macanese investor is not entitled to engage the treaty's investment protection

mechanisms. This raised significant questions about the application of Chinese investment treaties to Macau and potentially Hong Kong.

在本案中，老挝政府辩称，中老双边投资条约并不延伸至澳门，因此澳门投资者无权参与条约的投资保护机制。这引起了关于中国投资条约适用于澳门以及可能适用于香港的重大问题。

Singapore Court of Appeal Decision

The Singapore Court of Appeal found that the China-Laos BIT does indeed apply to Macau, granting Macanese investors the right to invoke the treaty's investment protection provisions. This decision was pivotal as it suggested that BITs signed by China could extend to its SARs, providing greater legal protection for investors from these regions.

新加坡上诉法院裁定，中老双边投资条约确实适用于澳门，赋予澳门投资者援引条约投资保护条款的权利。这一决定至关重要，因为它表明，中国签署的双边投资条约可以扩大到其特别行政区，为这些地区的投资者提供更大的法律的保护。

China's Foreign Ministry Response (October 2016)

Following the Singapore Court of Appeal's decision, China's Foreign Ministry Spokesperson publicly disagreed. According to her statement, as a principle, bilateral investment agreements between the central government and foreign countries do not automatically apply to SARs unless specific conditions are met. These conditions include:

在新加坡上诉法院作出裁决后，中国外交部发言人公开表示不同意。根据她的声明，作为一项原则，中央政府与外国之间的双边投资协定并不自动适用于特区，除非满足特定条件。这些情况包括：

- A decision by the central government.
这是中央政府的决定。
- Consultation with the SAR governments.
咨询特区政府。
- Agreement from the other contracting party to the treaty.
条约另一缔约方的协议。

This official stance underscores that treaty applicability to SARs like Hong Kong and Macau is not presumed and requires explicit action and agreement. It highlights the importance of government consultations and negotiations to extend the protections and obligations of international agreements to these regions.

这一官方立场强调，条约对香港和澳门等特区的适用性不是假定的，需要明确的行动和协议。它强调了政府磋商和谈判将国际协议的保护和义务扩展到这些地区的重要性。

In summary, while the *Sanum v. Laos* case demonstrated judicial acknowledgment of treaty applicability to SARs, the central government of China maintains that such applications require deliberate and explicit agreements involving both the SAR governments and the original treaty parties.

总而言之，虽然*Sanum v. Laos*一案表明司法承认条约适用于特别行政区，但中国中央政府坚持认为，此类适用需要特别行政区政府和原条约缔约方双方达成审慎和明确的协议。

投资条约概述

Investment treaties are formal agreements between States designed to promote and protect foreign investment by reducing sovereign risks and offering various guarantees and protections to investors. They are pivotal in fostering international economic cooperation by making cross-border investments safer and more attractive.

投资条约是国家之间的正式协定，旨在通过减少主权风险和向投资者提供各种保障和保护来促进和保护外国投资。它们通过使跨境投资更安全和更具吸引力，在促进国际经济合作方面发挥着关键作用。

Key Features of Investment Treaties :

1. Horizontal Agreements with Diagonal Rights : Investment treaties are horizontal agreements between States but grant diagonal rights to investors from one State who invest in another. This structure helps in ensuring that foreign investors receive specific protections directly from the host State.

横向协议与对角权利：投资条约是国家之间的横向协定，但给予一国投资者在另一国投资的对角权利。这一结构有助于确保外国投资者直接从东道国获得具体保护。

2. Promotion of Foreign Investment : By reducing sovereign risk and making business operations cheaper and more predictable, investment treaties significantly boost foreign investment in the participating countries. This, in turn, fosters economic development and bilateral trade.

促进外国投资：通过降低主权风险和使商业运营更便宜和更可预测，投资条约大大促进了参与国的外国投资。这反过来又促进了经济发展和双边贸易。

3. Substantive Protections : Investment treaties stipulate various protections for investors, including prohibitions against expropriation and assurances of fair and equitable treatment. These protections are crucial in ensuring that foreign investments are not arbitrarily or unfairly interfered with by the host State.实质性保护：投资条约规定了对投资者的各种保护，包括禁止征用和保证公平和公正待遇。这些保护对于确保外国投资不受东道国任意或不公平的干预至关重要。

4. International Arbitration : A key feature of investment treaties is the provision for international arbitration (the "teeth" of the Investment Treaty). This allows investors to resolve disputes with host States impartially and outside the host State's domestic legal system.

国际仲裁：投资条约的一个关键特征是关于国际仲裁的规定（投资条约的“牙齿”）。这使投资者能够在东道国的国内法律的制度之外公正地解决与东道国的争端。

5. Global Reach : There are over 3,000 investment treaties worldwide, each facilitating a safer and more predictable investment environment for parties involved.

全球影响力：全世界有3,000多项投资条约，每项条约都为有关各方提供更安全和更可预测的投资环境。

投资条约的运作机制

Acess

To avail themselves of the protections under an investment treaty, investors must satisfy specific "gateway requirements." These include the treaty's definitions of "national" or "investor" and "investment," along with any admission requirements particular to the host State.

为了利用投资条约的保护，投资者必须满足具体的“门槛要求”。其中包括条约对“国民”或“投资者”和“投资”的定义，沿着有东道国特有的任何准入要求。

Enforcement via ISDS

The Investor-State Dispute Settlement (ISDS) mechanism is the primary enforcement tool for the rights and obligations under investment treaties. It resolves disputes concerning the satisfaction of access requirements and jurisdictional objections.

投资者-国家争端解决机制是投资条约规定的权利和义务的主要执行工具。它解决有关是否满足访问要求和管辖权异议的争议。

Hong Kong-Australia Bilateral Investment Treaty

This treaty specifies that investments cover all kinds of assets, including movable and immovable property, shares, bonds, intellectual property rights, and business concessions. It also details the criteria for qualifying investors from both regions.

该条规定，投资涵盖各种资产，包括动产和不动产、股票、债券、知识产权和商业特许权。它还详细说明了来自这两个地区的合格投资者的标准。

ISDS Procedure

1. Dispute Resolution Process : Most ISDS provisions include a tiered dispute resolution process with a "cooling off" period for mandatory negotiations. If unresolved, disputes are submitted to international arbitration.

大多数《投资者和国家争端解决办法》的规定都包括一个分层次的争端解决程序，并规定了强制性谈判的“冷却”期。如果不能解决，争端将提交国际仲裁。

2. Arbitration Options : Parties may choose between ad hoc arbitration under UNCITRAL Rules or arbitration at ICSID under ICSID Rules. Each option provides a framework for carrying out the arbitration procedure, ensuring impartiality and fairness.

当事人可以选择根据贸易法委员会规则进行临时仲裁，也可以选择根据解决投资争端中心规则在解决投资争端中心进行仲裁。每一种选择都提供了一个执行仲裁程序的框架，确保公正和公平。

3. Proceedings Structure : Ad hoc arbitrations are conducted similarly to international commercial arbitrations and may involve national courts for satellite proceedings. ICSID arbitrations take place on the international plane, independent of national court influence, often resembling litigation in their formality and process.

临时仲裁与国际商业仲裁类似，可能涉及卫星程序的国家法院。ICSID仲裁在国际层面进行，独立于国家法院的影响，其形式和程序通常与诉讼相似。

In conclusion, investment treaties are crucial legal instruments that facilitate and protect foreign investments while providing structured mechanisms for dispute resolution, thereby enhancing international economic relations.

最后，投资条约是促进和保护外国投资的关键法律的文书，同时为解决争端提供结构化机制，从而加强国际经济关系。

投资条约条款概述

Investment treaties are designed to provide a robust framework for protecting and regulating foreign investments between states. These treaties ensure that investors from contracting states have specific rights and protections, and they outline the mechanisms for resolving disputes.

投资条约旨在为保护和规范国家间的外国投资提供一个强有力的整体。这些条约确保来自缔约国的投资者享有特定的权利和保护，并概述了解决争端的机制。

Direct Rights for Investors

Investment treaties grant investors the ability to pursue direct claims against states. This provision empowers investors by allowing them to seek redress independently, bypassing the need for intervention by their home state.

投资条约赋予投资者直接向国家索赔的能力。这一规定赋予投资者权力，允许他们独立寻求补救，而不必由其母国进行干预。

Eligibility

To benefit from the protections under an investment treaty:

要受益于投资条约下的保护：

1. Investor of a Contracting State : The claimant must be a recognized investor from one of the contracting states.

缔约国投资者：申请人必须是来自缔约国之一的公认投资者。

2. Investment Requirement : There must be an "investment" as defined by the treaty, which triggers the protective provisions.

投资要求：必须有条约定义的“投资”，这触发了保护性条款。

Substantive Protections

Investment treaties include several core protections:

投资条约包括若干核心保护：

1. Fair and Equitable Treatment : States must treat investors in a just and impartial manner.

公平和公正待遇：各国必须以公正和公平的方式对待投资者。

2. Prohibition on Expropriation without Compensation : Investors are safeguarded against the unlawful seizure of their investments. If expropriation occurs, it must be legally justified and accompanied by fair compensation.

禁止无偿征用：保护投资者的投资不被非法没收。如果发生征用，必须有合法理由，并给予公平的补偿。

3. Most Favoured Nation Treatment : Investors receive treatment no less favorable than that accorded to investors from any third country.

最惠国待遇：投资者获得的待遇不低于给予任何第三国投资者的待遇。

4. Umbrella Clause : This clause ensures that the state observes all obligations it has undertaken with respect to the investment.

保护伞条款：该条款确保国家遵守其对投资承担的所有义务。

Procedural Provisions

Investment treaties often streamline the dispute resolution process:

投资条约通常简化争端解决程序：

1. No Need to Exhaust Domestic Remedies : Investors are not required to pursue all possible remedies in the host state's legal system before seeking arbitration.

无需用尽国内补救措施：投资者在寻求仲裁之前，不需要在东道国的法律的体系中寻求所有可能的补救措施。

2. Pre-Arbitration Waiting Period : There is usually a stipulated period for attempting to resolve disputes amicably before arbitration can be initiated.

仲裁前等待期：通常有一个规定的期限，试图解决争议友好之前，可以启动仲裁。

Arbitration Mechanisms

To resolve disputes, investment treaties typically provide access to established international arbitration frameworks:

为解决争议，投资条约通常提供诉诸既定国际仲裁框架的途径：

1. ICSID : The International Centre for Settlement of Investment Disputes, a World Bank Group entity, specializes in arbitration and conciliation of investment disputes.

ICSID：解决投资争端国际中心，世界银行集团的一个实体，专门从事投资争端的仲裁和调解。

2. UNCITRAL : Arbitration rules provided by the United Nations Commission on International Trade Law.

贸易法委员会：联合国国际贸易法委员会提供的仲裁规则。

3. ICC or Other Institutions : Arbitration can also be conducted under the auspices of the International Chamber of Commerce or other recognized arbitration institutions.

国际商会或其他机构：仲裁也可以在国际商会或其他公认的仲裁机构的主持下进行。

These provisions collectively ensure that investment treaties offer comprehensive protection and a reliable dispute resolution mechanism for international investors, fostering a stable and predictable investment climate.

这些条款共同确保投资条约为国际投资者提供全面保护和可靠的争端解决机制，促进稳定和可预测的投资环境。

双边投资条约中的实质性保护概述

Bilateral Investment Treaties (BITs) are concise agreements, typically around ten pages long, that lay out fundamental rules to protect foreign investments. These treaties are designed to foster mutual confidence and investment between contracting States. Here's an overview of the key substantive protections found in a typical BIT:

双边投资条约（Bilateral Investment Treaties，简称BIT）是一种简明的协议，通常长达10页左右，规定了保护外国投资的基本规则。这些条约旨在促进缔约国之间的相互信任和投资。以下是典型双边投资条约中主要实质性保护的概述：

1. 征用保护 Expropriation Protection

The BIT ensures that investments made by nationals of one contracting State in the territory of the other are protected from expropriation, nationalization, or other forms of takeover by the host State. Such actions are only permissible if they are carried out for a public purpose, follow due process of law, and involve the payment of prompt and adequate compensation. This extends to both direct and indirect expropriation, securing the investors' assets against arbitrary state interference.

双边投资条约确保一缔约国国民在另一缔约国领土上的投资受到保护，不被东道国没收、国有化或其他形式的接管。这种行动只有在为公共目的采取、遵循适当法律程序并涉及及时和适当赔偿的情况下

才是允许的。这包括直接和间接征收，保护投资者的资产不受国家任意干预。

2. 国民待遇标准 National Treatment Standard

Each contracting State commits to treating the investors and their investments from the other contracting State on par with its own nationals and their investments. This "National Treatment" standard ensures a level playing field for foreign investors, preventing any form of discrimination based on nationality.

每一缔约国承诺将来自另一缔约国的投资者及其投资与本国国民及其投资同等对待。这一“国民待遇”标准确保外国投资者有一个公平的竞争环境，防止任何形式的基于国籍的歧视。

3. 最惠国待遇 (MFN) Most Favoured Nation (MFN) Rule

According to the MFN rule, if the host State grants more favorable treatment to investors from a third country, these same benefits must be extended to the investors from the other contracting State. This clause guarantees that investors benefit from any preferential treatment the host State may provide, ensuring they are not disadvantaged compared to other foreign investors. 根据最惠国待遇规则，如果东道国赠款第三国投资者更优惠的待遇，这些同样的利益也必须给予另一缔约国的投资者。这一条款保证投资者受益于东道国可能提供的任何优惠待遇，确保他们与其他外国投资者相比不会处于不利地位。

4. 公平和公正待遇 (FET) 和充分保护和安全 (FPS) Fair and Equitable Treatment (FET) and Full Protection and Security (FPS)

The BIT mandates that each contracting State must provide "Fair and Equitable Treatment" (FET) and "Full Protection and Security" (FPS) to the investments and investors from the other contracting State. These standards safeguard against unjust, arbitrary, or discriminatory measures, ensuring that investments are protected under fair, consistent and secure conditions. 双边投资条约规定，每一缔约国必须向另一缔约国的投资和投资者提供“公平和公正待遇”和“充分保护和安全”。这些标准防止不公正、任意或歧视性措施，确保投资在公平、一致和安全的条件下得到保护。

5. 投资者-国家争端解决 (ISDS) Investor-State Dispute Settlement (ISDS)

In the event of a dispute between a foreign investor and the host State, the BIT specifies a dispute resolution mechanism, commonly known as Investor-State Dispute Settlement (ISDS). This process typically involves negotiations, and if unresolved, the dispute is submitted to international arbitration based on an agreed set of rules. ISDS provides a neutral and effective means of resolving disputes, maintaining investor confidence, and ensuring that disputes are handled impartially.

如果外国投资者与东道国之间发生争端，双边投资条约规定了一个争端解决机制，通常称为投资者-国家争端解决机制。这一过程通常涉及谈判，如果无法解决，则根据商定的一套规则将争议提交国际仲

裁。ISDS提供了一个中立和有效的解决争端的方法，维护投资者的信心，并确保争端得到公正的处理。

These substantive protections in BITs build a robust legal framework that encourages foreign investment by ensuring that investors' rights are safeguarded, promoting international economic cooperation and development.

双边投资条约中的这些实质性保护建立了一个强有力的法律的框架，通过确保投资者的权利得到保障，鼓励外国投资，促进国际经济合作与发展。

征收

Expropriation is a pivotal concept in international investment law, reflecting its historical roots in the great oil nationalizations of the 20th century. Almost every modern investment treaty includes provisions addressing nationalization, expropriation, and other unlawful takings of foreign-owned property. These provisions are designed to protect foreign investors from arbitrary or unjust seizures by host States and to provide a clear legal framework for lawful expropriations.

征收是国际投资法中的一个关键概念，反映了其在20世纪大石油国有化中的历史根源。几乎每一项现代投资条约都包括处理国有化、征用和其他非法获取外国财产的条款。这些规定旨在保护外国投资者免遭东道国任意或不公正的没收，并为合法没收提供明确的法律的框架。

1. 征用的法律的条件 Legal Conditions for Expropriation

Investment treaties typically stipulate that for an expropriation to be considered lawful, it must meet four key requirements:

投资条约通常规定，要将征用视为合法，必须满足四个关键要求：

1. Public Purpose : The expropriation must be for a public purpose related to the internal needs of the Host State.
公共目的：征用必须是为了与东道国国内需要有关的公共目的。
2. Due Process : The procedures for expropriation must be carried out with due process of law.
正当程序：征用程序必须按照正当法律程序进行。
3. Non-Discriminatory : The act of expropriation must not be discriminatory against the foreign investor.
非歧视性：征用行为不得对外国投资者有歧视性。
4. Compensation : The expropriation must be accompanied by prompt, adequate, and effective compensation, commonly known as the Hull formula.
补偿：征用必须伴随着迅速、充分和有效的补偿，通常称为船体公式。

All these requirements are compound, meaning that each must be satisfied for the expropriation to be lawful under international law, mirroring the conditions under customary international law (CIL).

所有这些要求都是复合性的，这意味着必须满足每一项要求，根据国际法，征用才是合法的，反映了习惯国际法的条件。

2. Forms of Expropriation

International investment law recognizes two main forms of expropriation:

国际投资法承认两种主要的征用形式：

1. Direct Expropriation : This involves the host State openly and deliberately seizing or confiscating foreign-owned property or transferring the title of that property to the State or a State-mandated third party. Nationalization is a classical form of direct expropriation, whereas the revocation of essential concessions (e.g., production permits) by the host State is a more common modern trigger.

直接征用：这涉及东道国公开和故意扣押或没收外国拥有的财产，或将该财产的所有权转让给国家或国家授权的第三方。国有化是直接征用的一种典型形式，而撤销必要的特许权（例如，东道国的生产许可证）是一个更常见的现代触发因素。

2. Indirect Expropriation : This occurs when the host State implements measures that do not amount to a direct seizure but substantially deprive the foreign investor of their property rights or the economic benefits derived from them. Adverse regulations are the most frequent modern triggers for indirect expropriation claims.

间接征用：这种情况发生在东道国采取的措施不等于直接没收，但实质上剥夺了外国投资者的财产权或由此产生的经济利益。不利的规章制度是间接征用索赔的最常见的现代触发因素。

3. Treaty Provisions

Most investment treaties differentiate between direct and indirect expropriation, often prohibiting both expropriation and measures "tantamount to" or "having an effect equivalent to" expropriation. For instance, Article 5(1) of the UK-Indonesia BIT explicitly prohibits both types of expropriation.

大多数投资条约对直接征用和间接征用作了区分，往往既禁止征用，也禁止“相当于”征用或“具有相当于”征用效果的措施。例如，《联合王国-印度尼西亚双边投资条约》第5条第（1）款明确禁止这两种征用。

4. Treaty Clarifications

To address the complexities of indirect expropriation, investment treaties increasingly include clarifications and limitations regarding its scope. For example, Annex 2 of the ASEAN Comprehensive Investment Agreement (ACIA) provides specific limitations on what constitutes indirect expropriation, reflecting the ongoing evolution in the field of investor-State arbitration.

为了解决间接征用的复杂性，投资条约越来越多地包括对其范围的澄清和限制。例如，《东盟全面投资协定》附件2对什么构成间接征用规定了具体限制，反映了投资者与国家间仲裁领域的不断演变。

In summary, expropriation clauses in investment treaties are crucial for safeguarding foreign investments, ensuring that any state actions resulting in the taking of property are conducted lawfully, with due process, non-discrimination, and appropriate compensation.

总而言之，投资条约中的征收条款对于保障外国投资、确保任何导致没收财产的国家行动都是合法进行的、经过正当程序、不歧视和适当赔偿至关重要。

投资条约实践中的公平与公正待遇 (FET)

The Fair & Equitable Treatment (FET) standard plays a crucial role in contemporary investment treaty practice, often standing on par with the rule against unlawful expropriation. FET is designed to protect investors and their investments from unfair and inequitable conduct by host States, encompassing actions that might not necessarily constitute outright expropriation.

公平和公正待遇标准在当代投资条约实践中发挥着至关重要的作用，通常与反对非法征用的规则相提并论。外国直接投资旨在保护投资者及其投资免受东道国不公平和不公正行为的影响，包括不一定构成直接没收的行为。

典型的FET条款

A typical FET clause, like the one found in Article 3(2) of the UK-Indonesia Bilateral Investment Treaty (BIT), states: "Investments of nationals or companies of either Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party."

一个典型的外国直接投资条款，如《联合王国-印度尼西亚双边投资条约》第3条第2款规定：“缔约任何一方的国民或公司的投资在任何时候都应得到公正和公平的待遇，并应在缔约另一方的领土上享有充分的保护和安全。”

FET标准组成

1. Legitimate Expectations : FET includes protection of the basic expectations that were relied upon by the foreign investor when making the investment, known as "legitimate expectations." Recent case law trends towards requiring these expectations to be specific rather than general, as seen in cases like *Crystalex v Venezuela* (2015).

合理预期：FET包括保护外国投资者在进行投资时所依赖的基本预期，称为“合理预期”。最近的判例法趋势是要求这些期望是具体的，而不是一般的，正如在*Crystalex v Venezuela* (2015) 等案件中所看到的那样。

2. Stable Environment : The host State must maintain a transparent, stable, and predictable legal and regulatory environment for the investment, ensuring that investors have a reliable framework within which to operate.

稳定的环境：东道国必须为投资维持一个透明、稳定和可预测的法律的和管理环境，确保投资者有一个可靠的经营框架。

3. Non-Discrimination and Fairness : The host State must refrain from treating investors or their investments in a discriminatory, arbitrary, or unfair manner.

不歧视和公平：东道国必须避免以歧视、任意或不公平的方式对待投资者或其投资。

FET条款的解释

Due to the broad drafting of FET clauses in most BITs, investor-State tribunals interpret them according to international law. The Vienna Convention on the Law of Treaties (Article 31) mandates that treaty provisions be interpreted in light of the treaty's object and purpose. Many BITs are designed to promote investment and are therefore intentionally "investor-friendly," leading to a body of pro-investor FET jurisprudence.

由于大多数双边投资条约中的FET条款措辞宽泛，投资者-国家法庭根据国际法对其进行解释。《维也纳条约法公约》（第31条）规定，条规定应根据条约的目的和宗旨加以解释。许多双边投资条约旨在促进投资，因此有意“对投资者友好”，从而形成了一套有利于投资者的外国直接投资法律体系。

对FET的状态响应

In response to expansive interpretations favoring investors, States have started to confine the FET standards in their investment treaties. This trend is particularly evident in new multilateral investment treaties. For instance, Article 9.6(2) of the investment chapter of the Trans-Pacific Partnership clarifies that the applicable FET standard for covered investments aligns with the "customary international law minimum standard of treatment of aliens." This language allows States to argue that the Neer standard applies to FET claims.

为了应对有利于投资者的广泛解释，各国已开始在其投资条约中限制外国直接投资标准。这一趋势在新的多边投资条约中尤为明显。例如，《跨太平洋伙伴关系协定》投资章节第9.6 (2) 条明确规定，适用于所涵盖投资的FET标准符合“习惯国际法对外国人的最低待遇标准”。“这一措辞使各国有能力辩称，Neer标准适用于FET索赔。

The Neer Standard

The *Neer v Mexico* case (1926) set a high threshold for what constitutes a violation of the treatment standard of aliens under customary international law, requiring conduct amounting to "an outrage, bad faith, willful neglect of duty, or insufficiency of governmental action far short of international standards." This stringent standard has been applied in some investor-State cases (e.g., *Glamis Gold v USA*, 2009) but rejected in others (e.g., *Mondev International v USA*, 2002).

Neer诉墨西哥案（1926年）为构成违反习惯国际法规定的外国人待遇标准的行为设定了很高的门槛，要求行为达到“暴行、恶意、故意玩忽职守或政府行动远远低于国际标准。”“这一严格的标准已适用于某些投资者与国家之间的案件（例如，Glamis Gold诉美国，2009年），但在其他案件中被驳回（例如，Mondev International诉美国，2002年）。

In summary, the FET standard is a multifaceted protection mechanism in investment treaties, balancing the interests of investors and host States. It requires careful and context-specific interpretation to ensure fair treatment while respecting the sovereignty of host States.

总之，外国直接投资标准是投资条约中的一种多方面保护机制，平衡了投资者和东道国的利益。这需要根据具体情况进行认真的解释，以确保公平对待，同时尊重东道国的主权。

投资条约中的最惠国条款

Most Favoured Nation (MFN) clauses play a critical role in offering substantive protections to investors under international investment treaties. These clauses ensure that each Contracting State extends to investors from the other Contracting State any greater benefit or more favorable treatment that it accords to investors from third countries. The practical significance of MFN clauses can be observed in several key areas:

最惠国条款在根据国际投资条约向投资者提供实质性保护方面发挥着关键作用。这些条款确保每一缔约国给予另一缔约国的投资者以其给予第三国投资者的任何更大的利益或更优惠的待遇。最惠国条款的实际意义可从几个关键领域看出：

1. Importing Substantive Protections :

MFN clauses can be utilized to import substantive protections and standards that might not be expressly included in the applicable Investment Treaty. This allows investors to benefit from more robust protections available in treaties with other countries.

实质性保护：最惠国条款可用于引入可能未明确列入适用的《投资条约》的实质性保护和标准。这使投资者能够从与其他国家签订的条约中获得更强有力的保护。

2. Improving Existing Protections :

Investors can leverage MFN clauses to enhance the substantive protections and standards already contained in the applicable Investment Treaty. This improvement ensures more comprehensive and effective protection of their investments.

加强现有保护：投资者可以利用最惠国条款来加强适用的投资条约中已经包含的实质性保护和标准。这一改进确保更全面和有效地保护他们的投资。

3. Avoiding Unfavorable Carve-Outs :

MFN clauses can help investors avoid unfavorable carve-outs or specific exceptions within the Investment Treaty. By invoking MFN provisions, investors can ensure they are not subject to less favorable terms compared to those granted to others. 避免不利的分拆：最惠国条款可以帮助投资者避免投资条约中的不利例外或具体例外。通过援引最惠国条款，投资者可以确保他们不会受到比给予其他人的条件更优惠的条件。

However, the effectiveness of MFN clauses is conditional upon the treaty program of the host State. The host State must have provided a "better deal" to investors from other countries for the MFN clause to have substantial value.

然而，最惠国条款的效力取决于东道国的条约方案。东道国必须向其他国家的投资者提供“更好的交易”，使最惠国条款具有实质价值。

管辖权条款

It is important to note that jurisdictional provisions of an investment treaty, such as its arbitration clauses, are generally not covered by MFN treatment. Most arbitrators do not permit MFN clauses to be used to import a more advantageous arbitration agreement. Despite this prevailing view, there remain arguments within the arbitration community that justify attempts to use MFN clauses to secure better jurisdictional terms.

值得注意的是，投资条约的管辖权条款，例如其仲裁条款，通常不属于最惠国待遇的范围。大多数仲裁员不允许使用最惠国条款来引入更有利的仲裁协议。尽管有这种普遍看法，但仲裁界仍有一些论点认为，试图利用最惠国条款来确保更好的管辖权条件是有道理的。

In summary, MFN clauses in investment treaties offer significant strategic advantages for investors by enhancing protections, avoiding disadvantages, and ensuring that they are treated no less favorably than investors from third countries. Their application, however, depends on the specific treaty landscape of the host State.

总之，投资条约中的最惠国条款通过加强保护、避免不利条件并确保投资者得到不低于第三国投资者的待遇，为投资者提供了重要的战略优势。然而，这些原则的适用取决于东道国的具体条约情况。

国民待遇概述

National Treatment is a pivotal concept in both trade and investment law, aimed at ensuring non-discriminatory conditions for foreign investors and imported products relative to their domestic counterparts. This standard fosters a level playing field and promotes fair competition within host markets.

国民待遇是贸易和投资法中的一个关键概念，旨在确保外国投资者和进口产品相对于国内同行的非歧视性条件。这一标准促进了公平竞争，并促进了东道国市场内的公平竞争。

贸易法

National Treatment is a fundamental principle enshrined in the General Agreement on Tariffs and Trade (GATT). It mandates that imported products must be treated no less favorably than domestic products concerning internal regulations and measures. This principle is essential to the integrity of the multilateral trading system, preventing countries from undermining tariff commitments through discriminatory internal policies.

国民待遇是《关税及贸易总协定》（关贸总协定）的一项基本原则。它要求进口产品在国内法规和措施方面必须得到不低于国内产品的待遇。这一原则对多边贸易体系的完整性至关重要，可防止各国通过歧视性国内政策破坏关税承诺。

投资法

National Treatment extends to the treatment of foreign investors, ensuring they receive the same competitive conditions as domestic investors. This standard helps protect foreign investors from discriminatory government measures that could unfairly advantage local businesses. By guaranteeing equal treatment, host countries create a more attractive and stable investment environment, promoting international economic cooperation and development.

国民待遇延伸到外国投资者的待遇，确保他们获得与国内投资者相同的竞争条件。这一标准有助于保护外国投资者免受可能使当地企业处于不公平优势的歧视性政府措施的影响。通过保证平等待遇，东道国创造了更有吸引力和稳定的投资环境，促进了国际经济合作与发展。

Example Provision from a Bilateral Investment Treaty (BIT)

The Hong Kong-Germany BIT exemplifies the application of National Treatment in investment law. It stipulates that: "Neither Contracting Party shall in its area subject investors of the other Contracting Party, as regards their management, maintenance, use, enjoyment or disposal of their investments, to treatment less favorable than that which it accords to its own investors or to investors of any other State."

香港与德国的双边投资条约，确立了国民待遇在投资法中的应用。它规定：“任何缔约方不得在其地区内使另一缔约方的投资者在管理、维持、使用、享有或处置其投资方面受到不如其给予本国投资者或任何其他国家投资者的待遇。”

This clause ensures that foreign investors from each contracting party are not disadvantaged compared to domestic investors or investors from third states, thus upholding the National Treatment standard.

这一条款确保来自各缔约方的外国投资者与国内投资者或来自第三国的投资者相比不会处于不利地位，从而维护了国民待遇标准。

In summary, National Treatment is a critical mechanism in both trade and investment law that supports the fair treatment of foreign entities, mitigates protectionism, and encourages a transparent and equitable economic landscape.

总之，国民待遇是贸易和投资法中的一个重要机制，支持公平对待外国实体，减轻保护主义，并鼓励透明和公平的经济环境。

保护伞条款

Umbrella clauses are pivotal provisions in investment treaties that potentially elevate contract breaches to the level of treaty violations. These clauses aim to ensure that host states uphold their commitments regarding foreign investments, thereby providing an additional layer of protection for investors.

保护伞条款是投资条约中的关键条款，有可能将违反合同的行为上升到违反条约的程度。这些条款旨在确保东道国履行其对外国投资的承诺，从而为投资者提供额外的保护。

典型例子

A common manifestation of an umbrella clause can be found in Article 3(2) of the UK-Indonesia Bilateral Investment Treaty (BIT), which states: "Each Contracting Party shall observe any obligation it may have entered into with regard to investments of nationals or companies of the other Contracting Party." This typical example underscores the responsibility of each state to honor its investment-related obligations.

保护伞条款的一个常见表现形式是《英国-印度尼西亚双边投资条约》第3条第（2）款，其中规定：“每一缔约方应遵守其可能对另一缔约方国民或公司的投资承担的任何义务。”这个典型的例子强调了每个国家荣誉其投资相关义务的责任。

在条约中的位置

Umbrella clauses are frequently embedded within Fair and Equitable Treatment (FET) provisions, making them less conspicuous but crucial.

保护伞条款经常嵌入公平和公正待遇条款中，使其不那么引人注目，但至关重要。

激活标准和覆盖范围

An umbrella clause comes into effect when the host state, or an entity/agency it is responsible for, assumes an obligation. This can include a variety of commitments, such as concessions, permits, and contracts. For instance, if a state issues a concession or permit, these direct commitments may be susceptible to umbrella claims. Contracts made by State-Owned Enterprises (SOEs) might also be protected under umbrella clauses, depending on the circumstances.

当东道国或其负责的实体/机构承担义务时，总括条款即可生效。这可以包括各种承诺，如特许权、许可证和合同。例如，如果一个国家颁发特许权或许可证，这些直接承诺可能会受到总括索赔的影响。根据具体情况，国有企业签订的合同也可能受到保护伞条款的保护。

实例

Consider a National Oil Company (NOC) in a host state that enters into a Production Sharing Contract (PSC) with a foreign participant. If the NOC breaches this contract, the foreign participant can assert an umbrella claim under the applicable treaty, provided they can establish that the host state bears responsibility for the NOC's actions in accordance with international law.

考虑东道国的国家石油公司（NOC）与外国参与者签订了产量共享合同（PSC）。如果国家奥委会违反了这一合同，外国参与者可以根据适用的条约提出保护伞索赔，前提是他们可以证明东道国根据国际法对国家奥委会的行为负有责任。

法律高度

Umbrella clauses have the significant effect of elevating a contract breach to the level of a treaty breach. This transformation amplifies the gravity of the breach, potentially leading to more severe consequences for the host state.

保护伞条款具有将违约行为上升为违约行为的重大影响。这种转变放大了违约的严重性，可能给东道国带来更严重的后果。

最惠国待遇（MFN）条款的可用性和效用

It is important to note that not all investment treaties incorporate umbrella clauses. In such cases, investors may turn to Most-Favored-Nation (MFN) clauses to invoke umbrella protections available in other treaties to which the host state is a party.

必须指出，并非所有投资条约都包含总括条款。在这种情况下，投资者可能会求助于最惠国条款，援引东道国作为缔约方的其他条约中提供的保护伞。

In essence, umbrella clauses fortify the obligations of host states towards foreign investors, promoting a stable and reliable investment environment.

从本质上讲，保护伞条款加强了东道国对外国投资者的义务，促进了稳定和可靠的投资环境。

国际投资法的产生与演进

International investment law has developed over centuries, shaped by treaties, diplomatic practices, and crucial legal doctrines. Initially, in the 19th century, treaties protected foreign investments based on the host state's domestic laws. For instance, the 1850 Treaty between Switzerland and the U.S. mandated equal treatment for foreigners in cases of expropriation.

国际投资法经过几个世纪的发展，由条约、外交惯例和重要的法律的学说形成。最初，在世纪，条约根据东道国的国内法保护外国投资。例如，1850年瑞士和美国之间的条约规定，在征用情况下，外国人享有平等待遇。

Diplomatic practices like gunboat diplomacy allowed capital-exporting countries to impose their international legal standards on host nations. However, the publication of Carlos Calvo's doctrine in 1868 challenged this by suggesting international rules should let host states limit protections for foreign investments and foreigners should resolve disputes in local courts.

像炮舰外交这样的外交手段使得资本输出国能够将其国际法律的标准强加于东道国。然而，1868年卡洛斯卡尔沃学说的出版对这一点提出了挑战，他建议国际规则应该让东道国限制对外国投资的保护，外国人应该在当地法院解决争端。

In 1907, the Drago-Porter Convention prohibited the use of force in debt collection, emphasizing peaceful dispute resolution. By 1910, the dominant view, supported by figures like Elihu Root, was that states must adhere to international laws, providing justice beyond their national standards.

1907年，《德拉戈-波特公约》禁止在讨债中使用武力，强调和平解决争端。到了1910年，主流观点认为，各国必须遵守国际法，提供超出本国标准的正义，这一观点得到了伊莱休·鲁特等人物的支持。

The 1917 Russian Revolution saw the USSR expropriating foreign enterprises without compensation, leading to significant legal conflicts, such as the Lena Goldfields Arbitration in 1930. This and other disputes, such as Mexico's nationalization of U.S. interests in 1938, highlighted the need for a consistent international standard, leading to the Hull Doctrine promoting prompt, adequate, and effective compensation for expropriation.

1917年的俄国革命见证了苏联无偿征用外国企业，导致了重大的法律的冲突，例如1930年的莉娜·戈德菲尔德仲裁案。这一争端和其他争端，如1938年墨西哥对美国利益的国有化，突出了一致的国际标准的必要性，导致了船体原则，促进了对征用的及时，充分和有效的赔偿。

After World War II, newly independent states and traditional capital-exporting nations debated the rules of customary international law on foreign investments. The UN's intervention with Resolution 1803 (1962) and the New International Economic Order (1974) emphasized a balanced approach, recognizing state sovereignty while advocating fair compensation for nationalization.

第二次世界大战后，新独立的国家和传统的资本输出国就外国投资的习惯国际法规则进行了辩论。联合国通过第1803（1962）号决议和《国际经济新秩序》（1974）进行干预，强调了一种平衡的方法，承认国家主权，同时主张对国有化进行公平补偿。

To foster a stable environment for international investments, two critical treaties were established: the 1958 New York Convention, ensuring the recognition and enforcement of arbitral awards, and the 1965 ICSID Convention, providing a framework for settling disputes between investors and states.

为了营造一个稳定的国际投资环境，制定了两项重要条约：1958年《纽约公约》，确保承认和执行仲裁裁决；1965年《解决投资争端国际中心公约》，为解决投资者与国家之间的争端提供了一个框架。

The ICSID Convention emerged from the efforts of Aron Broches of the World Bank, who conducted global consultations to draft the agreement. By 1966, the ICSID Convention came into effect, offering a solid mechanism for international investment dispute resolution.

ICSID公约是世界银行的Aron Broches努力的结果，他进行了全球磋商以起草该协议。到1966年，ICSID公约生效，为国际投资争端解决提供了一个坚实的机制。

纽约公约和ICSID公约之间的主要差异

	纽约公约	ICSID公约
适用范围 Scope	Covers general international arbitration. 涵盖一般国际仲裁。	Dedicated to investor-state arbitration. 致力于投资者-国家仲裁。
Content	Focuses primarily on the enforcement of arbitral awards post-arbitration. 主要侧重于仲裁后仲裁裁决的执行。	Comprehensive rules covering arbitration procedures and awards. 涵盖仲裁程序和裁决的综合规则。
国家系统依赖程度 National Systems Reliance	Dependent on national laws and courts. 取决于国家法律和法院。	Minimal reliance on national systems for arbitration processes. 仲裁程序对国家系统的依赖最小。
复审 Review Powers	Allows limited review of arbitral awards under Article V. 允许根据第五条对仲裁裁决进行有限的复审。	No review powers for national courts. 国家法院没有复审权。

These components collectively illustrate the evolution and current structure of international investment protection, underscoring the balance between state sovereignty and the need to foster a secure environment for foreign investment.

这些组成部分共同说明了国际投资保护的演变和目前的结构，强调了国家主权与为外国投资创造安全环境的必要性之间的平衡。

国际投资法的渊源

Sources of International Investment Law consist of various treaties, customary laws, and judicial precedents that govern the relations and disputes between foreign investors and host states. The main components include:

国际投资法的渊源包括各种条约、习惯法和管辖外国投资者与东道国之间关系和争端的司法判例。主要组件包括：

- Multilateral Treaties : These are agreements between multiple countries aimed at setting standards and rules for foreign investment. Examples include agreements sponsored by international organizations like the OECD or the World Bank.

多边条约：这些协议是多个国家之间的协议，旨在为外国投资制定标准和规则。这方面的例子包括经合组织或世界银行等国际组织赞助的协定。

- Bilateral Investment Treaties (BITs) : BITs are agreements between two countries to promote and protect investments made by investors from each country in the other's territory. These treaties typically include provisions on fair treatment, protection from expropriation, and dispute settlement mechanisms.

双边投资条约（BITs）：双边投资条约是两国之间的协议，旨在促进和保护来自每个国家的投资者在对方领土上的投资。这些条约通常包括关于公平待遇、防止征用和争端解决机制的规定。

- Customary International Law : This encompasses practices and usages that, through consistent application over time and general acceptance as law, become legally binding. Customary law plays a crucial role in filling gaps between treaties and providing universally applicable standards.

习惯国际法：这包括通过长期一致适用和普遍接受为法律而具有法律约束力的做法和惯例。习惯法在填补条约之间的空白和提供普遍适用的标准方面发挥着至关重要的作用。

- Awards and Judicial Decisions : Decisions and awards by international arbitration panels and courts provide precedents and interpretations that shape the understanding and application of investment laws.

裁决和司法判决：国际仲裁小组和法院的裁决和裁决提供了先例和解释，影响了对投资法的理解和适用。

与《国际法院规约》第38条比较

The components of international investment law are similarly found in Article 38 of the ICJ Statute, which enumerates the sources used by the International Court of Justice (ICJ) for deciding disputes:

《国际法院规约》第38条也列出了国际投资法的组成部分，其中列举了国际法院裁决争端时使用的资料来源：

- International Conventions align with Multilateral Treaties and BITs .
国际公约与多边条约和双边投资条约保持一致。

- International Custom corresponds with Customary International Law .
国际习惯与习惯国际法相对应。
- General Principles of Law Recognized by Civilized Nations overlap with shared principles in foreign investment law.
《文明国家承认的一般法律原则》与外国投资法中的共同原则重叠。
- Judicial Decisions and Teachings of the Most Highly Qualified Publicists relate to the role of Awards and Judicial Decisions in forming legal standards.
最高资格的公关人员的司法裁决和教学涉及到裁决和司法裁决在形成法律的标准中的作用。

一般国际法：ICSID Convention

The ICSID Convention (International Centre for Settlement of Investment Disputes) provides a framework for resolving investment disputes through mediation and arbitration but does not set substantive standards for investment protection. Key features include:

ICSID公约（国际投资争端解决中心）为通过调解和仲裁解决投资争端提供了一个框架，但没有为投资保护设定实质性标准。主要功能包括：

Procedural Framework :The ICSID Convention sets out procedures for conciliation and arbitration between host states and foreign investors, ensuring a structured dispute resolution process.

程序框架：《解决投资争端国际中心公约》规定了东道国与外国投资者之间的调解和仲裁程序，确保有一个结构化的争端解决程序。

No Substantive Standards :The Convention focuses on procedural rules rather than substantive investment protection standards.

无实质性标准：《公约》侧重于程序规则，而不是实质性的投资保护标准。

Non-Consent Clause :merely participating in the ICSID Convention does not imply consent to arbitration; explicit agreement is required.

非同意条款：仅仅参加ICSID公约并不意味着同意仲裁;需要明确的协议。

ICSID条例

- **Administrative and Financial Regulations :** Guide the administration of conciliation and arbitration processes.
行政和财务条例：指导调解和仲裁程序的管理。
- **Institutional Rules :**Govern the initiation of conciliation and arbitration under ICSID.
机构规则：管辖在解决投资争端中心下启动调解和仲裁。
- **Arbitration Rules :**Detail the procedures for conducting arbitration, ensuring a fair process.
仲裁规则：详细说明进行仲裁的程序，确保公平的过程。

- Conciliation Rules : Outline the processes and conduct for conciliation efforts.
调解规则：概述调解工作的程序和行为。

Understanding the sources of international investment law and the procedural framework provided by the ICSID Convention is crucial for navigating and resolving disputes in the international investment landscape. These mechanisms collectively contribute to a structured and fair dispute resolution environment, fostering confidence among international investors and host states.

了解国际投资法的渊源和ICSID公约提供的程序框架对于在国际投资领域中导航和解决争议至关重要。这些机制共同促进了一个结构化和公平的争端解决环境，促进了国际投资者和东道国之间的信心。

ICSID仲裁的“自足”制度

The International Centre for Settlement of Investment Disputes (ICSID) operates a "self-contained" or "delocalized" arbitration system, designed to function independently from local legal systems. This unique framework is a product of specific provisions within the ICSID Convention, ensuring a streamlined and consistent approach to resolving investment disputes.

国际投资争端解决中心（投资争端解决中心）实行“自足”或“异地”仲裁制度，旨在独立于当地法律的制度运作。这一独特的框架是《解决投资争端国际中心公约》中具体条款的产物，确保以简化和一致的方式解决投资争端。

1. 第二十六条：

- The exclusivity of ICSID arbitration: When disputing parties consent to ICSID arbitration, it becomes their sole remedy for resolution. This ensures that the arbitration process remains uncontested by alternative legal actions.

ICSID仲裁的排他性：当争议当事人同意ICSID仲裁时，它成为解决争议的唯一补救措施。这确保了仲裁过程不会受到其他法律的行动的质疑。

2. 第二十七条：

- Restriction on diplomatic protection: Member States are prohibited from offering diplomatic protection to their nationals who have agreed to ICSID arbitration. This rule aims to prevent state interference, with exceptions only under specific limited circumstances.

对外交保护的限制：禁止成员国向同意ICSID仲裁的国民提供外交保护。这一规则旨在防止国家干预，只有在特定的有限情况下才有例外。

3. 第二十一条和第二十二条：

- Immunity from legal processes: Participants in ICSID proceedings are granted immunity from legal processes, safeguarding the integrity and impartiality of the arbitration process.
法律的程序豁免：ICSID程序的参与者享有法律的程序豁免权，以保障仲裁程序的完整性和公正性。

4. 第四十九至五十二条：

- Limitation of post-award remedies: The ICSID Convention delineates specific post-award remedies, confined to:
裁决后救济的限制：《解决投资争端国际中心公约》规定了具体的裁决后救济，限于：
 - Supplementation or Rectification (Article 49): Addressing minor omissions or errors in the award.
补充或更正（第四十九条）：处理裁决书中的微小遗漏或错误。
 - Interpretation (Article 50): Clarifying the meaning of the award.
解释（第50条）：澄清裁决的含义。
 - Revision (Article 51): Based on new and decisive evidence unavailable during the original proceedings.
修订（第51条）：根据原诉讼程序中无法获得的新的决定性证据。
 - Annulment (Article 52): Limited grounds for annulment, ensuring finality and stability in the arbitration awards.
撤销（第52条）：撤销的理由有限，确保仲裁裁决的终局性和稳定性。

5. 第五十三条：

- Finality and binding nature of awards: ICSID awards are definitive and cannot be annulled or set aside by the courts of any Member State, affirming their conclusiveness and authority.
裁决的终局性和约束性：解决投资争端中心的裁决是终局性的，任何成员国的法院都不能撤销或撤销，从而确认其终局性和权威性。

6. 第五十四条：

- Enforceability mandate: All Member States are bound to recognize and enforce the monetary component of ICSID awards, regardless of their involvement in the original dispute, thus fostering a reliable and predictable enforcement mechanism.
强制执行任务：所有成员国都有义务承认和执行解决投资争端中心裁决中的金钱部分，而不论它们是否参与原始争端，从而促进建立一个可靠和可预测的执行机制。

7. 第六十二条和第六十三条：

- Geographic neutrality: The location of the arbitration hearings carries no legal significance, emphasizing the delocalized nature of the ICSID process. This provision allows the arbitration process to remain unfettered by the jurisdictional peculiarities of any Member State.

地理中立：仲裁听证会的地点没有法律的意义，强调了解决投资争端国际中心程序的非本地化性质。这一规定使仲裁程序不受任何会员国管辖权特殊性的约束。

The "self-contained" nature of ICSID arbitration, facilitated by these provisions, ensures a consistent and impartial resolution of international investment disputes, promoting legal certainty and investor confidence globally.

ICSID仲裁的“自足”性质，在这些规定的推动下，确保了国际投资争端的一致和公正解决，促进了全球法律的确定性和投资者信心。

投资条约

Investment treaties are pivotal frameworks in international investment law, providing robust protections and dispute resolution mechanisms for investors and states. These treaties are primarily of two types: bilateral and multilateral.

投资条约是国际投资法的核心框架，为投资者和国家提供了强有力的保护和争端解决机制。这些条约主要分为两类：双边和多边。

类型和历史背景

1. 双边投资条约 (BITs) :

- Agreements between two countries to promote and protect investments made by investors from respective countries.
两国之间的协议，以促进和保护来自各自国家的投资者的投资。

1. 多边投资条约：

- Involves multiple countries agreeing on investment terms and conditions either regionally or globally.
涉及多个国家在区域或全球范围内就投资条款和条件达成一致。

Historically, investment treaties began with early bilateral agreements, gradually evolving into broader multilateral agreements often referred to as "green" multilateralism due to their recent emergence.

从历史上看，投资条约始于早期的双边协定，后来逐渐演变为更广泛的多边协定，由于最近才出现，通常被称为“绿色”多边主义。

重要性

- Investment treaties are considered the cornerstone of contemporary international investment law.
投资条约被认为是当代国际投资法的基石。
- Countries such as Germany, Switzerland, and China are leaders, having concluded hundreds of BITs each.
德国、瑞士和中国等国家是领头羊，各自缔结了数百项双边投资条约。
- The global landscape currently has over 3,500 BITs, underscoring their importance and prevalence.
全球目前有3,500多项双边投资条约，突出表明了它们的重要性和普遍性。

实质性保护标准

Investment treaties encapsulate several key protections:

投资条约包含了几项关键的保护措施：

- Admission of Investments : Guidelines for how investments are admitted into the host country.
投资准入：关于如何允许投资进入东道国的指导方针。
- Fair and Equitable Treatment (FET) : Ensures a stable and predictable investment environment.
公平和公正待遇 (FET) : 确保稳定和可预测的投资环境。
- Full Protection and Security (FPS) : Obligation of host states to protect investments physically and legally.
充分保护和安全 (FPS) : 东道国有义务保护投资的实物和法律。
- Guarantees Against Arbitrary and Discriminatory Treatment : Protection from unfair treatment.
保障不受任意和歧视性待遇：保护不受不公平待遇。
- National Treatment : Ensures foreign investors are not treated less favorably than domestic investors.
国民待遇：确保外国投资者的待遇不低于国内投资者。
- Most-Favored-Nation (MFN) Treatment : Foreign investors receive the same treatment as investors from the most favored nation.
最惠国待遇：外国投资者获得与最惠国投资者相同的待遇。
- Protection Against Expropriation : Includes guarantees and fair compensation in case of expropriation.
防止征用：包括在征用情况下的保障和公平补偿。

双边投资条约的关键组成部分

BITs contain substantive investment protections and elaborate dispute resolution mechanisms to address conflicts between investors and states.

双边投资条约载有实质性的投资保护和解决投资者与国家之间冲突的详细争端解决机制。

Importance of Clear Definitions :

明确定义的重要性：

- Investor and Investment : Precisely defined to avoid ambiguities.
投资者和投资：精确定义，以避免歧义。
- Substantive Standards of Protection : Clear benchmarks for FET, FPS, and other standards.
实质性保护标准：FET、FPS和其他标准的明确基准。
- Guarantees Concerning the Free Transfer of Payments : Provisions ensuring the free transfer of investment-related funds.
关于自由转移支付的保证：确保与投资有关的资金自由转移的规定。
- Dispute Settlement : Pre-defined processes for resolving investment disputes.
争端解决：预先确定的解决投资争端的程序。
- Termination and Sunset Clauses : Terms outlining the duration of the treaty and conditions under which it can be terminated.
终止和日落条款：概述条约期限和终止条件的条款。

Investment treaties play a crucial role in creating a secure and predictable environment for international investments, promoting economic cooperation and development among nations.

投资条约在为国际投资创造一个安全和可预测的环境、促进国家间的经济合作和发展方面发挥着至关重要的作用。

习惯国际法：定义和在国际法和投资法中的作用

习惯国际法的定义

Customary international law refers to obligations derived from the established practices of states, distinct from formal written treaties. As defined by Article 38(1)(b) of the International Court of Justice (ICJ) Statute, it is a primary source of international law, forming from general and consistent state practices performed out of a sense of legal obligation (opinio juris). Customary international law is identified by demonstrating two key elements: state practice and opinio juris .

习惯国际法是指源自国家惯例的义务，不同于正式的书面条约。正如《国际法院规约》第三十八条第一款（B）项所界定的，它是国际法的主要渊源，由出于法律的义务感（法律确念）而实施的一般和一贯的国家惯例形成。习惯国际法的确定体现了两个关键要素：国家惯例和法律确信。

在投资法中的作用

While investment law is predominantly governed by treaties, customary international law continues to play an integral role. Treaties must be interpreted in accordance with the Vienna Convention on the Law of Treaties (VCLT), which incorporates general rules of international law. Customary international law is particularly significant in the practice of investment arbitration, contributing essential rules on attribution, state responsibility, damages, expropriation, denial of justice, and the nationality of investors.

虽然投资法主要受条约管辖，但习惯国际法继续发挥不可或缺的作用。条约必须按照《维也纳条约法公约》解释，该公约纳入了国际法的一般规则。习惯国际法在投资仲裁实践中尤其重要，为归属、国家责任、损害赔偿、征用、拒绝司法和投资者国籍等方面提供了基本规则。

习惯法与条约法之间的联系

The interplay between customary law and treaty law is evident in the context of recent multilateral treaties. General principles of law, as outlined in Article 38(1) of the ICJ Statute, have gained increasing prominence in international legal discourse. These principles are vital for addressing gaps (lacunae) within treaty texts and for providing clarity in interpreting individual terms and phrases.

习惯法和条约法之间的相互作用在最近的多边条约中显而易见。《国际法院规约》第三十八条第一款概述的一般法律原则在国际法律的讨论中日益突出。这些原则对于解决条约案文中的空白（缺陷）和澄清解释个别术语和短语至关重要。

一般法律原则的例子

Several cases illustrate the application of general principles of law in international arbitration:

有几个案例说明了一般法律原则在国际仲裁中的适用：

- Good Faith :

诚信：

- *Sempra v Argentina* : Highlighted the importance of acting in good faith in international obligations.

Sempra诉阿根廷案：强调了在国际义务方面诚信行事的重要性。

- Nemo Auditur Propriam Turpitudinem Allegans :

Nemo Auditur Propriam Turpitudinem Allegans :

- *Rumeli v Kazakhstan* : The principle that no one should benefit from their own wrongdoing.

Rumeli诉哈萨克斯坦：任何人都不应该从自己的错误行为中受益的原则。

- Estoppel :

禁止反悔：

- *Chevron v Ecuador*: Prevents a party from arguing something contrary to a position it previously maintained.

Chevron诉厄瓜多尔: 防止一方提出与其先前所持立场相反的论点。

- Onus Probandi (Burden of Proof):

举证责任 (Burden of Proof) :

- *Alpha v Ukraine*: Emphasizes that the party making a claim must substantiate it.

Alpha诉乌克兰: 强调提出主张的一方必须提出证据。

- Rights to be Heard :

发表意见的权利:

- *Fraport v Philippines*: Ensures that parties have an opportunity to present their case.

法兰克福机场公司诉菲律宾案: 确保当事方有机会陈述案情。

These principles reflect the ongoing relevance and application of customary international law within the framework of international and investment law, providing a robust foundation for the consistent and fair resolution of disputes.

这些原则反映了习惯国际法在国际法和投资法框架内的持续相关性和适用性，为一致和公平地解决争端提供了坚实的基础。

仲裁裁决和司法裁决

In the realm of arbitration, particularly investment arbitration, the treatment of awards and judicial decisions highlights both the flexibility and challenges inherent in the system. Arbitral tribunals, while not strictly bound by precedent, often consider prior cases to guide their decisions. This approach balances respect for past rulings with the need for case-specific judgment.

在仲裁领域，特别是在投资仲裁领域，对裁决和司法判决的处理既突出了这一制度固有的灵活性，也突出了这一制度固有的挑战。仲裁庭虽然不受先例的严格约束，但往往考虑以前的案例来指导其裁决。这一做法在尊重过去的裁决与需要对具体案件作出判断之间取得了平衡。

1. Referencing but Not Binding by Previous Cases 参考但不受先前案例约束

- Arbitral tribunals routinely examine and refer to previous cases to inform their current decisions. However, unlike a standing international court, such as the International Court of Justice (ICJ), investment arbitration tribunals are constituted on an ad hoc basis. This structure complicates the development of a consistent body of case law, leading to a diverse array of rulings even on similar issues.

仲裁庭例行审查和参考以前的案件，为其目前的裁决提供信息。然而，与国际法院 (ICJ) 等常设国际法院不同，投资仲裁庭是临时组成的。这种结构使一致的判例法体系的发展变得复杂，甚至导致即使在类似问题上也会出现各种各样的裁决。

2. Discussion of Prior Awards in Treaty Awards 条约裁决中的先前裁决的讨论：

- Most treaty-based arbitral awards feature detailed discussions and analyses of earlier awards. This practice demonstrates the tribunals' efforts to consider historical context and jurisprudence, fostering a degree of continuity in their reasoning.
大多数基于条约的仲裁裁决都详细讨论和分析了先前的裁决。这一做法表明法庭努力考虑历史背景和判例，促进其推理的一定程度的连续性。

3. Tribunals Recognize Non-Binding Nature of Prior Awards 仲裁庭承认先前裁决的非约束性：

- Arbitral tribunals explicitly acknowledge the non-binding nature of earlier decisions. For instance:

仲裁庭明确承认以前的裁决不具有约束力。例如：

- In *AES v Argentina*, the tribunal asserted that ICSID decisions are binding only on the parties involved in that particular case. It emphasized the absence of a general rule of precedent in both general international law and the ICSID system.
在AES诉阿根廷一案中，仲裁庭声称，解决投资争端中心的裁决只对该特定案件所涉当事方具有约束力。法院强调，在一般国际法和解决投资争端中心的制度中，都没有一般的先例规则。
- Similarly, in *Saipem v Bangladesh*, the tribunal noted that, while not bound by previous decisions, it should give due consideration to earlier tribunal rulings. The tribunal stated it has a duty to adopt solutions evident in a series of consistent cases unless there are compelling grounds to diverge.
同样，在Saipem诉孟加拉国一案中，法庭指出，虽然不受以前裁决的约束，但应适当考虑法庭以前的裁决。仲裁庭表示，除非有令人信服的理由出现分歧，否则它有责任采取一系列一致案件中显而易见的解决办法。

4. Concerns and Solutions for Divergence of Interpretations 对解释分歧的关注和解决办法：

- The divergence in arbitral interpretations can lead to inconsistent and unpredictable outcomes. Addressing these concerns requires potential solutions, such as establishing guidelines or mechanisms that promote consistency and alignment across arbitral decisions. This could include creating more structured frameworks for referencing prior awards or developing common principles to guide tribunals.

仲裁解释的分歧可能导致不一致和不可预测的结果。解决这些问题需要潜在的解决方案，例如制定准则或机制，促进仲裁裁决的一致性和一致性。这可包括建立更有条理的框架，以参考先前的裁决或制定指导法庭的共同原则。

Overall, the treatment of awards and judicial decisions in arbitration underscores the complexity of maintaining both flexibility and consistency. The balance between honoring past decisions and adapting to the nuances of individual cases is essential for ensuring fair and equitable outcomes in the arbitral process.

总体而言，仲裁中对裁决和司法判决的处理突出表明了保持灵活性和一致性的复杂性。在尊重过去的决定和适应个别案件的细微差别之间取得平衡，对于确保仲裁过程中的公正和公平结果至关重要。

条约解释方法概述

Treaty interpretation is a critical aspect of international law, ensuring that treaties are effectively understood and applied. Three primary methods of interpretation have emerged, each with its own advantages and drawbacks: Textual, Intention of Parties, and Teleological.

条约解释是国际法的一个重要方面，确保条约得到有效理解和适用。出现了三种主要的解释方法，每一种都有自己的优点和缺点：文本，当事人的意图和目的。

Textual Approach 文本方法

This method emphasizes the ordinary meaning of the treaty's text, aiming to establish what the document explicitly states. By focusing on the text itself, it avoids external factors that might distort the interpretation. However, the concept of "ordinary" meaning can be subjective, and if terms are ambiguous, they cannot be interpreted into clarity; instead, such matters must be addressed by the parties, potentially requiring amendments. If the text remains unclear after interpretation, supplementary methods might be necessary, or the matter may be reverted back to the parties for resolution.

这种方法强调条约文本的一般含义，旨在确定文件明确规定的内容。通过注重案文本身，它避免了可能扭曲解释的外部因素。然而，“普通”含义的概念可能是主观的，如果术语含糊不清，就不能加以明确解释；相反，这些事项必须由当事人处理，可能需要修改。如果解释后案文仍不清楚，可能需要补充方法，或将问题退回当事方解决。

Intention of Parties 双方意向

This method seeks to give effect to the actual or presumed intentions of the treaty's signatories. While it aims to respect what the parties intended, it may involve a degree of artificiality, as parties might not have specific intentions for all points within the treaty. This approach could also ignore the explicit terms of the treaty, which might directly express the parties' intentions. An obscurity in the text could reflect an underlying ambiguity in the parties' intentions, making it challenging to ascertain whether a shared intention existed among all parties or was exclusive to some.

这种方法旨在使条约签署国的实际或推定意图生效。虽然它旨在尊重缔约方的意图，但它可能涉及一定程度的人为因素，因为缔约方可能对条约的所有内容都没有具体意图。这种做法也可能忽视条约的明确条款，而这些条款可能直接表达缔约方的意图。案文中的模糊不清可能反映出当事方意图的潜在模糊性，从而难以确定所有当事方之间是否存在共同意图，或者仅限于某些当事方。

Teleological Approach 目的论方法

The teleological method interprets the treaty based on its objectives and purposes, considering what the treaty aims to achieve. This approach acknowledges that new objectives might

emerge, potentially taking precedence over the framers' original intentions. However, it risks granting judges excessive discretion to reinterpret the treaty according to personal views, effectively amending the text. This judicial freedom can lead to the court acquiring a quasi-legislative role, potentially diverging from the treaty's original framework, encapsulated by the notion "Your treaty or our 'interpretation' of it?" as posed by Fitzmaurice.

目的论方法根据条约的目标和宗旨解释条约，考虑条约的目标是什么。这种方法承认，新的目标可能会出现，可能会优先于制定者的初衷。然而，它有可能赋予法官根据个人意见重新解释条约的过度自由裁量权，从而实际上修改了案文。这种司法自由可能导致法院获得准立法作用，可能偏离条约的原始框架，即“你的条约还是我们对条约的'解释'?”正如菲茨莫里斯所提出的。

In conclusion, while each method offers distinct perspectives on treaty interpretation, they also come with inherent limitations. Balancing these approaches ensures a more holistic and equitable understanding and application of international treaties.

最后，虽然每种方法都对条约解释提出了不同的观点，但它们也有固有的局限性。平衡这些方法可确保更全面和公平地理解和适用国际条约。

条约解释中的三项附加原则

In the realm of international law, interpreting treaties accurately is crucial for ensuring that the agreements between parties are respected and upheld in their intended spirit. Several principles guide this process, ensuring that treaties are interpreted effectively, contextually, and contemporaneously. Additionally, preparatory works (*travaux préparatoires*) play a significant role in understanding the intentions behind treaty provisions.

在国际法领域，准确解释条约对于确保各方之间的协定按照其预期精神得到尊重和维护至关重要。有几项原则指导这一进程，确保条约得到有效、符合背景和符合时代的解释。此外，准备工作（准备工件文件）在理解条约条款背后的意图方面发挥着重要作用。

1. Principle of Integration 整合原则

This principle asserts that a treaty should be read and understood as a whole, rather than basing interpretations on isolated words or phrases. The context and comprehensive meaning of sentences are critical. Stamp J.'s remarks in *Bourne v Norwich Crematorium Ltd [1967] 1WLR 691 (Ch.) at 696* encapsulate this principle, warning against distorting sentences by separately defining individual words.

这一原则主张，条约应作为一个整体来阅读和理解，而不是根据孤立的词语或短语来解释。语境和句子的综合意义是关键。斯坦普·J [1967] 1WLR 691 (Ch.) at 696概括了这一原则，警告不要通过单独定义单个单词来歪曲句子。

2. Principle of Effectiveness 有效性原则

According to this principle, all terms within a treaty are presumed to have meaning and should not be rendered redundant. The interpretation must aim to give full effect to the treaty's purpose, avoiding any construction that renders the treaty's application impossible, absurd, or merely symbolic. This ensures the treaty accomplishes its intended goals.

根据这一原则，条约中的所有用语都被推定为有意义，不应被视为多余。解释的目的必须是充分实现条约的宗旨，避免作出使条约的适用变得不可能、荒谬或仅仅是象征性的解释。这确保条约实现其预期目标。

3. Principle of Contemporaneity 当代性原则

Terms in a treaty should be interpreted based on their meaning at the time the treaty was concluded, reflecting the linguistic and contextual usages of that period. A notable reference is the Maritime Safety Committee case (ICJ Rep. 1960, p. 150, at p. 160) concerning the 1948 Convention for establishing the Inter-governmental Maritime Consultative Organization. Article 28(a) emphasized understanding phrases like "important interest in maritime safety" through the context of that time.

条约中的用语应根据其在条约缔结时的含义加以解释，反映该时期的语言和上下文用法。值得一提的是关于1948年《设立政府间海事协商组织公约》的海事安全委员会案（国际法院报告，1960年，第150页，见第160页）。第28 (a) 条强调通过当时的背景来理解“海上安全的重要利益”等短语。

Travaux Préparatoires (Preparatory Works) 准备工作

The role of travaux préparatoires varies between two main schools of thought:

准备工作在两个主要学派之间各不相同：

1. Habitual Use : Advocates for this approach believe no disputed text is fully clear without considering its preparatory works. These documents can clarify texts further and reinforce interpretations. 习惯用途：这种方法的倡导者认为，没有一个有争议的文本是完全清楚的，而不考虑它的准备工作。这些文件可以进一步澄清案文并加强解释。
1. Indispensable Use : This perspective holds that the diversity of interests and circumstances during treaty negotiations often makes preparatory works of limited utility. Furthermore, if a State was not involved in drafting or negotiating the treaty, it is challenging to discern its intentions solely from these documents. The International Commission of the River Oder case (PCIJ, Ser. A, No. 23, pp 41-2) demonstrates reluctance to consider travaux préparatoires when not all relevant parties participated in the drafting conference. Insulin用途：这一观点认为，条约谈判期间的利益和情况多种多样，往往使筹备工作的效用有限。此外，如果一个国家没有参与条约的起草或谈判，仅从这些文件中就很难看出其意图。奥得河国际委员会案（常设国际法院，A辑，第23号，第41- 42页）表明，在并非所有有关各方都参加起草会议的情况下，不愿意审议准备工作文件。

Methods: General Points

The three primary methods of interpretation—principles of integration, effectiveness, and contemporaneity—are not mutually exclusive. While they often converge to the same interpretative outcome, they may also lead to different conclusions. These methods are fundamental to the Vienna Convention on the Law of Treaties (VCLT) interpretation rules and serve as essential tools for international legal practitioners in ensuring treaties are applied as intended.

三种主要的解释方法--整合原则、有效性原则和当代性原则--并不相互排斥。虽然它们往往会导致相同的解释结果，但也可能导致不同的结论。这些方法是《维也纳条约法公约》解释规则的基础，是国际法律的从业人员确保条约按预期适用的基本工具。

This comprehensive understanding of treaty interpretation principles and the nuanced role of preparatory works is vital for navigating international agreements, ensuring their fair and effective execution.

全面理解条约解释原则和筹备工作的微妙作用，对于指导国际协定，确保其公平和有效执行至关重要。

VCLT解释规则概述

The Vienna Convention on the Law of Treaties (VCLT) sets out comprehensive guidelines for treaty interpretation, establishing principles recognized as customary international law. These guidelines are primarily encapsulated in Articles 31-33, which facilitate uniformity and clarity in international legal interpretations. Here, we examine these rules and their practical applications, drawing on jurisprudence and scholarly commentary.

《维也纳条约法公约》（《维也纳条约法公约》）规定了条约解释的全面准则，确立了公认为习惯国际法的原则。这些准则主要载于第31至33条，这些条款有助于国际法律的解释的统一和明确。在这里，我们研究这些规则及其实际应用，借鉴法理学和学术评论。

Articles 31-33

These articles are enshrined as rules of customary international law and are particularly beneficial in circumventing the non-retroactive provision of Article 4. Although these rules were largely shaped by the decisions of the International Court of Justice (ICJ) and the Permanent Court of International Justice (PCIJ), the courts did not establish a specific hierarchy or framework for these principles, thus leaving room for interpretative flexibility.

第三十一至三十三条：这些条款已作为习惯国际法规则载入，特别有利于规避第4条的不溯及既往规定。虽然这些规则在很大程度上是由国际法院和常设国际法院的裁决形成的，但法院并没有为这些原则确立具体的等级或框架，因此在解释上留有灵活余地。

Mandatory vs. Optional Provisions 强制性条款与任择性条款

Understanding the distinction between mandatory and optional provisions within the VCLT is crucial. Articles 31-33 are generally seen as mandatory rules that bind the parties to a treaty, ensuring consistency and fairness in interpretation.

理解《维也纳条约法公约》中强制性条款和任择性条款之间的区别至关重要。第三十一至三十三条一般被视为对条约缔约方具有约束力的强制性规则，确保解释的一致性和公正性。

VCLT第31条第1款

Article 31(1) demands interpretation in good faith, by giving terms their ordinary meaning in their context and in light of the treaty's object and purpose. Here, various interpretative methods converge, possibly representing different schools of thought. Although there is debate over any inherent hierarchy within the elements of Article 31(1), their collective application seeks to ensure balanced and reasonable treaty interpretation.

第三十一条第一款要求本着诚意解释，根据上下文并参照条约的目的和宗旨，说明用语的通常含义。在这里，各种解释方法汇聚在一起，可能代表着不同的思想流派。虽然对第三十一条第一款各要素的内在等级存在争议，但这些要素的集体适用力求确保平衡和合理的条约解释。

1. Good Faith :

This principle requires that treaty obligations are executed responsibly, without arbitrary or capricious actions. Fitzmaurice (1950) expressed that rejection of an interpretation should not be solely due to perceived lack of good faith

这一原则要求负责任地履行条约义务，不采取任意或反复无常的行动。Fitzmaurice (1950年) 表示，拒绝一项解释不应仅仅是因为认为缺乏诚意。

2. Ordinary Meaning :

Words in a treaty are to be interpreted in their normal and commonly understood sense. However, compromises among negotiating parties and the diverse backgrounds of interpreters can complicate this process. For instance, in the Kasikili/Sedudu Case (1999) , the ICJ diligently sought the ordinary meaning of "main channel" by referencing widely used international legal criteria.

条约中的词语应按其正常和通常理解的含义解释。然而，谈判各方之间的妥协和口译员的不同背景可能使这一进程复杂化。例如，在Kasikili/Sedudu案（1999年）中，国际法院通过引用广泛使用的国际法律的标准，努力寻求“主要渠道”的普通含义。

3. Object and Purpose :

The focus here is not on the parties but on the treaty itself, distinguishing between immediate rights and obligations (object) and the ultimate goal (purpose). The South West Africa cases highlighted a shift from strict textual interpretation to a more purposive approach, a method further reinforced by English courts in cases like Fothergill v Monarch Airlines Ltd.

这里的重点不是缔约方，而是条约本身，区分眼前的权利和义务（目标）与最终目标（宗旨）。西南非洲的案件突出了从严格的文本解释到更有目的的方法的转变，英国法院在福瑟吉尔诉君主航空公司等案件中进一步加强了这种方法。

4. 案例举例：

- In SGS Société Général de Surveillance S.A. v. Republic of the Philippines, the ICSID Tribunal used the preamble of a Bilateral Investment Treaty (BIT) to elucidate its object and purpose, demonstrating that resolving interpretative uncertainties in favor of protecting investments was legitimate.

在SGS Société Général de Surveillance S.A. ICSID仲裁庭使用双边投资条约的序言来阐明其目的和宗旨，表明解决有利于保护投资的解释不确定性是合法的。

These comprehensive guidelines provided by the VCLT ensure that treaties are interpreted uniformly, reasonably, and in alignment with the shared intentions and goals of the contracting parties, fostering international cooperation and legal certainty.

《维也纳条约法公约》提供的这些全面准则确保条约得到统一、合理的解释，并符合缔约方的共同意图和目标，促进国际合作和法律的确定性。

VCLT第31条第2款

背景

The context within which treaty words are interpreted can significantly influence their meaning. The International Court of Justice (ICJ) highlighted this in the Temple Case (1961), noting that words should be interpreted according to their natural and ordinary meaning, considering their context. Here, context may sometimes override the ordinary meaning of words. For proper interpretation, one must consider the surrounding text and the entirety of the treaty, including the preamble and annexes. Additionally, the context includes agreements among all parties related to the treaty's conclusion (31(2)(a)) and any related instruments accepted by the parties (31(2)(b)).

解释条约用语的背景可对其含义产生重大影响。国际法院在Temple案（1961年）中强调了这一点，指出词语应根据其自然和普通含义并考虑其上下文加以解释。在这里，上下文有时可能会凌驾于普通意义的话。为了作出适当的解释，必须考虑条约的周围案文和整个条约，包括序言和附件。此外，上下

文包括所有缔约方之间关于缔结条约的协定（第31条第2款（a）项）和缔约方接受的任何相关文书（第31条第2款（B）项）。

序言

The preamble of a treaty is integral in understanding its object and purpose. However, if there is a conflict between the preamble and an operative provision, the latter prevails. Notably, the preamble can influence whether the interpretation is restrictive or liberal.

条约的序言是理解其目的和宗旨的组成部分。但是，如果序言与执行部分的规定有冲突，则以后者为准。值得注意的是，序言可以影响解释是限制性的还是自由的。

VCLT第31条第3款：联系上下文

Beyond the immediate context, subsequent agreements and practices (31(3)(a) and 31(3)(b)) play a vital role. Subsequent agreements on interpretation or application, as seen in the Kasikili/Sedudu case (ICJ, 1999), enhance understanding of the treaty. Subsequent practices, accepted by all parties, further solidify this interpretation, even if not directly under the disputed provision, as illustrated in the Maritime Safety Committee case (ICJ Rep. 1960). Additionally, inaction where action was expected can also be examined, as in the Border and Transborder Armed Actions case (ICJ Rep 1988).

在直接背景之外，嗣后协定和惯例（第三十一条第三款（a）项和第三十一条第三款（B）项）发挥着至关重要的作用。如Kasikili/Sedudu案（国际法院，1999年）所示，嗣后关于解释或适用的协定加强了对条约的理解。如海事安全委员会案（国际法院报告，1960年）所示，为所有当事方接受的嗣后惯例进一步巩固了这一解释，即使不是直接根据有争议的条款。此外，也可以审查在预期采取行动的情况下不采取行动的情况，如边境和跨界武装行动案（国际法院报告，1988年）。

Article 31(3)(c) introduces relevant international law rules into the interpretation process, adding a layer of flexibility. There remains a consideration of whether these rules pertain to those existing at the treaty's conclusion or at the time of interpretation.

第三十一条第三款（丙）项在解释过程中引入了相关的国际法规则，增加了灵活性。这些规则是否与缔结条约时或解释条约时存在的规则有关，仍有待考虑。

VCLT第31条第4款：特殊含义

A special meaning must be explicitly intended by the parties, and the burden of proof lies with the claimant. This is exemplified in the Legal Status of Eastern Greenland case (PCIJ, Ser. A/B, No. 53).

当事人必须明确表示特殊含义，举证责任由原告承担。东格陵兰法律的地位案（常设国际法院，系列A/B，第53号）就是一个例子。

These provisions collectively ensure that treaty interpretations remain true to the parties' original intentions while allowing for adaptive application in evolving international contexts.

这些条款共同确保条约解释符合缔约方的初衷，同时允许在不断变化的国际环境中适应性地适用。

VCLT第32条

Article 32 of the Vienna Convention on the Law of Treaties provides guidelines on using supplementary means of interpretation to clarify treaty terms. This mechanism supports the main interpretive provisions outlined in Article 31 and caters to various interpretative needs that arise in international law.

《维也纳条约法公约》第32条规定了使用补充解释资料澄清条约用语的准则。这一机制支持第三十一条概述的主要解释性规定，并满足国际法中出现的各种解释需要。

求助于补充手段 Recourse to Supplementary Means

Recourse to supplementary means of interpretation "may" be optional but is often essential. These supplementary means include the preparatory work of the treaty and the circumstances of its conclusion. Importantly, such materials can be referenced even if a state was not present during the treaty negotiations, as demonstrated in the *Aerial Incident (Israel v Bulgaria)* case (ICJ, 1959). Despite Bulgaria's absence from the San Francisco Conference, the International Court of Justice (ICJ) relied on related records, emphasizing the broad scope of Article 32.

诉诸补充解释资料“可能”是可选的，但往往是必不可少的。这些补充手段包括条约的准备工作和缔结的情况。重要的是，如空中事件（以色列诉保加利亚）案（国际法院，1959年）所示，即使一国在条约谈判期间不在场，也可以参考这些材料。尽管保加利亚没有出席弗朗西斯科会议，但国际法院依靠相关记录，强调第三十二条的广泛范围。

Confirming Meaning

Supplementary means are frequently employed to confirm meanings derived under Article 31. Judicial bodies like the ICJ often turn to these additional interpretative tools to affirm the intended meanings, even if the text appears clear. For example, in the *Fisheries Jurisdiction cases* (ICJ, 1973), the court utilized supplementary means to reinforce the text's interpretation. 经常采用补充手段来确认第三十一条所规定的含义。国际法院等司法机构经常求助于这些额外的解释工具，以确认所要表达的含义，即使案文似乎很清楚。例如，在渔业管辖权案（国际法院，1973年）中，法院利用补充手段来加强对案文的解释。

Determining Ambiguity

Article 32's supplementary measures are crucial when a text's meaning is ambiguous or obscure. They are also used when Article 31's application results in outcomes that are

manifestly absurd or unreasonable. In such scenarios, supplementary means provide clarity and rationality, ensuring coherent treaty interpretation.

当一项案文的含义模糊不清或含糊不清时，第32条的补充措施至关重要。当第三十一条的适用导致明显荒谬或不合理的结果时，也会使用这些条款。在这种情况下，补充手段提供了明确性和合理性，确保了对条约的连贯解释。

非详尽范围 Non-Exhaustive Scope

The application of Article 32 is not exhaustive. It allows referencing other relevant documents or treaties, especially those adopted concurrently with the document in question. This broader approach ensures that exceptions or contextual elements contained in related documents are considered, as illustrated by the *Night Work case* (PCIJ, 1932).

第32条的适用并非详尽无遗。它允许参考其他有关文件或条约，特别是与有关文件同时通过的文件或条约。这种更广泛的方法确保了相关文件中包含的例外或上下文元素得到考虑，如夜间工作案例 (PCIJ, 1932) 所示。

解释规则

Two fundamental interpretative rules often guide the application of Article 32:

两项基本解释规则通常指导第32条的适用：

1. Lex Specialis Derogat Generali : A more specific rule will take precedence over a general one.
特别法一般减损法：更具体的规则优先于一般规则。
2. Ejusdem Generis Rule : General terms that follow specific terms are limited to the particular class of the specific terms. For instance, in a list that includes cricket, soccer, and tennis, the term “other activities” would be interpreted to mean similar sports.

Ejusdem Generis规则：特定术语后面的一般术语仅限于特定术语的特定类别。例如，在包括板球、足球和网球的列表中，术语“其他活动”将被解释为指类似的运动。

In summary, Article 32 of the Vienna Convention plays a vital role in treaty interpretation. Its supplementary means provide additional clarity, prevent absurd outcomes, and ensure a comprehensive understanding of treaty provisions, thereby supporting the primary interpretative framework established in Article 31.

总之，《维也纳公约》第32条在条约解释方面发挥着至关重要的作用。它的补充手段提供了更多的明确性，防止荒谬的结果，并确保对条约规定的全面理解，从而支持第三十一条建立的主要解释框架。

VCLT第33条

1. Equally Authoritative Texts :

- Texts authenticated in multiple languages are considered equally authoritative. This principle stands unless the treaty explicitly states or the parties agree that certain texts have a different status.

以多种语文认证的文本被视为具有同等权威性。除非条约明确规定或缔约方同意某些案文具有不同的地位，否则这一原则仍然有效。

2. Non-Authenticated Language Versions 非认证语言版本:

- A version in a language other than those authenticated can only be considered authentic if it is expressly provided or agreed to by the parties.

经认证的文本以外的其他语文的文本，只有在当事人明确提供或同意的情况下，才能被视为作准文本。

3. Presumed Same Meaning 推定相同含义:

- Each authenticated text is presumed to convey the same meaning, promoting consistency across linguistic versions.

每个经过认证的文本都被假定为传达相同的含义，从而促进语言版本之间的一致性。

4. Resolving Differences in Meaning 解决意义上的差异:

- If differences in meaning arise between texts, and Articles 31 and 32 do not resolve them, the interpretation that best reconciles the texts, in light of the treaty's object and purpose, should be adopted.

如果案文之间出现意义上的差异，而第三十一条和第三十二条又不能解决这些差异，则应根据条约的目的和宗旨，采用最能调和案文的解释。

General Conclusion on Articles 31-33

1. Professor O'Connell's Perspective :

- According to Professor O'Connell, the application priorities within these rules are not explicitly stated and are somewhat generalized. This lack of clarity necessitates reviewing traditional interpretative methods when interpreting a treaty.

根据奥康奈尔教授的说法，这些规则中的应用程序优先级没有明确说明，并且有些笼统。由于这种不明确性，有必要在解释条约时审查传统的解释方法。

- There is a potential risk that states might argue these rules cover all interpretive methods, although they are selective and inherently ambiguous.

存在一种潜在的风险，即各国可能会争辩说，这些规则涵盖了所有解释方法，尽管它们是有选择性的，本质上是模糊的。

2. 条款的效力

- Despite their potential shortcomings, these articles provide a more unified interpretative framework than having three separate schools of thought.
尽管存在潜在的缺陷，但这些条款提供了一个比三个独立的思想流派更统一的解释框架。
- They allow recourse to other relevant international legal rules and supplementary interpretive methodologies, providing valuable flexibility.
它们允许诉诸其他相关的国际法律的规则和补充解释方法，提供了宝贵的灵活性。
- While the absence of a clear hierarchy might create some uncertainty, it also offers the flexibility necessary to adapt to diverse interpretive challenges.
虽然缺乏明确的层次可能会造成一些不确定性，但它也提供了适应各种解释挑战所必需的灵活性。

In summary, Articles 31-33 of the Vienna Convention serve as a foundational guide for treaty interpretation, balancing uniformity and flexibility. This approach not only aids in resolving language discrepancies but also aligns treaty interpretation with broader legal principles and intentions.

总之，《维也纳公约》第三十一至三十三条是条约解释的基本指南，平衡了统一性和灵活性。这种做法不仅有助于解决语言上的差异，而且使条约的解释符合更广泛的法律的原则和意图。

国际法上的国家责任及其归属

State responsibility and attribution play pivotal roles in international law, outlining when a State is accountable for internationally wrongful acts.

国家责任和归属在国际法中发挥着关键作用，概述了国家何时应对国际不法行为负责。

General Principles : Under the International Law Commission's (ILC) Draft Articles on Responsibility of States for Internationally Wrongful Acts, every wrongful act by a State involves its international responsibility (Article 1). A State is liable for the conduct of all its organs and territorial units, irrespective of the official's rank, per Article 4. This includes any entity recognized as a state organ under internal law.

一般原则：根据国际法委员会关于国家对国际不法行为的责任的条款草案，一国的每一不法行为都涉及其国际责任（第1条）。第4条规定，国家对其所有机关和领土单位的行为负责，不论官员的级别如何。这包括根据国内法被承认为国家机关的任何实体。

Case Law Examples

- CMS v Argentina : Reinforces that a State's responsibility encompasses actions across all government branches.

CMS诉阿根廷案：强调国家的责任包括所有政府部门的行动。

- Vivendi v Argentina : Highlights that actions by federal subdivisions are attributable to the central government, underscoring that internal constitutional arrangements do not negate international obligations.
Vivendi诉阿根廷案：强调联邦各分支机构的行为应归咎于中央政府，强调内部宪法安排并不否定国际义务。

Excess of Authority 越权

According to Article 7, a State cannot escape liability by claiming that its organs acted beyond their authority or against instructions (ultra vires actions).

根据第7条，国家不能声称其机关超越权限或违反指示行事（越权行动）而逃避责任。

Complexity of Attribution

Attribution involves determining if a State's entities' actions can bind the State. General principles dictate separation but with exceptions:

归属涉及确定一国实体的行动是否对该国具有约束力。一般原则规定了分离，但有例外：

- Fraud and Evasion : Where entities are used to conceal improper conduct (Barcelona Traction).
欺诈和逃税：利用实体掩盖不当行为（巴塞罗那电车公司案）。
- Public Power : When entities exercise governmental authority (Philips Petroleum v Iran).
公共权力：实体行使政府权力（Philips Petroleum诉伊朗）。
- Ownership and Control : Applying tests to ascertain State control.
所有权和控制：通过测试确定国家控制。

投资仲裁司法实践

- Maffezini v Spain : Distinguishes between governmental and commercial functions, the latter typically not attributable to the State.
Maffezini诉西班牙：区分政府职能和商业职能，后者通常不属于国家。
- Salini v Morocco : Assessed the ownership, control, and functional roles of state-owned enterprises, linking State control with attribution of responsibilities under international law.
Salini诉摩洛哥案：评估了国有企业的所有权、控制权和职能作用，将国家控制与国际法规定的责任归属联系起来。

These principles and precedents underscore the robust mechanisms in international law to ensure States are held accountable for the actions of their various organs and entities, fortifying the system designed to uphold international obligations and rights.

这些原则和先例强调了国际法中确保各国对其各机关和实体的行动负责的强有力机制，加强了旨在维护国际义务和权利的制度。

05 笔记

Parties to the Arbitration Agreements 仲裁协议当事人

In international arbitration, identifying the entities bound by an arbitration agreement is crucial, as only those who have consented are generally considered parties to the agreement. However, various legal doctrines have expanded this scope to include "non-signatories" under certain conditions.

在国际仲裁中，确定受仲裁协议约束的实体至关重要，因为只有那些同意的实体通常被视为协议的当事方。然而，各种法律的学说扩大了这一范围，在某些条件下将“非签署国”包括在内。

1. Recurrent Issue : A central recurring issue in the enforcement of international arbitration agreements is determining the entities that are bound by, and those that can invoke, such agreements. Typically, only the entities that have formally consented are bound by these agreements. However, this does not always capture the full scope of parties involved.
经常性问题：在执行国际仲裁协议的一个中心经常性问题是确定受约束的实体，以及那些可以援引，这样的协议。通常，只有正式同意的实体才受这些协议的约束。然而，这并不总是涵盖所涉各方的全部范围。

2. Binding Nature : International arbitration agreements, being consensual documents, are binding solely on the entities that have agreed to them. Yet, several legal doctrines can extend this binding nature to non-signatory entities:

约束性：国际仲裁协议是双方同意的文件，仅对同意协议的实体具有约束力。然而，若干法律的学说可以将这种约束性质扩大到非签字实体：

- Agency : When an agent signs on behalf of a principal.
代理：代理人代表委托人签字。
- Alter Ego Status (Veil Piercing) : Entities treated as the same due to intertwined corporate existence.
改变自我状态（面纱刺穿）：由于相互交织的公司存在，实体被视为相同。
- Group of Companies : Companies within a closely-knit group may be deemed parties.
公司集团：组织紧密的集团内的公司可被视为当事方。
- Estoppel : Prevents a party from denying the arbitration clause after acting on the contract.
禁止反言：防止一方当事人在履行合同后否认仲裁条款。
禁止反言：防止一方当事人在履行合同后否认仲裁条款。
- Guarantor Relations : Guarantors of the contract might be bound by its arbitration clause.
担保人关系：合同的担保人可能受合同仲裁条款的约束。

- Third Party Beneficiary Rights : Beneficiaries of the contract have rights under the arbitration agreement.
第三人受益权：合同受益人享有仲裁协议规定的权利。
- Succession : Successors in interest inherit the arbitration clause.
继承：利益继承人继承仲裁条款。
- Assignment : Assigned rights include the arbitration obligations.
转让：仲裁权利包括仲裁义务。
- Assumption : Taking on contract obligations means accepting the arbitration clause.
假设：承担合同义务意味着接受仲裁条款。
- Miscellaneous Doctrinal Bases : Other relevant doctrines may apply in specific circumstances.
其他理论基础：其他相关理论可能适用于具体情况。

Basics of International Arbitration 国际仲裁基础知识

International commercial arbitration fundamentally relies on the parties' consensual agreement. This foundational principle ensures that only the parties who have agreed to resolve their disputes through arbitration are bound by the arbitration agreement.

国际商事仲裁从根本上依赖于当事人的合意。这一基本原则确保只有同意通过仲裁解决争议的当事人才受仲裁协议的约束。

1. Consensual Nature : The foundation of international arbitration is the mutual consent of the involved parties.
国际仲裁的基础是当事人的相互同意。
2. Effect Extends Only to Parties : The arbitration agreement's effects are limited to those who have formally agreed to it, not extending to others unless covered by specific legal doctrines.
效力仅限于当事人：仲裁协议的效力仅限于那些正式同意的人，除非有特定的法律的原则，否则不延伸至其他人。
3. Presumptive Parties : In most cases, the parties to an arbitration agreement are its formal signatories, ensuring a clear and mutual understanding of the arbitration commitment.
推定当事人：在大多数情况下，仲裁协议的当事人是其正式签署人，以确保对仲裁承诺有明确的相互理解。

Understanding these principles and doctrines is essential for navigating and effectively managing international arbitration agreements, ensuring parties are aware of their rights and obligations within this dispute resolution framework.

理解这些原则和学说对于指导和有效管理国际仲裁协议至关重要，确保当事人了解他们在争议解决框架内的权利和义务。

仲裁协议中合同的相对性

The concept of privity of contract is crucial in arbitration agreements, asserting that only those who have entered into the arbitration agreement are bound by its terms and can participate in arbitration proceedings. This principle is recognized in various international legal instruments, national legislation, domestic case law, arbitration case law, and institutional rules, as detailed below:

合同的相对性概念在仲裁协议中至关重要，该概念主张，只有已订立仲裁协议的人才受其条款的约束，并可参与仲裁程序。这一原则在各种国际法律的文书、国家立法、国内判例法、仲裁判例法和机构规则中得到承认，详情如下：

International Legal Instruments :

Article II(1) of the New York Convention highlights the subjective limits on the binding nature of arbitration agreements, implicitly recognizing privity of contract. It mandates Contracting States to recognize written agreements where parties undertake to submit their disputes to arbitration, thus confining arbitration's scope to those explicitly agreeing in writing.

国际法律的文书：

《纽约公约》第二条第（1）款强调了对仲裁协议约束性质的主观限制，默示承认合同的相对性。它要求缔约国承认当事人承诺将其争端提交仲裁的书面协议，从而将仲裁的范围限制在那些以书面形式明确同意的协议。

National Legislation :

The UNCITRAL Model Law's Article 7(1) defines an arbitration agreement as one where parties agree to submit all or certain disputes to arbitration. Similarly, China's Arbitration Law (Article 4) emphasizes that the will of the parties is paramount, requiring an agreement to arbitrate to be reached voluntarily. In contrast, the English Arbitration Act of 1996 (§ 6) omits the term "parties," indicating a different legislative approach but still fundamentally hinging on the consensual participation in arbitration.

国家立法：

《贸易法委员会示范法》第7（1）条将仲裁协议定义为当事人同意将全部或某些争议提交仲裁的协议。同样，中国《仲裁法》（第4条）强调当事人的意愿至上，要求仲裁协议应当自愿达成。相比之下，1996年《英国仲裁法》（第6节）省略了“当事人”一词，表明了一种不同的立法方法，但基本上仍然取决于双方同意参与仲裁。

Domestic Case Law :

The judicial stance, as seen in the Paris Cour d'appel's judgment in OIAETI v. SOFIDIF (1986), reinforces that the consensual nature of arbitration does not extend to third parties. It restricts

the effects of a contract to the contracting parties, barring any involuntary intervention or guarantee procedures.

国内判例法：

从巴黎上诉法院对OIAETI诉SOFIDIF（1986年）一案的判决中可以看出，司法立场强调仲裁的合意性质不适用于第三方。它将合同的效力限于缔约方，禁止任何非自愿的干预或担保程序。

Arbitration Case Law :

Arbitration-specific case law, such as the Ad Hoc Award in Banque Arabe et Int’l d’ Inv. v. Inter-Arab Inv. Guar. Corp. (1994), upholds that only those parties who have expressly agreed in writing to arbitrate can participate in proceedings. This principle underscores the voluntary nature of arbitration, as recognized internationally by the New York Convention.

仲裁判例法：

具体仲裁判例法，如阿拉伯银行和国际投资银行案中的特设裁决。五.阿拉伯国家间投资公司瓜尔Corp. (1994年) 坚持认为，只有那些以书面形式明确同意仲裁的当事人才能参加仲裁程序。这一原则强调了《纽约公约》在国际上承认的仲裁的自愿性质。

Institutional Rules :

Under institutional frameworks, Article 1(1) of the 2010 UNCITRAL Rules stipulates that these rules apply to disputes arising from a defined legal relationship, regardless of whether it is contractual, provided the parties have agreed to arbitration. This reinforces privity by ensuring only those in agreement are bound and can engage in arbitration.

机构规则：

在体制框架下，2010年《贸易法委员会规则》第1条第（1）款规定，本规则适用于由确定的法律的关系产生的争议，而不论这种关系是否是合同关系，但当事人必须同意仲裁。这通过确保只有那些达成协议的人受到约束并可以参与仲裁来加强当事人之间的关系。

In summary, privity of contract in arbitration is a widely acknowledged principle across various legal and institutional frameworks, ensuring that arbitration remains a consensual and structured process confined to the parties expressly agreeing to it.

总之，仲裁中的合同相对性是各种法律的和体制框架中广泛承认的一项原则，确保仲裁仍然是一个仅限于明确同意仲裁的当事人的合意和结构化的程序。

仲裁协议的签署人和非签署人

In most arbitration agreements, the parties involved are typically only those who have formally executed the underlying contract containing the arbitration clause. To establish who the parties to the arbitration agreement are, it is often sufficient to examine the contract’s signature page or the recitals to see the designated entities. Other entities, known as "non-signatories," are

generally not considered parties to the arbitration agreement and thus cannot enforce or be bound by its terms.

在大多数仲裁协议中，所涉当事方通常只是正式执行了载有仲裁条款的基础合同的当事方。要确定谁是仲裁协议的当事人，通常只需查看合同的签字页或陈述部分，以确定指定的实体。被称为“非签署方”的其他实体一般不被视为仲裁协议的当事方，因此不能执行其条款或受其约束。

Signatories Issues | Agency 签署国问题|机构

The party executing a contract does not automatically become a party to that contract or its associated arbitration clause. Under many legal systems, an agent or representative may sign an agreement on behalf of a principal, rendering the principal a party to the agreement while the agent or representative, in their individual capacity, is not. This rule frequently applies when officers or agents sign agreements on behalf of corporate entities, resulting in the corporation being a party to the agreement, but not the individual officer or agent.

执行合同的当事人并不自动成为该合同或其相关仲裁条款的当事人。在许多法律的制度下，代理人或代表可代表委托人签署协议，使委托人成为协议的当事人，而代理人或代表以其个人身份不是。这一规则经常适用于高级职员或代理人代表公司实体签署协议的情况，导致公司成为协议的一方，而不是个别高级职员或代理人。

Signatory status often serves as a basis for concluding that an entity is a party to a contract. However, this conclusion ultimately depends on the applicable contract law, which usually provides that signatories are parties to the agreements they execute, although there can be exceptions.

签署人地位往往是认定一实体为合同当事人的依据。然而，这一结论最终取决于适用的合同法，合同法通常规定，签字人是其执行的协议的当事人，尽管可能有例外。

Signatories Issues | Non-Signatories 签署国问题|非签署

Interestingly, entities that have not formally executed an arbitration agreement, or the underlying contract containing the arbitration clause, may still be bound by the arbitration agreement. This binding can occur despite their non-signatory status under circumstances supported by contract, agency, and corporate law principles. Thus, non-signatories may find themselves both bound and benefitted by the terms of an arbitration agreement.

有意思的是，尚未正式执行仲裁协议或载有仲裁条款的基本合同的实体可能仍受仲裁协议的约束。这种约束力可以发生，尽管他们的非签字人地位的情况下，支持合同，代理，和公司法原则。因此，非签署方可能会发现自己既受仲裁协议条款的约束又从中受益。

Case Law Reference: Thomson-CSF, SA v. Am. Arbitration Ass' n
判例法参考：Casson-CSF, SA v. Am.仲裁协会

The case of Thomson-CSF, SA v. Am. Arbitration Ass' n (64 F.3d 773, 776 (2d Cir. 1995)) underlines that arbitration, although consensual by nature, does not restrict the obligation to arbitrate solely to those who have personally signed the agreement. The court clarified that a non-signatory party might be bound by an arbitration agreement if ordinary principles of contract and agency dictate so. Determining when a non-signatory is bound or benefitted by an international arbitration agreement typically requires the application of generally applicable contract, agency, and corporate law principles, ensuring fair and equitable enforcement.

1999年，在美国，Anv.仲裁协会 (64 F.3d 773, 776 (2d Cir. 1995年) 强调，仲裁虽然具有合意性质，但并不将仲裁义务仅限于亲自签署协议的人。法院澄清说，如果合同和代理的一般原则要求这样做，非签字方当事人可能受仲裁协议的约束。确定非签署方何时受国际仲裁协议的约束或受益通常需要适用普遍适用的合同，代理和公司法原则，确保公平和公正的执行。

This nuanced approach to arbitration agreements emphasizes the importance of understanding the roles and responsibilities ascribed to both signatories and non-signatories, ensuring that the arbitration process remains effective and just.

对仲裁协议采取这种细致入微的做法，强调了理解赋予签署方和非签署方的作用和责任的重要性，以确保仲裁程序保持有效和公正。

理解国际仲裁协议中的非签字问题

In the realm of international arbitration, resolving disputes about non-signatory parties presents a complex challenge, primarily due to the absence of clear legislative provisions.

在国际仲裁领域，解决涉及非签署方的争议是一项复杂的挑战，主要是由于缺乏明确的立法规定。

Absence of Legislative Provisions Regarding Non-Signatory Issues :

International arbitration conventions like the New York Convention and national arbitration legislation such as the UNCITRAL Model Law provide no explicit guidelines for identifying parties to an arbitration agreement. They merely state that such agreements are binding. Few national statutes, such as Peruvian Arbitration Law (Art. 14), exceptionally clarify that active participation in a contract's negotiation or performance might bind non-signatories.

缺乏关于非签署问题的立法规定：

《纽约公约》等国际仲裁公约和《贸易法委员会示范法》等国家仲裁立法没有为确定仲裁协议当事人提供明确的准则。他们只是说这些协议具有约束力。很少有国家法规，如《秘鲁仲裁法》（第14条），例外地澄清，积极参与合同的谈判或履行可能对非签字人具有约束力。

Generally-Applicable Rules of Contract Law :

Courts and tribunals often resort to a variety of legal theories based on contract and commercial laws to bind non-signatories to arbitration agreements. Key principles include agency (both actual and apparent), implied consent, estoppel, and the notion of alter ego, among others.

These legal theories enable entities who have not signed an arbitration agreement to be still subjected to, or invoke, the arbitration clause.

合同法的一般适用规则：

法院和法庭经常诉诸以合同法和商法为基础的各种法律的理论，以约束非仲裁协议签署方。主要原则包括代理（包括实际的和表面的）、默示同意、禁止反言和另一个自我的概念等。这些法律的理论使未签署仲裁协议的实体仍受仲裁条款约束或援引仲裁条款。

Application of Legal Bases for Subjecting Non-Signatories to Arbitration Agreement :

Identifying whether a non-signatory is bound by an arbitration agreement generally requires detailed, case-specific analysis. Factors considered include the nature of the commercial relationship, corporate linkage, the parties' intentions (express or implied), and the extent of involvement in the contract. A notable viewpoint, highlighted in interim awards such as ICC Case No. 9517, stresses that examining the scope of obligations and rights concerning non-signatories is central to resolving these disputes.

使非签署人服从仲裁协议的法律的依据的适用：

确定非签署方是否受仲裁协议约束，一般需要进行详细的、针对具体案件的分析。考虑的因素包括商业关系的性质、公司联系、当事人的意图（明示或暗示）以及参与合同的程度。国际商会第9517号案件等临时裁决中强调的一个值得注意的观点强调，审查非签署方的义务和权利的范围是解决这些争端的核心。

Different Characterizations of Non-Signatory Status :

The legal community holds varying perspectives on non-signatory issues. Some characterize it as concerning the scope of an arbitration agreement, examining who the agreement encompasses. Others see it as a question of contract formation—whether an agreement has been formed between the non-signatory and existing parties. The more accepted view is that such concerns are matters of scope rather than contract formation.

非签署国地位的不同特征：

法律界对非签署方问题持有不同的观点。有些人将其定性为涉及仲裁协议的范围，审查协议包括哪些人。另一些人则将其视为合同订立的问题非签约方与现有当事方之间是否已达成协议。较被接受的观点是，这种关切是范围问题，而不是合同订立问题。

Non-Signatories | Scope of Arbitration Agreement :

In most instances, non-signatories are closely linked to one of the signing parties through agency, guarantor status, or similar relationships. The primary question revolves around interpreting these commercial relationships to determine the application scope of the arbitration agreement.

非签署|仲裁协议的范围：

在大多数情况下，非签署方通过代理、担保人身份或类似关系与签署方之一密切相关。首要的问题是如何解释这些商业关系，以确定仲裁协议的适用范围。

Legal Bases for Binding Non-Signatories to International Arbitration Agreements :

Legal frameworks to bind non-signatories fall under:

对国际仲裁协议非签署方具有约束力的法律的依据：

约束非签署方的法律的框架包括：

- Purely Consensual Theories :

物理理论：

- Agency 机构
- Apparent or ostensible authority
明显的或表面上的权威
- Implied consent 默示同意
- Assumption 假设
- Assignment 分配

- Non-Consensual Theories :

非理性理论：

- Estoppel 不容反悔
- Alter ego 另一个自我

Understanding these nuances and adopting a structured approach to assessing the role of non-signatories in arbitration agreements ensures a more effective and thorough resolution of disputes in the international commercial arena.

理解这些细微差别并采取有条理的方法来评估非签署方在仲裁协议中的作用，可确保更有效和彻底地解决国际商业竞技场中的争议。

国际仲裁中的代理关系

The agency relationship is a well-established legal concept that plays a crucial role in binding non-signatories to arbitration agreements. This principle allows a party, referred to as a principal, to be legally bound by the actions of their agent, who executes contracts on their behalf, including those containing arbitration clauses.

代理关系是一个确立已久的法律的概念，在约束仲裁协议的非签署方方面发挥着至关重要的作用。这一原则允许被称为委托人的当事人受其代理人行为的法律约束，代理人代表当事人执行合同，包括载有仲裁条款的合同。

1. Agency Relationship 代理关系：

- The simplest scenario in which a non-signatory is bound by an arbitration agreement is when an agent signs the contract for a principal. This scenario is widely accepted across developed legal systems. Agents are legally empowered to execute contracts, making them binding on their principals. However, such agreements do not necessarily bind the agent.

非签字人受仲裁协议约束的最简单情形是代理人代表委托人签署合同。这种设想在发达的法律的制度中得到广泛接受。代理人在法律上有权执行合同，使合同对委托人具有约束力。但是，这种协议不一定对代理人具有约束力。

2. Proof of Agency 代理证明：

- To substantiate an agency relationship, principles of agency law in various legal systems require evidence that the agent had express or implied authority to enter into contractual relationships for the principal. For instance:

为了证实代理关系，各种法律的制度中的代理法原则要求提供证据，证明代理人有明示或默示的权力为委托人订立合同关系。例如：

- Swiss Federal Tribunal Judgment (19 July 1988) : Establishes that an arbitration clause can bind a party that did not sign it if an authorized entity or third party signed on its behalf.

瑞士联邦法庭的判决（1988年7月19日）：裁定仲裁条款可对未签署该条款的一方当事人具有约束力，但须经授权的实体或第三方代表其签署。

3. Specificity of the Agency Relationship 代理关系的特殊性：

- It is essential that the agency relationship specifically pertains to the contract and arbitration agreement in question. This focus on specificity aligns with the separability principle, distinguishing the arbitration agreement from the underlying contract.

代理关系必须与所涉合同和仲裁协议具体相关。这种对具体性的侧重符合可分离性原则，将仲裁协议与基础合同区分开来。

4. National Laws and Agency 国家法律和机构：

- Generally, an agency relationship will cover both the underlying contract and the arbitration agreement. Nonetheless, the agency relationship may exclude the conclusion of an arbitration agreement or impose special requirements by national law. These provisions can conflict with the New York Convention.

一般来说，代理关系将涵盖基础合同和仲裁协议。尽管如此，代理关系可以排除缔结仲裁协议，或由国内法规定特殊要求。这些规定可能与《纽约公约》相冲突。

- Agency issues often present choice-of-law questions. Most authorities apply national law to determine agency status.

代理问题常常引起法律选择问题。大多数机关适用国内法来确定机构地位。

5. Gary Born’s View on Law Governing Agency 加里·玻恩的代理法律观

- Gary Born suggests that the law applicable to an agency relationship should determine if a principal is bound by an arbitration agreement. Alternatively, the applicable law could be:
加里波恩建议，适用于代理关系的法律应确定委托人是否受仲裁协议的约束。或者，适用法律可以是：
 - The law of the agent's headquarters or place of action.
代理人总部或行动地的法律。
 - The law governing the arbitration agreement, insofar as it concerns other parties to the agreement.
管辖仲裁协议的法律，只要它涉及协议的其他当事人。

6. Validation Principle (Gary Born) 确认原则（加里波恩）：

- Applying a validation principle, if either the law governing the arbitration agreement or the law governing the agency relationship would bind the principal or agent to the agreement, the non-signatory should be bound. This approach reflects the likely intentions of the parties and promotes efficiency and fairness by centralizing disputes in a single forum.
适用有效性原则，如果管辖仲裁协议的法律或管辖代理关系的法律对委托人或代理人有约束力，则非签字人应受约束。这种办法反映了当事方的可能意图，并通过将争端集中在一个单一的论坛来促进效率和公平。

Understanding the nuances of agency relationships in international arbitration helps in resolving disputes where non-signatories are involved by determining binding obligations based on the actions and authority of designated agents.

了解国际仲裁中代理关系的细微差别，有助于通过根据指定代理人的行为和权力确定具有约束力的义务，解决涉及非签署方的争议。

仲裁协议中的表观或表面权威

In the context of arbitration agreements, apparent or ostensible authority is closely related to the concept of agency. This legal doctrine can bind an entity to an agreement, even if a formal consent was not provided, under specific circumstances.

就仲裁协议而言，表面上的或表面上的权力与代理概念密切相关。这一法律的原则可以使一个实体受协议约束，即使在特定情况下没有提供正式同意。

1. Principle of Apparent Authority 表观权威原则：

- Also known as the “principle of appearance” or “mandat apparent,” apparent authority allows a party to be bound by actions taken on its behalf by another entity. This can occur even if the actions were unauthorized, provided the entity (the principal) created the appearance of authorization.

也称为“外观原则”或“表面授权”，表面授权允许一方受另一实体代表其采取的行动的约束。即使操作未经授权，只要实体（主体）创建了授权的外观，也会发生这种情况。

- For this principle to apply, the counter-party must reasonably believe that the authorization existed, based on the principal's words or conduct.

为了适用这一原则，对手方必须根据委托人的言论或行为合理地相信授权存在。

2. Application in Contracts and Arbitration Agreements 在合同和仲裁协议中的适用：

- The theory of apparent authority is significant in determining whether an arbitration agreement binds the principal by the acts of the apparent agent.

表见代理理论对于仲裁协议是否以表见代理人的行为约束被代理人具有重要意义。

- It rests on both principles of contract law and good faith while also incorporating notions of estoppel and abuse of right, which operate separate from direct consent principles.

它既以合同法原则和诚信原则为基础，同时也纳入了禁止反言和滥用权利的概念，这些概念与直接同意原则分开运作。

3. Apparent Authority and Choice of Law 表观权力和法律选择：

- The doctrine of apparent authority, as illustrated in Kett v. Shannon , focuses on representations by the principal which the third party perceives as binding the principal to the arrangements made by the agent.

如Kett v. Shannon一案所述，表见授权理论侧重于委托人的陈述，第三方认为这种陈述使委托人受代理人所作安排的约束。

- This principle raises important choice-of-law issues, which can include:

这一原则提出了重要的法律选择问题，其中包括：

- The law governing the arbitration agreement.
管辖仲裁协议的法律。
- The law of the state where the presumed principal's or agent's conduct took place.
推定的委托人或代理人的行为发生地的州的法律。
- The law of the state where the counter-party perceives the principal' s representations.
对方当事人感知委托人陈述的所在州的法律。

Thus, apparent or ostensible authority plays a critical role in international arbitration by determining when a party can be held accountable for the actions of another, based on perceived authority rather than explicit consent. This requires careful consideration of various applicable laws to ensure that the principle is appropriately applied.

因此，表面上的或表面上的权威在国际仲裁中发挥着关键作用，它决定了一方何时可以根据感知的权威而不是明确的同意对另一方的行为负责。这就需要认真考虑各种适用的法律，以确保该原则得到适当适用。

仲裁协议中的默示同意

Implied consent is a significant aspect when determining whether a non-signatory is bound by an arbitration agreement. Under most developed legal systems, entities can become parties to contracts, including arbitration agreements, not only through explicit agreements but also through implied consent, typically derived from their conduct or non-explicit declarations.

默示同意是确定非签字人是否受仲裁协议约束的一个重要方面。在大多数发达的法律的制度下，实体不仅可以通过明示协议，而且可以通过默示同意，通常是通过其行为或不明确的声明，成为包括仲裁协议在内的合同的当事方。

1. Legal Framework and Ordinary Contract Principles 法律的框架和普通合同原则：

- In general, the principles of ordinary contract law apply to issues of implied consent concerning arbitration agreements. Courts and tribunals analyze the conduct of the parties to discern if there is implied consent.

一般而言，普通合同法的原则适用于有关仲裁协议的默示同意问题。法院和法庭分析当事人的行为，以辨别是否存在默示同意。

2. Express vs. Implied Consent 明示与默示同意：

- While some jurisdictions have required express consent to arbitration agreements, these decisions are often outdated and contradict Article II of the New York Convention. The fundamental question is whether the parties objectively intended for a particular entity to be bound by the arbitration agreement.

虽然有些法域要求对仲裁协议表示同意，但这些裁决往往已经过时，并与《纽约公约》第二条相抵触。根本问题是当事人是否客观上有意使某一实体受仲裁协议的约束。

3. Key Factors and Factual Settings 关键因素和事实背景：

- Implied consent often arises in various factual settings. Some arbitral tribunals have held that active participation in negotiations or performance of contract obligations can bind a party to an arbitration agreement, even if unsigned.

Example:

默示同意经常出现在各种实际情况中。有些仲裁庭认为，积极参与谈判或履行合同义务可使一方当事人受仲裁协议的约束，即使该仲裁协议尚未签署。

范例：

- Final Award in ICC Case No. 6519 :

国际刑事法院第6519号案件的最终裁决：

- The arbitration clause can be extended to non-signatory entities if they played an active role in negotiations or were directly implicated in the agreement. Incidental involvement, however, does not amount to consent.
如果非签署方实体在谈判中发挥了积极作用或直接涉及协议，则仲裁条款可延伸适用于非签署方实体。然而，偶然参与并不等于同意。

4. Related Agreements and Conduct After Dispute Arises 争议发生后的相关协议和行为：

- Implied consent can also be inferred from a party's actions related to the contract or a related agreement. Courts and tribunals might find implied consent if a party's conduct after a dispute arises, such as invoking the arbitration clause or not objecting when it is invoked, demonstrates agreement.
默示同意也可以从一方当事人与合同或相关协议有关的行为中推断出来。如果一方当事人在争议发生后的行为，例如援引仲裁条款或在援引仲裁条款时不提出反对，表明同意，法院和仲裁庭可能会认定默示同意。
- Courts might refer to the notion of incorporation by reference, whereby conduct connects a non-signatory to the arbitration agreement based on related contract terms.
法院可以提及以提及方式纳入的概念，即行为将非签署人与基于相关合同条款的仲裁协议联系起来。

5. Importance of the Separability Presumption 分离性假设的重要性：

- It is crucial to consider implied consent in the context of the separability presumption. The focus is on whether there is implied consent to arbitrate disputes, regardless of consent to other contract obligations like delivering or purchasing goods.
至关重要的是，在分离推定的背景下考虑默示同意。重点是是否存在对仲裁争议的默示同意，而不管是否同意交付或购买货物等其他合同义务。

Understanding implied consent is essential for recognizing how non-signatories might be bound by arbitration agreements, ensuring fair and equitable dispute resolution in complex commercial contexts.

理解默示同意对于认识非签署方如何可能受仲裁协议约束、确保在复杂的商业环境中公正和公平地解决争议至关重要。

国际仲裁中的自我变更与面纱穿透

The doctrines of alter ego and veil-piercing play a critical role in international arbitration, especially when determining the binding nature of arbitration agreements on non-signatories. These doctrines allow for exceptions to the principle that each company is a separate legal entity, addressing situations where equity and justice demand otherwise.

改变自我和揭开面纱的理论在国际仲裁中发挥着关键作用，特别是在确定仲裁协议对非签署方的约束力时。这些理论允许每个公司都是一个单独的法律的实体的原则有例外，处理公平和正义要求有例外

的情况。

1. Binding Non-Signatories :

Under the alter ego doctrine, if a non-signatory entity exercises substantial control over a signatory entity, it may be bound by the arbitration clause. This concept, upheld by authorities across multiple jurisdictions, signifies a departure from treating corporate entities within a group as separate legal entities.

具有约束力的非签署方：

根据自我变更原则，如果非签署方实体对签署方实体行使实质性控制，则该实体可能受仲裁条款约束。这一概念得到多个法域主管部门的支持，意味着不再将集团内的公司实体视为单独的法律的实体。

2. Case Law Reference :

The *Case Concerning the Barcelona Traction, Light & Power Co.* (1970) by the International Court of Justice (ICJ) illustrates the circumstances under which corporate veils are lifted. The ICJ affirmed that disregarding separate legal identities is justified to prevent misuse of the legal personality, protect third parties, and prevent evasion of legal obligations.

判例法参考：

国际法院 (ICJ) 审理的巴塞罗那电车公司、轻工电力公司案 (1970) 说明了揭开公司面纱的情况。国际法院申明，为了防止滥用法律的人格、保护第三方和防止逃避法律的义务，不考虑单独的法律的身份是合理的。

3. Theory and Application :

The fundamental theory of alter ego is that one entity's dominance and misuse of another's operations can lead to treating them as a single entity. In arbitration, proving an alter ego relationship requires substantial evidence of such dominance and misuse, often to perpetrate fraud or injustice or evade legal responsibilities. Unlike agency or implied consent theories, the alter ego doctrine is grounded in overriding considerations of equity and fairness, making it a more rigid and principle-driven approach.

理论与应用：

另一个自我的基本理论是，一个实体的支配地位和对另一个实体操作的滥用可能导致将它们视为一个单一实体。在仲裁中，证明另一个自我的关系需要有大量证据证明这种支配和滥用，往往是为了进行欺诈或不公正或逃避法律的责任。与代理理论或默示同意理论不同，“改变自我”理论基于对公平和公正的压倒一切的考虑，使其成为一种更加严格和原则驱动的方法。

4. Establishing Alter Ego Status :

Establishing alter ego status typically involves demonstrating direct or indirect share ownership or a corporate role within a company. However, in rare cases, other forms of control relationships may suffice to establish this status.

改变自我状态：

建立另一个自我地位通常涉及证明直接或间接的股份所有权或在公司内的公司角色。然而，在极少数情况下，其他形式的控制关系可能足以确立这一地位。

5. Choice of Law :

The law applied to determine corporate veil piercing varies; some authorities use the law of the company's state of incorporation, the law governing the arbitration agreement, or the underlying contract law. However, the prevalent approach favors applying international principles or general principles of law. The *First Nat' l City Bank* decision emphasized applying internationally recognized equitable principles to avoid injustice without relying on a rigid formula.

法律选择：

适用于确定公司面纱是否被揭开的法律各不相同；有些当局使用公司成立地所在国的法律、管辖仲裁协议的法律或基本合同法。然而，普遍的做法倾向于适用国际原则或一般法律原则。*第一国家城市银行*的决定强调，应适用国际公认的公平原则，避免不公正现象，而不依赖于僵化的公式。

In conclusion, alter ego and veil-piercing doctrines serve as crucial mechanisms to address and rectify inequities in international arbitration, ensuring that justice prevails even when dealing with complex, multi-entity corporate structures. These doctrines underscore the importance of equity, control, and misuse in determining the true extent of an arbitration agreement's binding force.

最后，改变自我和揭开面纱理论是解决和纠正国际仲裁中不公平现象的关键机制，确保即使在处理复杂的多实体公司结构时也能伸张正义。这些学说强调了公平、控制和滥用在确定仲裁协议约束力的真实范围方面的重要性。

国际仲裁中的公司集团原则

The Group of Companies Doctrine addresses the complexities of involving non-signatories in arbitration within the context of corporate groups. This principle has stirred debates and has seen varied adoption across different jurisdictions due to its expansive reach beyond those who have directly signed arbitration agreements.

公司集团原则解决了在公司集团背景下让非签署人参与仲裁的复杂性。这一原则引起了争论，并在不同的司法管辖区得到了不同的采用，因为它的范围超出了直接签署仲裁协议的人。

1. Doctrine Overview

- The doctrine allows non-signatories within a corporate group to be considered parties to an arbitration clause. The inclusion is based on factors roughly paralleling those used in alter ego analysis. Specifically, if a company either controls or is controlled by a corporate affiliate that has signed a contract containing an arbitration clause and is actively involved in related negotiations or performance, it may invoke or be subjected to that clause. This holds true even if the company did not sign the contract.

该原则允许将公司集团内的非签署人视为仲裁条款的当事人。这种包含是基于与改变自我分析中使用的因素大致相似的因素。具体而言，如果一个公司控制或被一个公司关联公司控制，而该公司关联公司签署了包含仲裁条款的合同，并积极参与相关谈判或履行，则该公司可以援引或受制于该条款。即使公司没有签署合同，这也是正确的。

2. Jurisdictional Acceptance

- The acceptance of the Group of Companies Doctrine is limited and geographically uneven. For instance, it is explicitly accepted in France but remains controversial overall due to the implications for party autonomy and the expansion of arbitration obligations to non-signatories.

对公司集团原则的接受程度有限，而且地域分布不均。例如，它在法国被明确接受，但由于对当事人意思自治的影响和将仲裁义务扩大到非签署方，总体上仍有争议。

3. Case Study - ICC Case No. 4131 (Dow Chemical Company) :

- In an interim award, the arbitral tribunal recognized the rights of Dow Chemical and its subsidiaries to invoke the arbitration clause, despite not all entities having signed the contract in question. The tribunal applied general principles of international arbitration law, noting:

在一项临时裁决中，仲裁庭承认陶氏化学及其子公司有权援引仲裁条款，尽管并非所有实体都签署了有关合同。仲裁庭适用了国际仲裁法的一般原则，指出：

- Dow Chemical France's central role in the contractual relationship and the necessity of the American parent company's approval exemplified the interconnectedness within the corporate group.

法国陶氏化学公司在合同关系中的核心作用以及美国母公司批准的必要性，体现了公司集团内部的相互联系。

- The tribunal emphasized the concept of a corporate group as a single economic entity, thus legitimizing the application of the arbitration clause to all involved subsidiaries.

仲裁庭强调了公司集团作为单一经济实体的概念，从而使仲裁条款适用于所有相关子公司合法化。

- Participation in the conclusion, performance, or termination of the contracts, as well as mutual intentions, were pivotal in determining the parties to the arbitration.

参与订立、履行或终止合同以及相互意图，是确定仲裁当事方的关键。

4. Application in India :

- India respects party autonomy in arbitration and adopts a cautious stance toward the Group of Companies Doctrine. The recent judgment in *Cox and Kings vs SAP India* reaffirmed a measured approach to the doctrine, acknowledging some exceptions but largely maintaining a conservative view.

印度在仲裁中尊重当事人意思自治，对公司集团原则采取谨慎立场。最近在考克斯和金斯诉SAP印度案中的判决重申了对该原则的谨慎态度，承认了一些例外，但在很大程度上保持了保守的观点。

The Group of Companies Doctrine provides a framework for extending arbitration clauses within corporate groups, reflecting the economic realities and interdependence of related entities. However, its application remains contentious, with significant variations in acceptance and implementation across different legal jurisdictions, posing both opportunities and challenges for international arbitration.

公司集团原则为在公司集团内扩展仲裁条款提供了一个框架，反映了相关实体的经济现实和相互依存关系。然而，其适用仍然存在争议，不同法律的管辖区在接受和执行方面存在很大差异，这为国际仲裁带来了机遇和挑战。

国际仲裁中的第三方受益人和担保人

Third Party Beneficiaries

In some legal systems, individuals or entities that are not direct parties to a contract may, under certain circumstances, claim benefits as third party beneficiaries. This extends to arbitration clauses, where a third party could either invoke or be bound by the clause included in the contract.

第三方受益人：

在有些法律的制度中，不是合同直接当事方的个人或实体在某些情况下可以作为第三方受益人主张利益。这也适用于仲裁条款，在这种情况下，第三方可以援引合同中的条款或受其约束。

1. Invocation of Arbitration Clauses 仲裁条款的援引：

- The general principle, supported by cases such as the ICC Case No. 9762, is that third parties bound by obligations under a contract are also bound by the arbitration clause, even if they did not sign the contract.

得到国际商会第9762号判例等判例支持的一般原则是，受合同义务约束的第三方即使没有签署合同，也受仲裁条款约束。

2. Intention of Parties 双方意向：

- The primary analysis involves the parties' intent, considering the separability presumption. 主要的分析涉及当事人的意图，考虑到分离性推定。

- For a third party to benefit from an arbitration agreement, it must be determined if the signatories intended to confer that benefit on them.
要使第三方从仲裁协议中受益，必须确定签字人是否打算赋予他们这种利益。
- Additionally, third parties asserting rights as beneficiaries may be bound by the arbitration agreement, focusing on the underlying contractual rights rather than the agreement itself.
此外，作为受益人主张权利的第三方可能受仲裁协议的约束，侧重于基本的合同权利而不是协议本身。

Guarantors

In international commercial transactions, it is common for one party to guarantee another party's obligations under a contract they are not directly party to. This raises the question of the extent to which the guarantor is bound by the arbitration clause in the underlying contract.

担保人：

在国际商业交易中，一方当事人为另一方当事人在其并非直接当事人的合同下的义务提供担保是很常见的。这就产生了担保人在多大程度上受基础合同中仲裁条款约束的问题。

1. General Rule 一般规则：

- Guarantors, not being parties to the guaranteed contract, are likewise not parties to its arbitration agreement. This is upheld in both common law and civil law systems.
担保人不是被担保合同的当事方，同样也不是其仲裁协议的当事方。这一点在普通法和大陆法体系中都得到了确认。

2. Circumstances Binding Guarantors 对担保人有约束力的情况：

- Assignment of Rights :
权利转让：
 - If the guarantor benefits from an assignment of the guaranteed party's rights, the exercise of these rights can subject the guarantor to the arbitration clause.
如果担保人受益于被担保方权利的转让，则这些权利的行使可使担保人受制于仲裁条款。
- Substitute Performance :
替代性能：
 - When a guarantor provides substitute performance under the guaranteed contract, they can be bound by the arbitration agreement included in that contract.
当担保人根据担保合同提供替代履行时，他们可以受该合同所载仲裁协议的约束。
- Incorporation of Terms :
合并条款：

- The guarantee may include terms from the underlying contract, like the arbitration agreement, binding the guarantor.

担保书可包括对担保人具有约束力的基本合同条款，如仲裁协议。

- Implied Party Status :

- 隐含的缔约方地位：

- Guarantors can become implied parties to the underlying contract, depending on their role and significance in the performance of the contract.

担保人可以成为基础合同的默示当事人，具体取决于其在合同履行中的作用和重要性。

- The more commercially significant their role, the more likely they are considered intended parties to the arbitration agreement.

其作用在商业上越重要，就越有可能被视为仲裁协议的预期当事人。

In conclusion, third party beneficiaries and guarantors can sometimes invoke or be bound by arbitration agreements, depending on the parties' intentions, performance obligations, and the specific terms and nature of their involvement in the underlying contract. This nuanced approach aims to balance contractual rights and obligations within the framework of international commercial arbitration.

总之，第三方受益人和担保人有时可以援引仲裁协议或受仲裁协议的约束，具体取决于当事人的意图、履行义务以及其参与基础合同的具体条款和性质。这种细致入微的方法旨在平衡国际商事仲裁框架内的合同权利和义务。

国际仲裁协议的继承

Legal Succession and Arbitration Agreements :

Legal succession is a process where an entity becomes bound by an arbitration agreement without originally signing it. This scenario commonly arises in corporate settings, particularly through mergers and acquisitions. The Swiss Federal Tribunal highlights that while arbitration clauses generally bind only those who agreed, exceptions occur in cases of legal succession.

法律的继承和仲裁协议：

法律的继承是一个过程中，一个实体成为仲裁协议的约束，而不是最初签署它。这种情况下通常出现在公司环境，特别是通过合并和收购。瑞士联邦仲裁庭强调，虽然仲裁条款一般只对同意者具有约束力，但在法律的继承情况下也有例外。

1. Legal Succession 法律的继承：

- Swiss Federal Tribunal's Principle : Arbitration agreements are principally binding only on those who have contractually agreed to arbitrate. However, legal succession serves as an exception, enabling entities to be bound by arbitration clauses without having signed them.瑞士联邦法庭的原则：仲裁协议主要只对那些在合同上同意仲裁的人具有约束力。然而，法律的继承是一种例外，使实体能够在没有签署仲裁条款的情况下受这些条款的约束。

2. Corporate Mergers and Combinations 公司合并和合并：

- National legal regimes and corporate laws often permit the merger or combination of previously separate legal entities into a single new or existing entity. Through this process, the surviving entity acquires all assets and liabilities, including existing contracts and arbitration agreements, of the merged entities.

国家法律的制度和公司法往往允许将以前分立的法律的实体合并或组合成一个新的或现有的实体。通过这一程序，存续实体获得合并实体的所有资产和负债，包括现有合同和仲裁协议。

3. National Laws and Arbitration 国家法律和仲裁：

- National laws, arbitral tribunals, and legal commentaries support that the surviving entity in a merger inherits the contractual rights and obligations by law, including those related to arbitration agreements. This legal framework ensures that the new or surviving entity steps into the shoes of the pre-existing parties, maintaining continuity of contractual commitments.

国家法律、仲裁法庭和法律的评注都支持合并中的存续实体依法继承合同权利和义务，包括与仲裁协议有关的权利和义务。这一法律的框架确保新的或幸存的实体接替先前存在的各方，保持合同承诺的连续性。

- Although generally supported, some authorities note the possibility that arbitration agreements might be drafted to specifically preclude their transfer through succession, mirroring prohibitions against assignment.

一些权威机构指出，虽然普遍支持，但在起草仲裁协议时可能会明确排除通过继承进行的转让，这反映了禁止转让的规定。

4. Recent Case Law and Perspective 最近的案例法和观点：

- Recent case law from the Swiss Federal Supreme Court (SFSC) presents a more liberal approach towards extending arbitration agreements to third parties. This extension, however, is not the general rule; it applies only under specific circumstances and factual contexts.

瑞士联邦最高法院（SFSC）最近的判例法对将仲裁协议扩大到第三方提出了一种更为宽松的做法。然而，这一延伸并不是一般规则；它只适用于具体情况和事实背景。

In summary, legal succession offers a pathway for entities to become parties to arbitration agreements through mergers or business combinations, upheld by various national legal systems and supported by international arbitration practices. The nuanced approach in recent

case law reflects an evolving understanding of extending arbitration agreements, balancing between legal consistency and specific contextual considerations.

总之，法律的继承为各实体通过合并或企业合并成为仲裁协议当事方提供了一条途径，得到了各国法律的制度的支持，并得到了国际仲裁惯例的支持。最近判例法中的细微差别做法反映了对仲裁协议展期的理解不断演变，在法律的一致性和具体的背景考虑之间取得平衡。

仲裁协议中的代位权 Subrogation in the Context of Arbitration Agreements

Subrogation is a legal principle where one party (often an insurer) steps into the shoes of another party (such as the insured) to enforce their contractual rights. This concept is pivotal in the realm of arbitration, especially concerning the rights and obligations tied to arbitration agreements.

代位求偿权是一项法律的原则，其中一方（通常是保险人）代替另一方（如被保险人）行使其合同权利。这一概念在仲裁领域至关重要，特别是在与仲裁协议有关的权利和义务方面。

1. National Legal Systems and Subrogation 国家法律的制度和代位权：

- Numerous national legal systems incorporate provisions for subrogation, enabling one party to assume the contractual rights of another.

许多国家的法律的制度都纳入了代位权的规定，使一方当事人能够取得另一方当事人的合同权利。

2. Common Instance with Insurers 保险公司的常见案例：

- Subrogation frequently occurs with insurers, who take over the rights of their insured clients after a claim is paid.

代位求偿权经常发生在保险公司，他们在索赔支付后接管被保险客户的权利。

- In these scenarios, insurers are entitled to invoke and are bound by the arbitration clauses found in the insured's underlying contracts.

在这些情况下，保险人有权援引被保险人基本合同中的仲裁条款，并受其约束。

3. Validation Principle 验证原则：

- The principle of validation should logically extend to the effects of subrogation on arbitration agreements, ensuring that the rights and obligations to arbitrate are upheld in the subrogation context.

有效性原则在逻辑上应当延伸到代位求偿权对仲裁协议的影响，确保在代位求偿权的情况下维护仲裁的权利和义务。

4. Direct Action Statutes 直行动法规：

- Some legal systems have direct action statutes that allow non-signatories, including subrogated parties, to make claims based on the original contract's provisions.
有些法律的制度有直接诉讼法规，允许非签字人，包括代位当事人，根据原始合同的规定提出索赔。
- These statutes enable non-signatories to engage in arbitration even though they were not original parties to the contract.
这些法规使非签字人即使不是合同的原始当事人也可以进行仲裁。

In summary, subrogation plays a critical role in arbitration. When subrogation occurs, typically involving insurers, the subrogated party gains the right to invoke arbitration provisions from the underlying contract. This principle, along with the application of direct action statutes in some jurisdictions, ensures that all parties—original and subrogated—are bound by the same arbitration agreements, maintaining the integrity and enforceability of arbitration clauses across various legal systems.

总之，代位权在仲裁中起着至关重要的作用。当代位求偿发生时，通常涉及保险公司，被代位方获得援引基础合同中仲裁条款的权利。这一原则，沿着在某些司法管辖区的直接诉讼法规的应用，确保所有当事人-原始和代位-都受到相同的仲裁协议的约束，维护不同法律的体系中仲裁条款的完整性和可重复性。

国际仲裁中的禁止反悔原则及相关理论

The doctrine of estoppel and related legal principles play a significant role in international arbitration, especially in common law jurisdictions. These doctrines ensure fairness and consistency in legal proceedings by preventing parties from acting inconsistently with their prior statements or actions.

禁止反言原则和相关的法律的原则在国际仲裁中发挥着重要作用，特别是在普通法司法管辖区。这些原则确保法律的诉讼程序的公正性和一致性，防止当事方的行为与其先前的声明或行动不一致。

1. Estoppel in Common Law Jurisdictions 普通法司法管辖区中的禁止反言：

- Estoppel is a well-established legal doctrine that can be invoked to preclude parties from denying their participation in arbitration or other agreements. This principle ensures that parties cannot contradict their previous statements or conduct, promoting good faith and equity in legal relationships.

禁止反悔是一项确立已久的法律的原则，可援引该原则来阻止当事人拒绝参加仲裁或其他协议。这一原则确保当事人不能违背其先前的声明或行为，促进法律的关系中的诚信和公平。

2. Equitable Estoppel 公平禁止反言：

- This doctrine is specifically designed to prevent fraud or injustice. It bars a party from alleging and proving facts that are contradictory to their prior statements or actions. By doing so, it ensures that parties remain consistent with their past positions, thereby protecting the integrity of the arbitration process.
这一原则是专门为防止欺诈或不公正而设计的。它禁止一方声称和证明与其先前的声明或行动相矛盾的事实。通过这样做，它确保当事方保持其过去的立场，从而保护仲裁程序的完整性。

3. Choice-of-Law Analysis 法律选择分析：

- The application of estoppel principles in international arbitration often lacks a clear choice-of-law framework due to the complexity of multi-jurisdictional disputes. For instance, determining which state's law applies can be challenging when dealing with parties and arbitration clauses spread across different jurisdictions.
国际仲裁中禁止反言原则的适用，由于多法域争议的复杂性，往往缺乏明确的法律选择框架。例如，在处理跨越不同法域的当事人和仲裁条款时，确定适用哪个州的法律可能具有挑战性。
- Example Scenario: 示例场景：
 - A party from State A asserts an arbitration clause for arbitration in State B, during litigation in State C, against a party from State D, under a contract governed by State E's law. The diversity of these factors complicates the choice-of-law analysis.
A国的一方当事人在C国诉讼期间，根据受E国法律管辖的合同，对D国的一方当事人主张在B国进行仲裁的仲裁条款。这些因素的多样性使法律选择分析复杂化。
- In such nonconsensual contexts, it is more practical to apply international principles of estoppel and good faith. Additionally, employing a validation principle helps avoid arbitrary and unpredictable legal outcomes. This approach ensures that the principles of estoppel are consistently upheld across various jurisdictions, maintaining fairness in the arbitration process.

在这种非协商一致的情况下，更实际的做法是适用禁止反悔和诚信的国际原则。此外，采用验证原则有助于避免任意和不可预测的法律的结果。这种做法确保了禁止反言原则在不同的司法管辖区得到一致的维护，维护了仲裁过程的公平性。

Estoppel and related doctrines thus serve as crucial mechanisms in international arbitration, ensuring that parties adhere to their prior commitments and promoting equitable resolutions in complex multi-jurisdictional disputes.

因此，禁止反悔原则和相关理论是国际仲裁的关键机制，确保当事方遵守其先前的承诺，并促进公平解决复杂的多管辖区争端。

仲裁协议关键方面的详细概述：批准，公司官员，股东权利，合资企业和法律选择

In the realm of arbitration, various principles dictate the binding nature of arbitration agreements on non-signatories. These include ratification, corporate officer and director involvement, shareholder derivative rights, joint venture relations, and the choice of law governing the agreement.

在仲裁领域，各种原则规定了仲裁协议对非签署方的约束性质。这些包括批准、公司官员和董事的参与、股东派生权利、合资企业关系以及管辖协议的法律选择。

Ratification :

Ratification allows a non-signatory to become a party to an agreement. This principle is applicable to both arbitration agreements and other commercial contracts. For example, an existing party may ratify the assignment of rights and duties to a third party. Novation, where a new contract replaces a previous one, and an original party is substituted, is another form of ratification. The choice-of-law rules for guarantee/guarantor relations also apply to ratification.

批准日期：

批准允许非签署方成为协定的缔约方。这一原则既适用于仲裁协议，也适用于其他商业合同。例如，现有当事人可以批准将权利和义务转让给第三方。另一种形式的追认，是以新合同取代原合同，并由原合同当事人代替。担保/保证人关系的法律选择规则也适用于批准。

Corporate Officers and Directors :

Courts in some jurisdictions apply unique rules to arbitration clauses involving corporate officers and directors. Typically, these individuals do not become parties to the contract in their personal capacities even if they execute it on behalf of their company. However, in litigation, officers and directors may be personally involved, invoking or having arbitration agreements invoked against them. The Singapore High Court case *A co and others v D and another* underscores that merely acting as a director is insufficient to rely on a company's arbitration agreement without additional supporting circumstances.

公司官员和董事：

有些法域的法院对涉及公司高级职员和董事的仲裁条款适用独特的规则。通常情况下，这些人不会以个人身份成为合同的当事人，即使他们代表公司执行合同。然而，在诉讼中，高级职员和董事可能亲自参与，援引或被援引仲裁协议。新加坡高等法院*A co and others v D and another*一案强调，在没有其他支持性情况的情况下，仅仅作为董事行事不足以依赖公司的仲裁协议。

Shareholder Derivative Rights :

Shareholders can act on a company's behalf under certain conditions, particularly when the company's interests are damaged, and management fails to act due to self-dealing. These shareholders may invoke arbitration clauses if substantive law permits. Hence, if corporate law allows, minority shareholders can enforce arbitration agreements that the company has signed.

股东衍生权利：

股东在某些情况下可以代表公司行事，特别是当公司利益受到损害，管理层由于自我交易而未能采取行动时。如果实体法允许，这些股东可以援引仲裁条款。因此，如果公司法允许，少数股东可以执行

公司签署的仲裁协议。

Joint Venture Relations :

The theory of joint venture liability can bind non-signatory partners to arbitration agreements. Although infrequent, authorities recognize that one joint venture partner's agreement to arbitrate can extend to others. Additionally, principles of "civil conspiracy" can justify arbitration obligations for non-signatories. In ICC Case No. 9058/FMS/KGA, Bridas extended arbitration to the State of Turkmenistan, emphasizing the importance of the entire negotiation history.

合资企业关系：

合资企业责任理论可以使非签约方受仲裁协议的约束。尽管这种情况并不常见，但主管当局承认，合资企业的一个合伙人同意仲裁的情况可以扩大到其他合伙人。此外，“民事共谋”原则可以证明非签署方的仲裁义务是合理的。在国际刑事法院第9058/FMS/KGA号案件中，Bridas将仲裁范围扩大到土库曼斯坦国，强调了整个谈判历史的重要性。

Choice of Law Governing Parties to Arbitration Agreement :

Choosing the law that governs whether a non-signatory is bound by an arbitration agreement depends on the specific theory invoked. International principles might apply to groups of companies, estoppel, and alter ego doctrines, while national laws typically govern agency, assignment, merger, and guarantee/ratification. The validation principle favors enforcing an arbitration agreement vis-à-vis a non-signatory if it is consistent with either the law of the underlying legal event or the arbitration agreement.

仲裁协议当事人的管辖法律选择：

选择管辖非签署方是否受仲裁协议约束的法律取决于所援引的具体理论。国际原则可能适用于公司集团、禁止反言和改变自我原则，而国内法通常管辖代理、转让、合并和担保/批准。如果仲裁协议符合基础法律的事件的法律或仲裁协议，则有效性原则有利于维斯非签字人执行仲裁协议。

Understanding these principles aids in navigating the complexities of arbitration agreements and ensuring that all parties are appropriately bound, facilitating smoother resolution of disputes in international commercial contexts.

理解这些原则有助于驾驭仲裁协议的复杂性，确保所有当事人都受到适当的约束，促进在国际商业环境中更顺利地解决争议。

仲裁一方当事人的权利、义务、责任和义务

Dealing with Diverse Clients and Needs :

Arbitration practitioners must be adept at handling clients from various backgrounds with distinct needs and expectations. This requires a nuanced understanding of cultural, legal, and personal differences, ensuring effective and respectful communication and representation.

满足不同的客户和需求：

仲裁从业人员必须善于处理来自不同背景的客户，有不同的需求和期望。这需要对文化、法律的和个人差异有细致入微的理解，确保有效和尊重的沟通和代表。

Professional Obligations for Counsel :

Arbitral tribunals rely heavily on the professional obligations of counsel. This reliance is evident in multiple aspects:

律师的职业义务：

仲裁庭在很大程度上依赖律师的专业义务。这种依赖在多个方面都很明显：

- Compliance with Disclosure Orders : Counsel must transparently disclose relevant information.
遵守披露令：律师必须透明地披露相关信息。
- Honest Communication with Witnesses : Ensuring truthful interactions and representations.
与证人的诚实沟通：确保真实的互动和陈述。
- Factual and Other Representations : Accurate presentation of facts and statements is crucial. The reliability and content of a counsel’s ethical obligations are foundational to the arbitral process. These principles are affirmed by the Hong Kong Solicitors Guide to Professional Conduct .
事实和其他陈述：准确陈述事实和陈述至关重要。律师道德义务的可靠性和内容是仲裁程序的基础。《香港律师专业操守指引》确认了这些原则。

Conduct Subject to Discipline :

Solicitors, as officers of the court, must adhere to high standards of conduct:

遵守纪律的行为：

律师作为法院的人员，必须遵守高标准的行为：

- Behavior Standards : Necessary both in legal practice and independent business activities.
行为规范：无论是在法律的实践中，还是在独立的商业活动中，都是必要的。
- Hong Kong Legal Practitioners Ordinance (Cap. 159) : Solicitors should honor the obligations outlined.
《香港法律的执业者条例》（第322章）159)：律师应荣誉所列明的责任。

Third-Party Funding in Hong Kong :

Parties involved in arbitration within Hong Kong must be mindful of the regulations governing third-party funding, ensuring compliance with the specific legal provisions and ethical guidelines in place.

香港的第三方融资：

在香港进行仲裁的各方必须注意监管第三方融资的法规，确保遵守特定的法律的规定和道德准则。

International Code of Conduct for Counsel :

The conduct of counsel in international arbitration is multifaceted:

律师国际行为守则：

律师在国际仲裁中的行为是多方面的：

- Local Bar Obligations : Counsel's behavior is governed by local bar regulations, which may differ based on jurisdiction.

当地律师的义务：律师的行为受当地律师条例的约束，这些条例可能因管辖权而有所不同。

- International Code of Conduct : The need for a coherent, international standard to manage ethical conduct in arbitral proceedings.

国际行为准则：需要一个协调一致的国际标准来管理仲裁程序中的道德行为。

- National Rules vs. International Code : Exploration of how national professional responsibility rules interact with a proposed international code tailored for arbitration.

国家规则与国际准则：探讨国家职业责任规则如何与为仲裁量身定制的拟议国际准则相互作用。

- Co-Counsel Dynamics : Challenges and considerations when multiple counsel from different jurisdictions collaborate on a single arbitration case, as illustrated in the case of Cambodian Power Company v Kingdom of Cambodia .

Co-Counsel Dynamics：来自不同司法管辖区的多名律师在单一仲裁案件中合作时的挑战和考虑因素，如柬埔寨电力公司诉柬埔寨王国案所示。

These points outline the key aspects of the rights, duties, responsibilities, and obligations of parties involved in arbitration, emphasizing ethical behavior, compliance with regulations, and effective representation of diverse clients.

这些要点概述了参与仲裁的当事人的权利，义务，责任和义务的关键方面，强调道德行为，遵守法规以及有效代表不同客户。

国际仲裁中的证人准备和律师行为

Witness Preparation :

In the United States, witness preparation, often referred to as "coaching," is common practice to ensure witnesses are well-prepared to testify. The neglect of thorough witness preparation may lead to malpractice suits against attorneys. This has given rise to a witness training industry, with companies like Bond Solon offering specialized training programs. Additionally, "in-house mini trials" are conducted to familiarize witnesses with a trial setting.

证人准备：

在美国，证人准备，通常被称为“辅导”，是确保人为作证做好充分准备的常见做法。忽视充分的证人准备可能会导致对律师的渎职诉讼。这催生了证人培训行业，像邦德·索隆这样的公司提供专门的培训课程。此外，还进行“内部小型审判”，以使证人熟悉审判环境。

In contrast, the UK and Hong Kong strictly prohibit the coaching of witnesses. Violations of this prohibition can result in severe disciplinary sanctions against legal practitioners. However, familiarizing witnesses with the procedural aspects of the arbitration process is encouraged, as it helps them understand what to expect without crossing the ethical line into coaching.

相比之下，英国和香港严格禁止辅导证人。违反这一禁令可能导致对法律的从业人员的严厉纪律制裁。然而，鼓励证人熟悉仲裁过程的程序方面，因为这有助于他们了解在不越过道德底线的情况下可以期待什么。

Evidence: Counsel's Limits :

The extent to which counsel can manage evidence varies by jurisdiction. In the UK and Hong Kong, there is a clear obligation for barristers not to mislead or deceive courts intentionally. Counsel is also required to bring pertinent case law to the court's attention, upholding the principles of fair play and justice as highlighted by Lord Hoffmann's reflections on the rule of law, particularly in the context of the Soviet case.

证据：律师的限制：

律师管理证据的程度因法域而异。在英国和香港，大律师有明确的责任，不得故意误导或欺骗法庭。律师还必须提请法院注意有关的判例法，坚持霍夫曼勋爵对法治的思考所强调的公平竞争和正义原则，特别是在苏联案件中。

In some other jurisdictions, however, it might be considered malpractice if counsel brings adverse case law or documents to the court's attention, which highlights a significant international disparity in ethical obligations.

然而，在其他一些法域，如果律师提请法院注意不利的判例法或文件，则可能被视为渎职，这突出表明在道德义务方面存在着重大的国际差异。

Fair Opportunity to Present a Case :

Under the New York Convention (Article V.1.(b)), a fundamental principle is that enforcement of an arbitral award may be refused if the party against whom it is invoked was unable to present its case. This ensures that the integrity of the arbitration process is maintained, providing each party with a fair chance to argue their case.

公平的机会来介绍一个案例：

根据《纽约公约》（第五条第1款。(b)）第106条第1款规定的一项基本原则是，如果仲裁裁决所针对的当事方不能陈述其理由，则可拒绝执行仲裁裁决。这确保了仲裁过程的完整性得到维护，为每一方提供了一个公平的机会来辩论他们的案件。

IBA Guidelines on Party Representation in International Arbitration :

The IBA Guidelines insist on integrity and honesty in party representation, discouraging unnecessary delays and obstructive behaviors. Key points include:

国际律师协会关于当事人在国际仲裁中代表的准则：

国际律师协会准则坚持政党代表的正直和诚实，阻止不必要的延误和阻碍行为。要点包括：

- Submissions to Arbitral Tribunal 向仲裁庭提交的材料：

- Prohibiting knowingly false submissions of fact.
禁止故意提交虚假事实。
- Ensuring witness and expert evidence is truthful.
确保证人和专家的证据是真实的。
- Avoiding suppression of requested documents.
避免压制所要求的文件。

- Witnesses and Experts 证人和专家：

- Prohibiting the encouragement of false evidence.
禁止鼓励提供虚假证据。

Counsel Misconduct Consequences :

If counsel engages in misconduct, the arbitral tribunal has several actions it can take:

律师不当行为的后果：

如果律师从事不当行为，仲裁庭有几个行动，它可以采取：

- Admonishing the party representative.
对党代表提出告诫。
- Drawing appropriate inferences about the evidence or legal arguments.
对证据或法律的论点作出适当的推论。
- Considering misconduct when apportioning arbitration costs.
在分摊仲裁费用时考虑不当行为。
- Taking other appropriate measures .
采取其他适当措施。

Guidelines Applicability :

The IBA Guidelines apply if the parties agree and are not intended to override mandatory laws, disciplinary rules, or agreed arbitration rules. This raises a debate about the possible need for a universal code of conduct in international arbitration to address these ethical variances.

指南适用性：

如果当事人同意，IBA指南适用，并且不打算推翻强制性法律，纪律规则或商定的仲裁规则。这引起了一场辩论，即是否有必要在国际仲裁中制定一项普遍的行为守则，以解决这些道德差异。

Understanding these nuances in witness preparation and counsel's ethical boundaries is critical for practitioners engaged in international arbitration, ensuring fair and just proceedings in a globally diverse legal environment.

了解证人准备和律师道德界限的这些细微差别对于从事国际仲裁的从业人员至关重要，确保在全球多样化的法律的环境中进行公平和公正的诉讼。

06 笔记

仲裁员及其他决策人物在仲裁中的角色

Who is an Arbitrator?

An arbitrator is a non-governmental decision-maker chosen by the parties or appointed on their behalf to resolve disputes using adjudicative procedures. These procedures ensure both parties have the opportunity to present their case. According to Gary Born in "Arbitration and Forum Selection Agreements: Drafting and Enforcing," an arbitrator plays a crucial role in maintaining impartiality and fairness in the arbitration process.

仲裁员是谁？仲裁员是由当事人选择或代表其任命的非政府决策者，用于通过裁决程序解决争议。这些程序确保双方都有机会陈述自己的案件。根据加里·鲍恩在《仲裁和法庭选择协议：起草和执行》一书中的观点，仲裁员在保持仲裁过程中的公正性和公平性方面发挥着至关重要的作用。

仲裁员类型

1. Sole Arbitrator :

A single arbitrator is appointed to handle the entire arbitration case. This is common in straightforward disputes where the required expertise is concentrated in one individual. 独任仲裁员：一名仲裁员被任命来处理整个仲裁案件。这在所需专业知识集中在一个人身上的简单争议中很常见。

2. Presiding Arbitrator :

The lead arbitrator in a tribunal of multiple arbitrators. The presiding arbitrator orchestrates the arbitration proceedings and often makes the final decisions in conjunction with co-arbitrators. 主席仲裁员：该仲裁庭的首席仲裁员。主席仲裁员负责协调仲裁程序，并经常与共同仲裁员一起做出最终决定。

3. Co-Arbitrator :

These are arbitrators who work alongside the presiding arbitrator in a panel, collectively contributing their expertise and judgment to resolve the dispute. 共同仲裁员：这些是与仲裁庭主席并肩工作的仲裁员，他们共同贡献自己的专业知识和判断力，以解决争端。

其他仲裁关键决策人物

1. Emergency Arbitrator :

Appointed under specific arbitration rules, such as the HKIAC Administered Arbitration Rules, to address urgent relief needs before a tribunal is constituted. The role of an emergency arbitrator is critical in ensuring immediate and temporary measures can be granted swiftly, as outlined in § 22A of the Ordinance. 紧急仲裁员：根据特定仲裁规则任命，例如香港国际仲裁中心管理仲裁规则，在仲裁庭成立之前解决紧急救济需求。紧急仲裁员的角色在确保能够迅速授予立即和临时措施方面至关重要，如《条例》第 22A 条所述。

2. Umpire :

Utilized in certain arbitration circumstances, an umpire acts as a decisive figure, especially when arbitrators are unable to reach a consensus. 裁判：在特定仲裁情况下使用，仲裁员充当决定性角色，尤其是在仲裁员无法达成共识时。

3. Appointing Authority :

If the parties cannot agree on an arbitrator, an appointing authority steps in to make the selection, ensuring the arbitration process moves forward. 任命当局：如果各方无法就仲裁员达成一致，指定机构将介入进行选择，以确保仲裁程序继续进行。

4. Ad Hoc Committee Member (ICSID) :

These members are part of a committee that reviews awards in cases handled by the International Centre for Settlement of Investment Disputes, providing oversight and ensuring the integrity of the arbitral process. 特别委员会成员 (ICSID)：这些成员是审查国际投资争端解决中心处理的案件奖项的委员会的一部分，提供监督并确保仲裁程序的完整性。

5. Independent Examiner of Documents :

This role involves reviewing and verifying documents submitted during arbitration to ensure accuracy and authenticity, which is vital for the integrity of the process. 独立文件审查员：此角色涉及审查和核实仲裁过程中提交的文件，以确保准确性和真实性，这对于过程的完整性至关重要。

其他仲裁机构

A notable example is a member of a standing arbitral body like the Iran-U.S. Claims Tribunal, which handles specific claims between countries. Members of such bodies bring specialized knowledge and consistency to the arbitration process.

一个显著的例子是伊朗-美国索赔法庭这样的常设仲裁机构成员，该机构处理国家间的具体索赔。此类机构的成员为仲裁过程带来了专业知识和一致性。

Emergency Arbitrator

Defined in the Ordinance and HKIAC rules, an emergency arbitrator is crucial for addressing urgent matters requiring immediate intervention before the main tribunal is established. This role excludes certain references, such as those to the 'arbitral tribunal' or 'award', in some arbitration rules, ensuring clarity in procedural aspects.

在条例和 HKIAC 规则中定义，紧急仲裁员对于在主要仲裁庭成立之前需要立即干预的紧急事项至关重要。此角色排除了某些引用，例如某些仲裁规则中对“仲裁庭”或“裁决”的引用，确保程序方面的清晰性。

In summary, the roles and responsibilities of arbitrators and other decision-making figures in arbitration emphasize the importance of impartiality, expertise, and procedural integrity. These elements collectively ensure that arbitration remains an effective and reliable method for dispute resolution.

总的来说，仲裁员和其他决策人物在仲裁中的角色和责任强调了公正性、专业性和程序完整性的重要性。这些要素共同确保仲裁始终是有效且可靠的争议解决方法。

仲裁员/裁判员简介

Arbitration is an alternative dispute resolution mechanism where appointed arbitrators or umpires resolve disputes outside of traditional court systems. Various rules and procedures guide the arbitration process, ensuring fairness, impartiality, and binding resolutions for involved parties.

仲裁是一种替代性争议解决机制，由指定的仲裁员或裁判员在传统法院系统之外解决争议。各种规则和程序指导仲裁过程，确保涉及各方的公平、公正和具有约束力的裁决。

2015 年 HKIAC 程序下的仲裁条款 Arbitration Clause under 2015 HKIAC Procedures

Arbitration conducted under the 2015 Hong Kong International Arbitration Centre (HKIAC) Procedures follows clearly defined steps for arbitrator appointment and decision-making:

2015 年香港国际仲裁中心（HKIAC）程序下的仲裁遵循明确的仲裁员任命和决策步骤：

1. Appointment Procedure : Each disputing party appoints one arbitrator. If the two arbitrators cannot agree on a decision, a third arbitrator is nominated by them. Should they fail to nominate within seven days, the Chairman of HKIAC steps in to appoint the third arbitrator. This ensures the arbitration process proceeds efficiently even in cases of disagreement.
会议程序：每个争议方指派一名仲裁员。如果两名仲裁员无法就决定达成一致，他们将提名第三名仲裁员。如果他们七天内未能提名，HKIAC 主席将介入指派第三名仲裁员。这确保了即使在有争议的情况下，仲裁程序也能高效进行。
2. Binding Decision : The panel's majority decision is final, conclusive, and binding on all parties, enforceable in any court with jurisdiction, providing resolution certainty.
决定：该小组的多数决定是最终、明确且具有约束力的，对所有当事人具有约束力，在任何有管辖权的法院均可执行，提供了解决的确定性。

《条例》下仲裁条款中的仲裁员角色

Arbitration under this Ordinance provides for either a singular or dual arbitrator approach, with the potential appointment of an umpire:

本条例下的仲裁规定了一种或两种仲裁员的方法，并可能任命一名仲裁员：

1. Single Arbitrator : Parties agree on a single arbitrator to resolve disputes.

单仲裁员：各方同意由一名仲裁员解决争议。

2. Two Arbitrators and Umpire : Each party appoints one arbitrator if they can't agree on a single arbitrator. The two arbitrators then appoint an umpire under provisions of the Arbitration Ordinance 1963. The decision by the arbitrator(s) or umpire is final and binding, ensuring dispute resolution and compliance with legal standards.

两位仲裁员和裁判：如果双方不能就单一仲裁员达成一致，则每方指派一位仲裁员。然后，两位仲裁员根据 1963 年仲裁条例的规定指派一位裁判。仲裁员或裁判的决定是最终且具有约束力的，确保争议解决和符合法律标准。

指定机构 (UNCITRAL Arbitration Rules)

The appointing authority under UNCITRAL Arbitration Rules holds extensive powers to ensure effective arbitration processes:

联合国国际贸易法委员会仲裁规则下的指定当局拥有广泛的权力，以确保有效的仲裁程序：

1. Appoint Arbitrators : Includes the authority to revoke, re-appoint arbitrators, and designate the presiding arbitrator.

指定仲裁员：包括撤销、重新指定仲裁员以及指定首席仲裁员的权力。

2. Decide Challenges : Authority to rule on challenges to arbitrators, maintaining impartiality and integrity.

决定挑战：裁决员挑战的裁决权，保持公正和诚信。

3. Substitute Arbitrator : Right to deprive a party from appointing a substitute arbitrator if necessary.

替代仲裁员：在必要时剥夺一方指定替代仲裁员的权利。

4. Tribunal Proceedings : Can authorize a truncated tribunal to proceed.

法庭程序：可授权缩短法庭继续进行。

5. Review Fees and Expenses : Conducts binding reviews of arbitrators' fees and expenses.

审查费用和支出：对仲裁员的费用和支出进行具有约束力的审查。

ICSID Ad Hoc Committee 临时委员会

Upon annulling an arbitral award, the ICSID Chairman appoints an ad hoc committee:

在撤销仲裁裁决后，ICSID 主席任命一个临时委员会：

1. Formation : Three persons from the Panel of Arbitrators form the committee to decide on annulment applications.
仲裁员小组的三人组成委员会，决定撤销申请。
2. Statutory Grounds for Annulment : As per Article 52 of the ICSID Convention, these include improper tribunal constitution, tribunal exceeding its powers, member corruption, serious procedural rule departures, or an award lacking reasons.
法定撤销理由：根据《国际投资争端解决中心公约》第 52 条，包括不当组成仲裁庭、仲裁庭越权、成员腐败、严重违反程序规则或裁决缺乏理由。

Independent Examiner of Documents 独立文件审查员

At times, a tribunal may prefer appointing an independent examiner for document review:

有时，法庭可能更倾向于指派独立审查员对文件进行审查：

Role : The examiner reviews and reports on objections to document production, often due to claims of confidentiality or privilege, ensuring fairness and compliance without the tribunal directly handling potentially sensitive material.

角色：审查员审查并报告对文件生产的异议，通常是因为保密或特权主张，确保公平和合规，而无需法庭直接处理可能敏感的材料。

These comprehensive guidelines and authorities within arbitration frameworks ensure that arbitration as a dispute resolution method remains effective, fair, and reliable for all parties involved.

这些全面的指南和仲裁框架内的权威机构确保仲裁作为一种争议解决方法对所有相关方都保持有效、公平和可靠。

香港仲裁的委任程序及仲裁员人数 Appointment Process and Number of Arbitrators in Hong Kong Arbitration

仲裁员人数

Under the Hong Kong Arbitration Ordinance (Cap. 609), "arbitral tribunal" encompasses a sole arbitrator or a panel of arbitrators, including an umpire (§ 2(1)). The parties involved in arbitration are granted the autonomy to determine the number of arbitrators required for their case (§ 23/Art. 10). This flexibility includes the right to authorize a third party or an arbitral institution to make this determination on their behalf. In instances where the parties fail to agree on the number of arbitrators, the HKIAC has the authority to decide, defaulting to either one or three arbitrators.

根据《香港仲裁条例》（第 609 章），“仲裁庭”包括独任仲裁员或仲裁员小组，包括一名公断人（§ 2(1)）。参与仲裁的各方有权自主决定其案件所需的仲裁员人数（第 23 条/第 10 条）。这种灵活

性包括授权第三方或仲裁机构代表其做出决定的权利。如果当事人未能就仲裁员人数达成一致，HKIAC 有权决定，默认使用一名或三名仲裁员。

指定仲裁员

The process of appointing arbitrators also entails specific guidelines, particularly concerning nationality restrictions, as outlined in the HKIAC Practice Note (effective 28 September 2021):

正如 HKIAC 实践指南（2021 年 9 月 28 日生效）中所述，任命仲裁员的过程还需要具体准则，特别是有关国籍限制的准则：

1. Nationality Restrictions on Sole or Presiding Arbitrators 独任仲裁员或首席仲裁员的国籍限制：

- Generally, the HKIAC will not appoint a sole or presiding arbitrator who shares the same nationality as any party involved if the parties are of different nationalities, unless there is a mutual agreement to do so (3.1).

一般而言，如果当事人国籍不同，HKIAC 不会指定与当事人国籍相同的独任仲裁员或首席仲裁员，除非双方同意这样做 (3.1)。

- In certain circumstances where no objections are raised within a specified time frame, the HKIAC may appoint an arbitrator of the same nationality as a party (3.2).

在某些情况下，如果在指定期限内没有提出异议，HKIAC 可以指定一名与当事人国籍相同的仲裁员 (3.2)。

- Given Hong Kong's legal distinctions as a Special Administrative Region separate from Mainland China, a Hong Kong passport holder may be appointed in cases involving parties from Mainland China, provided there are no objections within the set time frame (3.3).

鉴于香港作为独立于中国大陆的特别行政区的法律区别，在涉及中国大陆当事人的案件中，只要在规定期限内没有异议，可以指定香港护照持有人 (3.3)。

2. Specific Nationality Restriction Applications 特定国籍限制申请：

- British Overseas Territories : Under Rule 6.3 of the LCIA Arbitration Rules, a citizen of an overseas territory is considered a national of that territory, not the State itself. For instance, in emergency arbitrations, a candidate holding British and Hong Kong passports was considered despite the respondent being incorporated in the Cayman Islands.

英国海外领土：根据伦敦国际仲裁院仲裁规则第 6.3 条，海外领土的公民被视为该领土的国民，而不是该国本身的国民。例如，在紧急仲裁中，尽管被申请人在开曼群岛注册成立，但仍考虑了持有英国和香港护照的候选人。

- Mainland Chinese and Non-Chinese Parties : These cases require an understanding of the distinctions between Hong Kong and PRC jurisdictions, and it is crucial to ask if any party objects to the appointment of arbitrators based on nationality.

中国大陆和非中国当事人：这些案件需要了解香港和中国司法管辖区之间的区别，并且至关重要的 是询问是否有任何一方反对基于国籍任命仲裁员。

This structured approach to the appointment and number of arbitrators ensures that all parties have a fair and unbiased tribunal, maintaining the integrity of the arbitration process while accommodating specific needs and preferences.

这种结构化的仲裁员任命和人数方法确保了所有当事人都有一个公平和公正的仲裁庭，保持仲裁程序的完整性，同时满足特定的需求和偏好。

国际仲裁中仲裁员地位

The status of arbitrators in international arbitration encompasses various statutory, institutional, and contractual considerations. Understanding their role, rights, and obligations is critical for appreciating the framework within which they operate.

仲裁员在国际仲裁中的地位包括各种法定、制度和合同方面的考虑。了解他们的角色、权利和义务对于理解他们运作的框架至关重要。

法定或制度考虑因素

1. New York Convention:

The New York Convention, a cornerstone of international arbitration, remains silent on the specific status of arbitrators. It defers to national laws to determine the scope of arbitrators' roles, fees, and obligations. 作为国际仲裁基石的《纽约公约》对仲裁员的具体地位保持沉默。它遵循国家法律来确定仲裁员的角色、费用和义务的范围。

2. UNCITRAL Model Law:

Similar to the New York Convention, the UNCITRAL Model Law does not explicitly address the status of arbitrators, leaving this area largely to be governed by national legislation. 与《纽约公约》类似，《贸易法委员会示范法》没有明确涉及仲裁员的地位，这使得该领域很大程度上由国家立法管辖。

3. National Laws:

Arbitrators' fees, immunities, and confidentiality obligations are regulated by national laws. Arbitrators typically enjoy a quasi-judicial status, different from national court judges but recognized within a formal legal framework. For example, in K/S Norjarl A/S v. Hyundai Heavy Indus. Co. (1992), the court noted the inseparable contractual and status considerations of arbitrators' roles and duties. 仲裁员的费用、豁免权和保密义务均受国家法律管辖。仲裁员通常享有准司法地位，与国家法院法官不同，但在正式法律框架内得到承认。例如，在 K/S Norjarl A/S 诉现代重工业公司 (Hyundai Heavy Indus) 案中。Co. (1992)，法院注意到仲裁员的角色和职责不可分割的合同和地位考虑因素。

4. Institutional Rules:

Arbitration institutions focus heavily on ensuring the independence and impartiality of arbitrators. Institutional rules also address arbitrators' fees and to some extent, their immunities, providing a structure within which arbitrators must operate. 仲裁机构非常注重确保仲裁员的独立性和公正性。机构规则还涉及仲裁员的费用，并在某种程度上涉及仲裁员的豁免权，从而提供了仲裁员必须在其中运作的结构。

合同和立法方面

1. Contractual Status:

Arbitrators have contractual rights and obligations towards the parties, rooted in the arbitration agreement. For instance, in Baar v. Tigerman (1983), an arbitrator's failure to render an award within the prescribed time was considered a breach of contract. This illustrates the intertwined contractual nature of an arbitrator's responsibilities to the disputing parties. 仲裁员对当事人享有根植于仲裁协议的合同权利和义务。例如，在 Baar v. Tigerman (1983) 案中，仲裁员未能在规定时间内作出裁决被视为违约。这说明仲裁员对争议双方的责任是相互交织的合同性质。

2. Legislative Status:

While arbitrators perform a quasi-judicial role, their obligations extend beyond mere contractual duties. They must maintain impartiality and independence, distinct from the relationship lawyers have with their clients. Arbitrators are not bound by a client-lawyer relationship but have a duty to remain neutral and unbiased. 虽然仲裁员发挥准司法作用，但他们的义务超出了单纯的合同义务。他们必须保持公正和独立，这与律师与客户的关系不同。仲裁员不受委托人与律师关系的约束，但有义务保持中立和公正。

Ethical Codes and Guidelines

1. Ethical Standards:

No universal mandatory rules exist for the conduct of international arbitrators. However, some domestic jurisdictions, such as California, have established ethical standards for arbitrators in contractual arbitration. These local rules aim to uphold the integrity and fairness of the arbitral process.

国际仲裁员的行为不存在普遍的强制性规则。然而，一些国内司法管辖区，例如加利福尼亚州，已经为合同仲裁中的仲裁员制定了道德标准。这些地方规则旨在维护仲裁程序的完整性和公平性。

2. Institutional Adoptions:

Arbitration institutions and associations have developed optional codes of conduct and ethics to guide arbitrators. Examples include the IBA Rules of Ethics for International Arbitrators (1987), the AAA/ABA Code of Ethics, and the IBA Guidelines on Conflicts of Interest. These guidelines, although not mandatory, are widely used and respected within the international arbitration community

仲裁机构和协会制定了可选的行为和道德准则来指导仲裁员。例如，《IBA 国际仲裁员道德规则》(1987 年)、《AAA/ABA 道德准则》和《IBA 利益冲突指南》。这些指南虽然不是强制性的，但在国际仲裁界得到广泛使用和尊重。

These diverse regulatory frameworks ensure that arbitrators maintain high standards of conduct, crucial for the legitimacy and effectiveness of international arbitration as a dispute resolution mechanism.

这些多样化的监管框架确保仲裁员保持高标准的行为，这对于国际仲裁作为争议解决机制的合法性和有效性至关重要。

The status of arbitrators in international arbitration is shaped by a combination of statutory regulations, institutional rules, and ethical guidelines. Understanding these aspects is essential for appreciating the intricate balance of rights, duties, and responsibilities that define an arbitrator's role in the global context. By adhering to these various frameworks, arbitrators contribute significantly to the fairness and efficiency of the arbitration process.

仲裁员在国际仲裁中的地位是由法律法规、制度规则和道德准则共同决定的。了解这些方面对于理解定义仲裁员在全球背景下的角色的权利、义务和责任之间的复杂平衡至关重要。通过遵守这些不同的框架，仲裁员可以为仲裁过程的公平性和效率做出重大贡献。

国际仲裁员合同的性质

In international arbitration, the nature of the arbitrator's contract varies and is often subject to interpretation. Key analyses include whether the contract is a trilateral agreement, a separate agreement, an employment contract, or a *sui generis* form.

在国际仲裁中，仲裁员合同的性质各不相同，并且常常需要进行解释。主要分析包括合同是否为三边协议、单独协议、雇佣合同或特殊形式。

1. 三边协议 Trilateral Agreement

A trilateral agreement conjoins the arbitration agreement between the disputing parties with the arbitrator's appointment. Upon appointment, the arbitrator becomes a third party to this agreement, converting it into a trilateral contract. This structure ensures that the arbitrator is recognized as an integral part of the arbitration process. As noted in the case of K/S Norjarl A/S v. Hyundai Heavy Indus. Co. [1992], the agreement encapsulates the arbitrator's role as a distinct part of the contractual relationship.

三方协议将争议双方之间的仲裁协议与仲裁员的任命结合起来。一旦任命，仲裁员就成为本协议的第三方，将其转化为三边合同。这种结构确保仲裁员被视为仲裁过程中不可或缺的一部分。正如 K/S Norjarl A/S 诉现代重工一案中所述。Co. [1992]，该协议将仲裁员的角色封装为合同关系的一个独特部分。

2. 单独协议 Separate Agreement

This perspective considers an arbitrator's contract as a distinct agreement between the arbitrator and the parties, delineating their respective rights and obligations. Although the arbitration agreement influences the terms of the arbitrator's appointment and choice of law, it does not transmute the original arbitration agreement into a new one. The separate agreement emphasizes the arbitrator's independence while maintaining adherence to the underlying arbitration framework.

这种观点将仲裁员合同视为仲裁员与当事人之间的明确协议，界定了各自的权利和义务。尽管仲裁协议影响仲裁员的指定和法律选择的条款，但它并不将原仲裁协议转变为新的仲裁协议。单独的协议强调仲裁员的独立性，同时保持对基本仲裁框架的遵守。

3. 劳动合同 Employment Contract

Classifying an arbitrator's contract as an employment contract is rare, as it would compromise the core qualities of impartiality and independence. If an arbitrator were an employee, it would imply subordination to the appointing parties, which contradicts the fundamental principles of arbitration.

将仲裁员合同归类为雇佣合同的情况很少见，因为这会损害公正性和独立性的核心品质。如果仲裁员是雇员，则意味着从属于指定当事人，这与仲裁的基本原则相矛盾。

4. 特殊或混合形式 Sui Generis or Hybrid Form

Considered the most accurate classification, a sui generis or hybrid form of agreement acknowledges the unique nature of the arbitrator's role, which doesn't fit neatly into conventional contract categories. This sui generis nature reflects the quasi-judicial functions an arbitrator performs. The UK Supreme Court, in Jivraj v. Hashwani [2011] UKSC 40, held that an arbitrator operates as an independent provider of services, not under the direction of the parties, underscoring their impartiality and autonomy.

独特或混合形式的协议被认为是最准确的分类，它承认仲裁员角色的独特性质，这并不完全适合传统的合同类别。这种特殊性质反映了仲裁员所履行的准司法职能。英国最高法院在 Jivraj v. Hashwani [2011] UKSC 40 中裁定，仲裁员作为独立的服务提供者运作，不受当事人的指导，强调了仲裁员的公正性和自主性。

Case Study: Jivraj v. Hashwani [2011] UKSC 40

The case of Jivraj v. Hashwani provides a critical examination of the nature of an arbitrator's contract. The dispute arose from an arbitration clause in a joint venture agreement requiring

arbitrators to be respected members of the Ismaili community. This requirement was challenged under the Employment Equality (Religion and Belief) Regulations 2003.

Jivraj 诉 Hashwani 案对仲裁员合同的性质进行了严格审查。该争议源于合资协议中的仲裁条款，该条款要求仲裁员必须是受人尊敬的伊斯玛仪派成员。这一要求受到 2003 年《就业平等（宗教和信仰）条例》的质疑。

- First Instance: It was held that arbitrators are not employees under the scope of the Regulations. Even if applicable, the Genuine Occupational Requirement (GOR) exception would apply due to the religious ethos involved. 一审：认为仲裁员不属于《条例》规定范围内的雇员。即使适用，由于涉及宗教精神，真实职业要求 (GOR) 例外也将适用。
- Court of Appeal: This decision was overturned, ruling that arbitrators are employees providing services under a "contract personally to do any work," and the GOR exception was deemed inapplicable. 上诉法院：该判决被推翻，裁定仲裁员是根据“个人从事任何工作的合同”提供服务的雇员，GOR 例外被视为不适用。
- Supreme Court: Ultimately, the Supreme Court unanimously overruled the Court of Appeal, defining the arbitrator's role as quasi-judicial rather than employment-based. The court emphasized that arbitrators do not perform services under the direction of the parties but act as independent providers of services. 最高法院：最终，最高法院一致否决了上诉法院的裁决，将仲裁员的角色定义为准司法角色，而不是基于雇佣角色。法院强调，仲裁员不是在当事人的指导下提供服务，而是作为独立的服务提供者。

This pivotal case underscores the unique and independent nature of an arbitrator's contract, distinguishing it from traditional employment relationships and reinforcing the principle of impartiality in arbitration proceedings.

这一关键案件凸显了仲裁员合同的独特性和独立性，使其有别于传统的雇佣关系，并强化了仲裁程序的公正性原则。

国际仲裁员合同的订立

The formation of an international arbitrator's contract is a nuanced process governed by a combination of communications, actions, institutional arbitration rules, and principles of national law. This process establishes the arbitrator's role and responsibilities in resolving international disputes impartially and effectively.

国际仲裁员合同的形成是一个微妙的过程，受通信、诉讼、机构仲裁规则和国内法原则的综合约束。这一过程确立了仲裁员在公正有效解决国际争端方面的作用和责任。

Agreement Formation

The agreement to appoint an arbitrator is shaped by various elements:

任命仲裁员的协议由多种因素组成：

1. Series of Communications and Actions

- The formation process often initiates through a series of communications and actions between the involved parties and the prospective arbitrator.
形成过程通常通过有关各方和未来仲裁员之间的一系列沟通和行动开始的。
- Institutional rules, such as those of the International Chamber of Commerce (ICC), play a crucial role. In ICC arbitration, for example, the arbitrator's contract formalizes when they sign a declaration of acceptance and the terms of reference.
国际商会 (ICC) 等机构规则发挥着至关重要的作用。例如，在国际商会仲裁中，仲裁员的合同在签署接受声明和职权范围后正式生效。

2. Offer and Acceptance :

- The process usually begins with parties approaching a potential arbitrator with a request to serve as an arbitrator, which constitutes an offer.
该过程通常始于当事人联系潜在仲裁员并请求担任仲裁员，这构成了要约。
- The arbitrator's acceptance of this offer can be explicit, such as a formal acceptance, or implied through actions like drafting the terms of reference or convening a status conference. These actions signal the arbitrator's commitment to the role, solidifying the contractual relationship.
仲裁员对该要约的接受可以是明确的，例如正式接受，也可以通过起草职权范围或召开状况会议等行动来暗示。这些行为表明了仲裁员对这一角色的承诺，巩固了合同关系。

3. Nominations and Appointment

- In many arbitration frameworks, each party has the right to nominate a co-arbitrator. This system ensures that the arbitrator's appointment serves the interests of all parties involved in the dispute, promoting fairness and impartiality.
在许多仲裁框架中，各方均有权提名一名共同仲裁员。该制度确保仲裁员的任命符合争议各方的利益，促进公平和公正。
- A notable perspective from a French judgment in Raffineries de pétrole d'Homs et de Banias v. Chambre de Commerce Internationale (1985 Rev. arb.) elucidates that an arbitrator's judicial authority originates from the collective agreement of all parties, despite being nominated by a single party. The court emphasized that an arbitrator is a judge and not merely a representative of the appointing party, reinforcing the commitment to impartiality and justice.

法国在 Raffineries de pétrole d'Homs et de Banias v. Chambre de Commerce Internationale (1985 Rev. arb.) 案中的判决中的一个值得注意的观点阐明，仲裁员的司法权威源自各方的集体协议，尽管仲裁员是由仲裁员提名的。单身派对。法院强调，仲裁员是法官，而不仅仅是指定方的代表，这强化了对公正和正义的承诺。

The formation of an international arbitrator's contract is a carefully structured process that balances the needs and inputs of all parties involved. Through a combination of

communications, compliance with institutional rules, and acknowledgment of national legal principles, the integrity and fairness of the arbitration process are preserved. This structured approach ensures that arbitrators can perform their duties impartially, free from undue influence by any single party, thus contributing to the effective resolution of international disputes.

国际仲裁员合同的形成是一个精心设计的过程，可以平衡所有相关方的需求和投入。通过沟通、遵守机构规则和承认国家法律原则相结合，仲裁过程的完整性和公平性得到了维护。这种结构化方法确保仲裁员能够公正地履行职责，不受任何一方的不当影响，从而有助于有效解决国际争端。

国际仲裁员合同终止和仲裁员辞职

In the realm of international arbitration, the contract of the arbitrator and the circumstances under which it might be terminated or the arbitrator might resign are governed by various rules and regulations. Understanding these provisions is vital for both practitioners and parties involved in arbitration.

在国际仲裁领域，仲裁员合同及其终止或仲裁员辞职的情况受到各种规则和条例的管辖。了解这些规定对于仲裁从业者和当事人都至关重要。

1. Natural Termination of Arbitrator's Contract :

The general rule is that an arbitrator's contract terminates upon the issuance of the final award. This is supported by the UNCITRAL Model Law, Art. 32(3), which states that the mandate of the arbitral tribunal terminates with the termination of the arbitral proceedings. This clause ensures that arbitrators fulfill their duties up to the conclusion of the arbitration.

一般规则是，仲裁员的合同在最终裁决发布后终止。这得到了《贸易法委员会示范法》第 1 条的支持。第 32 条第(3)款规定，仲裁庭的职权随着仲裁程序的终止而终止。本条款确保仲裁员履行其职责直至仲裁结束。

2. Early Termination

Just like other contracts, an arbitrator's contract can be subject to early termination under certain conditions.

就像其他合同一样，仲裁员合同可以在某些条件下提前终止。

- According to the 2010 UNCITRAL Rules, Art. 13(3), if an arbitrator is challenged by a party, all parties may agree to the challenge, or the arbitrator may choose to withdraw. Notably, such withdrawal does not imply acceptance of the challenge's validity.

根据 2010 年《贸易法委员会规则》，Art.第13条第（3）款规定，如果仲裁员受到一方当事人的质疑，则各方当事人可以同意该质疑，或者仲裁员可以选择回避。值得注意的是，这种撤回并不意味着接受挑战的有效性。

- Similarly, the 2010 SCC Rules, Art. 15(4), state that if the other party agrees to the challenge, the arbitrator shall resign. These rules provide mechanisms to address concerns about impartiality and ensure that the arbitration process retains its integrity.

同样，2010年SCC规则第1条。第15(4)条规定，如果另一方当事人同意回避，仲裁员应辞职。这些规则提供了解决公正性问题并确保仲裁过程保持完整性的机制。

3. ICC Rules on Termination and Replacement :

The 2017 ICC Rules, Art. 15(1), specify that an arbitrator shall be replaced upon death, upon acceptance by the Court of the arbitrator's resignation, upon acceptance by the Court of a challenge, or upon the Court's acceptance of a request jointly made by all parties. These provisions outline clear conditions under which an arbitrator's contract can be terminated and ensure a structured approach to replacing arbitrators.

2017年国际商会规则，第1条第15(1)条规定，仲裁员在死亡、法院接受仲裁员辞职、法院接受质疑或法院接受各方共同提出的请求后，应予以替换。这些条款概述了终止仲裁员合同的明确条件，并确保采用结构化方法更换仲裁员。

4. Voluntary Resignation and National Regulations :

Arbitrators are entitled to resign from their mandate under certain circumstances, which consequently terminates their contract. National jurisdictions may impose specific conditions for such terminations. For instance, the French Code of Civil Procedure, Art. 1457(1), requires that an arbitrator must continue their mission until it is completed unless they can demonstrate incapability or a legitimate reason for abstention or resignation. This regulation prevents arbitrary resignation and maintains consistency in arbitration proceedings.

自愿辞职和国家规定：在某些情况下，仲裁员有权辞去职务，从而终止其合同。国家司法管辖区可能会对此类终止施加特定条件。例如，法国《民事诉讼法典》第1条。第1457(1)条要求仲裁员必须继续其任务直至任务完成，除非他们能够证明自己无能力或有正当理由弃权或辞职。该规定防止任意辞职并保持仲裁程序的一致性。

The termination of an international arbitrator's contract and resignation rules serve to uphold the arbitration process's fairness, integrity, and efficiency. From naturally concluding the mandate with the final award to early termination under specified circumstances, these rules balance the needs for flexibility and consistency. Understanding these rules is essential for all parties to an arbitration, ensuring they can navigate the process effectively and maintain the arbitration's credibility.

国际仲裁员合同终止和辞职规则有利于维护仲裁程序的公平、诚信和效率。从最终裁决的自然结束到特定情况下的提前终止，这些规则平衡了灵活性和一致性的需求。了解这些规则对于仲裁各方都至关重要，以确保他们能够有效地驾驭整个流程并维护仲裁的可信度。

与仲裁机构签订的合同

In the realm of international arbitration, parties often opt to resolve disputes through institutional arbitration, where a designated arbitral institution oversees the process. This choice brings with it a set of institutional rules that become incorporated into the arbitrator's contract, detailing various aspects of the arbitration process.

在国际仲裁领域，当事人通常选择通过机构仲裁解决争议，由指定的仲裁机构监督整个过程。这种选择带来了一套制度规则，这些规则被纳入仲裁员合同中，详细说明了仲裁过程的各个方面。

纳入机构规则 Incorporation of Institutional Rules

When parties agree to institutional arbitration, they implicitly accept the institution's rules as part of their arbitration agreement. These rules cover the procedures and frameworks that will govern the arbitration, providing a structured path for dispute resolution.

当事人同意机构仲裁时，他们默认接受该机构的规则作为其仲裁协议的一部分。这些规则涵盖了仲裁的程序和框架，为争议解决提供了结构化的路径。

Governance of Arbitrators' Rights

The institutional rules define key elements of the arbitrator's role, including:

机构规则定义了仲裁员角色的关键要素，包括：

- Remuneration : The fees and payments due to the arbitrator for their services.
报酬：仲裁员因提供服务而应支付的费用和付款。
- Challenges to Appointment : Procedures for disputing an arbitrator's appointment if impartiality or independence is questioned.
对任命的质疑：如果公正性或独立性受到质疑，则对仲裁员的任命提出争议的程序。
- Form of the Award : Specifications for the award, including institutions like the International Chamber of Commerce (ICC) requiring awards to undergo scrutiny to ensure they meet the standards and requirements.
奖项形式：奖项规范，包括国际商会 (ICC) 等机构要求奖项经过审查以确保其符合标准和要求。

Arbitrators' Imperative Role

While the contractual relationship with the arbitral institution provides a framework, it does not overshadow the core responsibility of arbitrators—to conduct the arbitration proceedings impartially and independently. Arbitrators are bound by their duty to the parties, ensuring fair and unbiased adjudication of the dispute.

虽然与仲裁机构的合同关系提供了一个框架，但它并没有掩盖仲裁员的核心职责——公正、独立地进行仲裁程序。仲裁员对当事人负有义务，确保对争议进行公平和公正的裁决。

仲裁协议至上 Arbitration Agreement Supremacy

The primary contractual obligation in arbitration remains the arbitration agreement between the disputing parties. The contract between the arbitral institution and the arbitrators is ancillary and does not supersede or displace the terms agreed upon by the parties. Instead, it serves to facilitate the procedural aspects of arbitration while preserving the integrity of the parties' initial agreement.

仲裁中的主要合同义务仍然是争议双方之间的仲裁协议。仲裁机构与仲裁员之间的合同是辅助性的，不能取代或取代当事人约定的条款。相反，它有助于促进仲裁的程序方面，同时保持双方最初协议的完整性。

Contracts with arbitral institutions play a crucial role in defining the procedural framework and ensuring the effective administration of arbitration. They incorporate essential institutional rules that govern the arbitrators' rights and obligations while maintaining the primacy of the arbitration agreement between the parties. This structure ensures a balanced approach that upholds the principles of impartiality and independence in the arbitration process.

与仲裁机构签订的合同在确定程序框架和确保仲裁的有效管理方面发挥着至关重要的作用。它们纳入了管理仲裁员权利和义务的基本制度规则，同时保持双方之间仲裁协议的首要地位。这种结构确保了平衡的做法，维护仲裁过程中的公正性和独立性原则。

国际仲裁员的义务

以裁决方式解决争议

Arbitrators play a crucial role in resolving disputes in an adjudicatory manner, ensuring that the process is fair, efficient, and impartial. Various national laws and international rules outline the obligations and standards arbitrators must adhere to during arbitration proceedings.

仲裁员在以裁决方式解决争议方面发挥着至关重要的作用，确保程序公平、高效和公正。各种国家法律和国际规则概述了仲裁员在仲裁程序中必须遵守的义务和标准。

仲裁员的核心裁决职责 Core Adjudicatory Duty of Arbitrators

Arbitrators are required to resolve disputes through an adjudicative process, emphasizing a fair and impartial approach. The core duty involves providing both parties with an equal opportunity to present their cases, thus fostering an environment of equity and justice.

仲裁员必须通过裁决程序解决争议，强调公平、公正。核心职责是为双方提供平等的陈述机会，从而营造公平正义的环境。

Domestic Statutes

1. English Arbitration Act, 1996 (Section 33) :

The English Arbitration Act mandates that the arbitral tribunal act fairly and impartially between parties. This includes giving each party a reasonable opportunity to present their case and adopt procedures appropriate to the case's circumstances to avoid unnecessary delays and expenses.

1996 年英国仲裁法（第 33 条）：

英国仲裁法规定仲裁庭在当事人之间公平、公正地行事。这包括为各方提供合理的机会陈述案件并采取适合案件情况的程序，以避免不必要的延误和费用。

International Legislative Frameworks

1. UNCITRAL Model Law (Article 18) :

This law underscores the principle of treating parties with equality and ensuring a full opportunity for each party to present their case, forming a cornerstone of international arbitration practices.

贸易法委员会示范法（第 18 条）：该法强调了平等对待当事人的原则，确保各方都有充分的机会陈述案情，构成了国际仲裁实践的基石。

2. Swiss Law on Private International Law (Article 182(3)) :

Swiss law requires that the chosen procedure, whether determined by the parties or the tribunal, ensures equal treatment and the right to be heard in an adversarial manner.

瑞士国际私法法（第 182(3) 条）：瑞士法律要求所选择的程序，无论是由当事人还是法庭决定，都要确保平等待遇和以对抗性方式听取意见的权利。

3. Swedish Arbitration Act (§ 24(1)) :

Swedish law mandates that arbitrators give parties the opportunity to present their cases, either in writing or orally, as necessary.

瑞典仲裁法 (§ 24(1))：瑞典法律规定，仲裁员应在必要时给予当事人以书面或口头形式陈述案情的机会。

4. Brazilian Arbitration Law (Article 13(6)) :

Brazilian law specifies that arbitrators must conduct themselves impartially, independently, competently, diligently, and discreetly.

巴西仲裁法（第 13(6) 条）：巴西法律规定仲裁员必须公正、独立、称职、勤勉和谨慎地行事。

Institutional Rules

1. 2010 UNCITRAL Rules (Article 17(1)) :

These rules provide the tribunal with discretion in conducting arbitration, mandating that parties be treated equally and given a reasonable opportunity to present their case. The tribunal must also avoid unnecessary delays and expenses.

2010 年贸易法委员会规则（第 17(1) 条）：这些规则赋予仲裁庭进行仲裁的自由裁量权，要求各方受到平等对待，并给予合理的机会陈述案情。仲裁庭还必须避免不必要的延误和费用。

2. 2017 ICC Rules (Article 22(4)) :

The ICC rules require the arbitral tribunal to act fairly and impartially, ensuring that each party has a reasonable opportunity to present their case

2017 年国际商会规则（第 22(4) 条）：国际商会规则要求仲裁庭公平、公正地行事，确保各方都有合理的机会陈述案情。

3. LCIA Rules (Article 14(4)(i)) : The LCIA rules emphasize the arbitral tribunal's duty to act fairly and impartially, ensuring that all parties have a reasonable opportunity to present their cases and engage with their opponent's case.

LCIA 规则（第 14(4)(i) 条）：LCIA规则强调仲裁庭有公平、公正行事的义务，确保各方都有合理的机会陈述自己的案件并参与对方的案件。

These rules and statutes collectively underscore the importance of fairness, impartiality, and equality in arbitration proceedings. Arbitrators must adhere to these obligations to maintain the integrity and effectiveness of the arbitration process, ultimately ensuring a just resolution for all parties involved.

这些规则和法规共同强调了仲裁程序中公平、公正和平等的重要性。仲裁员必须遵守这些义务，以维护仲裁程序的完整性和有效性，最终确保所有相关方得到公正的解决。

公正性和独立性义务

In the realm of international arbitration, the obligations of arbitrators to remain impartial and independent are fundamental to the integrity and fairness of the arbitration process.

在国际仲裁领域，仲裁员保持公正和独立的义务对于仲裁程序的诚信和公平至关重要。

Impartiality

1. Definition and Importance :

- Impartiality is the absence of bias or favoritism towards any party involved in the dispute.
公正是指对争议涉及的任何一方不存在偏见或偏袒。
- It is crucial for ensuring that the proceedings are fair and that the final decision is just.
这对于确保诉讼程序的公平性和最终判决的公正性至关重要。

2. Requirements for Arbitrators :

- Arbitrators must be free from subjective biases, predispositions, or affinities.
仲裁员必须没有主观偏见、倾向或亲和力。

- They should conduct the arbitration without letting personal feelings or relationships influence their judgment.
他们应该在不让个人感情或关系影响他们的判断的情况下进行仲裁。
- This requirement ensures that all parties can have confidence in the fairness of the process and the arbitral award.
这一要求确保各方都能对程序和仲裁裁决的公正性充满信心。

Independence

1. Definition and Significance
 - Independence refers to the absence of relationships or interests that might affect an arbitrator's impartiality.
独立性是指不存在可能影响仲裁员公正性的关系或利益。
 - Upholding independence is critical for maintaining the trust and credibility of the arbitration process.
坚持独立性对于维护仲裁程序的信任和可信度至关重要。
2. Requirements for Arbitrators :
 - Arbitrators must be free of personal, contractual, institutional, or other relationships that could compromise their independence.
仲裁员不得存在可能损害其独立性的个人、合同、机构或其他关系。
 - They should avoid any interactions or associations that may raise questions about their ability to provide an unbiased judgment.
他们应该避免任何可能引起人们对他们提供公正判断能力的质疑的互动或关联。
 - This requirement prevents conflicts of interest and ensures the integrity of the arbitration process.
这一要求可以防止利益冲突并确保仲裁过程的完整性。

Maintaining Impartiality and Independence

1. Ongoing Duty :
 - Arbitrators have an ongoing duty to disclose any circumstances that may affect their impartiality or independence.
仲裁员有持续义务披露任何可能影响其公正性或独立性的情况。
 - This includes any potential conflicts of interest or relationships that arise during the arbitration.
这包括仲裁期间出现的任何潜在的利益冲突或关系。
2. Remedies for Breach :

- If an arbitrator's impartiality or independence is compromised, parties may challenge the arbitrator's appointment.
如果仲裁员的公正性或独立性受到损害，当事人可以对仲裁员的任命提出质疑。
- Remedies may include the removal of the compromised arbitrator and the appointment of a new one to ensure a fair and impartial process.
补救措施可能包括罢免受影响的仲裁员并任命一名新仲裁员，以确保公平公正的程序。：

The obligations of impartiality and independence are cornerstone principles in international arbitration. Arbitrators must continuously ensure they are free from biases and relationships that could affect their judgment. These obligations help maintain the trust of the parties in the arbitration process, thereby upholding the integrity and effectiveness of international arbitration as a dispute resolution mechanism.

公正和独立的义务是国际仲裁的基石原则。仲裁员必须不断确保他们不存在可能影响其判断的偏见和关系。这些义务有助于维持当事人对仲裁过程的信任，从而维护国际仲裁作为争议解决机制的完整性和有效性。

披露潜在冲突的义务 **Obligation of Disclosure of Potential Conflicts**

In international arbitration, maintaining impartiality and independence is paramount, which is underpinned by the obligation of arbitrators to disclose potential conflicts of interest. This process is critical to ensuring the integrity of the arbitration process and providing parties with the reassurance they need to entrust the resolution of their disputes to an impartial arbitrator.

在国际仲裁中，保持公正和独立至关重要，仲裁员有义务披露潜在的利益冲突。这一过程对于确保仲裁过程的公正性以及让当事人放心将其争议委托给公正的仲裁员解决至关重要。

General Obligation

Prospective arbitrators are required to disclose any circumstances that might impact their impartiality and independence. This disclosure allows parties to assess whether the arbitrator meets the necessary standards of fairness and neutrality expected in the arbitration process. This duty of disclosure helps uphold the credibility and integrity of arbitration as a dispute resolution mechanism.

未来的仲裁员必须披露任何可能影响其公正性和独立性的情况。该披露允许当事人评估仲裁员是否符合仲裁过程中预期的公平和中立的必要标准。这种披露义务有助于维护仲裁作为争议解决机制的可信性和完整性。

Legal Precedent - *Karlseng v. Cooke*

A U.S. court in *Karlseng v. Cooke*, 346 S.W.3d 85, 97 (Tex. Ct. App. 2011), emphasized the vital role of disclosure, given the significant power, responsibility, and limited judicial review involved in arbitration. Arbitrators are expected to conduct reasonable efforts to uncover and

divulge any potential conflicts of interest. This case underscores that arbitrators do not need to investigate every aspect of their past but should exercise due diligence and careful introspection to identify and disclose relevant interests and relationships.

美国法院在Karlseng v. Cooke, 346 SW3d 85, 97 (Tex. Ct. App. 2011)案中强调了披露的重要作用，因为仲裁涉及重大权力、责任和有限的司法审查。仲裁员应采取合理努力来发现和披露任何潜在的利益冲突。本案强调，仲裁员无需调查其过去的方方面面，而应进行尽职调查和仔细反省，以识别和披露相关利益和关系。

Guidance by the ICC

The ICC International Court of Arbitration issued a guidance note in March 2016 to assist arbitrators in identifying conflicts of interest and disclosure requirements. The note highlights several scenarios that may cast doubt on an arbitrator's independence or impartiality, such as any representation by the arbitrator or their law firm to a party or its affiliates, business relationships, and professional or close personal relationships with any counsel involved.

国际商会国际仲裁院于 2016 年 3 月发布了指导说明，协助仲裁员识别利益冲突和披露要求。该说明强调了可能对仲裁员的独立性或公正性产生怀疑的几种情况，例如仲裁员或其律师事务所向一方或其附属公司提供的任何陈述、业务关系以及与所涉及的任何律师的专业或密切的个人关系。

Jurisdictional Requirements and Guidelines

Different jurisdictions impose various degrees of obligation for disclosure. For instance, France imposes legal liability for failing to disclose conflicts of interest. The IBA Guidelines on Conflicts of Interest in International Arbitration are widely adopted and provide practical standards for managing conflicts in arbitration. However, unlike the IBA Guidelines, the ICC does not mandate the disclosure of third-party funding, but it does provide robust standards for the practical application of conflict rules.

不同的司法管辖区规定了不同程度的披露义务。例如，法国对未披露利益冲突规定法律责任。《IBA 国际仲裁利益冲突指南》被广泛采用，为管理仲裁冲突提供了实用标准。然而，与 IBA 指南不同的是，ICC 并不强制要求披露第三方资助，但它确实为冲突规则的实际应用提供了强有力的标准。

In conclusion, the obligation of disclosure for international arbitrators is a cornerstone of ensuring a fair and impartial arbitration process. By adhering to these standards, arbitrators maintain the credibility and reliability of arbitration as an effective means of resolving international disputes.

综上所述，国际仲裁员的信息披露义务是确保仲裁程序公平公正的基石。通过遵守这些标准，仲裁员可以保持仲裁作为解决国际争端的有效手段的可信性和可靠性。

Obligation of Care, Skill, and Integrity

An international arbitrator must perform their duties with care, skill, and professional integrity. This includes dedicating adequate time and attention to the arbitration process, ensuring that

awards are well-reasoned and enforceable, and participating actively in tribunal deliberations. The arbitrator must resolve all disputes thoroughly, as failure to do so may result in enforcement issues. In exceptional cases, arbitrators may need to report criminal behavior by fellow arbitrators to the appropriate authorities.

国际仲裁员必须以谨慎、技能和职业操守履行职责。这包括在仲裁过程中投入足够的时间和精力，确保裁决合理且可执行，并积极参与仲裁庭的审议。仲裁员必须彻底解决所有争议，否则可能会导致执行问题。在特殊情况下，仲裁员可能需要向有关当局报告其他仲裁员的犯罪行为。

Obligation of Diligence

Diligence in conducting arbitration is critical, as parties expect efficient resolution of disputes. Institutional rules, like those of the ICC, often set time limits for rendering awards to ensure prompt resolution. Arbitrators must manage their availability to balance other commitments and avoid delays in proceedings.

勤勉地进行仲裁至关重要，因为当事人期望有效解决争议。机构规则（例如国际刑事法院的规则）通常会设定裁决的时间限制，以确保及时解决。仲裁员必须管理其可用性，以平衡其他承诺并避免诉讼程序延误。

Obligation to Apply Law

The primary role of an arbitrator is to provide legally binding decisions by applying the appropriate legal principles. The duty to adjudicate means adhering strictly to the law unless the parties have agreed to resolve disputes based on principles like ex aequo et bono or amiable compositeurs. Arbitrators must remain within their mandate without overstepping into investigative roles.

仲裁员的主要作用是通过应用适当的法律原则提供具有法律约束力的裁决。裁决义务意味着严格遵守法律，除非双方同意根据公平等原则或友好调解者等原则解决争端。仲裁员必须恪尽职守，不得超越调查职责。

The obligations and responsibilities of international arbitrators are designed to maintain the high standards expected in international arbitration. Ensuring disclosure of potential conflicts, exercising due care and skill, conducting proceedings diligently, and applying the law appropriately are fundamental to the credibility and effectiveness of the arbitration process. These responsibilities safeguard the interests of the parties involved and uphold the integrity of the international arbitration framework.

国际仲裁员的义务和责任旨在维持国际仲裁的高标准。确保披露潜在冲突、运用应有的谨慎和技巧、勤勉地进行诉讼程序以及适当地适用法律，是仲裁程序可信性和有效性的基础。这些责任维护了当事人的利益并维护了国际仲裁框架的完整性。

仲裁员不委托职责的义务

The core duties of an arbitrator include attending hearings, deliberations, and analyzing submissions and evidence. These responsibilities are non-delegable, meaning arbitrators must personally perform them to maintain the process's integrity. However, arbitrators can seek assistance for non-decisional tasks such as clerical work or from junior lawyers without infringing on their evaluative functions.

仲裁员的核心职责包括参加听证会、审议以及分析意见和证据。这些职责是不可委托的，这意味着仲裁员必须亲自履行这些职责以保持流程的完整性。然而，仲裁员可以就文书工作等非决策性任务或初级律师寻求帮助，而不会侵犯其评估职能。

Use of Administrative Secretaries

The involvement of administrative secretaries is common, but their role must be strictly administrative. According to the ICC Secretariat Note Concerning the Appointment of Administrative Secretaries by Arbitral Tribunals, 6(2) ICC Ct. Bull. 77, 78 (1995), secretaries must not influence the tribunal's decisions or participate in the decision-making process. Similarly, the HKIAC Guidelines on the Use of a Secretary to the Arbitral Tribunal provide clear boundaries for secretaries' involvement. The Yukos Arbitration case illuminates the potential issues with overstepping secretaries' mandates, reminding tribunals to exercise caution.

行政秘书的参与很常见，但他们的角色必须严格是行政性的。根据国际商会秘书处关于仲裁庭任命行政秘书的说明，6(2) ICC Ct.公牛。 77, 78 (1995)，秘书不得影响仲裁庭的决定或参与决策过程。同样，《香港国际仲裁中心仲裁庭秘书使用指南》为秘书的参与规定了明确的界限。尤科斯仲裁案揭示了超越秘书职权的潜在问题，提醒仲裁庭谨慎行事。

按照当事人仲裁协议进行仲裁的义务

Arbitrators must conduct the arbitration in line with the parties' agreement. This includes procedural matters such as disclosures, hearings, and timetables. However, arbitrators must ensure that adherence to such agreements does not result in a breach of mandatory laws. In instances where the agreed procedures are unrealistic or inappropriate, arbitrators are obligated to consult the parties to rectify any violations of applicable mandatory laws.

仲裁员必须按照当事人的约定进行仲裁。这包括披露、听证会和时间表等程序事项。然而，仲裁员必须确保遵守此类协议不会导致违反强制性法律。如果商定的程序不切实际或不适当，仲裁员有义务与当事人协商纠正任何违反适用强制性法律的行为。

When institutional arbitration rules are chosen by the parties, these rules grant arbitrators the power to determine procedural matters. Institutional rules provide a structured framework, ensuring that procedural determinations are consistent and fair while respecting the parties' autonomy.

当当事人选择机构仲裁规则时，这些规则赋予仲裁员决定程序事项的权力。制度规则提供了一个结构化的框架，确保程序决定的一致性和公平性，同时尊重当事人的自主权。

In conclusion, understanding the arbitrator's non-delegation obligations and adhering to parties' agreements are foundational to the arbitration process. These obligations ensure that arbitrators maintain their responsibility, integrity, and impartiality, upholding the arbitration's role as an effective dispute resolution mechanism.

总之，了解仲裁员的非委托义务并遵守当事人的协议是仲裁程序的基础。这些义务确保仲裁员保持责任、诚信和公正，维护仲裁作为有效争议解决机制的作用。

保密义务

仲裁程序中的保密义务是基本义务并得到广泛认可。尽管某些框架缺乏明确的保密规定，但仲裁的准司法性质本质上要求保密。道德准则进一步强化了这一要求，确保所有各方遵守诚信和谨慎的标准。

A landmark example underscoring the significance of confidentiality is the case *Himpurna Cal. Energy Ltd v. Republic of Indonesia*. The tribunal emphasized that probing the secrecy of deliberations is improper and that maintaining confidentiality is essential to protect arbitrators' independent judgment.

强调保密重要性的一个具有里程碑意义的例子是*Himpurna Cal* 的案例。能源有限公司诉印度尼西亚共和国。仲裁庭强调，探究审议的保密性是不适当的，保密对于保护仲裁员的独立判断至关重要。

Institutional Rules Imposing Confidentiality

- ICDR Rules (Art. 37) : Confidentiality of disclosed information is mandatory unless required by law or mutually agreed otherwise by the parties.
ICDR 规则（第 37 条）：除非法律要求或双方另有约定，否则披露信息的保密性是强制性的。
- LCIA Rules (Art. 30(2)) : Tribunal deliberations are confidential, except under specific arbitration articles.
LCIA 规则（第 30(2) 条）：除特定仲裁条款外，仲裁庭的审议是保密的。
- 2012 Swiss Rules (Art. 44) : Confidentiality of awards, orders, and arbitration materials is mandatory unless legal obligations necessitate disclosure.
2012 年瑞士规则（第 44 条）：除非法律义务需要披露，否则裁决、命令和仲裁材料的保密性是强制性的。
- 2013 HKIAC Rules (Art. 42) : Disclosure of arbitration-related information is prohibited unless agreed otherwise by the parties.
2013 HKIAC 规则（第 42 条）：除非当事人另有约定，否则禁止披露仲裁相关信息。
- 2010 SCC Rules (Art. 46) : SCC and the Arbitral Tribunal are obligated to maintain confidentiality.
2010年SCC规则（第46条）：SCC和仲裁庭有保密义务。
- 2013 SIAC Rules (Art. 35(1)) : All arbitration proceedings and related matters are confidential.
2013 SIAC 规则（第 35(1) 条）：所有仲裁程序及相关事项均保密。

Obligation to Propose Settlement

The role of arbitrators in proposing settlements varies significantly across different legal systems. There is no universal consensus on whether arbitrators should take an active role in proposing settlements.

仲裁员在提出和解方案中的作用在不同的法律体系中存在很大差异。对于仲裁员是否应在提出和解方案中发挥积极作用，目前尚未达成普遍共识。

Civil Law Jurisdictions

In some civil law jurisdictions, arbitrators are empowered and sometimes required to facilitate settlements. For instance:

在一些大陆法系司法管辖区，仲裁员被授权，有时甚至被要求促进和解。例如：

- Netherlands Code of Civil Procedure (Art. 1043) : Arbitrators may order parties to appear for settlement discussions at any stage.
荷兰民事诉讼法典（第 1043 条）：仲裁员可以命令当事人在任何阶段出席和解讨论。
- Japanese Arbitration Law (Art. 38(4)) : Arbitrators can attempt settlements if the parties consent, integrating collaborative dispute resolution into the arbitration process.
日本仲裁法（第 38(4) 条）：如果当事人同意，仲裁员可以尝试和解，将协作争议解决纳入仲裁程序。

Common Law Jurisdictions

Conversely, in common law jurisdictions, it is uncommon for arbitrators to propose settlements actively. However, arbitrators who also serve as mediators or conciliators may engage in such practices, bridging the gap between different dispute resolution methods.

相反，在普通法域，仲裁员主动提出和解方案的情况并不常见。然而，兼任调解员或调解员的仲裁员也可能会采取此类做法，以弥合不同争议解决方法之间的差距。

Research on Settlement Proposals

Academic research, such as S. Ali's *Resolving Disputes in the Asia Pacific Region*, highlights the diverse approaches to settlement proposals in arbitration across different legal traditions. S. Ali 的《亚太地区争议解决》等学术研究强调了不同法律传统下仲裁中解决建议的不同方法。

International arbitrators play a crucial role in ensuring confidentiality and, where appropriate, facilitating settlements. These obligations are vital for maintaining the integrity, efficiency, and impartiality of the arbitration process, accommodating the diverse needs and expectations of parties involved in international disputes. Understanding these obligations enables arbitrators and parties to navigate arbitration proceedings with confidence and ethical adherence.

国际仲裁员在确保保密并酌情促进和解方面发挥着至关重要的作用。这些义务对于维护仲裁程序的完整性、效率和公正性、满足国际争议当事人的不同需求和期望至关重要。了解这些义务使仲裁员和当事人能够充满信心并遵守道德规范地进行仲裁程序。

完成其任务的义务

In international arbitration, arbitrators hold a significant responsibility to fulfill their mandate by rendering an award. This obligation underscores the importance of continuity and reliability in the arbitration process while also addressing the potential situations that may lead to an arbitrator's resignation.

在国际仲裁中，仲裁员承担着通过作出裁决来履行其职责的重大责任。这一义务强调了仲裁过程中连续性和可靠性的重要性，同时也解决了可能导致仲裁员辞职的潜在情况。

Arbitrators are expected to commit to their roles and see their tasks through to completion. According to the AAA/ABA Code of Ethics, Canon I(H), once an arbitrator has accepted an appointment, they should not withdraw or abandon their post unless forced by unforeseen circumstances that make it impossible or impracticable to continue. This principle ensures that arbitrators remain dedicated to their role, thereby upholding the integrity and consistency of the arbitration process.

仲裁员应致力于履行自己的职责并完成其任务。根据 AAA/ABA 道德准则 Canon I(H)，仲裁员一旦接受任命，就不得撤回或放弃其职位，除非由于不可预见的情况而导致无法或不切实际地继续担任仲裁员。这一原则确保仲裁员始终尽职尽责，从而维护仲裁过程的完整性和一致性。

Resignation Permitted by National Laws and Institutional Rules

Although arbitrators are generally expected to complete their mandate, national laws and institutional rules do permit resignation. Such resignation may require the consent of national courts or the arbitral institution. This flexibility allows arbitrators to step down when necessary while still maintaining proper oversight and procedural fairness.

尽管仲裁员通常应该完成其职责，但国家法律和机构规则确实允许辞职。此类辞职可能需要得到国家法院或仲裁机构的同意。这种灵活性允许仲裁员在必要时下台，同时仍保持适当的监督和程序公平。

个人情况发生重大变化

There are instances where an arbitrator may need to resign due to significant changes in personal circumstances, such as illness, incapacity, or the emergence of a conflict of interest. Under the UNCITRAL Model Law, Article 14(1), an arbitrator's mandate terminates if they become de jure or de facto unable to perform their functions or fail to act without undue delay. This provision ensures that the arbitration process remains fair and efficient, even if an arbitrator cannot continue.

在某些情况下，仲裁员可能因个人情况发生重大变化（例如生病、丧失行为能力或出现利益冲突）而需要辞职。根据《贸易法委员会示范法》第 14(1) 条，如果仲裁员在法律上或事实上无法履行其职责或未能无不当拖延地行事，则其授权终止。该规定确保即使仲裁员无法继续仲裁，仲裁程序仍保持公平和高效。

Challenges to Arbitrator Appointments

Arbitrators sometimes face challenges to their appointments. Some choose to resign in response to these challenges, while others defend their position. It is crucial to strike a delicate balance in these situations to avoid antagonizing the tribunal, thus ensuring that the arbitrator's duties are executed without bias or disruption. This balance helps maintain the tribunal's credibility and the arbitration's overall effectiveness.

仲裁员的任命有时会面临挑战。一些人选择辞职来应对这些挑战，而另一些人则捍卫自己的立场。在这些情况下保持微妙的平衡至关重要，以避免与仲裁庭对抗，从而确保仲裁员在不带偏见或干扰的情况下履行职责。这种平衡有助于维持仲裁庭的公信力和仲裁的整体有效性。

The obligation of international arbitrators to complete their mandate encompasses a commitment to seeing their role through to the end while allowing for resignation under specific, justifiable circumstances. This balance between dedication and flexibility is essential for maintaining the fairness, integrity, and efficiency of the international arbitration process. Understanding these aspects helps all parties involved in arbitration appreciate the responsibilities and challenges faced by arbitrators, contributing to a more robust and trustworthy dispute resolution mechanism.

国际仲裁员完成其任务的义务包括承诺将其角色发挥到底，同时允许在特定、合理的情况下辞职。这种奉献精神和灵活性之间的平衡对于维持国际仲裁程序的公平、诚信和效率至关重要。了解这些方面有助于参与仲裁的各方认识到仲裁员所面临的责任和挑战，有助于建立更加健全和值得信赖的争议解决机制。

国际仲裁员不遵守规定的补救措施和处罚概述

In the field of international arbitration, arbitrators are expected to adhere strictly to their duties and obligations. Various jurisdictions have established remedies and penalties for arbitrators who fail to meet these expectations, ensuring accountability and maintaining the integrity of the arbitration process.

在国际仲裁领域，仲裁员应当严格履行自己的职责和义务。各个司法管辖区对未能满足这些期望的仲裁员制定了补救措施和处罚措施，以确保问责制并维护仲裁程序的完整性。

国际仲裁员不遵守义务的补救措施

民事责任

In Serious Cases : Arbitrators can face civil liability when their non-compliance significantly affects the arbitration process. For example, the Austrian ZPO (§ 594(4)) holds arbitrators accountable for damages caused by a failure or delay in fulfilling their obligations.

严重情况下：当仲裁员不遵守规定严重影响仲裁程序时，可能会面临民事责任。例如，奥地利 ZPO (第 594(4) 条) 要求仲裁员对因未能或延迟履行其义务而造成的损害承担责任。

Specific Jurisdictions :

具体管辖范围：

- The Italian Code of Civil Procedure (Art. 813(2)) makes arbitrators liable for damages if they miss deadlines or abandon their roles without just cause.
《意大利民事诉讼法》（第 813(2) 条）规定，如果仲裁员错过最后期限或无正当理由放弃其职责，则须承担损害赔偿责任。
- The Portuguese Law on Voluntary Arbitration (Art. 12(3)) and Argentine National Code of Civil and Commercial Procedure (Arts. 745, 756) emphasize the arbitrator's responsibility for damages due to non-performance.
葡萄牙自愿仲裁法（第 12(3) 条）和阿根廷国家民事和商事程序法典（第 745、756 条）强调仲裁员对因不履行职责而造成的损害承担责任。
- According to the Lebanese New Code of Civil Procedure (Art. 769(3)), arbitrators can be held liable if they resign without serious grounds.
根据黎巴嫩新民事诉讼法（第769（3）条），仲裁员如果无正当理由辞职，可能要承担责任。

丧失国际仲裁员获得报酬的权利 Loss of International Arbitrator's Right to Remuneration

1. Forfeiture of Fees :

没收费用：

- Failure to carry out responsibilities can result in the forfeiture of fees, a remedy which serves as a potent deterrent against negligence or misconduct.
不履行责任可能会导致费用被没收，这是一种对疏忽或不当行为起到有效威慑作用的补救措施。
- Counterbalancing Immunities : This forfeiture can balance any immunities that arbitrators may have. For instance, under the English Arbitration Act, 1996 (§ 24(4)), and the Singapore Arbitration Act (§ 16(4)), courts have the discretion to order the repayment of fees if an arbitrator is removed.

平衡豁免权：这种没收可以平衡仲裁员可能拥有的任何豁免权。例如，根据《1996 年英国仲裁法》(§ 24(4)) 和《新加坡仲裁法》(§ 16(4))，如果仲裁员被免职，法院有权酌情下令偿还费用。

◦ Global Examples :

全球示例：

- The Indian Arbitration and Conciliation Act (Art. 13(6)) allows the court to decide an arbitrator's fee entitlement if an arbitral award is set aside.
《印度仲裁与调解法》（第 13(6) 条）允许法院在仲裁裁决被撤销的情况下决定仲裁员的费用权利。

- The Israeli Arbitration Law (Art. 34) provides that courts can determine whether arbitrators are entitled to remuneration or require repayment upon their removal.
《以色列仲裁法》（第34条）规定，法院可以决定仲裁员是否有权获得报酬或在被解职后要求偿还。

These remedies and penalties ensure that arbitrators remain accountable and that the arbitration process remains fair and efficient, protecting the interests of all parties involved.

这些补救措施和处罚确保仲裁员继续承担责任，并确保仲裁过程保持公平和高效，保护所有相关方的利益。

国际仲裁员的终止和罢免

The effectiveness of international arbitration can be greatly influenced by the performance and conduct of the arbitrator(s). Both termination and removal mechanisms are essential to maintaining the integrity and fairness of the arbitration process. Here, we explore the key points regarding the termination of an arbitrator's contract and the removal of an arbitrator from their role.

国际仲裁的有效性很大程度上取决于仲裁员的表现和行为。终止和移除机制对于维护仲裁过程的完整性和公平性至关重要。在此，我们探讨有关终止仲裁员合同和解除仲裁员职务的要点。

Termination of International Arbitrator's Contract

Arbitrators can face termination if they fail to meet their contractual or other obligations. Unlike removal by a national court or arbitral institution, termination by consent of both parties does not necessitate an external decision. For instance, in Hong Kong under Section 27 of the Arbitration Ordinance, any party may request the termination of an arbitrator's mandate via the court or HKIAC. The immediate effect of such termination is the invalidation of the arbitrator's contract and the cessation of future monetary remuneration.

如果仲裁员未能履行合同或其他义务，他们可能会面临终止。与国家法院或仲裁机构的解除不同，经双方同意的终止不需要外部决定。例如，在香港，根据《仲裁条例》第27条，任何一方均可通过法院或香港国际仲裁中心请求终止仲裁员的委任。此类终止的直接后果是仲裁员合同无效并停止未来的货币报酬。

Removal of International Arbitrator 罢免国际仲裁员

An arbitrator's inability to fulfill their mandate can result in their removal by a national court or the appointing arbitration institution. Relevant provisions include:

仲裁员无法履行其职责可能会导致其被国家法院或指定仲裁机构免职。相关规定包括：

- 2010 UNCITRAL Rules (Art. 12(3)) : This rule applies when an arbitrator fails to act or is unable to perform their duties, triggering the challenge procedure.
2010 年《联合国国际贸易法委员会规则》（第 12(3) 条）：当仲裁员不作为或无法履行职责而引发质疑程序时，适用本规则。
- 2017 ICC Rules (Art. 15(2)) : Permits the court to replace an arbitrator on its initiative if the arbitrator is legally or practically hindered from performing duties or fails to meet rules and deadlines.
2017 年国际商会规则（第 15(2) 条）：如果仲裁员在法律上或实际上无法履行职责或未能遵守规则和截止日期，则允许法院主动更换仲裁员。
- The LCIA provides explicit criteria under Article 10(2) for removing an arbitrator LCIA 根据第 10 条第(2)款规定了罢免仲裁员的明确标准：
 - Deliberate breach of the Arbitration Agreement.
故意违反仲裁协议。
 - Lack of fairness and impartiality.
缺乏公平、公正。
 - Inefficiency and lack of diligence in conducting arbitration.
仲裁效率低下且缺乏勤勉。

Prohibition on Further Appointment

Although there is minimal legal basis for prohibiting the reappointment of arbitrators, arbitration institutions generally avoid appointing those considered incompetent. The reputation of an arbitrator plays a significant role in securing repeat appointments. Competence, efficiency, and integrity are vital for maintaining an arbitrator's standing in the arbitration community.

尽管禁止重新指定仲裁员的法律依据起码有限，但仲裁机构通常会避免指定那些被认为不称职的仲裁员。仲裁员的声誉在确保重复任命方面发挥着重要作用。能力、效率和诚信对于维持仲裁员在仲裁界的地位至关重要。

Understanding the mechanisms for terminating or removing international arbitrators is crucial for ensuring the credibility and efficacy of the arbitration process. Clear rules and procedures help parties address issues effectively and maintain the overall fairness and integrity of arbitration outcomes.

了解终止或罢免国际仲裁员的机制对于确保仲裁程序的可信性和有效性至关重要。明确的规则和程序有助于当事人有效解决问题，维护仲裁结果的整体公平性和完整性。

仲裁员的质疑和罢免

In the context of arbitration, the rules governing the challenge and removal of arbitrators are crucial to ensure fair proceedings. The 2018 HKIAC Administered Arbitration Rules outline the procedures for addressing situations where an arbitrator needs to be replaced, as well as the grounds and processes for challenging arbitrators. Understanding these rules and the associated case law is essential for legal practitioners and parties involved in arbitration.

在仲裁方面，仲裁员回避和罢免的规则对于确保公平程序至关重要。2018年HKIAC机构仲裁规则概述了处理需要更换仲裁员的情况的程序，以及质疑仲裁员的理由和程序。了解这些规则和相关判例法对于法律从业者和参与仲裁的当事人至关重要。

HKIAC Administered Arbitration Rules (2018)

Articles 12.1, 12.2, and 12.3 detail the conditions and procedures for replacing an arbitrator who has died, been successfully challenged, removed, or resigned. If HKIAC determines that exceptional circumstances justify depriving a party of its right to designate a substitute arbitrator, it may either appoint a substitute arbitrator or authorize the remaining arbitrators to continue. Furthermore, arbitration generally resumes at the stage where the arbitrator was replaced.

香港国际仲裁中心机构仲裁规则（2018）：第12.1、12.2和12.3条详细规定了更换已死亡、被成功质疑、免职或辞职的仲裁员的条件和程序。如果HKIAC认为特殊情况有理由剥夺一方当事人指定替代仲裁员的权利，则它可以指定替代仲裁员或授权其余仲裁员继续担任仲裁员。此外，仲裁通常在仲裁员被更换的阶段恢复。

Articles 11.6 and 11.7 specify the grounds for challenging an arbitrator and the timeline for submitting such challenges. Justifiable doubts about an arbitrator's impartiality, independence, or ability to perform are valid grounds for challenge, which must be filed within 15 days of becoming aware of the relevant circumstances.

第11.6和11.7条规定了质疑仲裁员的理由以及提交此类质疑的时间表。对仲裁员的公正性、独立性或履行能力的合理怀疑是提出质疑的有效理由，必须在了解相关情况后15天内提出质疑。

Justifiable Doubt in Hong Kong Case Law

The Jung Science Test serves as the standard for assessing bias in Hong Kong, considering whether an objective fair-minded and informed observer would conclude that there is a real possibility of bias. This principle is reiterated in various legal precedents, emphasizing the importance of an informed and fair-minded perspective in such evaluations.

香港判例法中的合理怀疑：荣格科学测试是香港评估偏见的标准，考虑客观公正和知情的观察者是否会得出结论认为确实存在偏见的可能性。这一原则在各种法律先例中得到重申，强调了此类评估中知情和公正观点的重要性。

Examples and Practical Applications :

Two illustrative examples highlight the practical application of these rules. In the first, an arbitrator's connections to the respondent's companies led to a challenge based on

perceived bias. In the second, nondisclosures about a presiding arbitrator's connections prompted allegations of bias. Both cases underscore the importance of transparency and the rigorous assessment of impartiality.

两个说明性例子强调了这些规则的实际应用。首先，仲裁员与被申请人公司的关系导致了基于感知偏见的质疑。第二次，未披露首席仲裁员的关系引发了偏见指控。这两个案例都强调了透明度和严格公正性评估的重要性。

Arbitrator Challenge Process (HKIAC) :

The HKIAC arbitrator challenge process involves multiple steps to ensure fairness and reasoned decision-making. Parties file a notice of challenge, and the HKIAC invites comments from involved parties. The challenge is usually decided on written submissions, and a challenge panel is appointed. After applying the challenge test, a non-binding recommendation is made, and HKIAC issues a reasoned decision that can adopt, reject, or revise the recommendation.

仲裁员质疑程序 (HKIAC)：HKIAC 仲裁员质疑程序涉及多个步骤，以确保决策的公平性和合理性。当事人提交质疑通知，HKIAC 邀请相关当事人发表评论。挑战通常以书面意见决定，并任命一个挑战小组。应用质疑测试后，将提出不具约束力的建议，HKIAC 会发布合理的决定，可以采纳、拒绝或修改该建议。

By adhering to these structured processes, the HKIAC ensures that arbitration remains fair, impartial, and efficient, safeguarding the integrity of the arbitration process.

通过遵守这些结构化流程，HKIAC 确保仲裁保持公平、公正和高效，维护仲裁程序的完整性。

仲裁员的权利

International arbitration provides a vital framework for resolving cross-border disputes, and arbitrators play a critical role in this process. To protect the integrity and fairness of arbitration, arbitrators are granted specific rights, including remuneration, cooperation from the parties, and immunity from legal actions.

国际仲裁为解决跨境争议提供了重要框架，仲裁员在此过程中发挥着关键作用。为了保护仲裁的诚信和公平，仲裁员被授予特定的权利，包括报酬、当事人的合作以及法律诉讼的豁免权。

报酬权 Right to Remuneration

Arbitrators are entitled to fees for their services. Various jurisdictions recognize this:

仲裁员有权就其服务收取费用。各个司法管辖区都承认这一点：

- National Laws : For instance, the Singapore Arbitration Act, 2012, § 40(1) stipulates that parties are liable to pay reasonable fees and expenses to arbitrators in appropriate circumstances.
- 国家法律：例如，2012 年《新加坡仲裁法》第 40(1) 条规定，当事人有责任在适当情况下向仲裁员支付合理的费用和开支。

- Contractual Agreements : In ad hoc arbitrations, the fee arrangement is a matter of contract between the parties and the arbitrator.
合同协议：在临时仲裁中，费用安排是当事人和仲裁员之间的合同问题。
- Institutional Fee Structures : When appointed by arbitration institutions (e.g., ICC, LCIA, HKIAC), the arbitrators' fees follow the institution's established fee schedules.
机构费用结构：当由仲裁机构（例如国际商会、伦敦国际仲裁院、香港国际仲裁中心）任命时，仲裁员的费用遵循该机构既定的收费表。
 - UNCITRAL Arbitration Rules (2010) Article 41(1) : Stipulates that arbitrators' fees and expenses must be reasonable, considering factors like the dispute's complexity and the time spent.
《联合国国际贸易法委员会仲裁规则》(2010) 第 41(1) 条：规定考虑到争议的复杂性和所花费的时间等因素，仲裁员的费用和支出必须合理。
 - LCIA Rules : Allow the tribunal to set its remuneration, capped at £400 per hour, with accountability for reporting hours.
LCIA 规则：允许仲裁庭设定其薪酬，上限为每小时 400 英镑，并对报告时间负责。
 - ICC Rules : The ICC Court determines fees based on a fee scale taking into account the dispute's amount, arbitrator's diligence, time spent, and procedural efficiency.
国际商会规则：国际商会法院根据收费标准确定费用，并考虑争议金额、仲裁员的勤勉程度、花费的时间和程序效率。
 - HKIAC Rules : Offer flexibility for parties to decide whether fees should be based on the amount in dispute or an hourly rate.
HKIAC 规则：为当事人提供灵活性，以决定费用应基于争议金额还是按小时费率。

合作权

Arbitrators have the right to expect cooperation from the parties involved.

仲裁员有权期待当事人的合作。

- Party Cooperation : Parties are expected to engage in good faith efforts to resolve disputes and support the arbitration process. This includes not engaging in conduct that causes undue delays.
各方合作：各方应真诚地努力解决争议并支持仲裁程序。这包括不从事导致不当延误的行为。
- Legislative Support : For example, the English Arbitration Act, 1996 (§ 40) and Victoria Commercial Arbitration Act, 2011 (§ 24B) enjoin parties to facilitate expeditious arbitral proceedings.
立法支持：例如，《1996 年英国仲裁法》(§ 40) 和《2011 年维多利亚商业仲裁法》(§ 24B) 责令当事人促进快速仲裁程序。

- Consequences of Non-cooperation : Non-cooperative behavior, including tactics to undermine the process, can be penalized through cost orders and other remedies.
不合作的后果：不合作行为，包括破坏流程的策略，可以通过成本令和其他补救措施进行惩罚。

Right to Immunity 豁免权

Arbitrators enjoy immunity to ensure they can perform their functions without fear of legal repercussions.

仲裁员享有豁免权，以确保他们能够履行职责而不必担心法律后果。

- International Conventions : The ICSID Convention (Articles 21(a) and 22) explicitly provides arbitrators with immunity from legal processes for acts performed in their official capacity. This immunity extends to parties, agents, counsel, advocates, witnesses, and experts involved in the proceedings.

国际公约：《ICSID 公约》（第 21(a) 条和第 22 条）明确规定仲裁员以其官方身份实施的行为享有法律程序豁免权。这种豁免权适用于参与诉讼的当事人、代理人、律师、辩护人、证人和专家。

- Absence in Key Conventions : The New York Convention and European Convention, while foundational to international arbitration enforcement, do not specifically address arbitrator immunity.

缺乏主要公约：《纽约公约》和《欧洲公约》虽然是国际仲裁执行的基础，但并未具体涉及仲裁员豁免权。

Arbitrator immunity is a critical concept in ensuring the independence and efficacy of the arbitration process. The immunity granted to arbitrators can be understood through the frameworks provided by national arbitration legislation, judicial decisions, and institutional rules.

仲裁员豁免权是确保仲裁程序独立性和有效性的关键概念。赋予仲裁员的豁免可以通过国家仲裁立法、司法判决和机构规则提供的框架来理解。

National Arbitration Legislation or Judicial Decisions

Under national laws, arbitrators are often granted either absolute or qualified immunity to protect them from liability for actions taken in their official capacity. The New Zealand Arbitration Act is a notable example, where § 13 clearly states that arbitrators are not liable for negligence. Some jurisdictions, like California, go further by protecting arbitrators from being compelled to testify about their decisions or conduct in prior proceedings, ensuring their decisions remain unchallenged on a personal level.

根据国家法律，仲裁员通常被授予绝对或有条件的豁免权，以保护他们免受以官方身份采取的行动的责任。新西兰仲裁法就是一个显着的例子，其中第 13 条明确规定仲裁员不对疏忽承担责任。加州等一些司法管辖区更进一步保护仲裁员不被迫就其在先前程序中的决定或行为作证，确保他们的决定在个人层面上不受质疑。

The UNCITRAL Model Law, although silent on the issue of arbitrator immunity, generally sees judicial recognition of such immunity in the absence of specific legislative provisions. This practice is reflected in case law from both the United States and the United Kingdom, where courts have upheld the principle that arbitrators, much like judges, must operate free from the fear of personal repercussion. For instance, in the 1956 U.S. case *Babylon Milk & Cream Co. v. Horvitz*, the court recognized the necessity for arbitrators to be protected from litigation by unsuccessful parties. Similarly, in the U.K. case *Sutcliffe v. Thackrah* (1974), the House of Lords affirmed that those performing judicial roles, including arbitrators, are not liable for negligence.

《贸易法委员会示范法》虽然没有提及仲裁员豁免权问题，但在没有具体立法规定的情况下，普遍认为司法承认这种豁免权。这种做法在美国和英国的判例法中都有体现，这些国家的法院都坚持这样的原则：仲裁员与法官一样，必须在运作时不必担心个人受到影响。例如，在1956年美国*Babylon Milk & Cream Co. v. Horvitz*一案中，法院承认有必要保护仲裁员免受败诉方的诉讼。同样，在英国*Sutcliffe 诉 Thackrah*案（1974 年）中，上议院确认，包括仲裁员在内的司法角色不承担过失责任。

Institutional Rules

Most arbitration institution rules explicitly provide for the immunity of arbitrators to ensure they can perform their duties without the threat of civil liability. For ad hoc arbitration, parties typically need to agree on the extent of civil liability protection for arbitrators.

大多数仲裁机构规则都明确规定仲裁员的豁免权，以确保他们能够履行职责而不会受到民事责任的威胁。对于临时仲裁，当事人通常需要就仲裁员的民事责任保护范围达成一致。

Prominent examples include the 2017 ICC Rules, which offer broad immunity, stating that arbitrators and related personnel are not liable for any act or omission in connection with the arbitration, except where prohibited by applicable law. The German Institution of Arbitration (DIS), 2018 HKIAC Rules, 2010 SCC Rules, and 2013 VIAC Rules all provide similar protections, with specific provisions to ensure acts of gross negligence or willful misconduct are not covered.

突出的例子包括 2017 年国际商会规则，该规则提供了广泛的豁免权，规定仲裁员和相关人员不对与仲裁有关的任何作为或不作为承担责任，除非适用法律禁止。德国仲裁机构 (DIS)、2018 年 HKIAC 规则、2010 年 SCC 规则和 2013 年 VIAC 规则都提供类似的保护，并有具体规定确保重大过失或故意不当行为不包括在内。

In summary, the immunity of international arbitrators is a well-established principle designed to maintain the integrity and independence of the arbitration process. This immunity allows arbitrators to make unbiased decisions without the fear of personal liability, thereby facilitating fair and efficient dispute resolution on a global scale.

综上所述，国际仲裁员的豁免权是一项既定的原则，旨在维护仲裁程序的完整性和独立性。这种豁免权使仲裁员能够做出公正的决定，而不必担心个人责任，从而促进全球范围内公平、高效的争议解决。

These rights collectively ensure that arbitrators can conduct arbitrations efficiently, impartially, and without undue influence, thereby upholding the integrity of the international arbitration

process.

这些权利共同确保仲裁员能够高效、公正且不受不当影响地进行仲裁，从而维护国际仲裁程序的完整性。

Role of Presiding Arbitrator in Arbitration Proceedings 首席仲裁员在仲裁程序中的作用

The presiding arbitrator is a key figure in arbitration, tasked with steering the proceedings and ensuring a fair and efficient resolution. Their responsibilities include making critical procedural decisions and leading the drafting of the arbitration award. This positions the presiding arbitrator to significantly influence the outcome and opinions of the co-arbitrators, ensuring that the arbitration process is unbiased and balanced. Furthermore, the presiding arbitrator acts as a steward, neutralizing any predispositions held by party-appointed arbitrators. In certain national laws, such as the English Arbitration Act, 1996 (§ 20[4]), and the Swiss Law on Private International Law (Art. 189[2]), the presiding arbitrator may even have the final say in case of split opinions among arbitrators.

首席仲裁员是仲裁的关键人物，其任务是引导仲裁程序并确保公平有效的解决方案。他们的职责包括做出关键的程序决定和领导起草仲裁裁决。这使得首席仲裁员能够显着影响共同仲裁员的结果和意见，确保仲裁过程的公正和平衡。此外，首席仲裁员充当管理者，消除当事人指定仲裁员的任何倾向。在某些国家法律中，例如《1996 年英国仲裁法》(§ 20[4]) 和《瑞士国际私法法》(第 189[2] 条)，首席仲裁员甚至可以在下列情况下拥有最终决定权：仲裁员之间意见分歧。

Choice of Law Governing International Arbitrators' Obligations, Rights, and Protections 国际仲裁员义务、权利和保护的法律选择

The selection of the governing law is critical for defining the obligations, rights, and protections of arbitrators. Given the significant differences between legal systems, making the right choice of law is essential. The applicable law governing an arbitrator's contract can derive from various sources:

适用法律的选择对于界定仲裁员的义务、权利和保护至关重要。鉴于法律体系之间存在显着差异，做出正确的法律选择至关重要。管辖仲裁员合同的适用法律可以来自多种来源：

- **Law Chosen by the Parties** : Parties may expressly or impliedly select the governing law.
双方选择的法律：双方可以明示或默示选择管辖法律。
- **Law of the Arbitral Seat** : The legal framework where the arbitration is physically or legally based can govern the contract.
仲裁地法律：仲裁实际或法律依据的法律框架可以管辖合同。

- Law Governing the Arbitration Agreement : The legal system underpinning the arbitration agreement may serve as the applicable law.
仲裁协议适用的法律：仲裁协议所依据的法律制度可以作为适用的法律。
- Law of the Arbitrator's Domicile : The personal law of the arbitrator could also be considered.
仲裁员住所法：也可以考虑仲裁员属人法。

These choices ensure that the arbitrator’s obligations are clear, rights are protected, and the arbitration process is conducted within a legally coherent framework. This results in a transparent and effective arbitration process, reinforcing the credibility and fairness of the arbitration outcome.

这些选择确保仲裁员的义务明确，权利受到保护，并且仲裁程序在法律一致的框架内进行。这带来了透明、有效的仲裁过程，增强了仲裁结果的可信度和公平性。

Both the crucial role of the presiding arbitrator and the careful selection of governing law underpin the integrity and effectiveness of the international arbitration process.

首席仲裁员的关键作用和对管辖法律的精心选择都是国际仲裁程序完整性和有效性的基础。

07 笔记

当事人决定仲裁程序的自主权

概述

In the realm of international arbitration, the autonomy granted to parties in determining the arbitral procedure is pivotal. This autonomy is a significant reason why parties choose arbitration over traditional litigation, aiming for processes that are fair, neutral, and adaptable to their specific needs.

在国际仲裁领域，赋予当事人决定仲裁程序的自主权至关重要。这种自主权是当事人选择仲裁而非传统诉讼的重要原因，旨在寻求公平、中立且适合其具体需求的程序。

Importance of Procedural Conduct : Parties enter into arbitration agreements with the prospect of achieving fair and unbiased procedures that stand apart from the formalities and technicalities inherent to national court systems. The flexibility and efficiency of arbitration are attractive benefits that allow the proceedings to be tailored to the dispute's particular requirements.

各方签订仲裁协议的目的是实现公平和公正的程序，有别于国家法院系统固有的手续和技术细节。仲裁的灵活性和效率是极具吸引力的优势，可以根据争议的具体要求定制仲裁程序。

Means of Achieving Objectives

1. Substantial Autonomy 充分的自主权：

- Under international conventions and domestic legislation, parties enjoy significant freedom to determine the arbitral procedure. This autonomy empowers them to create a dispute resolution process aligning with their mutual interests and specific case demands.

根据国际公约和国内立法，当事人在确定仲裁程序方面享有很大的自由。这种自主权使他们能够创建符合共同利益和具体案件需求的争议解决流程。

2. Broad Discretion of Arbitrators 仲裁员的广泛自由裁量权：

- Arbitrators possess extensive discretion to manage procedural aspects, enabling them to conduct proceedings in a manner that promotes neutrality, fairness, and efficiency.
- 仲裁员拥有广泛的自由裁量权来管理程序方面，使他们能够以促进中立、公平和效率的方式进行诉讼。

Objectives of Parties' Autonomy in Arbitral Procedure 仲裁程序中当事人自治的目标

1. Neutrality 中立性:

- Ensuring that the procedural rules are not biased towards one party's legal traditions or preferences. This neutrality is fundamental to fostering a level playing field.

确保程序规则不偏向一方的法律传统或偏好。这种中立性对于营造公平竞争环境至关重要。

2. Procedural Fairness 程序公正:

- Upholding both parties' procedural rights throughout the arbitration process. This includes equitable treatment in presenting evidence, making arguments, and other procedural aspects.

在整个仲裁过程中维护双方的程序权利。这包括在提供证据、提出论据和其他程序方面的公平待遇。

3. Speedy, Efficient, and Expert Result 快速、高效、专业的结果:

- With minimal judicial interference, arbitration aims for swift resolution by experts familiar with the subject matter, leading to knowledgeable and timely decisions.

在尽量减少司法干预的情况下，仲裁旨在由熟悉主题的专家迅速解决问题，从而做出明智且及时的决定。

4. Avoiding Formalities of Domestic Courts 避免国内法院的手续:

- Arbitration steers clear of the rigid procedural formalities of domestic litigation, favoring commercially sensible solutions that are more aligned with the practicalities of business operations.

仲裁避开了国内诉讼严格的程序手续，有利于更符合商业运营实际的商业上合理的解决方案。

5. Tailored Procedure 定制程序:

- Parties can customize arbitration procedures to their specific needs, such as opting for document-only proceedings, engaging experts, utilizing the Kaplan Opening, or even implementing "baseball arbitration" techniques.

当事人可以根据自己的具体需求定制仲裁程序，例如选择纯文件程序、聘请专家、利用卡普兰开局，甚至实施“棒球仲裁”技术。

This flexibility in procedural conduct supports the primary objectives of neutrality, fairness, efficiency, and practicality, making international arbitration a preferred choice for resolving complex, cross-border disputes.

这种程序行为的灵活性支持中立、公平、高效和实用的主要目标，使国际仲裁成为解决复杂跨境争议的首选。

Principles of Parties' Autonomy 当事人意思自治原则

A cornerstone of arbitration is the principle of parties' autonomy, which allows parties to tailor the arbitral process to their specific needs and preferences. This principle is widely recognized and safeguarded by international conventions such as the New York Convention, as well as

domestic statutes and institutional rules. It grants parties significant freedom, limited primarily by the necessity to maintain fundamental procedural fairness.

仲裁的基石是当事人意思自治原则，该原则允许当事人根据自己的具体需求和偏好定制仲裁程序。这一原则得到《纽约公约》等国际公约以及国内法规和制度规则的广泛认可和维护。它赋予当事人很大的自由，但主要受到维持基本程序公平的必要性的限制。

International Conventions & Domestic Statutes on Parties' Autonomy 关于当事人意思自治的国际公约和国内法规

1. The New York Convention, Article V(1)(d) 《纽约公约》第五条(1)(d)：

- The New York Convention stipulates that an arbitral award may not be enforced if the arbitral procedure or the composition of the arbitral authority was not in accordance with the parties' agreement. In the absence of such an agreement, it must comply with the law of the country where the arbitration took place.

《纽约公约》规定，仲裁程序或者仲裁机构的组成不符合当事人约定的，仲裁裁决不得被执行。如果没有此类协议，则必须遵守仲裁发生地国家的法律。

2. UNCITRAL Model Law, Article 19(1) 《贸易法委员会示范法》第 19(1) 条：

- This Model Law, adopted by many jurisdictions, including Hong Kong, asserts that parties are free to agree on procedural aspects of arbitration, subject to the overarching provisions of the law. For instance, in Hong Kong, this is reflected in section 47(1) of the Arbitration Ordinance (Cap 609).

该《示范法》被包括香港在内的许多司法管辖区采用，规定当事人可以在遵守法律总体规定的前提下，自由就仲裁的程序方面达成一致。例如，在香港，《仲裁条例》（第 609 章）第 47(1) 条反映了这一点。

3. Hong Kong Arbitration Ordinance, Article 19(1) 香港仲裁条例，第 19(1) 条：

- Emphasizes the autonomy of parties to decide the procedural rules of arbitration, aligning closely with the UNCITRAL Model Law.

强调当事人自主决定仲裁程序规则，与《贸易法委员会示范法》紧密结合。

4. Institutional Rules (HKIAC and SIAC) 机构规则（HKIAC 和 SIAC）：

- Arbitration institutions like the Hong Kong International Arbitration Centre (HKIAC) and the Singapore International Arbitration Centre (SIAC) also uphold the principle of party autonomy, allowing parties to craft an arbitration process suited to their needs.

香港国际仲裁中心（HKIAC）和新加坡国际仲裁中心（SIAC）等仲裁机构也秉持当事人意思自治原则，允许当事人制定适合自己需求的仲裁程序。

Conflicting Obligations of the Tribunal 法庭的相互冲突的义务

A critical issue that can arise is when the tribunal objects to the procedural agreements made by the parties. The tribunal's obligation is to balance the parties' autonomy with the need to

ensure procedural fairness and adherence to mandatory legal standards. While tribunals are generally respectful of the procedures agreed upon by the parties, they retain the authority to modify such procedures if they contravene fundamental fairness or legal requirements.

当仲裁庭反对双方达成的程序协议时，可能会出现一个关键问题。仲裁庭的义务是平衡当事人的自主权与确保程序公正和遵守强制性法律标准的需要。虽然仲裁庭通常尊重当事人商定的程序，但如果这些程序违反基本公平或法律要求，他们保留修改这些程序的权力。

In conclusion, the principle of parties' autonomy in determining arbitral procedures is fundamental in arbitration, providing flexibility and control to parties over the dispute resolution process. This autonomy is broadly supported and recognized internationally and domestically, enhancing the efficiency and fairness of arbitration as a method of dispute resolution.

总之，当事人自主决定仲裁程序的原则是仲裁的基础，为当事人提供了对争议解决过程的灵活性和控制力。这种自主权得到了国际和国内的广泛支持和认可，提高了仲裁作为争议解决方式的效率和公平性。

Arbitral Tribunal's Discretion in Determining Arbitral Procedure 仲裁庭决定仲裁程序的自由裁量权

Arbitral tribunals play a critical role in the international arbitration process, largely due to the discretion they hold in determining arbitral procedure. This discretion is vital, especially when there is no agreement between parties on procedural matters not regulated by applicable rules. Below, we explore various legal frameworks and their provisions regarding this discretion and the limits imposed on it.

仲裁庭在国际仲裁程序中发挥着至关重要的作用，这很大程度上是因为它们在确定仲裁程序方面拥有自由裁量权。这种自由裁量权至关重要，特别是当双方就不受适用规则管辖的程序事项未达成协议时。下面，我们探讨了有关这种自由裁量权及其限制的各种法律框架及其规定。

Fundamental Discretion 基本自由裁量权

The international arbitral process fundamentally relies on the arbitrator's discretion to decide procedural matters when parties do not have an agreement. This discretion ensures that arbitration can proceed smoothly and adapt to the specific needs of the dispute.

国际仲裁程序从根本上依赖仲裁员在当事人未达成协议时自行决定程序事项。这种自由裁量权确保仲裁能够顺利进行并适应争议的具体需要。

Legal Frameworks 法律框架

1. European Convention, Article IV(4)(d) 欧洲公约，第四条(4)(d)：

- The article allows the tribunal to establish procedural rules directly or by referencing the rules and statutes of a permanent arbitral institution, granting flexibility in procedural determinations.

该条允许仲裁庭直接或参照常设仲裁机构的规则和规约制定程序规则，赋予程序决定的灵活性。

2. UNCITRAL Model Law, Article 19(2) 《贸易法委员会示范法》第 19(2) 条：

- If the parties fail to agree, the tribunal may conduct arbitration as it deems appropriate, including deciding the admissibility, relevance, materiality, and weight of any evidence. While notable, this is not applicable in Hong Kong per section 47 of the Arbitration Ordinance. 如果双方未能达成一致，仲裁庭可以在其认为适当的情况下进行仲裁，包括决定任何证据的可采性、相关性、实质性和重要性。值得注意的是，根据《仲裁条例》第 47 条，这不适用于香港。

3. Hong Kong Arbitration Ordinance, s47 香港仲裁条例，第 47 条：

- If there is no agreement, the tribunal has the authority to conduct the arbitration as it considers appropriate. The tribunal is not bound by the traditional rules of evidence but must give the weight it views as suitable to the evidence presented. 如果没有达成一致，仲裁庭有权进行其认为适当的仲裁。仲裁庭不受传统证据规则的约束，但必须给予其认为适合所提供的证据的权重。

4. UNCITRAL Arbitration Rules 2010, Article 17 2010 年贸易法委员会仲裁规则，第 17 条：

- These rules mandate that the tribunal must conduct proceedings to avoid unnecessary delay and expense, while ensuring fairness and an efficient process to resolve disputes. 这些规则规定仲裁庭必须进行诉讼程序以避免不必要的延误和费用，同时确保公平和高效的争议解决程序。

Limits on Arbitrators' Discretion 仲裁员自由裁量权的限制

The discretion of arbitrators is not limitless and is bound by several critical principles to maintain fairness and efficiency:

仲裁员的自由裁量权并非无限，并受几个关键原则的约束，以保持公平和效率：

1. Equal Treatment and Due Process 平等待遇和正当程序：

- Arbitrators must ensure fairness and uphold due process, ensuring all parties are treated equally and fairly.

仲裁员必须确保公平并遵循正当程序，确保各方得到平等和公正的对待。

2. Efficiency 效率：

- The process should be managed efficiently to avoid unnecessary delays and costs. 应有效管理该流程，以避免不必要的延误和成本。

3. General Obligation 一般义务：

- There is an underlying obligation to respect and implement the procedural agreements made by the parties, reinforcing the autonomy of their agreement.

尊重和执行当事人达成的程序协议，加强其协议的自主性是一项基本义务。

优先各方协议 Overriding Parties' Agreement

Once an agreement on procedures has been established between the parties, it cannot be revoked unilaterally or jointly. This clause underscores the importance of stability and commitment in the agreed arbitral process.

当事人之间一旦订立程序协议，不得单方面或共同撤销。该条款强调了商定的仲裁程序中稳定性和承诺的重要性。

In conclusion, while the tribunal's discretion in determining procedural matters provides the necessary flexibility for effective arbitration, it is balanced by the need for fairness, efficiency, and respect for the parties' agreements. This equilibrium ensures that arbitration remains a reliable and equitable method for resolving international disputes.

总之，虽然仲裁庭在确定程序事项方面的自由裁量权为有效仲裁提供了必要的灵活性，但它需要公平、效率和尊重当事人协议的需要来平衡。这种平衡确保仲裁仍然是解决国际争端的可靠和公平的方法。

仲裁中的强制性程序

概述

Arbitration provides a flexible dispute resolution mechanism, but it operates within a framework of mandatory procedural requirements dictated by national and international law. These requirements are designed to ensure fairness, equality, and regularity in arbitral proceedings.

仲裁提供了一种灵活的争议解决机制，但它是在国家和国际法规定的强制性程序要求的框架内运作的。这些要求旨在确保仲裁程序的公平、平等和规范。

Freedom vs. Mandatory Law : While arbitration grants parties significant freedom to define the procedural aspects of dispute resolution and allows the tribunal discretion to shape these procedures, this freedom is bounded by mandatory requirements. These mandatory requirements are laid down by relevant national and international laws to ensure that the fundamental principles of justice are upheld.

自由与强制性法律： 虽然仲裁赋予当事人很大的自由来定义争议解决的程序方面，并允许仲裁庭自由裁量权制定这些程序，但这种自由受到强制性要求的限制。这些强制性要求是由相关国家和国际法律规定的基本原则。

Scope of Mandatory Law : The mandatory laws typically impose limited but essential guarantees of procedural fairness and regularity. While these laws aim to provide a fair and

balanced arbitration environment, they do not overly restrict the flexibility that makes arbitration an attractive option. The essential guarantees include ensuring that all parties have the opportunity to present their case and that the tribunal acts impartially and within its jurisdiction.

强制性法律的范围：强制性法律通常对程序公平性和规律性施加有限但必要的保证。虽然这些法律旨在提供公平和平衡的仲裁环境，但它们并没有过度限制使仲裁成为有吸引力的选择的灵活性。基本保障包括确保所有各方都有机会陈述案情，并确保仲裁庭在其管辖范围内公正行事。

International Conventions : International conventions play a crucial role in maintaining procedural fairness in arbitration. These conventions permit the setting aside of arbitral awards and deny their recognition if the basic procedural fairness requirements are not satisfied. This mechanism ensures that arbitral proceedings adhere to international standards of fairness and regularity. Additionally, the conventions allow for national laws to implement non-discriminatory rules that uphold procedural fairness and equality, thereby providing a balanced approach that respects both international and domestic legal principles.

国际公约：国际公约在维护仲裁程序公正方面发挥着至关重要的作用。这些公约允许撤销仲裁裁决，并在不满足基本程序公正要求的情况下拒绝承认仲裁裁决。这一机制确保仲裁程序遵守公平和规范的国际标准。此外，这些公约允许国家法律实施维护程序公平和平等的非歧视性规则，从而提供尊重国际和国内法律原则的平衡方法。

In conclusion, while arbitration offers a flexible and party-centric approach to dispute resolution, it is regulated by mandatory procedural requirements to ensure fairness and regularity, thereby maintaining the integrity and credibility of the arbitral process.

总之，仲裁虽然提供了灵活且以当事人为中心的争议解决方式，但它受到强制性程序要求的约束，以确保公平性和规范性，从而维护仲裁程序的完整性和可信性。

The New York Convention

The New York Convention is a cornerstone in the enforcement of international arbitration agreements and awards. Key provisions include:

《纽约公约》是执行国际仲裁协议和裁决的基石。主要条款包括：

- Article II : Mandates that signatory states enforce arbitration agreements, ensuring that parties adhere to their contractual commitment to resolve disputes through arbitration.
第二条：授权签署国执行仲裁协议，确保各方遵守通过仲裁解决争议的合同承诺。
- Article V(1)(b) : Allows for non-recognition of arbitral awards if a party was not given proper notice or was otherwise unable to present their case, ensuring procedural fairness.
第五条(1)(b)：如果一方未收到适当通知或因其他原因无法陈述案情，则允许不承认仲裁裁决，从而确保程序公正。

- Article V(1)(d) : Awards can be refused if the arbitration procedure was not followed as agreed by the parties.
第五条第（1）款（d）项：如果未按照当事人约定进行仲裁程序，则可以拒绝裁决。
- Article V(2)(b) : Awards can be refused enforcement if they violate the public policy of the enforcing country.
第五条第（2）款（b）项：如果裁决违反执行国的公共政策，可以拒绝执行。

National Legislation

National laws typically provide minimal standards for procedural fairness and equality while allowing substantial autonomy to the parties and discretion to the tribunal. For example:

国家法律通常规定程序公正和平等的最低标准，同时允许当事人有很大的自主权和仲裁庭的自由裁量权。例如：

- UNCITRAL Model Law, Article 18 : Although not applicable in all jurisdictions, it stipulates that parties must be treated equally and given a full opportunity to present their case.
《贸易法委员会示范法》第 18 条：虽然并不适用于所有司法管辖区，但它规定各方必须受到平等对待并给予充分的机会陈述案情。

National Legislation in Hong Kong

- Hong Kong Arbitration Ordinance, Section 46 :
香港仲裁条例，第 46 条：
 - Section 46(2) : Requires equal treatment of the parties.
第 46(2) 条：要求各方平等对待。
 - Section 46(3) : Mandates that tribunals act independently, fairly, and impartially, providing a reasonable opportunity for parties to present their cases and addressing their opponents' cases. Tribunals must use appropriate procedures to avoid unnecessary delay or expense, thus ensuring a fair resolution process.
第 46(3) 条：规定仲裁庭独立、公平、公正地行事，为当事人提供陈述案件和处理对方案件的合理机会。仲裁庭必须使用适当的程序，以避免不必要的延误或费用，从而确保公平的解决过程。

Mimmie Chan's Sun Tian Gang Set-Aside Judgment 陈美美 (Mimmie Chan) 孙天刚撤销判决

This high-profile case in Hong Kong illustrates the application of natural justice principles in arbitration. Sun Tian Gang, imprisoned during the arbitration, successfully argued for the award to be set aside due to a lack of due process. The judge found that Sun was deprived of a fair opportunity to know and contest the claims against him, thus violating fundamental notions of natural justice.

香港这起备受瞩目的案件体现了自然正义原则在仲裁中的应用。仲裁期间入狱的孙天刚因缺乏正当程序而成功主张撤销裁决。法官认为，孙被剥夺了了解和质疑针对他的指控的公平机会，从而违反了自然正义的基本概念。

Understanding these procedural requirements is crucial for ensuring the legitimacy and enforceability of arbitral awards, maintaining the integrity of the arbitration process, and protecting the rights of the parties involved.

了解这些程序要求对于确保仲裁裁决的合法性和可执行性、维护仲裁程序的完整性以及保护当事人的权利至关重要。

仲裁中的司法不干预

Judicial Non-Interference is a principle that underscores the importance of minimal court involvement in the arbitration process to uphold its efficacy and integrity. This principle advocates for arbitration proceedings to move forward in accordance with the agreements between parties, without unnecessary judicial interventions that could cause delays and complications.

司法不干涉原则强调法院最少程度地参与仲裁过程以维护其有效性和完整性的重要性。该原则主张仲裁程序按照当事人之间的协议进行，而不需要不必要的司法干预，以免造成延误和复杂化。

Neil Kaplan's Perspective

Neil Kaplan, a prominent figure in the field of arbitration, illustrates the dichotomy between an ideal and realistic approach to judicial non-interference in arbitration:

仲裁领域的杰出人物尼尔·卡普兰（Neil Kaplan）阐述了司法不干预仲裁的理想与现实方法之间的二分法：

1. Ideal Scenario :

- In a perfect world, arbitration agreements would be flawlessly honored.
在一个完美的世界中，仲裁协议将得到完美的履行。
- Arbitrators would be appointed smoothly as per the agreement with no challenges.
仲裁员将按照协议顺利任命，不会遇到任何挑战。
- Disputes over document production would be non-existent.
关于文件制作的争议将不存在。
- Parties would comply with arbitral awards voluntarily.
当事人自愿遵守仲裁裁决。

This utopian vision would eliminate the need for any interaction between courts and the arbitral process, a scenario that would significantly reduce the legal workload for many professionals in the field.

这种乌托邦式的愿景将消除法院和仲裁程序之间任何互动的需要，这种情况将大大减少该领域许多专业人士的法律工作量。

2. Real-World Scenario 真实场景：

- Despite the ideal scenario, the reality is vastly different. Disputes arise concerning the appointment of arbitrators, document production, and compliance with awards.
尽管这是理想的情况，但现实却有很大不同。争议的产生涉及仲裁员的任命、文件的制作以及裁决的遵守。
- Therefore, judicial interaction becomes crucial to aid the arbitration process, ensuring that it remains fair and aligned with the parties' agreement.
因此，司法互动对于协助仲裁程序、确保仲裁保持公平并符合当事人的协议变得至关重要。
- Courts may need to step in to resolve challenges to arbitrators, enforce agreements, and ensure compliance with awards.
法院可能需要介入解决对仲裁员的质疑、执行协议并确保裁决得到遵守。

Importance of Judicial Non-Interference

- This principle is fundamentally important to the efficacy of the international arbitral process.
这一原则对于国际仲裁程序的有效性至关重要。
- It ensures that arbitration can proceed based on the agreement of the parties or under the direction of the tribunal, without the delays and second-guessing associated with judicial review of procedural decisions.
它确保仲裁可以根据当事人的协议或仲裁庭的指示进行，而不会出现与程序决定的司法审查相关的延误和事后猜测。
- Judicial involvement should be limited to essential interventions that support and not hinder the arbitral process.
司法参与应仅限于支持而不是阻碍仲裁程序的必要干预。

Mimicking the ideal, efforts are made to keep judicial interference as minimal as possible, fostering an environment where arbitration can achieve its goals of efficiency, confidentiality, and finality. This delicate balance ensures arbitration remains a viable and attractive alternative to litigation, benefiting international business relations and dispute resolution.

效仿这一理想，努力将司法干预降到最低，营造一个仲裁环境，使仲裁能够实现其效率、保密性和终局性的目标。这种微妙的平衡确保仲裁仍然是诉讼的可行且有吸引力的替代方案，有利于国际商业关系和争议解决。

法律框架

Judicial non-interference is a fundamental principle in international arbitration, ensuring that arbitration remains a preferred method for dispute resolution by minimizing court involvement.

This principle is enshrined in several key international treaties and national legislations, notably the New York Convention (NYC) and the UNCITRAL Model Law.

司法不干涉是国际仲裁的一项基本原则，通过最大限度地减少法院的参与，确保仲裁仍然是解决争议的首选方法。这一原则被载入多项重要国际条约和国家立法，特别是《纽约公约》(NYC) 和《贸易法委员会示范法》。

Judicial Non-Interference Under the New York Convention (NYC)

The NYC does not explicitly prevent courts from entertaining interlocutory applications related to ongoing arbitration procedures, such as disputes over procedural timetables, disclosure orders, or evidentiary rulings. However, the NYC's structure inherently supports judicial non-interference:

纽约公约并未明确阻止法院受理与正在进行的仲裁程序相关的中间申请，例如有关程序时间表、披露令或证据裁决的争议。然而，纽约公约的结构本质上支持司法不干涉：

- Article II(3) mandates that courts refer parties to arbitration when a valid arbitration agreement exists, reinforcing arbitration as the primary forum for dispute resolution.
第二条第(3)款规定，当存在有效仲裁协议时，法院将当事人提交仲裁，从而强化了仲裁作为争议解决的主要场所的地位。
- Articles III, IV, and V outline the conditions under which courts may intervene, primarily concerning the recognition and enforcement of arbitral awards, thus implicitly limiting court intervention during the arbitration process.
第三条、第四条和第五条概述了法院可以干预的条件，主要涉及仲裁裁决的承认和执行，从而隐含地限制了法院在仲裁过程中的干预。

国家立法规定的司法不干涉

1. UNCITRAL Model Law 贸易法委员会示范法：

- Article 5 explicitly states that courts shall not intervene in arbitration matters except where the law provides, supporting the autonomy and efficiency of the arbitration process.
第五条明确规定，除法律规定外，法院不得干预仲裁事务，支持仲裁程序的自主性和效率。

2. Hong Kong Arbitration Ordinance (Cap 609) 香港仲裁条例（第 609 章）：

- Section 12 reinforces the principle of limited court intervention, aligning with Article 5 of the UNCITRAL Model Law.
第 12 条强化了有限法院干预的原则，与《贸易法委员会示范法》第 5 条保持一致。
- Further Articles :
更多条款：
 - Article 6 (Section 13) : Designates national courts for specific arbitration-related functions.
第 6 条（第 13 节）：指定国家法院履行与仲裁相关的具体职能。

- Article 11 (Section 24) : Concerns the appointment of arbitrators by the courts when parties cannot agree.
第 11 条 (第 24 条) : 涉及当事人无法达成一致时法院指定仲裁员的问题。
- Article 13 (Section 26) : Allows for the challenge of arbitrators through judicial processes.
第 13 条 (第 26 条) : 允许通过司法程序对仲裁员提出质疑。
- Article 14 (Section 27) : Addresses the replacement of arbitrators.
第 14 条 (第 27 条) : 涉及仲裁员的更换。
- Article 16 (Section 34) : Permits courts to review jurisdictional decisions made by arbitral tribunals.
第 16 条 (第 34 条) : 允许法院审查仲裁庭做出的管辖权决定。
- Article 34 (Section 81) : Provides recourse against arbitral awards, specifying limited grounds for court intervention.
第 34 条 (第 81 条) : 规定了对仲裁裁决的追索权，明确了法院干预的有限理由。

These frameworks collectively ensure that courts only intervene in arbitration where absolutely necessary, preserving the integrity, efficiency, and appeal of arbitration as a means of resolving international disputes.

这些框架共同确保法院仅在绝对必要时介入仲裁，从而维护仲裁作为解决国际争端的手段的完整性、效率和上诉性。

比较分析：《纽约公约》与《ICSID公约》中的司法不干涉

The New York Convention and the ICSID Convention are pivotal frameworks supporting the investor-State arbitration system, yet they are distinct in their scope, focus, and interaction with national judicial systems.

《纽约公约》和《ICSID 公约》是支持投资者与国家仲裁制度的关键框架，但它们在范围、重点以及与国家司法系统的互动方面却截然不同。

New York Convention

1. Broad Applicability 广泛的适用性：
 - The New York Convention applies to a wide spectrum of international arbitration, not restricted to investor-State disputes.
《纽约公约》适用于广泛的国际仲裁，不仅限于投资者与国家之间的争端。
 - It is a foundational treaty for recognizing and enforcing international arbitral awards across different jurisdictions.
它是在不同司法管辖区承认和执行国际仲裁裁决的基础条约。
2. Product-Oriented Focus 以结果为导向的重点：

- The convention is predominantly concerned with the post-arbitration phase, specifically the recognition and enforcement of arbitral awards.
该公约主要关注仲裁后阶段，特别是仲裁裁决的承认和执行。
- It establishes a framework for national courts to enforce arbitration agreements and the awards resulting from those agreements.
它为国家法院执行仲裁协议和这些协议所产生的裁决建立了一个框架。

3. Dependence on National Systems 对国家系统的依赖：

- The New York Convention operates through national laws, which provide the necessary legal framework (*lex arbitri*) for arbitration.
《纽约公约》通过国家法律运作，为仲裁提供了必要的法律框架（任意法）。
- National courts play a critical role in both enforcing arbitration agreements and awards, with the power to review under specific conditions outlined in Article V.
国家法院在执行仲裁协议和裁决方面发挥着关键作用，有权在第五条规定的特定条件下进行审查。

4. National Court Review Powers 国家法院审查权：

- Article V of the New York Convention outlines grounds on which national courts can refuse recognition and enforcement of awards, providing limited but significant review powers.
《纽约公约》第五条概述了国家法院可以拒绝承认和执行裁决的理由，提供有限但重要的审查权力。

ICSID Convention

1. Exclusive to Investor-State Disputes 投资者与国家争端专有：
 - The ICSID Convention is narrowly focused on arbitration between investors and sovereign States, providing a specialized legal framework for such disputes.
《ICSID 公约》主要关注投资者与主权国家之间的仲裁，为此类争议提供专门的法律框架。
2. Comprehensive Lex Arbitri 综合任意法：
 - Unlike the New York Convention, the ICSID Convention offers a complete set of rules for both the arbitration process and the resulting awards.
与《纽约公约》不同，ICSID 公约为仲裁程序和裁决结果提供了一整套规则。
 - It functions as an all-encompassing legal framework, reducing the need for external rules.
它作为一个包罗万象的法律框架发挥作用，减少了对外部规则的需求。
3. Supra-National Arbitration System 超国家仲裁系统：
 - The ICSID Convention envisions an arbitration system that largely operates independently of national judicial systems.
《ICSID 公约》设想建立一个基本上独立于国家司法系统运作的仲裁系统。

- National courts are involved only as the final enforcers of awards, rather than as active participants in the arbitration process.

国家法院仅作为裁决的最终执行者，而不是仲裁过程的积极参与者。

4. Limited National Court Involvement 国家法院的有限参与：

- The enforcement mechanism under the ICSID Convention does not provide national courts with the authority to review awards.

《ICSID 公约》下的执行机制并未赋予国家法院审查裁决的权力。

- This enhances the finality and stability of awards issued under the ICSID framework.
这增强了 ICSID 框架下颁发的裁决的最终性和稳定性。

In summary, while both the New York Convention and the ICSID Convention aim to facilitate and strengthen the investor-State arbitration system, they do so through different mechanisms and with varying degrees of judicial non-interference. The New York Convention integrates closely with national legal systems, allowing for limited judicial review, whereas the ICSID Convention establishes a more autonomous framework with minimal court interference, ensuring the finality and enforceability of arbitral awards.

总之，虽然《纽约公约》和《ICSID 公约》都旨在促进和加强投资者与国家之间的仲裁制度，但它们通过不同的机制和不同程度的司法不干涉来实现这一目标。《纽约公约》与国家法律体系紧密结合，允许有限的司法审查，而《ICSID 公约》则建立了一个更加自主的框架，将法院干预降至最低，确保了仲裁裁决的终局性和可执行性。

Procedural Conduct in International Arbitration 国际仲裁的程序行为

In international arbitration, procedural conduct is a critical factor that significantly influences the efficiency and fairness of the dispute resolution process. Unlike domestic court proceedings, international arbitration does not adhere to a rigid procedural code. Instead, the procedural elements are predominantly in the hands of the parties and the arbitral tribunal, providing a high degree of flexibility.在国际仲裁中，程序行为是显著影响争议解决过程效率和公平性的关键因素。与国内法院诉讼不同，国际仲裁不遵守严格的程序规则。相反，程序要素主要掌握在当事人和仲裁庭手中，提供了高度的灵活性。

概述

- Control Over Procedure :The procedural conduct of international arbitration allows parties to tailor their dispute resolution process to their specific needs. Both parties and arbitral tribunals have substantial latitude in designing the proceedings, which includes determining the applicable laws and selecting arbitrators with relevant expertise. This autonomy can lead to more efficient and specialized dispute resolution.

控制程序：国际仲裁的程序性允许当事人根据自己的具体需求定制争议解决流程。当事人和仲裁庭在设计程序时拥有很大的自由度，包括确定适用的法律和选择具有相关专业知识的仲裁员。这种主权可以带来更高效、更专业的争议解决。

- **No General Procedural Code :**The absence of a universal procedural code for international arbitration can be seen as both an advantage and a disadvantage. On one hand, it provides parties with the flexibility to create a custom process that suits their particular circumstances. On the other hand, it can lead to uncertainty and inconsistency in how different arbitrations are conducted.

无通用程序：国际仲裁缺乏通用程序守则既可以被视为优点，也可以被视为缺点。一方面，它为各方提供了创建适合其特定情况的自定义流程的灵活性。另一方面，它可能导致不同仲裁的进行方式存在不确定性和不一致。

- **Domestic Rules of Civil Procedure :**In international arbitration, the mandatory application of domestic civil procedure rules is generally avoided. Instead, the procedural rules are either agreed upon by the parties or specified by the arbitrators. This freedom allows for a more streamlined process, free from the often complex and stringent requirements of domestic litigation.

国内民事诉讼规则：在国际仲裁中，一般避免强制适用国内民事程序规则。相反，程序规则要么由当事人商定，要么由仲裁员指定。这种自由使得程序更加简化，不受国内诉讼通常复杂和严格的要求的影响。

- **Institutional Rules :**Certain institutions, such as the International Chamber of Commerce (ICC), provide that arbitral tribunals may determine their procedural rules. These can include, but are not limited to, the procedural rules of national law. Arbitrators have the liberty to accept these rules, but they are not compelled to do so, allowing for further flexibility.

机构规则：某些机构，例如国际商会（ICC），规定仲裁庭可以决定其程序规则。这些可以包括但不限于国家法律的程序规则。仲裁员可以自由地接受这些规则，但他们并非被迫这样做，从而具有更大的灵活性。

Institutional vs. Ad Hoc Arbitration :机构仲裁与临时仲裁

- **Institutional Arbitration :**Governed by the established rules of an arbitral institution, providing a structured framework that can enhance predictability and reliability. **机构仲裁：**受仲裁机构既定规则管辖，提供可增强可预测性和可靠性的结构化框架。
- **Ad Hoc Arbitration :**Offers greater flexibility as it is not bound by institutional rules, but necessitates a higher degree of agreement between parties on procedural matters. **临时仲裁：**提供更大的灵活性，因为它不受机构规则的约束，但需要各方就程序事项达成更高程度的协议。

HKIAC Administered Arbitration Rules – Section IV

The Hong Kong International Arbitration Centre (HKIAC) provides specific guidelines under its administered arbitration rules, covering various aspects of procedural conduct:

HKIAC 机构仲裁规则 – 第四节：香港国际仲裁中心（HKIAC）根据其管理仲裁规则提供了具体指南，涵盖程序行为的各个方面：

- General Provisions (Article 13) : Establishes the basic framework and principles.一般规定（第 13 条）：建立基本框架和原则。
- Seat and Venue (Article 14) : Determines the location of arbitration.地点和地点（第 14 条）：确定仲裁地点。
- Language (Article 15) : Specifies the language for proceedings.语言（第 15 条）：指定诉讼程序的语言。
- Statement of Claim and Defence (Articles 16 & 17) : Outlines requirements for initial submissions.索赔和答辩声明（第 16 条和第 17 条）：概述了初次提交的要求。
- Amendments (Article 18) , Jurisdiction (Article 19) , Further Written Statements (Article 20) : Detail procedures for modifying claims, establishing authority, and submitting additional statements.修正案（第 18 条）、管辖权（第 19 条）、进一步书面声明（第 20 条）：修改权利要求、建立权限和提交附加声明的详细程序。
- Evidence and Hearings (Article 22) : Governs the submission and evaluation of evidence.证据和听证会（第 22 条）：管辖证据的提交和评估。
- Interim Measures (Article 23) and Security for Costs (Article 24) : Provide guidelines for protective and emergency measures.临时措施（第 23 条）和费用保障（第 24 条）：提供保护和紧急措施指南。
- Tribunal-Appointed Experts (Article 25) : Rules on the use of expert testimony.仲裁庭指定的专家（第 25 条）：关于使用专家证词的规则。
- Default (Article 26) : Addresses non-participation by a party.默认（第 26 条）：解决一方不参与的问题。
- Joinder of Additional Parties (Article 27) and Consolidation of Arbitrations (Article 28) : Rules for involving additional parties or combining proceedings.追加当事人的加入（第 27 条）和仲裁的合并（第 28 条）：涉及追加当事人或合并程序的规则。
- Single Arbitration under Multiple Contracts (Article 29) : Provisions for arbitrations involving multiple agreements.多份合同下的单一仲裁（第 29 条）：涉及多份协议的仲裁的规定。
- Closure of Proceedings (Article 30) and Waiver (Article 31) : Procedures for formally closing proceedings and conditions for waiving procedural rights.程序结束（第 30 条）和放弃（第 31 条）：正式结束程序的程序和放弃程序权利的条件。

The procedural conduct in international arbitration, with its emphasis on flexibility, expertise, and efficiency, provides a robust platform for resolving complex disputes, ensuring that the

parties' interests are adequately addressed.国际仲裁的程序行为强调灵活性、专业性和效率，为解决复杂争议提供了强大的平台，确保当事人的利益得到充分考虑。

第 1 号程序令中概述的程序行为

Procedural Order No. 1 sets out clear directives and timelines for the conduct of the arbitration process, ensuring an organized and efficient resolution of the dispute. These procedures provide structure for the submission of claims, defence, and any necessary expert evidence, while also allowing for flexibility where necessary.第 1 号程序令规定了仲裁程序进行的明确指示和时间表，确保有组织、高效地解决争议。这些程序为提交索赔、辩护和任何必要的专家证据提供了结构，同时在必要时也允许灵活性。

Submissions Timeline: 提交时间表

- Statement of Claim 索赔声明：

The Claimant is required to submit a comprehensive Statement of Claim, supported by witness statements, expert reports (if any), and all relevant documentation by a specified date.索赔人必须在指定日期之前提交一份全面的索赔声明，并附有证人陈述、专家报告（如果有）以及所有相关文件。

- Statement of Defence and Counterclaim 抗辩及反诉声明：

The Respondent must submit its Statement of Defence and any Counterclaim, accompanied by the same types of supporting documents, by another set deadline.被申请人必须在另一个规定的截止日期前提交其答辩书和任何反诉，并附上相同类型的证明文件。

- Statement of Reply and Defence to Counterclaim 反诉答辩及答辩声明：

The Claimant then submits a Statement of Reply addressing the Counterclaim, along with supporting witness statements and expert reports, by a subsequent date.然后，索赔人在随后的日期提交针对反索赔的答复声明，以及支持证人陈述和专家报告。

- Rejoinder and Reply to Defence to Counterclaim 对反诉答辩的反驳和答复：

Finally, the Respondent has a deadline to submit a Rejoinder and reply to the Defence to Counterclaim, with all necessary supportive materials.最后，被申请人必须在截止日期前提交答辩并对反诉答辩作出答复，并附上所有必要的支持材料。

- Highlighting Relevant Passages 突出显示相关段落：

Every relevant passage in the supporting documents must be highlighted to facilitate easy reference.支持文件中的每一个相关段落都必须突出显示，以便于参考。

Post-Hearing Submissions 听证会后提交的意见

The possibility of post-hearing submissions will be determined by the Arbitrator in consultation with the Parties, unless the Parties agree otherwise.听证会后提交意见的可能性将由仲裁员与双方协商确定，除非双方另有约定。

Case Management Conference 案例管理会议

A Case Management Conference will be scheduled by the Arbitrator, conducted via video-conference or in person, as agreed upon with the Parties.仲裁员将按照与双方商定的方式安排案件管理会议，通过视频会议或亲自进行。

Expert Evidence:专家证据

- Expert Conference 专家会议：

By a set date, the experts from both Parties must confer to identify areas of agreement and disagreement, and provide reasons for any disagreements.在规定日期之前，双方专家必须进行协商，以确定一致和分歧的领域，并提供任何分歧的理由。

- Memorandum or Separate Reports 备忘录或单独报告：

By the same deadline, a joint memorandum should be prepared by the experts. If a joint document is not feasible, the experts must produce a statement of agreed views and separate reports detailing their differences.在同一截止日期前，专家们应编写一份联合备忘录。如果联合文件不可行，专家们必须提出一致意见的声明和详细说明分歧的单独报告。

- Application to Vacate Procedural Steps 申请腾出程序步骤：

Provision is made for either party, or both jointly, to apply to the Arbitrator to vacate any procedural steps in the interest of efficiency.为了提高效率，任何一方或双方共同向仲裁员申请撤销任何程序步骤。

These regulations are designed to streamline the arbitration process, ensuring that it progresses efficiently and transparently while providing opportunities for expert input and maintaining flexibility to adapt to the needs of the parties involved.这些法规旨在简化仲裁程序，确保仲裁程序高效、透明地进行，同时提供专家意见的机会并保持灵活性以适应相关各方的需求。

Civil law, common law, and other procedures

In arbitration, procedural conduct is influenced by various intangible factors, including the dynamics between opposing counsel and the preferences of the arbitrators. These elements significantly affect how arbitration is conducted and the methods used to resolve disputes.在仲裁中，程序行为受到各种无形因素的影响，包括对方律师之间的动态和仲裁员的偏好。这些要素极大地影响仲裁的进行方式以及解决争议的方法。

Intangible Factors Affecting Tribunal's Discretion :The tribunal's decisions are often shaped by the cooperation and preferences of the opposing counsel. When counsel works together effectively, it can streamline the arbitration process. Additionally, the personal characteristics of arbitrators—including their age, temperament, intelligence, time commitments, background, and interests—play a crucial role in shaping procedural preferences.

影响仲裁庭自由裁量权的无形因素：仲裁庭的裁决通常取决于对方律师的合作和偏好。当律师有效合作时，可以简化仲裁流程。此外，仲裁员的个人特征——包括年龄、气质、智力、时间承诺、背景和兴

趣——在形成程序偏好方面发挥着至关重要的作用。

Impact of Arbitrator's Legal Background :A notable factor influencing procedural decisions is the arbitrator's legal background. Arbitrators trained in different legal systems, such as Common Law, Civil Law, Islamic Law, or others, bring their distinct procedural approaches to the arbitration process.

仲裁员法律背景的影响：影响程序决定的一个显着因素是仲裁员的法律背景。接受过普通法、民法、伊斯兰法等不同法律体系培训的仲裁员将其独特的程序方法运用到仲裁过程中。

Civil Law Procedures

Civil law follows an inquisitorial process , where the tribunal is primarily responsible for identifying and addressing legal issues. The tribunal actively seeks evidence and probes the factual record. As a result, there is typically less document disclosure and fewer opportunities for cross-examination compared to common law systems.民法程序：民法遵循调查程序，法庭主要负责确定和解决法律问题。仲裁庭积极寻找证据并调查事实记录。因此，与普通法系相比，文件披露和交叉询问的机会通常较少。

Common Law Procedures

In contrast, common law systems employ an adversarial process , allowing each party significant freedom to develop and present their arguments. This system involves extensive document disclosure and thorough cross-examinations to uncover the truth.普通法程序：相比之下，普通法体系采用对抗性程序，允许各方有很大的自由来发展和提出自己的论点。该系统涉及广泛的文件披露和彻底的盘问以揭露真相。

Professor Tercier's Observations

Professor Tercier highlights the cultural roots of discovery in legal systems:

- **Common Law :** Discovery is considered fundamental to the adversarial system, compensating for the tribunal's lack of inquisitorial powers. It is valued for its role in uncovering the truth to achieve justice between parties.
普通法：证据开示被认为是对抗制的基础，弥补了法庭调查权力的缺乏。它因其在揭露真相以实现各方之间正义方面的作用而受到重视。
- **Civil Law :** On the continent, civil procedures aim to establish a "relative truth," reflecting the perspectives presented by the parties rather than an absolute truth. Here, evidence management lies with the parties' counsel, who have discretion over the extent of disclosure.
民法：在大陆法系，民事程序旨在建立“相对真相”，反映当事人提出的观点，而不是绝对真相。在这里，证据管理由当事人的律师负责，他们对披露的程度拥有酌处权。

In summary, arbitration procedures are deeply influenced by the legal traditions and cultural practices of the arbitrators and the legal systems they represent. Understanding these differences is crucial for navigating the complexities of international arbitration effectively.

综上所述，仲裁程序深受仲裁员及其所代表的法律体系的法律传统和文化习俗的影响。了解这些差异对于有效应对国际仲裁的复杂性至关重要。

In the realm of international arbitration, procedural conduct is of paramount importance. The development of internationally accepted procedural guidelines or rules ensures consistency, fairness, and efficiency in arbitration proceedings across different jurisdictions. Key guidelines provided by the International Bar Association (IBA) include the IBA Rules on the Taking of Evidence, IBA Guidelines on the Conflict of Interest, and IBA Guidelines on Party Representation. These guidelines play a crucial role in addressing what is termed "legislitis"—the tendency towards excessive legalism in arbitration.

在国际仲裁领域，程序行为至关重要。制定国际公认的程序指南或规则可确保不同司法管辖区仲裁程序的一致性、公平性和效率。国际律师协会 (IBA) 提供的主要指南包括《IBA 取证规则》、《IBA 利益冲突指南》和《IBA 当事人代表指南》。这些指南在解决所谓的“立法主义”（仲裁中过度法律主义的倾向）方面发挥着至关重要的作用。

Procedural Conduct: Internationalised Approach 程序行为：国际化方法

Development of Guidelines :The internationalisation of arbitration necessitates the creation of procedural guidelines that are universally acknowledged. These guidelines facilitate a harmonised approach to managing arbitration processes, ensuring that irrespective of the parties' backgrounds, the conduct of arbitration remains standardized and fair.

制定指南：仲裁的国际化需要制定普遍认可的程序指南。这些准则有助于采用统一的方法来管理仲裁程序，确保无论当事人的背景如何，仲裁的进行都保持标准化和公平。

Key Guidelines 主要指导方针：

- IBA Rules on the Taking of Evidence : This set of rules provides a framework for handling evidence in arbitration, ensuring that the process is efficient, economical, and fair.

IBA 取证规则：这套规则提供了仲裁中处理证据的框架，确保仲裁过程高效、经济和公平。

- IBA Guidelines on the Conflict of Interest : These guidelines help in identifying and addressing potential conflicts of interest in arbitration, thus preserving the integrity of the process.

IBA 利益冲突指南：这些指南有助于识别和解决仲裁中潜在的利益冲突，从而保持程序的完整性。

- IBA Guidelines on Party Representation : These guidelines offer a structured approach to party representation, promoting ethical practices and fairness.

IBA 政党代表准则：这些准则提供了政党代表的结构化方法，促进道德实践和公平。

- Need for Guidelines :The existence of such guidelines is critical for several reasons:

此类指南的存在至关重要，原因如下：

- **Consistency and Fairness** : Ensures that arbitration proceedings are conducted uniformly and justly across different jurisdictions.一致性和公平性：确保仲裁程序在不同司法管辖区统一、公正地进行。
- **Addressing Legalism** : Mitigates the risk of excessive legalism in arbitration, keeping the process streamlined and accessible.解决法律问题：降低仲裁中过度法律主义的风险，保持流程精简且易于使用。
- IBA Rules on the Taking of Evidence: Article 2 - Consultation on Evidentiary IssuesIBA 取证规则：第 2 条 - 证据问题磋商
- Early Consultation :Article 2 mandates the Arbitral Tribunal to consult with the parties at the earliest appropriate time. This early consultation aims to agree on an evidence-taking process that is efficient, economical, and fair.
- 早期咨询：第 2 条授权仲裁庭尽早与当事人协商。此次早期磋商旨在就高效、经济且公平的取证流程达成一致。
- Scope of Consultation
 - Witness Statements and Expert Reports : Preparation and submission details.证人陈述和专家报告：准备和提交详细信息。
 - Oral Testimony : Procedures for taking testimony at hearings.口头证词：在听证会上作证的程序。
 - Document Production : Format and requirements for producing documents.文件制作：制作文件的格式和要求。
 - Confidentiality : Appropriate confidentiality levels for arbitration evidence.保密性：仲裁证据的适当保密级别。
 - Efficiency and Resources : Strategies to promote efficiency and conserve resources.效率和资源：提高效率和节约资源的策略。

Role of the Arbitral Tribunal

The Tribunal's responsibilities include:

法庭的职责包括：

- Identifying Relevant Issues : Highlighting issues that are critical to the case's outcome.识别相关问题：突出对案件结果至关重要的问题。
- Preliminary Determinations : Making early determinations on material issues when appropriate.初步决定：在适当的时候对重大问题做出早期决定。

By adhering to these guidelines and rules, international arbitration can maintain a balance between legal rigor and procedural flexibility, ensuring that disputes are resolved in a manner that is both just and expedient.通过遵守这些准则和规则，国际仲裁可以在法律严谨性和程序灵活性之间保持平衡，确保争议得到公正、便利的解决。

主要程序步骤

The procedural conduct in arbitration is structured to ensure a systematic and fair resolution of disputes. Below is an outline of the main procedural steps typically followed in an arbitration process.

仲裁的程序行为旨在确保系统且公平地解决争议。以下是仲裁过程中通常遵循的主要程序步骤的概述。

1. Commencement of Arbitration 仲裁开始

This marks the formal initiation of the arbitration process, triggered by the filing of a notice of arbitration.

这标志着由提交仲裁通知引发的仲裁程序正式启动。

2. Constitution of the Arbitral Tribunal/Appointment of the Tribunal Secretary 仲裁庭的组成/仲裁庭秘书的任命

The next step involves forming the arbitral tribunal, often comprising one or more arbitrators. A tribunal secretary may also be appointed to assist with administrative tasks.

下一步涉及组建仲裁庭，通常由一名或多名仲裁员组成。还可指定仲裁庭秘书协助行政工作。

3. First Case Management Conference 第一届案件管理会议

An initial meeting between the tribunal and the parties to discuss and establish a procedural timetable and other administrative matters.

仲裁庭与当事方举行初次会议，讨论并确定程序时间表和其他行政事项。

4. Issuance of Procedural Order No. 1 发布第 1 号程序令

The tribunal issues its first procedural order, setting out the procedures and timeline for the arbitration.

仲裁庭发布第一份程序令，规定了仲裁程序和时间表。

5. Statement of Claim 索赔声明

The claimant formally submits their statement of claim, detailing the facts, legal grounds, and relief sought.

索赔人正式提交索赔声明，详细说明事实、法律依据和寻求的救济。

6. Statement of Defence 辩护声明

The respondent provides their statement of defense, responding to the allegations and claims made by the claimant.

被申请人提供答辩书，回应申请人的指控和主张。

7. Document Production Phase 文件制作阶段

During this phase, parties are required to produce and exchange relevant documents they intend to use as evidence.

在此阶段，各方需要出示并交换他们打算用作证据的相关文件。

8. Statement of Reply 答复声明

The claimant submits a statement of reply, addressing points raised in the respondent's statement of defense.

申诉人提交答辩声明，针对被诉人答辩书中提出的要点。

9. Statement of Rejoinder 反驳声明

The respondent may then submit a rejoinder, responding to the claimant's reply.

然后，被申请人可以提交反驳，以回应原告的答复。

10. Hearing (and Initial Deliberations) 听证会（和初步审议）

Oral hearings are conducted, where parties present their evidence and arguments. Initial deliberations by the tribunal may begin during this phase.

举行口头听证会，各方提出证据和论点。仲裁庭可能在此阶段开始初步审议。

11. Post-Hearing Briefs

Following the hearings, parties are invited to submit post-hearing briefs summarizing their positions and key points of evidence.

听证会结束后，请各方提交听证会后简报，总结其立场和证据要点。

12. Deliberations 审议

The tribunal diligently deliberates on all the presented evidence and arguments to form a decision.

仲裁庭认真审议所有提交的证据和论点以做出决定。

13. Award Finalisation Phase 裁决最终确定阶段

This phase involves drafting, reviewing, and finalizing the arbitration award.

此阶段包括起草、审查和最终确定仲裁裁决。

14. Rendering of Final Award/Termination of the Arbitration 最终裁决的作出/仲裁的终止

Finally, the tribunal issues the arbitration award, concluding the arbitration process, or terminates the arbitration if the dispute is otherwise resolved.

最后，仲裁庭作出仲裁裁决，结束仲裁程序，如果争议得到其他解决，则终止仲裁。

Understanding these procedural steps provides a clear roadmap of the arbitration process, ensuring awareness of the necessary stages and their respective requirements for a fair and effective dispute resolution.

了解这些程序步骤可以为仲裁程序提供清晰的路线图，确保了解公平有效的争议解决的必要阶段及其各自的要求。

Disclosure & Discovery

Internal Procedural Issues in International Arbitration 国际仲裁中的内部程序问题

Evidentiary and Pleading Rules: The evidentiary and pleading rules in international arbitration allow parties to submit documents and other relevant evidence to support their case.

证据和诉状规则：国际仲裁中的证据和诉辩规则允许当事人提交文件和其他相关证据来支持其案件。

- UNCITRAL Model Law, Art. 23 and the Singapore International Arbitration Act, First Schedule, Art. 24

贸易法委员会示范法，第 1 条23和《新加坡国际仲裁法》附表一第 1 条。

- These provisions permit parties to present documents they consider relevant with their statements or other pertinent evidence.

这些规定允许当事人提交他们认为与其陈述或其他相关证据相关的文件。

Oaths for Witnesses 证人宣誓

The administration of oaths or affirmations for witnesses and parties is another crucial procedural aspect:

证人和当事人宣誓或宣誓的管理是另一个重要的程序方面：

- Singapore International Arbitration Act, § 12(2) and Arbitration Ordinance, Cap 609, Section 56

新加坡国际仲裁法第 12(2) 条和仲裁条例第 609 章第 56 条：

- These sections empower arbitral tribunals to administer oaths or take affirmations, unless the parties have agreed otherwise. This authority ensures that the testimony given is under a binding affirmation of truthfulness.

这些条款授权仲裁庭宣誓或作出确认，除非当事人另有约定。该权威确保所提供的证词具有具有约束力的真实性。

Disclosure Powers 披露权力

Disclosure powers in arbitration are essential to ensure that all relevant material is accessible to both parties:

仲裁中的披露权对于确保双方均可获取所有相关材料至关重要：

- Hong Kong Arbitration Ordinance, s55(2) 香港仲裁条例，第 55(2) 条

The court may order individuals to attend proceedings to give evidence or produce documents.

法院可以命令个人参加诉讼程序提供证据或出示文件。

- Hong Kong Arbitration Ordinance, s56(1)(b) 香港仲裁条例，第 56(1)(b) 条：

- Arbitration tribunals can issue orders for:
仲裁庭可以发布以下命令：
 - Security for arbitration costs.
仲裁费用的担保。
 - Discovery or delivery of documents.
发现或交付文件。
 - Testimonies via affidavit.
通过宣誓书作证。
 - Handling of relevant property (e.g., inspection, preservation, or sale).
相关财产的处理（例如检查、保存或出售）。
- Singapore International Arbitration Act, § 12(1) 新加坡国际仲裁法，第 12(1) 条：
 - Grants similar powers to arbitration tribunals for ordering document discovery, interrogatories, and affidavits.
授予仲裁庭类似的权力，要求仲裁庭进行文件调取、质询和宣誓。

General Principles of Disclosure & Discovery

Disclosure and discovery in international arbitration have certain common aspects and significant differences

国际仲裁中的披露和证据开示具有某些共同点和显著差异：

- A measure of discovery/disclosure is standard practice despite the contested scope.
尽管范围存在争议，但发现/披露的措施是标准做法。
- U.S./English-style extensive discovery, including depositions, is generally not routine.
美国/英国式的广泛证据披露（包括证词）通常并不常见。
- Differences are evident between civil and common law approaches to disclosure.
大陆法系和普通法的披露方法之间存在明显差异。
- There is an emerging consensus on the necessity and value of disclosure in the arbitration process, supported by guidelines such as the IBA Rules on the Taking of Evidence in International Arbitration .
在《IBA 国际仲裁取证规则》等指导方针的支持下，人们对仲裁过程中披露的必要性和价值正在形成共识。

In summary, disclosure and discovery are crucial elements of the arbitration process, governed by specific rules that ensure a fair and transparent procedure. By understanding these procedural issues, parties can better navigate the complexities of international arbitration.

总之，披露和证据开示是仲裁程序的关键要素，受到确保程序公平和透明的具体规则的约束。通过了解这些程序问题，当事人可以更好地应对国际仲裁的复杂性。

仲裁中的文件制作

Document production is a crucial process in arbitration, encompassing the exchange of written materials between parties, which play a significant role in determining the outcome of the dispute. According to Dr. Sam Luttrell, "document production is the process by which the parties to a dispute exchange, either voluntarily or on the basis of orders from the Tribunal, written materials relevant and material to the outcome of the dispute."

文件制作是仲裁中的一个关键过程，包括当事人之间交换书面材料，这对确定争议结果起着重要作用。Sam Luttrell 博士表示，“文件制作是争议双方自愿或根据仲裁庭的命令交换与争议结果相关和重要的书面材料的过程。”

To effectively manage document production, several tactical considerations must be addressed:

为了有效管理文档制作，必须考虑几个战术因素：

1. Knowing Your Documents 了解您的文件

It is imperative to locate and identify the relevant universe of documents and understand what formats these documents are in. This helps in planning the logistics of document management. 必须找到并识别相关的文档范围并了解这些文档的格式。这有助于规划文档管理的后勤工作。

Once identified, the next steps involve collecting and preserving these documents to ensure they remain intact and accessible throughout the arbitration process.

一旦确定，接下来的步骤包括收集和保存这些文件，以确保它们在整个仲裁过程中保持完整且可访问。

2. Knowing Your Case 了解您的情况

Clearly understanding the evidence needed to substantiate your claims is essential. This involves recognizing which documents are critical to proving your case, allowing you to focus your efforts on obtaining and presenting these pieces of evidence effectively.

清楚地了解证实您的主张所需的证据至关重要。这包括识别哪些文件对于证明您的案件至关重要，使您能够集中精力有效地获取和出示这些证据。

3. Knowing the Other Side 了解对方

Having knowledge about the disclosure or discovery norms prevalent in the other party's legal culture can provide valuable insights into their expectations and practices.

了解对方法律文化中普遍存在的披露或发现规范可以为他们的期望和实践提供有价值的见解。

Understanding where their legal representatives come from can further shape your strategy, as different legal traditions may influence their approach to document production.

了解他们的法律代表来自哪里可以进一步制定您的策略，因为不同的法律传统可能会影响他们的文件制作方法。

4. Knowing Your Arbitrators 了解您的仲裁员

Familiarizing yourself with the arbitrators' backgrounds can help predict the scope of disclosure they are likely to permit. This can vary significantly depending on their legal heritage and prior experiences.

熟悉仲裁员的背景有助于预测他们可能允许的披露范围。这可能会根据他们的法律遗产和以往经验的不同而有很大差异。

Additionally, understanding their potential stance on privilege issues can assist in anticipating and preparing for procedural decisions that may impact the arbitration process.

此外，了解他们在特权问题上的潜在立场可以帮助预测和准备可能影响仲裁过程的程序决定。

These tactical considerations form the foundation for strategic document production, guiding parties through the complexities of arbitration and helping to ensure that their case is robustly supported by relevant and material written evidence.

这些战术考虑构成了战略文件制作的基础，指导当事人应对仲裁的复杂性，并帮助确保他们的案件得到相关和实质性书面证据的有力支持。

Document production in arbitration is often viewed as straightforward by arbitration lawyers, but in practice, it is frequently complex due to several factors. These include differing legal traditions of the involved parties and their counsel, which lead to competing understandings about the amount of evidence to be presented at the outset and the disclosure scope required later in the proceedings. Moreover, there are often disputes regarding exceptions to disclosure, such as proportionality, confidentiality, business secrecy, and privilege. Arguments also arise over how admitted or uncontested facts and burdens of proof impact the entitlement to request specific documents. Another challenge is the absence or limited content of document production rules within the Terms of Reference, governing laws, and procedural rules.

仲裁律师通常认为仲裁中的文件制作很简单，但在实践中，由于多种因素，它往往很复杂。其中包括涉及各方及其律师不同的法律传统，这导致对一开始要提供的证据数量和程序后期要求的披露范围产生相互矛盾的理解。此外，关于披露的例外情况，例如比例性、保密性、商业秘密和特权，经常存在争议。关于承认或无争议的事实和举证责任如何影响索取特定文件的权利也存在争论。另一个挑战是职权范围、适用法律和程序规则中缺乏文件制作规则或内容有限。

文件制作的阶段

The typical document production process in arbitration includes four main phases:

仲裁中典型的文件制作过程包括四个主要阶段：

Phase 1 - Document Production Request (DPR) 第1阶段 - 文件制作请求 (DPR)

Each party initiates the process by submitting its DPR. This can be done either through a formal letter, a Redfern Schedule, or a combination of both. This phase sets the stage for identifying the documents each party believes are necessary for the proceedings.

各方通过提交其 DPR 来启动该流程。这可以通过正式信函、Redfern 时间表或两者的结合来完成。此阶段为确定各方认为诉讼所需的文件奠定了基础。

Phase 2 - Response to DPR 第 2 阶段 - 对 DPR 的响应

Upon receiving a DPR, each party must respond. Responses may include providing or agreeing to provide some or all of the requested documents or objecting to the production of some or all of the requested documents. In this phase, the requesting party is typically given an opportunity to reply to objections, which can result in the narrowing down or withdrawal of certain document requests.

收到 DPR 后，各方必须做出回应。回应可包括提供或同意提供部分或全部所要求的文件或反对出示部分或全部所要求的文件。在此阶段，请求方通常有机会回复异议，这可能会导致缩小或撤回某些文件请求的范围。

Phase 3 - Submission of Disputed Items to the Tribunal 第 3 阶段 - 向仲裁庭提交争议项目

Items under dispute from each DPR are submitted to the Tribunal for determination. This can be done in the form of written submissions, Redfern Schedules, or both. The Tribunal's involvement helps mediate and resolve the contested items, ensuring the fairness and efficiency of the document production process.

每个 DPR 有争议的项目均提交给仲裁庭裁决。这可以通过书面提交、Redfern 时间表或两者的形式来完成。仲裁庭的参与有助于调解和解决争议事项，确保文件制作过程的公平性和效率。

Phase 4 - Tribunal Decision 第 4 阶段 - 仲裁庭裁决

The Tribunal reviews the disputed items and issues its decision on each one. This decision outlines which documents must be produced, based on the arguments and objections presented, and considers principles such as relevance, necessity, and any applicable exceptions to disclosure.

仲裁庭审查有争议的事项并对每一项作出裁决。该决定根据提出的论点和反对意见概述了必须提供哪些文件，并考虑了相关性、必要性和任何适用的披露例外等原则。

By adhering to this structured process, arbitration seeks to balance the need for comprehensive evidence with the practicalities and fairness of document production, ultimately aiming to support a just resolution of disputes.

通过遵循这一结构化流程，仲裁力求在全面证据的需求与文件制作的实用性和公平性之间取得平衡，最终旨在支持公正解决争议。

The document production process in arbitration involves multiple phases aimed at ensuring fair and efficient management of evidence and information exchange between disputing parties. Governed by the Tribunal's procedural orders and applicable rules, document production is meticulously organized to align with the principles of transparency and objectivity inherent in arbitration proceedings.

仲裁中的文件制作过程涉及多个阶段，旨在确保争议双方之间公平有效地管理证据和信息交换。在仲裁庭程序命令和适用规则的管辖下，文件的制作经过精心组织，以符合仲裁程序固有的透明度和客观性原则。

Document Production Phase 1: Initiation and Requests

This phase kicks off with the parties making Document Production Requests (DPRs) either in the form of a letter or a Redfern Schedule. The Redfern Schedule is a crucial document jointly established by the parties and Tribunal, detailing the requested documents and their relevance.

文件制作第一阶段：启动和请求

此阶段从各方以信件或 Redfern 时间表的形式提出文件制作请求 (DPR) 开始。雷德芬附表是双方和仲裁庭共同制定的重要文件，详细说明了所需文件及其相关性。

Document Production Phase 2: Response to Requests

Parties respond to DPRs within an agreed timeframe, set by one of the initial procedural orders. They can either voluntarily produce the requested documents or consult with the requesting party to finalize the production. If objections arise, they are documented in the third column of the Redfern Schedule, with the requesting party having the opportunity to address these objections, refining their requests as necessary.

文件制作第二阶段：响应请求

各方在初始程序命令之一规定的商定时间范围内对 DPR 做出回应。他们可以自愿提供所要求的文件，也可以与请求方协商以完成制作。如果出现异议，它们会记录在 Redfern 附表的第三栏中，请求方有机会解决这些异议，并根据需要完善其请求。

Document Production Phase 3: Tribunal Determination

At this stage, the Tribunal intervenes to resolve any disputed items. The Redfern Schedule, now containing three filled columns, is presented to the Tribunal, with the fourth column left for the Tribunal's decisions. Complex objections, like those based on privilege, may necessitate additional supporting submissions. In cases of disputed redactions, un-redacted documents are reviewed by the Tribunal, and highly sensitive documents may be handled by third-party experts.

文件制作阶段 3：仲裁庭裁决

在此阶段，仲裁庭介入解决任何有争议的事项。雷德芬附表现已包含三栏，已提交给仲裁庭，第四栏留给仲裁庭做出决定。复杂的反对意见，例如基于特权的反对意见，可能需要额外的支持性提交。如果编辑存在争议，未编辑的文件将由仲裁庭审查，高度敏感的文件可能会由第三方专家处理。

Document Production Phase 4: Tribunal Decision

The Tribunal finalizes its decisions on the disputed items, completing the fourth column of the Redfern Schedule or issuing procedural orders. It may grant or deny requests, narrow them down, or ask for further clarifications.

文件制作第 4 阶段：仲裁庭裁决

仲裁庭完成对争议项目的裁决，完成雷德芬附表第四栏或发布程序命令。它可能会批准或拒绝请求、缩小请求范围或要求进一步澄清。

Example Scenario 示例场景

To illustrate, consider a case where Party A requests documents related to Respondent's meetings and WhatsApp messages about mask specifications. Respondent objects, citing broad definitions and burdensome collection. The Tribunal reviews responses and objections, and makes determinations, evidenced by the completed Redfern Schedule, ensuring both parties' concerns are judiciously considered.

为了说明这一点，请考虑甲方请求与被投诉人会议相关的文件以及有关口罩规格的 WhatsApp 消息的情况。受访者反对，引用了广泛的定义和繁琐的收集。仲裁庭审查答复和反对意见，并做出决定，以完整的雷德芬时间表为证，确保双方的关切得到明智考虑。

1 No.	2 Requesting Party	3 Documents or Category of Documents Requested	4 Relevance and Materiality According to Requesting Party		5 Responses/ Objections to Document Request	6 Reply to Objections to Document Request	7 Tribunal's Decisions
			Ref. to Submissions	Comments			

No.	Document Requested	Relevance		OBJECTIONS	REPLY	DECISION
		Ref. to Submissions	Comments			
1	Any documents in relation to the Respondent's meeting with its employees including but not limited to meeting minutes, and WhatsApp messages regarding the mask specifications.	SoC, ¶ 14	The said documents are under custody control and possession of the Respondent, and it is material and relevant to the dispute at hand. The said documents will assist the Tribunal to understand whether Respondent informed its employees about the mask specifications at all.	The definition of documents is too broad, and it is burdensome for Claimant to collect the documents.	The documents mentioned are essential to the dispute at hand, and they are limited to the mask specifications.	
2	Any meeting minutes of Mr. Respondent's Director that were recorded in meetings between Claimant and Respondent.	SoD, ¶ 12; Witness Statement of the Director, ¶ 5	The said documents are under custody control and possession of the Respondent, and it is material and relevant to the dispute at hand. The WS states that the Director amended the contract in the meeting by saying that the Alfa algorithm masks are impossible to produce due to lack of sources.	The definition of documents is too broad. Any minutes of meetings between the parties should also be kept by the Claimant.	The Claimant's position is that the alleged amendment has never happened.	

In conclusion, the structured approach to document production in arbitration—emphasizing cooperation, transparency, and fairness—ensures a balanced process that aligns with the overarching goals of effective dispute resolution.

总之，仲裁中文件制作的结构化方法——强调合作、透明度和公平——确保了一个平衡的过程，符合有效争议解决的总体目标。

案例

In *Krueger v. Pelican Prod. Corp.*, Judge Wayne E. Alley of the Western District of Oklahoma delivered a notable order reflecting his frustration with the contentious behavior of counsel in a discovery dispute. The case underscores the judiciary's stance against uncivil and contentious practices among lawyers. Judge Alley highlighted that while the local creed of civil conduct among lawyers is aspirational and non-enforceable, such behavior still merits judicial disapproval. His colorful commentary suggested that attorneys guilty of such behavior should be metaphorically consigned to a hell of endless discovery disputes with equally disagreeable adversaries.

在克鲁格诉鹈鹕产品案中。俄克拉荷马州西区法官韦恩·E·艾利 (Wayne E. Alley) 发布了一项值得注意的命令，反映出他对律师在证据披露纠纷中的争议行为感到失望。该案凸显了司法部门对律师中不文明和有争议行为的立场。艾利法官强调，虽然当地律师的民事行为信条是理想的且不可执行的，但这种行为仍然值得司法部门的反对。他丰富多彩的评论表明，犯有此类行为的律师应该被隐喻地置于与同样令人不快的对手进行无休止的发现纠纷的地狱中。

法律规定

Document production in arbitration is a critical aspect governed variably by national laws and specific arbitration rules. Understanding these distinctions is crucial for navigating arbitration effectively.

仲裁中的文件制作是一个关键方面，受国家法律和具体仲裁规则的不同管辖。了解这些区别对于有效进行仲裁至关重要。

1. National Arbitration Laws

- Most national arbitration statutes do not directly address document production.

大多数国家仲裁法规并不直接涉及文件制作。

- Notable Exceptions :

值得注意的例外：

- 1996 English Arbitration Act, Section 34(2)(d) : Addresses the powers of the tribunal regarding evidence.

1996 年《英国仲裁法》第 34(2)(d) 条：规定了仲裁庭有关证据的权力。

- U.S. Federal Arbitration Act, Section 7 : Pertains to arbitrator authority to subpoena documents and witness testimony.

美国联邦仲裁法第 7 条：涉及仲裁员传票文件和证人证词的权力。

2. Arbitration Rules :

Various commonly used arbitration rules provide different levels of guidance on document production:

各种常用的仲裁规则对文件制作提供了不同程度的指导：

- ICC Rules, Article 20(5) : Allows the Arbitral Tribunal to request additional evidence at any time during the proceedings.

国际商会规则第 20(5) 条：允许仲裁庭在仲裁过程中随时要求提供额外证据。

- UNCITRAL Rules, Article 24(3) .

《贸易法委员会规则》第 24(3) 条。

- LCIA Rules, Article 22(1)(e) : Includes provisions on document production.

LCIA 规则第 22(1)(e) 条：包括有关文件制作的规定。

- ICSID Rules, Article 34(2)(a) : Details the scope and method for obtaining documents.

ICSID 规则第 34(2)(a) 条：详细说明了获取文件的范围和方法。

3. ICSID Arbitration

- ICSID arbitration proceedings do not adhere to a national legal framework.

ICSID 仲裁程序不遵守国家法律框架。

- Utilize transnational norms, particularly the IBA Rules on the Taking of Evidence in International Arbitration, as reference points to guide document production.

利用跨国规范，特别是《IBA 国际仲裁取证规则》作为指导文件制作的参考点。

By understanding both the judicial perspective on civil conduct in litigation and the detailed frameworks governing document production in arbitration, legal professionals can better prepare for and navigate the complexities of dispute resolution, ensuring adherence to both procedural fairness and efficiency.

通过了解诉讼中民事行为的司法视角和仲裁中文件制作的详细框架，法律专业人士可以更好地准备和应对争议解决的复杂性，确保遵守程序公平性和效率。

IBA取证规则

In international arbitration, document production is a critical process governed by principles that ensure fairness and efficiency. One of the most influential frameworks in this area is the IBA Rules on the Taking of Evidence in International Arbitration . These rules are increasingly accepted among arbitration practitioners due to their comprehensive guidance on handling document production requests (DPRs).在国际仲裁中，文件制作是一个关键过程，遵循确保公平和效率的原则。该领域最有影响力的框架之一是《IBA 国际仲裁取证规则》。这些规则因其对处理文件制作请求 (DPR) 的全面指导而越来越受到仲裁从业者的接受。

Components of a Document Production Request (DPR) :A well-drafted DPR under the IBA Rules must include a detailed description of each requested document or a specific category of documents, an explanation of their relevance and materiality to the case, and a statement

confirming their absence from the requesting party's possession while providing reasons for assuming the opposing party holds them.文件制作请求 (DPR) 的组成部分：根据 IBA 规则，精心起草的 DPR 必须包括对每份请求文件或特定类别文件的详细描述、对这些文件与案件的相关性和重要性的解释，以及一份确认请求方不拥有这些文件并提供理由的声明假设对方持有它们。

Grounds for Refusing a DPR :The IBA Rules specify several grounds on which a tribunal may refuse a DPR. These include insufficient relevance or materiality to the case, legal impediments or privileges, unreasonable burden, document loss or destruction, confidentiality concerns, political or institutional sensitivity, and even considerations of procedural economy, proportionality, fairness, or equality.拒绝 DPR 的理由：IBA 规则规定了仲裁庭可以拒绝 DPR 的若干理由。这些包括与案件的相关性或重要性不足、法律障碍或特权、不合理的负担、文件丢失或毁坏、保密问题、政治或制度敏感性，甚至是程序经济性、相称性、公平性或平等性的考虑。

Relevance vs. Materiality :Relevance and materiality, although often paired, are distinct concepts. A document is deemed material if it directly impacts the elements required to prove or negate a case. In contrast, relevance pertains to the document's potential influence on the probability assessment of a fact in issue.相关性与重要性：相关性和重要性虽然经常配对，但却是不同的概念。如果文件直接影响证明或否定案件所需的要素，则该文件被视为重要。相反，相关性涉及文件对争议事实的概率评估的潜在影响。

Contesting Relevance and Materiality :Good grounds for questioning a document's relevance or materiality include proving a fact that is not contested, addressing an element not central to the case, or being duplicative of other evidence.争论相关性和重要性：质疑文件的相关性或重要性的充分理由包括证明没有争议的事实、解决与案件无关的要素或与其他证据重复。

Privilege Objections :Objections based on legal professional privilege, litigation privilege, and expert privilege are common but complex due to varying national rules and the ambiguous status of in-house counsel under European law.特权异议：基于法律专业特权、诉讼特权和专家特权的反对很常见，但由于不同的国家规则以及欧洲法律下内部法律顾问的模糊地位而变得复杂。

Burden Objections :Parties may object to document production if the burden of producing the document outweighs its probative value. Factors such as the volume of documents, redaction costs, and exorbitant financial expenses are critical considerations.负担反对：如果提供文件的负担超过其证明价值，当事人可以反对提供文件。文件量、编辑成本和高昂的财务费用等因素是关键的考虑因素。

Handling Commercial and Security Concerns :In commercial and ISDS cases, parties may resist production based on trade secrets, competitive harm, or national security concerns. Tribunals often address confidentiality issues through protective measures like redaction, limited access, or production to legal advisors or the tribunal only.处理商业和安全问题：在商业和 ISDS 案件中，各方可能会基于商业秘密、竞争损害或国家安全担忧而抵制生产。法庭通常通过保护措施来解决保密问题，例如编辑、限制访问或仅向法律顾问或法庭提供信息。

Drafting a DPR : The "golden rules" for drafting an effective DPR include using a Redfern Schedule, framing requests as narrowly as possible, and providing clear and precise

justifications. Avoid overlapping or duplicative requests to ensure efficiency and clarity.起草 DPR
：起草有效 DPR 的“黄金规则”包括使用 Redfern Schedule、尽可能缩小请求范围，以及提供清晰准确的理由。避免重叠或重复的请求，以确保效率和清晰度。

Pre-Agreement Practices :Before reaching the Redfern stage, it's best practice to agree on various procedural aspects with the opposing party. This includes confidentiality levels, document formats, exchange methods, and procedures for handling inadvertent production and challenges.协议前的做法：在进入 Redfern 阶段之前，最佳做法是与对方就各个程序方面达成一致。这包括保密级别、文档格式、交换方法以及处理无意生产和挑战的程序。

Practical Considerations in Document Production :Document production involves careful management, often requiring specific roles for collection, custodian interviews, local counsel advice, arbitration hold lists, and the use of third-party suppliers. Ensuring the proper management of queries and vetting documents for commercial sensitivity is crucial.文件制作中的实际考虑因素：文件制作涉及仔细管理，通常需要特定角色进行收集、保管人访谈、当地律师建议、仲裁保留清单以及第三方供应商的使用。确保对查询和审查文档进行适当管理以确保商业敏感性至关重要。

In essence, the IBA Rules on the Taking of Evidence provide a structured framework for document production in international arbitration, promoting procedural fairness and efficiency while accommodating the unique challenges posed by cross-border disputes.从本质上讲，IBA《取证规则》为国际仲裁中的文件制作提供了一个结构化框架，促进了程序公平性和效率，同时适应了跨境争议带来的独特挑战。

仲裁临时措施 Provisional Measures

概述

Provisional measures are critical tools in arbitration, designed to protect the interests of parties or preserve property during the pendency of arbitral proceedings. Their purpose is to ensure that the eventual award is meaningful and enforceable.

临时措施是仲裁中的重要工具，旨在保护当事人的利益或在仲裁程序未决期间保护财产。他们的目的是确保最终裁决有意义且可执行。

Arbitrator's Authority to Order Provisional Relief :International conventions, such as the New York Convention (NYC), do not explicitly address provisional measures. However, the NYC can be interpreted to support the arbitrator's powers to grant such relief under Article II. National legislation plays a significant role: whether relief is granted depends on the law of the seat of arbitration, and enforceability is also contingent upon this legal framework.

仲裁员下令临时救济的权力：《纽约公约》(NYC) 等国际公约没有明确规定临时措施。然而，《纽约公约》可以被解释为支持仲裁员根据第二条授予此类救济的权力。国家立法发挥着重要作用：是否给予救济取决于仲裁地的法律，可执行性也取决于该法律框架。

UNCITRAL Model Law, Article 17 :Under the UNCITRAL Model Law, unless otherwise agreed by the parties, the tribunal may order interim measures of protection as necessary. The Hong Kong Arbitration Ordinance reiterates this, allowing tribunals to grant interim measures at a party's request.

《贸易法委员会示范法》第 17 条：根据《贸易法委员会示范法》，除非当事人另有约定，仲裁庭可以根据需要下令采取临时保护措施。《香港仲裁条例》重申了这一点，允许仲裁庭应一方当事人的请求批准临时措施。

Types of Interim Measures

Interim measures can take various forms, including:

- Maintaining or restoring the status quo pending the resolution of the dispute. 在争端解决之前维持或恢复现状。
- Taking actions to prevent or refrain from actions that could cause harm or prejudice to the arbitral process. 采取行动防止或避免可能对仲裁程序造成损害或损害的行为。
- Preserving assets to ensure that subsequent awards can be satisfied. 保存资产以确保后续奖励能够得到满足。
- Preserving evidence that may be relevant and material to resolving the dispute. 保存可能与解决争议相关且重要的证据。

These measures ensure that the arbitration process maintains integrity and that the final award can be effectively implemented.

这些措施保证了仲裁过程的公正性和最终裁决的有效执行。

Enforcement of Interim Measures :Arbitral tribunals can convert interim measures into awards, making them enforceable. For instance, the Hong Kong Arbitration Ordinance specifies that interim measures, including injunctions, are enforceable, though certain sections (e.g., section 56) are excluded from this provision.

临时措施的执行：仲裁庭可以将临时措施转化为裁决，使其具有可执行性。例如，《香港仲裁条例》规定临时措施（包括禁令）是可执行的，尽管某些条款（例如第 56 条）被排除在该条款之外。

UNCITRAL Arbitration Rules, Article 26 :The UNCITRAL Arbitration Rules further elaborate that tribunals may grant interim measures upon a party's request. These measures include actions to maintain the status quo, prevent harm, preserve assets, and safeguard evidence—all crucial for ensuring that arbitration proceedings are effective and comprehensive.

《贸易法委员会仲裁规则》第 26 条：《贸易法委员会仲裁规则》进一步规定，仲裁庭可以根据当事人的请求批准临时措施。这些措施包括维持现状、防止损害、保护资产和保护证据的行动——所有这些对于确保仲裁程序有效和全面都至关重要。

In summary, provisional measures play a vital role in arbitration, providing mechanisms to protect parties' interests and ensure the enforceability of the final arbitral award. They reflect

the flexibility and effectiveness of arbitration as a dispute resolution tool, accommodating the complexities of international commercial disputes.综上所述，临时措施在仲裁中发挥着至关重要的作用，它提供了保护当事人利益并确保最终仲裁裁决可执行的机制。它们体现了仲裁作为争议解决工具的灵活性和有效性，适应了国际商事争议的复杂性。

Provisional measures play a crucial role in arbitration by providing urgent interim relief to parties before the final resolution of the dispute. However, these measures are subject to certain limitations and standards that must be adhered to by arbitral tribunals.

临时措施在争议最终解决之前为当事人提供紧急临时救济，在仲裁中发挥着至关重要的作用。然而，这些措施受到仲裁庭必须遵守的某些限制和标准的约束。

Limitations on the Tribunal's Powers to Grant Provisional Relief 仲裁庭给予临时救济的权力的限制

1. Relief Against Third Parties :

针对第三方的救济：

- Arbitral tribunals cannot order relief that involves third parties, such as attaching property held by someone not involved in the dispute.
仲裁庭不能下令涉及第三方的救济，例如扣押与争议无关的人持有的财产。

2. Direct Enforcement :

直接执行：

- Tribunals lack the authority to enforce provisional relief directly; enforcement is usually within the jurisdiction of national courts.
法庭无权直接执行临时救济；执行通常属于国家法院的管辖范围。

3. Subject Matter Limitation :

主题限制：

- Provisional measures are restricted to issues directly related to the dispute's subject matter.
临时措施仅限于与争议主题直接相关的问题。

4. Constitution of Tribunal :

法庭组成：

- Until an arbitral tribunal is formally constituted, it cannot order provisional relief.
在仲裁庭正式组成之前，它不能下令临时救济。

5. Expedited Provisional Relief :

加急临时救济：

- Rules are in place to expedite provisional relief, ensuring timely intervention when necessary.

制定规则可以加快临时救济，确保在必要时及时干预。

6. Party Agreement :

当事人协议：

- Parties may agree to exclude the tribunal's power to order provisional measures through opt-in or opt-out provisions.

各方可以同意排除仲裁庭通过选择加入或选择退出条款下令采取临时措施的权力。

7. Jurisdiction of National Courts :

国家法院的管辖权：

- The authority to order interim relief is not exclusive to arbitral tribunals; national courts also have jurisdiction in these matters, providing an additional avenue for urgent relief.
下令临时救济的权力并非仲裁庭所独有；国家法院对这些事项也有管辖权，为紧急救济提供了另一个途径。

Standard for Granting Orders of Relief 授予救济令的标准

1. Risk of Serious Irreparable Harm :

严重且不可挽回的伤害的风险：

- Relief is granted when there is a significant risk of irreparable harm to the claimant if measures are not taken.

如果不采取措施，索赔人将面临无法挽回的损害的重大风险，则给予救济。

2. Urgency :

紧急程度：

- The need for relief must be immediate, requiring prompt action to prevent harm or preserve rights.

救济的需要必须是立即的，需要立即采取行动来防止伤害或维护权利。

3. Necessity :

必要性：

- The requirement for provisional measures must be essential, not just convenient.
临时措施的要求必须是必要的，而不仅仅是方便的。

4. No Pre-Judgment of the Merits :

无需预先判断优劣：

- Provisional measures should not pre-judge the case's merits, maintaining objectivity until the final decision.

临时措施不应预先判断案件的是非曲直，在最终决定之前保持客观性。

5. Prima Facie Jurisdiction :

初步证据管辖权：

- The tribunal must have an initial jurisdiction over the dispute to grant provisional measures.

仲裁庭必须对争议拥有初步管辖权，才能采取临时措施。

6. Prima Facie Case on the Merits :

初步证据表明案件的实质：

- The claimant must present a preliminary case supporting their claim, demonstrating that they have a credible argument.

索赔人必须提出支持其索赔的初步案例，证明他们有可信的论点。

7. Balance of Hardship/Prejudices :

困难/偏见的平衡：

- The tribunal must consider the balance of hardships and prejudices on both parties, ensuring that relief is fair and just.

仲裁庭必须考虑双方的困难和偏见的平衡，确保救济公平公正。

In summary, while provisional measures in arbitration provide essential interim relief, they are governed by strict standards and limitations to ensure fairness and proper jurisdictional authority. Understanding these nuances is fundamental for effective arbitration practice.

总之，虽然仲裁中的临时措施提供了必要的临时救济，但它们受到严格的标准和限制的约束，以确保公平和适当的管辖权。了解这些细微差别是有效仲裁实践的基础。

Provisional measures are vital tools in arbitration, providing temporary relief and maintaining the integrity of the arbitration process until a final award is made. These measures can be essential for preserving assets, ensuring compliance, and safeguarding the interests of the parties involved.

临时措施是仲裁的重要工具，可提供临时救济并维持仲裁程序的完整性，直至做出最终裁决。这些措施对于保护资产、确保合规性和维护相关各方的利益至关重要。

Categories of Provisional Measures 临时措施类别

1. Orders Preserving Status Quo : These measures maintain the current circumstances to prevent any changes that could affect the arbitration's outcome.

维持现状的命令：这些措施维持当前情况，以防止任何可能影响仲裁结果的变化。

2. Orders Prohibiting Aggravation of the Dispute : Prevent actions like public statements that could escalate the conflict.

禁止加剧争端的命令：防止公开声明等可能导致冲突升级的行为。

3. Orders Requiring Specific Performance : Enforce obligations that are necessary for the proper conduct of business or the enjoyment of legal rights during the arbitration.
要求具体履行的命令：履行在仲裁期间正常开展业务或享有合法权利所必需的义务。
4. Orders Requiring Security for Underlying Claims : Ensure financial security for claims made during arbitration.
要求相关索赔担保的命令：确保仲裁期间提出的索赔的财务安全。
5. Orders Requiring Security for Legal Costs : Secure funds to cover potential legal costs.
需要法律费用担保的订单：确保资金支付潜在的法律费用。
6. Orders Requiring Payment of Advance on Costs or Deposit : Mandate advance payments to cover future arbitration-related expenses.
要求预付费用或押金的命令：强制预付费用以支付未来仲裁相关费用。
7. Orders for Preservation or Inspection of Property : Protect or enable the inspection of property relevant to the dispute.
财产保存或检查令：保护或允许检查与争议相关的财产。
8. Confidentiality Orders : Safeguard sensitive information to maintain privacy and confidentiality during the arbitration.
保密令：保护敏感信息，以在仲裁期间维护隐私和机密。
9. Orders for Interim Payment : Provide temporary financial payments while awaiting final resolution.
临时付款命令：在等待最终解决方案期间提供临时财务付款。
10. Antisuit Orders : Prevent parties from initiating or continuing litigation in other jurisdictions, ensuring arbitration remains the sole dispute resolution forum.
禁诉令：防止当事人在其他司法管辖区提起或继续诉讼，确保仲裁仍然是唯一的争议解决论坛。

与临时措施相关的执行问题

- Nature of Awards : Provisional measures are not final awards but interim reliefs addressing specific aspects of a dispute temporarily.
裁决的性质：临时措施不是最终裁决，而是暂时解决争议特定方面的临时救济。
- Permitting Enforcement : Certain national legal frameworks permit the enforcement of provisional measures. For instance, Article 17H of the UNCITRAL Model Law allows for the enforcement of interim measures by arbitral tribunals upon application to a relevant court.
允许执行：某些国家法律框架允许执行临时措施。例如，《贸易法委员会示范法》第17H条允许仲裁庭根据向相关法院提出的申请执行临时措施。

- Hong Kong-PRC Arrangement on Interim Measures : A notable development allowing parties involved in Hong Kong-seated administered arbitrations to seek interim relief from Mainland Chinese courts. This reciprocal arrangement enhances the efficacy of Hong Kong arbitration by providing access to Mainland Courts for interim measures, covering asset preservation, evidence, and conduct under PRC law.

香港与中国临时措施安排：一项显著进展，允许参与在香港进行的管理仲裁的当事人向中国内地法院寻求临时救济。这项互惠安排通过向内地法院提供临时措施（涵盖中国法律下的资产保全、证据和行为）的途径，提高了香港仲裁的效率。

Provisional measures are crucial in arbitration, ensuring the processes' fairness, efficiency, and effectiveness while protecting the parties' interests until a final decision is rendered.

临时措施在仲裁中至关重要，它可以确保仲裁程序的公平、高效和有效，同时保护当事人的利益，直至作出最终裁决。

Consolidation, Joinder, and Intervention in Arbitration

Overview

Consolidation, joinder, and intervention are important mechanisms in arbitration that can streamline the resolution of disputes involving multiple parties and contracts. These mechanisms provide the potential for increased efficiency, consistency, and cost savings, but also bring about complexities and challenges that need careful management.

联合、合并和干预是仲裁中的重要机制，可以简化涉及多方和合同的争议的解决。这些机制提供了提高效率、一致性和节省成本的潜力，但也带来了需要仔细管理的复杂性和挑战。

Advantages and Disadvantages

Advantages :

- Efficiency : Consolidating related disputes into a single proceeding can save time and resources.

效率：将相关争议合并为一个程序可以节省时间和资源。

- Consistency : Ensuring uniform decisions and outcomes in related disputes.

一致性：确保相关争议的决策和结果一致。

- Cost Reduction : Potentially lower legal and arbitration-related costs due to streamlined processes.

降低成本：由于简化的流程，可能会降低法律和仲裁相关的成本。

Disadvantages

- Complexity : Managing the increased complexity of multiple parties and issues can prove challenging.
复杂性：管理多方和问题日益增加的复杂性可能具有挑战性。
- Delays : Consolidated processes can take longer due to the additional procedural steps.
延迟：由于额外的程序步骤，合并流程可能需要更长的时间。
- Management Issues : Navigating differing parties' interests, strategies, and legal positions can complicate proceedings.
管理问题：考虑不同各方的利益、战略和法律立场可能会使诉讼程序复杂化。

International Conventions

- Generally do not provide explicit mechanisms for consolidation, joinder, or intervention.
通常不提供明确的合并、联合或干预机制。
- This lack of provision leads to discrepancies and varied practices globally.
这种规定的缺乏导致了全球范围内的差异和不同的做法。

Silence in Domestic Legislation

- Many domestic arbitration laws do not address these mechanisms, creating gaps in procedural clarity.
许多国内仲裁法没有涉及这些机制，导致程序清晰度方面存在差距。
- Parties may face uncertainty due to the lack of legislative guidance on consolidating arbitration disputes.
由于缺乏关于合并仲裁纠纷的立法指导，当事人可能面临不确定性。

Parties' Arbitration Agreements

- Including specific clauses in arbitration agreements can pre-define procedures for consolidation, joinder, and intervention.
在仲裁协议中纳入具体条款可以预先定义合并、合并和干预的程序。
- Ensures early clarity and mutual understanding, reducing potential conflicts during disputes.
确保尽早澄清和相互理解，减少纠纷期间潜在的冲突。

Institutional Rules

- Prominent arbitration institutions like the International Chamber of Commerce (ICC), American Arbitration Association (AAA), and Singapore International Arbitration Centre (SIAC) provide frameworks for these mechanisms.
国际商会 (ICC)、美国仲裁协会 (AAA) 和新加坡国际仲裁中心 (SIAC) 等著名仲裁机构为这些机制提供了框架。

- Each institution has distinct criteria and procedural rules that must be followed, offering structured approaches to manage these processes.

每个机构都有必须遵循的独特标准和程序规则，并提供结构化方法来管理这些流程。

Difficulties

- Coordination : Ensuring alignment and coordination among various parties and their legal representatives.

协调：确保各方及其法律代表之间的一致和协调。

- Jurisdiction : The tribunal must have appropriate jurisdiction over all consolidated parties and issues, posing potential legal challenges.

管辖权：仲裁庭必须对所有合并的当事人和问题拥有适当的管辖权，这会带来潜在的法律挑战。

Tribunal Constitution 法庭章程

- The process of constituting a tribunal acceptable to all parties can be complex.

组建各方都能接受的仲裁庭的过程可能很复杂。

- Issues with impartiality and fairness can arise, particularly when consolidating disputes from different parties with divergent interests.

可能会出现公正性和公平性问题，特别是在合并利益不同的各方的争议时。

Multi-Contract Issues

- Disputes often involve multiple contracts with varying terms and conditions.

争议通常涉及条款和条件不同的多份合同。

- Harmonizing these differences within a single arbitration proceeding requires careful attention to detail and procedural fairness.

在单一仲裁程序中协调这些差异需要仔细注意细节和程序公平性。

Consolidation, joinder, and intervention, despite their complexities, provide valuable tools for managing multi-party and multi-contract disputes efficiently. Their proper implementation requires careful drafting of arbitration agreements, awareness of institutional rules, and strategic management of the arbitration process.

合并、合并和干预尽管很复杂，但却为有效管理多方和多合同纠纷提供了宝贵的工具。它们的正确实施需要仔细起草仲裁协议、了解机构规则以及对仲裁过程进行战略管理。

仲裁保密性概述

Confidentiality is one of the core advantages of arbitration over litigation, presenting significant benefits for parties seeking to resolve disputes. This aspect ensures that sensitive information is

protected, business reputations remain intact, and the details of the arbitration process are not subject to public scrutiny. Here are the key points related to confidentiality in arbitration:

保密性是仲裁相对于诉讼的核心优势之一，为寻求解决争议的当事人带来了显着的好处。这确保了敏感信息受到保护、商业声誉完好无损，并且仲裁过程的细节不受公众监督。以下是与仲裁保密相关的要点：

1. Advantages of Confidentiality :

Confidentiality in arbitration provides several benefits, including the protection of sensitive information, maintenance of business reputation, prevention of public scrutiny, and the encouragement of open dialogue and full disclosure during arbitration, without fear of the information becoming public.

仲裁保密具有多种好处，包括保护敏感信息、维护商业声誉、防止公众监督以及鼓励仲裁期间进行公开对话和充分披露，而不必担心信息被公开。

2. Arbitration vs. Litigation :

One of the primary reasons parties choose arbitration over litigation is the confidentiality it offers. Litigation typically occurs in public courts, exposing details of the dispute to public records and media, whereas arbitration proceedings are private.

当事人选择仲裁而不是诉讼的主要原因之一是仲裁提供的保密性。诉讼通常在公共法院进行，将争议的细节公开给公共记录和媒体，而仲裁程序是私人的。

3. Under International Conventions :

International conventions generally do not impose specific confidentiality obligations; they remain silent on the matter, leaving it to the discretion of the parties or the applicable rules of arbitration institutions.

国际公约一般不规定具体的保密义务；他们对此事保持沉默，将其留给当事人自行决定或适用仲裁机构的规则。

4. Under National Law :

National laws often allow the parties to agree upon their own confidentiality regime. This contractual freedom enables parties to tailor confidentiality provisions to their specific needs and concerns.

国家法律通常允许当事人就自己的保密制度达成一致。这种合同自由使各方能够根据自己的具体需求和关注点定制保密条款。

5. Disclosure of Awards in Enforcement Proceedings :

While arbitration proceedings are confidential, there is no prohibition against the disclosure of arbitral awards during enforcement proceedings. This necessary step can potentially breach confidentiality but is crucial for the practical enforcement of awards.

虽然仲裁程序是保密的，但并不禁止在执行程序中披露仲裁裁决。这一必要步骤可能会违反保密规定，但对于裁决的实际执行至关重要。

6. Institutional Rules :

Arbitration institutions, such as the Hong Kong International Arbitration Centre (HKIAC), the London Court of International Arbitration (LCIA), and the International Chamber of Commerce (ICC), often impose general confidentiality obligations on the parties. In contrast, institutions like the United Nations Commission on International Trade Law (UNCITRAL) provide more limited confidentiality obligations.

香港国际仲裁中心（HKIAC）、伦敦国际仲裁院（LCIA）和国际商会（ICC）等仲裁机构通常对当事人施加一般保密义务。相比之下，联合国国际贸易法委员会（UNCITRAL）等机构规定的保密义务更为有限。

7. Confidentiality Orders by Arbitral Tribunals :

Arbitral tribunals have the authority to issue confidentiality orders to ensure that all aspects of the arbitration, including submissions, evidence, and proceedings, remain confidential. 仲裁庭有权发布保密令，以确保仲裁的所有方面（包括提交材料、证据和诉讼程序）保密。

8. Confidentiality of Arbitrator's Deliberations :

The deliberations among arbitrators are strictly confidential. This confidentiality maintains the integrity and impartiality of the decision-making process.

仲裁员之间的商议是严格保密的。这种保密性维护了决策过程的完整性和公正性。

9. Confidentiality of Arbitral Hearings :

Arbitral hearings are typically private unless the parties agree otherwise. This ensures that the information disclosed during hearings is protected from public exposure.

除非当事人另有约定，仲裁听证会通常是不公开的。这确保了听证会期间披露的信息不会被公开曝光。

10. Confidentiality in Investor-State Arbitration :

While confidentiality in investor-state arbitration is generally upheld, it can be limited due to public interest considerations. Specific provisions and practices are employed to balance transparency and confidentiality.

虽然投资者与国家仲裁中的保密性通常得到维护，但出于公共利益的考虑，保密性可能会受到限制。采用具体规定和做法来平衡透明度和保密性。

In conclusion, confidentiality in arbitration offers a distinct advantage over litigation by ensuring privacy and protecting sensitive information. The flexibility allowed under national laws, along with the support of institutional rules and the ability of tribunals to issue confidentiality orders, reinforces the secure and confidential nature of arbitration proceedings.

总之，通过确保隐私和保护敏感信息，仲裁中的保密性比诉讼具有明显的优势。国家法律允许的灵活性，加上机构规则的支持以及仲裁庭发布保密令的能力，加强了仲裁程序的安全和保密性质。

仲裁中的法律代表和专业行为

Legal Representation and Professional Conduct are crucial elements in arbitration, affecting the fairness and efficiency of the process. Various sources, including international conventions, national legislation, and institutional rules, address these aspects to different extents.

法律代表和职业行为是仲裁的关键要素，影响仲裁过程的公平性和效率。各种来源，包括国际公约、国家立法和机构规则，在不同程度上涉及这些方面。

1. Fundamental Right :

One of the core principles in arbitration is the parties' fundamental right to be represented by counsel of their choice. This ensures that both parties can have adequate legal support and advice, enhancing the fairness of the proceedings.

仲裁的核心原则之一是当事人有自己选择的律师代表的基本权利。这确保了双方都能获得充分的法律支持和建议，增强诉讼的公平性。

2. International Conventions :

International conventions are generally silent on the issue of legal representation. They do not explicitly address the right or restrictions regarding the choice of counsel, leaving this matter to be governed by national laws or institutional rules.

国际公约通常对法律代表问题保持沉默。它们没有明确涉及选择律师的权利或限制，使此事受国家法律或机构规则的管辖。

3. National Legislation :

National laws vary in their approach to legal representation:

各国法律对法律代理的处理方式各不相同：

- Countries Allowing Freedom of Counsel Choice : In countries like Austria and Switzerland, the legislation expressly provides parties with the freedom to choose their legal representation. This approach supports the fundamental right to counsel of choice.

允许自由选择律师的国家：在奥地利和瑞士等国家，立法明确规定当事人可以自由选择其法律代表。这种方法支持选择律师的基本权利。

- Countries Prohibiting Foreign Counsel : In contrast, some countries (e.g., China, Singapore, Thailand) have legislation that prohibits foreign counsel from representing parties in arbitration. This restriction can have significant implications for international parties involved in arbitration within these jurisdictions.

禁止外国律师的国家：相比之下，一些国家（例如中国、新加坡、泰国）制定了立法，禁止外国律师代表当事人参加仲裁。这一限制可能对参与这些司法管辖区仲裁的国际当事人产生重大影响。

4. Institutional Rules :

Institutional arbitration rules generally provide full recognition of parties' rights to be represented by counsel of their choice. This ensures consistency and supports the autonomy of parties within the arbitration process.

机构仲裁规则通常充分承认当事人由其选择的律师代表的权利。这确保了仲裁过程中的一致性并支持各方的自主权。

5. Representation by Non-Lawyers 非律师代表

- UNCITRAL 2010 Arbitration Rules : These rules allow representation by "persons" which can include non-lawyers, particularly in specialized trade arbitrations. This flexibility can be vital in industries where technical expertise is paramount.

UNCITRAL 2010 仲裁规则：这些规则允许“人员”代表，其中可以包括非律师，特别是在专门的贸易仲裁中。这种灵活性对于技术专长至关重要的行业至关重要。

6. Representation by Lawyers 律师代表：

- Representation by lawyers in arbitration is subject to rules of professional conduct. These rules are essential to maintain the integrity and ethical standards of legal practice within arbitration proceedings.

律师在仲裁中的代理须遵守职业行为规则。这些规则对于维护仲裁程序中法律实践的诚信和道德标准至关重要。

7. Third Party Funding 第三方资助：

- Third party funding in arbitration introduces potential pitfalls that must be navigated carefully. Issues such as conflicts of interest, disclosure, and control over the arbitration process can arise, requiring careful management to ensure fairness and transparency.
- 仲裁中的第三方资助会带来潜在的陷阱，必须小心应对。可能会出现利益冲突、披露和仲裁过程控制等问题，需要谨慎管理以确保公平和透明。

This comprehensive framework illustrates the importance of legal representation and professional conduct in arbitration, highlighting the need to balance the rights of parties with regulatory and ethical considerations.

这一综合框架阐明了仲裁中法律代表和专业行为的重要性，强调了平衡当事人权利与监管和道德考虑的必要性。

08 笔记

国际仲裁裁决 International Arbitral Awards

International Arbitral Awards are critical elements within the arbitration process, serving as the final and binding conclusion to disputes resolved through arbitration. These awards create immediate legal rights and obligations for the parties involved, distinguishing them from mere advisory recommendations. However, parties may sometimes refuse to comply with these awards, necessitating a clear understanding of their legal impacts and the available post-award proceedings for enforcement or challenge.

国际仲裁裁决是仲裁程序中的关键要素，是通过仲裁解决争议的最终且具有约束力的结论。这些裁决为相关各方创造了直接的法律权利和义务，将其与单纯的咨询建议区分开来。然而，当事人有时可能拒绝遵守这些裁决，因此需要清楚地了解其法律影响以及可用的裁决后执行或质疑程序。

Introduction

1. Final Step in Arbitration :

An arbitral award represents the culmination of the arbitration process. Once the proceedings are concluded, the tribunal will deliberate and render a final award, which addresses the parties' claims and resolves their disputes. This final award is crucial as it provides a definitive resolution, marking the end of the arbitration process.

仲裁的最后一步：仲裁裁决代表仲裁程序的最终结果。诉讼程序结束后，仲裁庭将审议并作出最终裁决，解决双方的索赔并解决争议。最终裁决至关重要，因为它提供了明确的解决方案，标志着仲裁过程的结束。

2. Legal Effects :

Arbitral awards are not advisory in nature; they are binding legal instruments. When an award is issued, it immediately creates legal rights and obligations for the parties. This characteristic underscores the seriousness and enforceable nature of the arbitration process, establishing the award as a potent legal tool.

法律效力：仲裁裁决本质上不具有咨询性质；它们是具有约束力的法律文书。裁决一经发布，立即为各方创造了法律权利和义务。这一特点强调了仲裁程序的严肃性和可执行性，使裁决成为一种有效的法律工具。

3. Tribunal's Mandate :

With the issuance of a final award, the tribunal's original mandate concludes, and the tribunal becomes *functus officio*. This means the tribunal has fulfilled its function and lacks further authority over the matter, emphasizing the finality of the arbitral award.

法庭的职权：随着最终裁决的发布，仲裁庭最初的任务结束，仲裁庭开始行使职权。这意味着仲裁庭已经履行了其职能，对此事缺乏进一步的权威，强调了仲裁裁决的终局性。

4. Voluntary Compliance :

In practice, the vast majority of arbitral awards are complied with voluntarily. This high rate of voluntary compliance speaks to the effectiveness and acceptance of arbitration as a dispute resolution mechanism, reducing the necessity for further legal action.

自愿遵守：实践中，绝大多数仲裁裁决都是自愿遵守的。这种高自愿合规率说明了仲裁作为争议解决机制的有效性和接受度，从而减少了采取进一步法律行动的必要性。

5. Enforcement of Awards :

Despite the general trend of voluntary compliance, there are instances where parties may refuse to adhere to the arbitral award. In such cases, it becomes essential to pursue enforcement steps. Understanding the legal frameworks and procedures available for enforcing arbitral awards is crucial for ensuring that the awarded rights and obligations are upheld.

裁决的执行：尽管自愿遵守是普遍趋势，但在某些情况下，当事人可能会拒绝遵守仲裁裁决。在这种情况下，采取执法措施就变得至关重要。了解执行仲裁裁决的法律框架和程序对于确保维护裁决的权利和义务至关重要。

In conclusion, international arbitral awards are foundational to the arbitration process, offering a binding resolution to disputes. Their enforceability and the legal mechanisms available for addressing non-compliance make them an effective and reliable form of dispute resolution in the international arena.

总之，国际仲裁裁决是仲裁程序的基础，为争议提供了具有约束力的解决方案。它们的可执行性和可用于解决违规问题的法律机制使其成为国际舞台上有效且可靠的争端解决形式。

Awards: Legal Effects

Arbitral awards serve as final and binding legal instruments in the realm of dispute resolution. Once an award is issued, it imposes an immediate obligation on the parties to adhere to its terms. The legal community acknowledges this finality and binding nature as a fundamental characteristic of arbitration, ensuring that the resolution process is respected and upheld.

仲裁裁决是争议解决领域的最终且具有约束力的法律文书。一旦裁决作出，各方就有立即遵守其条款的义务。法律界承认这种最终性和约束力是仲裁的基本特征，确保解决过程得到尊重和维护。

Voluntary compliance with arbitral awards is common, reflecting the parties' contractual obligations not only to engage in arbitration but also to abide by the resulting decisions. This consensual aspect underscores the trust parties place in arbitration as a reliable dispute resolution mechanism.

自愿遵守仲裁裁决的情况很常见，这反映了当事人不仅有参与仲裁的合同义务，而且还有遵守由此产生的决定的义务。这一共识方面强调了各方对仲裁作为可靠争议解决机制的信任。

Furthermore, arbitral awards carry significant legal ramifications, particularly concerning the doctrines of res judicata and collateral estoppel. Under most national legislations, these doctrines prevent parties from relitigating claims that were or could have been resolved by the arbitral tribunal. This preclusion reinforces the finality of the arbitration process and deters continuous litigation over settled matters.

此外，仲裁裁决具有重大的法律影响，特别是在既判力和附带禁止反悔原则方面。根据大多数国家立法，这些原则阻止当事人对仲裁庭已解决或本可以解决的索赔重新提起诉讼。这一排除强化了仲裁程序的最终性，并阻止了针对已解决事项的持续诉讼。

Making of an Award

The process of "making" an arbitral award involves the tribunal rendering its decision in a manner that satisfies the formal requirements set forth by the arbitration legislation applicable in the seat of arbitration. Typically, this includes the completion of a written, signed, and dated decision, which is then delivered to the parties involved.

“做出”仲裁裁决的过程涉及仲裁庭以满足仲裁地适用的仲裁立法规定的形式要求的方式做出裁决。通常，这包括完成书面、签名和注明日期的决定，然后将其交付给相关各方。

National legislations worldwide address various aspects related to the making of international arbitral awards, specifically for arbitrations conducted within their territories. These laws prescribe formal requirements, such as the format and content of the award, as well as notice requirements to ensure that all parties are properly informed of the tribunal's decision.

世界各地的国家立法涉及与国际仲裁裁决的制定相关的各个方面，特别是在其领土内进行的仲裁。这些法律规定了正式要求，例如裁决的格式和内容，以及通知要求，以确保所有各方都正确了解仲裁庭的决定。

By adhering to these prescribed formalities, the arbitral process maintains its integrity and enforceability. Ensuring that awards are rendered and communicated according to legal requirements facilitates their recognition and enforcement across jurisdictions, further bolstering the effectiveness of arbitration as a preferred method of dispute resolution.

通过遵守这些规定的手续，仲裁程序可以保持其完整性和可执行性。确保根据法律要求作出和传达裁决，有利于裁决在不同司法管辖区的承认和执行，进一步增强仲裁作为争议解决首选方法的有效性。

Formal Requirements for Awards: HKAO

1. Writing and Signing 书写和签名：

- According to the Hong Kong Arbitration Ordinance (HKAO), every arbitral award must be documented in writing and signed by the arbitrator or the panel of arbitrators. In cases where there are multiple arbitrators, the signatures of the majority are sufficient, provided any missing signature is accounted for.

根据香港仲裁条例（HKAO），每项仲裁裁决都必须以书面形式记录并由仲裁员或仲裁员小组签署。在有多名仲裁员的情况下，只要考虑到任何缺失的签名，多数仲裁员的签名就足够了。

2. Statement of Reasons 理由陈述：

- Typically, an arbitral award should articulate the reasons it is based upon unless the disputing parties have mutually decided that no reasons are necessary, or if the award reflects agreed terms under Article 30.

通常，仲裁裁决应阐明其所依据的理由，除非争议双方共同决定不需要理由，或者裁决反映了第30条下商定的条款。

3. Date and Place 日期和地点：

- The award must prominently state the date and place of arbitration as per Article 20(1). This given location is considered the place where the award is made.

根据第20(1)条，裁决必须在显着位置注明仲裁日期和地点。该指定地点被视为颁发裁决的地点。

4. Delivery 送达

- After the completion of the award, a signed copy must be delivered to each involved party, ensuring all parties have the official document for their records.

奖励完成后，必须将签名副本交付给每个相关方，以确保所有各方都有正式文件作为记录。

Post-Award Proceedings

概述

Upon the conclusion of arbitration and receipt of the award, various post-award proceedings can follow. These proceedings help confirm, correct, or enforce the award, ensuring compliance and addressing any outstanding issues.

仲裁结束并收到裁决后，可以进行各种裁决后程序。这些程序有助于确认、更正或执行裁决，确保合规性并解决任何悬而未决的问题。

1. Confirmation 确认：

- The arbitral award can be formally confirmed by the judiciary in the same region where the arbitration took place, thus providing legal acknowledgment and validation.
仲裁裁决可由仲裁发生地的司法机关正式确认，从而提供法律承认和效力。

2. Annulment 撤销：

- There is a possibility for the award to be annulled or set aside by the local court where the arbitration was conducted, based on specific legal grounds.
根据具体的法律依据，进行仲裁的当地法院有可能撤销或撤销该裁决。

3. Correction, Interpretation, Supplementation 更正、解释、补充：

- The arbitral tribunal retains the authority to correct any errors, interpret the award, or supplement it to include any omitted aspects initially overlooked.

仲裁庭保留纠正任何错误、解释裁决或补充裁决以包括最初忽略的任何遗漏方面的权力。

4. Recognition 认出：

- For broader acceptance, the award can be recognized within the jurisdiction of the arbitral seat or in a foreign country. This step makes the award formally acknowledged by courts outside the original arbitration seat.

为了获得更广泛的接受，该裁决可以在仲裁地的管辖范围内或在外国得到承认。这使得该裁决得到原仲裁地以外法院的正式承认。

5. Enforcement 执行：

- Lastly, enforcement actions can be taken to ensure compliance with the award, either in the original arbitration seat or elsewhere. This is crucial for compelling the losing party to adhere to the award's directives.

最后，可以在原仲裁地或其他地方采取强制执行行动，以确保裁决得到遵守。这对于迫使败诉方遵守裁决的指示至关重要。

Understanding these points prepares individuals for practical engagements with arbitration proceedings, from the formal issuance of awards to the various avenues of post-award actions, ensuring a comprehensive grasp of the arbitration lifecycle under the HKAO.

了解这些要点可以帮助个人做好实际参与仲裁程序的准备，从正式发布裁决到裁决后采取的各种途径，确保全面掌握 HKAO 下的仲裁生命周期。

Confirmation or Recognition

An arbitral award needs recognition or confirmation to be enforceable. Without this, the award cannot serve as the basis for enforcement, although it may still have preclusive effects in other legal contexts.

仲裁裁决需要得到承认或确认才能执行。如果没有这一点，该裁决就不能作为执行的基础，尽管它在其他法律背景下仍然可能具有排除效力。

1. Separate Legal Instrument 单独的法律文书：

- The judgment confirming or recognizing an arbitral award is distinct from the award itself. This separation means that the judgment can be independently recognized or enforced, providing an additional layer of legal validation.

确认或承认仲裁裁决的判决与裁决本身不同。这种分离意味着判决可以被独立承认或执行，从而提供额外的法律效力。

2. Summary Proceedings for Local Awards :

- In certain jurisdictions, particularly where the arbitration is seated locally, awards are presumed valid and confirmed through summary proceedings, expediting the enforcement process.
在某些司法管辖区，特别是仲裁地点为当地的司法管辖区，裁决被视为有效并通过简易程序予以确认，从而加快了执行过程。

3. Immediate Enforceability in Some Jurisdictions 在某些司法管辖区立即可执行：

- Jurisdictions like the UK and Hong Kong have statutes allowing for the immediate enforceability of awards without the prerequisite of formal confirmation, simplifying and speeding up the enforcement process.

英国和香港等司法管辖区的法规允许裁决立即执行，无需正式确认，从而简化并加快了执行过程。

a. UK Arbitration Act 1996 1996 年英国仲裁法：

The act states that an arbitral award, once the court grants leave, can be enforced similarly to a court judgment or order, ensuring that arbitration agreements hold substantial legal weight.

该法案规定，一旦法院批准，仲裁裁决就可以像法院判决或命令一样得到执行，从而确保仲裁协议具有实质性的法律效力。

b. Hong Kong Arbitration Ordinance (Section 84) 香港仲裁条例（第 84 条）：

Under this ordinance, arbitral awards (whether made in Hong Kong or elsewhere) are enforceable like court judgments, pending the court's leave. It also regulates the process for appeals related to such enforcement decisions.

根据该条例，仲裁裁决（无论是在香港还是其他地方作出）在等待法院许可的情况下，可以像法院判决一样强制执行。它还规范了与此类执行决定相关的上诉程序。

c. Singapore International Arbitration Act (Section 19) 新加坡国际仲裁法（第 19 条）：

Similar to the UK and Hong Kong, this act allows arbitral awards to be enforced as judgments or court orders with the High Court's leave. This stipulation reinforces the binding nature of arbitration agreements and their outcomes.

与英国和香港类似，该法案允许在高等法院许可的情况下将仲裁裁决作为判决或法院命令执行。这一规定强化了仲裁协议及其结果的约束力。

In conclusion, post-award proceedings are essential in transitioning arbitration results into enforceable legal decisions, ensuring that parties comply with the outcomes achieved through arbitration. The procedural frameworks in various jurisdictions, such as the UK, Hong Kong, and Singapore, offer structured and efficient pathways to enforce arbitration awards, underscoring the robust nature of international arbitration as a dispute resolution mechanism.

总之，裁决后程序对于将仲裁结果转化为可执行的法律决定至关重要，确保当事人遵守通过仲裁取得的结果。英国、香港和新加坡等不同司法管辖区的程序框架为执行仲裁裁决提供了结构化且高效的途径，凸显了国际仲裁作为争议解决机制的稳健性质。

Annulment of Arbitral Awards: Legal Effects and Hong Kong Arbitration Ordinance S.81 撤销仲裁裁决：法律效力和香港仲裁条例 S.81

Annulment of Awards: Legal Effects

The annulment, also referred to as setting aside or vacating, of an arbitral award fundamentally impacts its validity. Such an action can only be undertaken by a court in the jurisdiction where the arbitration was seated. The local effect of annulment is the nullification of the award, rendering it void. However, the recognition of this annulment outside the original jurisdiction remains a contentious issue, comparable to the vacatur of a lower court's judgment.

仲裁裁决的撤销（也称为撤销或撤消）从根本上影响其有效性。此类诉讼只能由仲裁所在地司法管辖区的法院采取。撤销的局部效果是裁决无效，使其无效。然而，在原始管辖范围之外承认这一废止仍然是一个有争议的问题，就像下级法院判决的撤销一样。

Most national arbitration legislations provide detailed provisions outlining the limited circumstances under which an award may be annulled. Additionally, these legislations often describe the procedures and establish specific time limits within which annulment can be sought.

大多数国家仲裁立法都提供了详细的规定，概述了可以撤销裁决的有限情况。此外，这些立法通常描述了程序并规定了可以寻求撤销的具体时限。

香港仲裁条例 S.81 Hong Kong Arbitration Ordinance S.81

The Hong Kong Arbitration Ordinance Section 81 provides a comprehensive framework for setting aside an arbitral award:

《香港仲裁条例》第 81 条规定了撤销仲裁裁决的综合框架：

1. Recourse to a Court 诉诸法院：

- Parties may only seek to set aside an arbitral award through an application process stipulated in the ordinance.

当事人只能通过该条例规定的申请程序寻求撤销仲裁裁决。

2. Grounds for Setting Aside 搁置理由：

- Applications can be based on:

应用程序可以基于：

- Proof of a party's incapacity or invalid arbitration agreement.
当事人无行为能力或仲裁协议无效的证明。
- Failure to give proper notice or the inability to present a case.
未能发出适当通知或无法陈述案件。
- Arbitration decisions addressing issues beyond the agreed scope.
仲裁决定涉及超出约定范围的问题。

- Non-compliance of the arbitral tribunal's composition or procedures with the agreement, unless it conflicts with non-derogable provisions of the law.
仲裁庭的组成或程序不符合协议，除非与法律不可减损的规定相冲突。
- The court can also set aside an award if:
如果出现以下情况，法院也可以撤销裁决：
 - The subject matter cannot be settled by arbitration under local law.
根据当地法律，标的事项不能通过仲裁解决。
 - The award conflicts with public policy.
该裁决与公共政策相冲突。

3. Time Limit 时间限制：

- Applications to set aside must be filed within three months of the award's receipt or the disposal of any requests under Article 33 by the arbitral tribunal.
撤销申请必须在仲裁庭收到裁决或处理根据第 33 条提出的任何请求后三个月内提出。

4. Court's Discretion 法院的自由裁量权：

- The court has the discretion to suspend setting aside proceedings, allowing the arbitral tribunal to resume proceedings or take actions deemed necessary to eliminate the grounds for annulment.

法院有权中止撤销程序，允许仲裁庭恢复程序或采取必要的行动来消除撤销的理由。

This structured approach ensures that the integrity of the arbitral process is maintained while providing necessary avenues for redress in specific and limited instances where procedural or substantive injustices may have occurred.

这种结构化方法可确保维护仲裁程序的完整性，同时在可能发生程序或实体不公正的特定和有限情况下提供必要的补救途径。

Dallah案

The Dallah controversy sheds light on the complexities of international arbitration and the enforceability of arbitral awards involving non-signatories. This case centers around a Saudi Arabian company, Dallah, which attempted to enter into a contract to build housing for Pakistani pilgrims with the Awami Hajj Trust, an entity established by the Pakistani Government. When the project failed, Dallah sought to recover damages via arbitration.

达拉争议揭示了国际仲裁的复杂性以及涉及非签署方的仲裁裁决的可执行性。此案以沙特阿拉伯公司 Dallah 为中心，该公司试图与巴基斯坦政府设立的实体 Awami Hajj Trust 签订一份为巴基斯坦朝圣者建造住房的合同。当项目失败后，达拉寻求通过仲裁追回损失。

In July 1995, Dallah signed a memorandum of understanding with the Pakistani Government. The following year, Dallah entered into a formal contract with the Awami Hajj Trust to proceed with the housing project. Notably, while the Pakistani Government was not a signatory to this

contract, the agreement still included references to the Government, such as providing guarantees and allowing the Trust to assign its obligations to the Government without Dallah's consent.

1995年7月，达拉与巴基斯坦政府签署谅解备忘录。次年，达拉与 Awami Hajj Trust 签订了正式合同，以继续实施该住房项目。值得注意的是，虽然巴基斯坦政府不是该合同的签署方，但该协议仍然提到了政府，例如提供担保并允许信托基金在未经达拉同意的情况下将其义务转让给政府。

The project did not materialize due to a change in government, leading to the dissolution of the Trust. Subsequently, in May 1998, Dallah pursued arbitration under the ICC rules in Paris, claiming damages against the Government. Despite the Government's non-signatory status, the arbitral tribunal ruled in favor of Dallah, awarding approximately \$20 million in damages and legal costs.

由于政府更迭，该项目未能实现，导致信托基金解散。随后，达拉于1998年5月根据国际商会规则在巴黎提起仲裁，向政府索赔。尽管政府处于非签署国地位，仲裁庭还是做出了有利于 Dallah 的裁决，判给约 2,000 万美元的损害赔偿金和法律费用。

英国最高法院的判决

The UK courts were tasked with deciding whether to enforce the arbitral award. In its November 2010 ruling, the UK Supreme Court focused on whether the Government was a party to the arbitration agreement. According to the New York Convention (Article V(1)(a)), the court could independently review the tribunal's jurisdiction decision. The Supreme Court concluded that the tribunal's findings were insufficient to prove that the Government was a party to the arbitration agreement, thus denying enforcement of the award in the UK.

英国法院的任务是决定是否执行仲裁裁决。在 2010 年 11 月的裁决中，英国最高法院重点关注政府是否是仲裁协议的一方。根据《纽约公约》（第五条第(1)(a)款），法院可以独立审查仲裁庭的管辖权决定。最高法院的结论是，仲裁庭的调查结果不足以证明政府是仲裁协议的一方，因此拒绝在英国执行该裁决。

Paris Court of Appeal Decision

Conversely, the French legal system approached the case under the Dalico doctrine, which applies French "material rules" of international arbitration rather than specific national laws. The Paris Court of Appeal conducted a factual inquiry into the parties' intentions and concluded that the Government had acted as the primary party throughout the project phases. The court determined that the Trust served merely as a formal façade. As a result, the Paris Court upheld the tribunal's decision and dismissed the Government's annulment efforts, also ordering it to cover Dallah's legal fees.

相反，法国法律体系根据达利科原则处理此案，该原则适用法国国际仲裁的“实质性规则”，而不是具体的国家法律。巴黎上诉法院对双方的意图进行了事实调查，得出的结论是，政府在整个项目阶段充当了主要一方。法院认定该信托基金只是作为一个正式的外观。结果，巴黎法院维持了法庭的裁决，驳回了政府的撤销努力，并命令政府支付达拉的律师费。

The Dallah case highlights significant challenges in international arbitration, particularly regarding non-signatories' involvement and the enforceability of arbitral awards across different jurisdictions. The divergent outcomes in the UK and French courts underscore the complexities and discretionary nature of international arbitration enforcement under the New York Convention.

达拉案凸显了国际仲裁中的重大挑战，特别是在非签署方的参与以及仲裁裁决在不同司法管辖区的可执行性方面。英国和法国法院的不同结果凸显了《纽约公约》下国际仲裁执行的复杂性和自由裁量权。

仲裁裁决的执行

The enforcement of an arbitral award involves distinct legal procedures, initially focusing on the recognition of the award and subsequently moving to its enforcement. This multi-step approach ensures that both international and local awards are given effect efficiently and within the bounds of local legal frameworks.

仲裁裁决的执行涉及不同的法律程序，最初侧重于裁决的承认，随后转向执行。这种多步骤方法确保国际和当地裁决在当地法律框架范围内有效生效。

Recognition vs. Enforcement 承认与执行：

1. Recognition : This is the judicial process whereby an arbitral award is accepted or confirmed by a local court. Recognition results in the entry of a local court judgment that acknowledges the operative terms of the foreign or domestic arbitral award. It serves as a prerequisite to enforcement, ensuring that the award is integrated into the local judicial system.

承认：这是当地法院接受或确认仲裁裁决的司法程序。承认后，当地法院的判决将承认外国或国内仲裁裁决的执行条款。它是执行的先决条件，确保裁决融入当地司法系统。

2. Enforcement : After recognition, enforcement involves coercive measures by the local national courts to implement the award. This can include execution upon assets, attachment, garnishment, and other legal remedies provided under local law. Enforcement ensures that the award has practical effect and that the winning party can collect any monetary damages or other relief granted.

执行：承认后，执行涉及当地国家法院为执行裁决而采取的强制措施。这可以包括资产执行、扣押、扣押以及当地法律规定的其他法律补救措施。执行可确保裁决具有实际效力，并且胜诉方可以收取任何金钱赔偿或其他授予的救济。

Stages of Enforcement

According to the ruling in *Shandong Hongri Acron Chem. Joint Stock Co. v PetroChina Int'l (HK) Corp. [2011] HKCA 168*, enforcement is a two-stage process:

执行阶段：

根据山东红日安康化学有限公司的裁决。*Joint Stock Co. v PetroChina Int'l (HK) Corp. [2011] HKCA 168*，执行过程分为两个阶段：

1. Recognition Stage : The award is converted into a judgment.

认可阶段：裁决转化为判决。

2. Execution Stage : The judgment is enforced using local remedies like asset seizure or garnishment.

执行阶段：使用资产扣押或扣押等当地补救措施来执行判决。

HK Rules of the High Court: Enforcement (Order 45, Rule 1) 香港高等法院规则：执行（第 45 号命令第 1 条）

- The HK rules outline specific procedures for enforcing judgments or orders for payment of money:

香港规则概述了执行判决或付款命令的具体程序：

- Not Into Court 不上法庭：

- Writ of fieri facias: Authorizes the seizure of the debtor's property to satisfy the judgment.

Writ of fieri facias：授权扣押债务人的财产以履行判决。

- Garnishee proceedings: Involves third parties who owe money to the debtor.

扣押程序：涉及欠债务人钱款的第三方。

- Charging order: Secures the debt against the debtor's property.

押记令：以债务人的财产担保债务。

- Appointment of a receiver: An external party is assigned to manage the assets.

指定接管人：指定外部方来管理资产。

- Order of committal: In specific cases, imprisonment can be ordered.

拘押令：在特定情况下，可判处监禁。

- Writ of sequestration: Seizes the debtor's property to compel compliance.

扣押令：扣押债务人的财产以强制其遵守。

- Order of imprisonment: Under Order 49B, as a coercive measure.

监禁令：根据第 49B 号命令，作为强制措施。

- Into Court 进入法庭：

- Appointment of a receiver.

指定接管人。

- Order of committal for relevant cases.

相关案件的收押令。

- Writ of sequestration. 扣押令状。

The enforcement process is integral to ensuring that arbitral awards are not merely symbolic but are actionable, reflecting the commitment of legal systems to uphold arbitration as an effective dispute resolution mechanism.

执行过程对于确保仲裁裁决不仅具有象征意义而且具有可操作性至关重要，反映了法律体系支持仲裁作为有效争议解决机制的承诺。

Enforcement of Awards in Hong Kong

In Hong Kong, an award rendered by an arbitral tribunal has the same enforceability as a court-ordered award. However, this enforcement is contingent upon obtaining leave from the Court. More specifically, section 61 of the Arbitration Ordinance (Cap 609) stipulates that if the Court grants leave, it may enter judgment according to the terms of the arbitral award or direction. This process provides a judicial endorsement of the arbitral decision, ensuring its execution while maintaining legal oversight and integrity.

在香港执行裁决：

在香港，仲裁庭作出的裁决与法院作出的裁决具有同等的可执行性。然而，这一执行取决于获得法院的许可。更具体而言，《仲裁条例》（第609章）第61条订明，如果法庭给予许可，则可根据仲裁裁决或指示的条款作出判决。这一过程为仲裁决定提供了司法认可，确保其执行，同时保持法律监督和完整性。

This mechanism underscores the importance of having a robust legal framework to support the enforceability of international arbitral awards, reflecting Hong Kong's commitment to being a reliable hub for arbitration.

这一机制强调了建立健全的法律框架来支持国际仲裁裁决的可执行性的重要性，反映了香港致力于成为可靠的仲裁中心的承诺。

Preclusive Effects of an Award 裁决的排除效应

When an arbitration award is rendered, it can have significant legal impacts by precluding further claims or issues related to the dispute. This concept, known as “preclusive effects,” encompasses res judicata (claim preclusion) and issue estoppel (issue preclusion), preventing the same parties from relitigating the same matters. The procedures and requirements for recognizing these effects vary between locally-seated and foreign-seated arbitrations.

仲裁裁决作出后，可以通过排除与争议相关的进一步索赔或问题而产生重大法律影响。这一概念被称为“排除效应”，包括既判力（主张排除）和禁止反言（问题排除），防止同一当事人就同一事项重新提起诉讼。本地仲裁和外国仲裁的承认这些影响的程序和要求有所不同。

1. Res Judicata and Issue Estoppel :Arbitration awards may preclude future legal actions on resolved claims (res judicata) and issues (issue estoppel).

既判力和禁止反悔问题：仲裁裁决可能会阻止未来对已解决的索赔（既判力）和问题（问题禁止反言）采取法律行动。

2. Seated Arbitration (Local) :In most jurisdictions, awards from locally-seated arbitrations automatically have preclusive effects from the moment they are made, without the need for additional confirmation or recognition.

坐席仲裁（本地）：在大多数司法管辖区，当地仲裁裁决自作出之日起就自动具有排除效力，无需额外确认或认可。

3. Foreign-Seated Arbitration : For awards made in foreign-seated arbitrations, most jurisdictions require the award to be recognized first before it can have any preclusive effects in local courts. This recognition process is essential to enforce the award's preclusive nature.

外国仲裁地：对于在外国仲裁地作出的裁决，大多数司法管辖区要求裁决首先得到承认，然后才能在当地法院产生任何排除效力。这一认可过程对于加强裁决的排他性至关重要。

Post-Award Options for an Award-Debtor

1. Do Nothing : The award-debtor can choose not to comply with the award, effectively awaiting an enforcement action initiated by the award-creditor. During this enforcement action, the award-debtor can resist recognition of the award. However, this approach has significant drawbacks, including potentially waiving certain defences in recognition proceedings and losing control over the venues where enforcement actions may be initiated.

什么也不做：裁决债务人可以选择不遵守裁决，实际上是在等待裁决债权人发起的强制执行行动。在执行行动期间，裁决债务人可以拒绝承认裁决。然而，这种方法有很大的缺点，包括可能放弃认可程序中的某些抗辩，以及失去对可能启动执法行动的场所的控制。

2. Seek Annulment or Set Aside : Alternatively, the award-debtor may take a proactive approach by seeking to annul or set aside the award at the arbitral seat. This strategy can help address any procedural or substantive issues with the award more directly.

寻求撤销或撤销：或者，裁决债务人可以采取积极主动的方式，寻求在仲裁地撤销或撤销裁决。这一策略可以帮助更直接地解决与裁决相关的任何程序性或实质性问题。

In conclusion, understanding the preclusive effects of an arbitration award and the post-award options available to an award-debtor is crucial for parties involved in arbitration. These mechanisms play a pivotal role in determining the finality of the award and the strategic decisions parties must make following its issuance.

总之，了解仲裁裁决的排除效力以及裁决债务人可用的裁决后选择对于仲裁当事人至关重要。这些机制在确定裁决的最终结果以及裁决发布后各方必须做出的战略决策方面发挥着关键作用。

国际仲裁裁决的法律框架

International arbitral awards are recognized and enforced through a comprehensive legal framework comprising both international treaties and national legislation. This framework ensures that arbitration, as a method of dispute resolution, is effective, dependable, and globally consistent.

国际仲裁裁决通过由国际条约和国家立法组成的综合法律框架得到承认和执行。该框架确保仲裁作为一种争议解决方法有效、可靠且全球一致。

1. International Level

- New York Convention 1958 :

The New York Convention, officially known as the "Convention on the Recognition and Enforcement of Foreign Arbitral Awards," is a cornerstone of international arbitration. It obligates its signatories to recognize and enforce arbitral awards made in other contracting states, provided certain conditions are met. This widespread acceptance and implementation of the convention facilitate the global enforcement of arbitral awards, making arbitration a practical choice for international dispute resolution.

1958 年纽约公约：

《纽约公约》，正式名称为《承认及执行外国仲裁裁决公约》，是国际仲裁的基石。它要求其签署国在满足某些条件的情况下承认和执行在其他缔约国作出的仲裁裁决。该公约的广泛接受和实施促进了仲裁裁决的全球执行，使仲裁成为国际争议解决的实际选择。

2. National Level :

- UNCITRAL Model Law :

Developed by the United Nations Commission on International Trade Law (UNCITRAL), the Model Law serves as a template for countries to develop their arbitration laws. Its purpose is to harmonize and modernize the arbitration process globally, ensuring consistency and predictability.

贸易法委员会示范法：

《示范法》由联合国国际贸易法委员会（UNCITRAL）制定，可作为各国制定仲裁法的模板。其目的是协调全球仲裁程序并使之现代化，确保一致性和可预测性。

- National Arbitration Legislation Based on UNCITRAL Model Law :

Various countries have enacted national legislation incorporating or inspired by the UNCITRAL Model Law:

基于《贸易法委员会示范法》的国家仲裁立法：

各国已颁布了纳入《贸易法委员会示范法》或受《贸易法委员会示范法》启发的国家立法：

- Swiss Law on Private International Law :

Switzerland's legislation integrates the principles of the Model Law, providing a robust framework for international arbitration.

瑞士国际私法：

瑞士的立法整合了《示范法》的原则，为国际仲裁提供了强有力的框架。

- French Code of Civil Procedure :

France's arbitration law aligns with international standards, ensuring that arbitration proceedings are conducted fairly and awards are enforceable.

法国民事诉讼法典：

法国的仲裁法与国际标准接轨，确保仲裁程序公平进行和裁决可执行。

- U.S. Federal Arbitration Act :

This act enforces arbitration agreements and awards within the United States, supporting both domestic and international arbitration with provisions consistent with the Model Law.

美国联邦仲裁法：

该法案在美国境内执行仲裁协议和裁决，支持国内和国际仲裁，其条款符合《示范法》。

- German Code of Civil Procedure :

Germany's legislation on arbitration integrates the UNCITRAL Model Law principles, facilitating international arbitration.

德国民事诉讼法典：

德国的仲裁立法融入了《联合国国际贸易法委员会示范法》的原则，为国际仲裁提供了便利。

- Arbitration Ordinance (s. 4 of Cap 609) :

Hong Kong's arbitration ordinance, based on the Model Law, provides a comprehensive legal framework ensuring consistency with global standards.

仲裁条例（第 609 章第 4 条）：

香港的仲裁条例以《示范法》为基础，提供了一个全面的法律框架，确保与全球标准保持一致。

This multifaceted legal framework enables the effective operation and enforcement of international arbitral awards, promoting arbitration as a reliable and efficient method for resolving international disputes.

这种多层面的法律框架使国际仲裁裁决能够有效运作和执行，促进仲裁成为解决国际争端的可靠和有效的方法。

国际

《纽约公约》概述及其特点

The New York Convention, formally titled the "Convention on the Recognition and Enforcement of Foreign Arbitral Awards," was established in New York in 1958. It plays a critical role in international arbitration by ensuring that arbitral awards made in one contracting state are enforceable in other contracting states. Initially, 24 countries signed the convention, and today, it has 156 parties.

《纽约公约》，正式名称为《承认及执行外国仲裁裁决公约》，于 1958 年在纽约签订。它确保在一个缔约国作出的仲裁裁决在其他国家可以得到执行，在国际仲裁中发挥着至关重要的作用。其他缔约国。最初有 24 个国家签署了该公约，如今已有 156 个缔约方。

The main objective of the Convention is to create a unified framework that simplifies the enforcement process of arbitral awards internationally. It imposes a general obligation on the contracting states to recognize and enforce such awards, thus enhancing the efficiency of international dispute resolution.

该公约的主要目标是建立一个统一的框架，简化国际仲裁裁决的执行过程。它对缔约国施加了承认和执行此类裁决的一般义务，从而提高了国际争端解决的效率。

Key Points on Non-Recognition

- The Convention stipulates limited and exclusive grounds for non-recognition of awards. These grounds, outlined in Article V, are narrowly defined and exhaustive, placing the burden of proof on the party contesting the award (award-debtor). This ensures that non-recognition remains an exception rather than the rule.
该公约规定了不承认裁决的有限和排他性理由。第五条中概述的这些理由定义狭义且详尽，将举证责任置于对裁决提出异议的一方（裁决债务人）身上。这确保了不承认仍然是例外而不是规则。
- Additionally, the Convention limits the forums where annulment actions can be initiated, preventing multiple, overlapping annulment efforts.
此外，该公约还限制了可以发起撤销行动的论坛，从而防止了多重、重叠的撤销行动。

Features of the New York Convention

1. Elimination of "Double Exequatur" 消除“双重执行”：
 - The Convention simplifies enforcement by eliminating the requirement for double exequatur, where an award must be confirmed in its country of origin before being enforced elsewhere.
该公约取消了双重执行书的要求，简化了执行，即裁决必须在其原籍国得到确认，然后才能在其他地方执行。
2. Presumptive Recognition and Enforcement 推定承认和执行：
 - Contracting states are required to recognize and enforce arbitral awards by default, provided there are no valid grounds for refusal under Article V.
如果没有第五条规定的有效拒绝理由，缔约国必须默认承认和执行仲裁裁决。
3. Exclusive Non-Recognition Grounds 独家不承认理由：
 - Article V outlines exclusive grounds under which recognition and enforcement of an award can be refused:
第五条概述了拒绝承认和执行裁决的专有理由：
 - (a) Parties' Incapacity or Invalid Agreement : If the parties were under some incapacity or the agreement is invalid under applicable law.
(a)双方无行为能力或协议无效：如果双方无行为能力或协议根据适用法律无效。
 - (b) Improper Notice : If the award-debtor was not given proper notice of the arbitrator's appointment or arbitration proceedings.
(b)不当通知：如果未向裁决债务人发出有关仲裁员的任命或仲裁程序的适当通知。

- (c) Beyond Submission Scope : If the award deals with issues beyond what was submitted for arbitration.

(c)超出提交范围：如果裁决涉及的问题超出了提交仲裁的范围。

- (d) Non-Compliant Procedure : If the arbitration procedure was not in accordance with party agreements or applicable law.

(d)程序不合规：如果仲裁程序不符合当事人协议或适用法律。

- (e) Non-Binding or Set Aside : If the award has not become binding or has been set aside or suspended by a competent authority.

(e)不具约束力或撤销：如果裁决尚未具有约束力或已被主管当局撤销或暂停。

4. Additional Grounds by Competent Authority 主管当局提出的其他理由：

- (a) The subject matter is not arbitrable under the law of the country where enforcement is sought.
(a) 根据寻求执行的国家的法律，标的事项不可仲裁。
- (b) Enforcement would contravene the public policy of the country.
(b) 执行将违反国家的公共政策。

5. Annulment and Enforcement 废除和执行：

- The Convention includes provisions to restrict annulment actions to specific forums, ensuring that annulments cannot be easily pursued in multiple jurisdictions.
该公约包括将撤销行动限制在特定论坛的条款，确保不能轻易在多个司法管辖区寻求撤销。

6. Optional and Permissive Non-Recognition 可选的和允许的不承认：

- States have the option to include permissive non-recognition clauses, provided they comply with the overarching principles of the Convention.
各国可以选择纳入允许的不承认条款，前提是它们符合《公约》的总体原则。

In conclusion, the New York Convention is a cornerstone of international arbitration, facilitating the efficient and reliable enforcement of arbitral awards globally. Its carefully constructed framework of presumption in favor of recognition, along with clearly defined grounds for non-recognition, helps maintain consistency and trust in the international arbitration process.

总之，《纽约公约》是国际仲裁的基石，有助于在全球范围内高效、可靠地执行仲裁裁决。其精心构建的有利于承认的推定框架以及明确界定的不承认理由，有助于保持国际仲裁程序的一致性和信任。

国内

The legal framework governing international arbitral awards is multifaceted, involving both international guidelines and national legislation. This framework is crucial for ensuring that arbitration remains a viable and efficient means of resolving international commercial disputes.

管辖国际仲裁裁决的法律框架是多方面的，涉及国际准则和国家立法。这一框架对于确保仲裁仍然是解决国际商事纠纷的可行且有效的手段至关重要。

Legal Framework of International Arbitral Awards Under the UNCITRAL Model Law

The "UNCITRAL Model Law on International Commercial Arbitration", adopted on 21 June 1985 by the United Nations Commission on International Trade Law (UNCITRAL), plays a pivotal role in standardizing arbitration procedures globally. It aims to help states reform and modernize their arbitration laws, ensuring a cohesive approach to handling international commercial disputes. The Model Law encompasses all aspects of the arbitral process, addressing:

联合国国际贸易法委员会（UNCITRAL）于1985年6月21日通过的《贸易法委员会国际商事仲裁示范法》在全球仲裁程序标准化方面发挥着关键作用。它旨在帮助各国对其仲裁法进行改革和现代化，确保采用统一的方法来处理国际商业纠纷。《示范法》涵盖仲裁程序的所有方面，涉及：

- The arbitration agreement : Stipulating how parties can agree to resolve disputes through arbitration.
仲裁协议：规定当事人如何约定通过仲裁解决争议。
- The composition and jurisdiction of arbitral tribunals : Defining how tribunals are formed and their authority over disputes.
仲裁庭的组成和管辖权：定义仲裁庭的组成方式及其对争议的管辖权。
- The recognition and enforcement of arbitral awards : Outlining the process for recognizing and enforcing awards, ensuring they are implemented effectively across different jurisdictions.
仲裁裁决的承认和执行：概述承认和执行裁决的程序，确保裁决在不同司法管辖区得到有效执行。

Legal Framework of International Arbitral Awards Under National Arbitration Legislation

National arbitration legislation complements the international framework, with most nations enacting laws that promote arbitration. These laws typically feature:

国家仲裁立法补充了国际框架，大多数国家都颁布了促进仲裁的法律。这些法律通常具有以下特点：

- Pro-arbitration regimes : Laws that support and facilitate arbitration as a preferred dispute resolution method.
支持仲裁制度：支持和促进仲裁作为首选争议解决方法的法律。
- Award-making procedures : Addressing the creation of awards at arbitration seats, ensuring clarity and consistency in arbitral decisions.
裁决程序：解决在仲裁地作出裁决的问题，确保仲裁决定的明确性和一致性。
- Recognition and annulment : Providing statutory mechanisms for recognizing and confirming awards, as well as grounds for annulling them if necessary.
承认和撤销：提供承认和确认裁决的法定机制，以及必要时撤销裁决的理由。

- Enforcement provisions : Ensuring local awards are enforced with minimal exceptions. These laws often include pro-enforcement measures to recognize and enforce foreign awards, promoting international cooperation in upholding arbitral decisions.
执行条款：确保当地裁决得到执行，极少有例外。这些法律通常包括承认和执行外国裁决的支持执行措施，促进维护仲裁裁决的国际合作。

The intersection of the UNCITRAL Model Law and national arbitration legislation establishes a robust legal framework that supports the efficacy and reliability of international arbitration. This framework is instrumental in fostering confidence among parties opting for arbitration, knowing their awards will be recognized and enforced across borders, thereby enhancing the overall efficiency of international commerce.

《贸易法委员会示范法》与国家仲裁立法的交叉建立了一个强有力的法律框架，支持国际仲裁的有效性和可靠性。该框架有助于增强选择仲裁的当事人的信心，因为他们知道他们的裁决将得到跨境承认和执行，从而提高国际商务的整体效率。

“仲裁裁决” 概念

An "arbitral award" is central to the effectiveness and enforceability of arbitration decisions under international arbitration conventions and national arbitration statutes. Defining a decision as an "arbitral award" has several critical implications:

“仲裁裁决”对于国际仲裁公约和国家仲裁法规下仲裁决定的有效性和可执行性至关重要。将决定定义为“仲裁裁决”有几个重要意义：

- Res judicata or preclusive effects apply exclusively to arbitral awards.
既判力或排除效力仅适用于仲裁裁决。
- Arbitral awards can be annulled under national arbitration legislation.
根据国家仲裁立法，仲裁裁决可以被撤销。
- They are eligible for recognition and enforcement under international arbitration conventions.
它们有资格根据国际仲裁公约获得承认和执行。

Absence of Legislative Definition

Interestingly, despite the importance of arbitral awards, there is no explicit legislative definition. This gap does not necessarily result in inconsistent limitations on what constitutes an arbitral award. Instead, certain structural conditions help identify a decision as an arbitral award.

有趣的是，尽管仲裁裁决很重要，但并没有明确的立法定义。这种差距并不一定会导致对仲裁裁决的构成限制不一致。相反，某些结构性条件有助于将决定确定为仲裁裁决。

Structural Conditions

1. Result from an Agreement to Arbitrate 仲裁协议的结果：

- The award must originate from a valid arbitration agreement between the parties.
裁决必须源自双方之间有效的仲裁协议。

2. Formal Characteristics 形式特征：

- The award must be made by appointed arbitrators.
裁决必须由指定的仲裁员做出。
- It should be in writing, signed, and dated.
它应该是书面形式，签名并注明日期。
- It must represent the final disposition of substantive matters involved in the dispute.
它必须代表争议涉及的实质性事项的最终处理。

3. Substantive Resolution 实质性决议：

- The award must resolve a substantive issue rather than procedural issues.
裁决必须解决实质性问题而不是程序性问题。

Non-Qualified 'Awards'

Certain decisions do not qualify as arbitral awards 某些决定不符合仲裁裁决的条件：

- Procedural or Interim Orders : Temporary decisions or orders concerning procedural issues within the arbitration.
程序或临时命令：有关仲裁中程序问题的临时决定或命令。
- Expert Determinations : Decisions made by experts, not arbitral tribunals.
专家裁决：由专家而非仲裁庭做出的决定。
- Judgments : Court decisions rather than arbitration results.
判决：法院判决而非仲裁结果。
- Conciliation Reports and Recommendations : Non-binding advisories arising from conciliation processes.
调解报告和建议：调解过程中产生的不具约束力的建议。

Understanding the features and requirements of an arbitral award is crucial for practicing international arbitration effectively. By meeting specific structural conditions, decisions gain the formal recognition necessary for enforcement and other legal effects under international conventions and domestic statutes, ensuring that arbitration remains a reliable and authoritative method of dispute resolution.

了解仲裁裁决的特点和要求对于有效开展国际仲裁至关重要。通过满足特定的结构性条件，决定获得国际公约和国内法规下执行和其他法律效力所需的正式承认，确保仲裁仍然是解决争议的可靠和权威的方法。

裁决的类型

In arbitration, decision-making processes and the determination of awards can vary based on the statutes and institutional rules governing the proceedings. While unanimous decisions are the norm, there are provisions for non-unanimous awards, including majority decisions and awards rendered by the presiding arbitrator under specific circumstances.

在仲裁中，决策过程和裁决的确定可能会根据管理程序的法规和机构规则而有所不同。虽然一致裁决是常态，但也有非一致裁决的规定，包括多数裁决和首席仲裁员在特定情况下作出的裁决。

Majority Awards

Arbitration statutes and institutional rules generally permit decisions to be made by a majority of arbitrators, even if it is not unanimous. According to Article 29 of the UNCITRAL Model Law , in arbitral proceedings involving multiple arbitrators, any decision of the tribunal shall be made by a majority, unless the parties agree otherwise. Additionally, procedural questions can be decided solely by the presiding arbitrator if authorized by the parties or tribunal members. These provisions ensure that the arbitration process is efficient and does not get stalled due to a lack of unanimous agreement.

仲裁法规和机构规则通常允许大多数仲裁员做出决定，即使并非一致同意。根据《贸易法委员会示范法》第29条，在涉及多名仲裁员的仲裁程序中，仲裁庭的任何决定均应以多数票作出，除非当事人另有约定。此外，如果当事人或仲裁庭成员授权，程序问题只能由首席仲裁员决定。这些规定确保仲裁程序高效，不会因缺乏一致同意而陷入停滞。

Awards by Presiding Arbitrator

There can be instances where each of the three arbitrators has a different opinion on the resolution of a dispute. In such cases, where no majority can be established, certain arbitration statutes and institutional rules allow the presiding arbitrator to make a decisive award independently. This mechanism ensures that the arbitration does not face an impasse and a resolution is reached. Examples of such provisions include:

在某些情况下，三名仲裁员中的每一位都可能对争议的解决有不同的意见。在这种情况下，无法达成多数意见，某些仲裁法规和机构规则允许首席仲裁员独立做出决定性裁决。这一机制确保仲裁不会陷入僵局并达成解决方案。此类规定的示例包括：

- UK Arbitration Act (20.4)
英国仲裁法 (20.4)
- French Code of Civil Procedure (Art. 1513(3))
法国民事诉讼法 (第 1513(3) 条)
- Swiss Law on Private International Law (Article 189(2))
瑞士国际私法法 (第 189(2) 条)

- Belgian Judicial Code (Article 1711(3))
比利时司法法典（第 1711(3) 条）
- Chinese Arbitration Law (Article 53)
中国仲裁法（第53条）

Institutional rules supporting such provisions:

支持此类规定的机构规则：

- ICC Rules Art 31(1)
国际商会规则第 31(1) 条
- LCIA Rules Art 26(3)
LCIA 规则第 26(3) 条
- HKIAC Rules Art 32(1)
HKIAC 规则第 32(1) 条
- 2013 SIAC Rules Art 28(5)
2013 SIAC 规则第 28(5) 条

However, in jurisdictions or under rules without such provisions, deliberations must continue until a majority decision is reached, ensuring a collective decision-making process.

然而，在没有此类规定的司法管辖区或规则下，审议必须继续进行，直至达成多数决定，以确保集体决策过程。

These approaches highlight the flexibility and adaptability of arbitration as a dispute resolution mechanism, capable of addressing various challenges and complexities in achieving fair and timely outcomes.

这些方法凸显了仲裁作为争议解决机制的灵活性和适应性，能够应对各种挑战和复杂性，以实现公平和及时的结果。

国际仲裁裁决的形式要求

International arbitration serves as a preferred method for resolving cross-border disputes, providing a mechanism that is often more efficient and specialized than traditional court litigation. However, for an arbitral award to be recognized and enforceable, it must comply with specific formal requirements. Adherence to these requirements is critical, as non-compliance can lead to annulment or non-recognition of the award.

国际仲裁是解决跨境争议的首选方法，提供了一种比传统法院诉讼更高效、更专业的机制。然而，仲裁裁决要获得承认和执行，必须符合特定的形式要求。遵守这些要求至关重要，因为不遵守这些要求可能会导致裁决被撤销或不被承认。

Importance of Compliance

Failure to meet formal requirements can jeopardize the validity of an arbitral award. This can lead to annulment (having the award set aside) or non-recognition and non-enforcement by national courts, thereby undermining the entire arbitration process.

不满足形式要求可能会危及仲裁裁决的有效性。这可能导致国家法院撤销（撤销裁决）或不承认和不执行裁决，从而破坏整个仲裁程序。

Sources of Formal Requirements

The formal requirements for arbitral awards are typically derived from three main sources:

仲裁裁决的正式要求通常来自三个主要来源：

1. Lex Arbitri (law of the place of arbitration) : These are the mandatory rules established by the jurisdiction in which the arbitration takes place.

Lex Arbitri (仲裁地法律)：这些是仲裁发生地司法管辖区制定的强制性规则。

2. Parties' Agreement : Parties can agree on specific requirements as part of their arbitration agreement.

双方协议：双方可以就具体要求达成一致，作为仲裁协议的一部分。

3. Applicable Institutional Rules : Institutional rules, such as those from the International Chamber of Commerce (ICC) or the American Arbitration Association (AAA), also set forth formal requirements for arbitral awards.

适用的机构规则：国际商会 (ICC) 或美国仲裁协会 (AAA) 等机构规则也规定了仲裁裁决的正式要求。

UNCITRAL Model Law on International Commercial Arbitration (Art. 31)

The United Nations Commission on International Trade Law (UNCITRAL) Model Law is a widely adopted legal framework that provides guidelines on the recognition and enforcement of arbitral awards. Article 31 of the UNCITRAL Model Law outlines several key formal requirements:

《贸易法委员会国际商事仲裁示范法》(第 31 条)

联合国国际贸易法委员会（贸易法委员会）示范法是一个广泛采用的法律框架，为仲裁裁决的承认和执行提供指导方针。《贸易法委员会示范法》第 31 条概述了几项关键的正式要求：

1. Writing Requirement : The award must be documented in writing.

书面要求：裁决必须以书面形式记录下来。

2. Signature Requirement : The award must be signed by the arbitrator(s). If there is more than one arbitrator, the signatures of a majority are sufficient, provided the reason for any omitted signature is stated.

签名要求：裁决必须由仲裁员签名。如果仲裁员人数超过一名，则多数人签名即可，但须说明省略签名的原因。

3. Date and Place : The award must indicate the date and place of arbitration.

日期和地点：裁决必须注明仲裁日期和地点。

4. Reasoning : The award must state the reasons upon which it is based unless the parties have agreed that no reasons are to be given.

理由：裁决必须说明其所依据的理由，除非双方同意不给出理由。

Example of Compliance in Legislation

In Hong Kong, the formal requirements for arbitral awards are codified in Section 67 of the Arbitration Ordinance (Cap 609). This provision largely mirrors the requirements set forth in the UNCITRAL Model Law, ensuring that awards made in Hong Kong comply with internationally recognized standards.

在香港，仲裁裁决的正式要求载于《仲裁条例》（第 609 章）第 67 条。该规定很大程度上反映了《贸易法委员会示范法》中规定的要求，确保在香港作出的裁决符合国际公认的标准。

In summary, the integrity and enforceability of international arbitral awards hinge on strict adherence to formal requirements dictated by legal frameworks, agreements between parties, and institutional rules. Ensuring compliance with these requirements is fundamental to the efficacy of the international arbitration process.

总之，国际仲裁裁决的完整性和可执行性取决于严格遵守法律框架、当事人之间的协议和机构规则所规定的形式要求。确保遵守这些要求对于国际仲裁程序的有效性至关重要。

Recourse Against Arbitral Award and Setting Aside Applications 针对仲裁裁决的追索权和撤销申请

Arbitral awards, while usually final and binding, can be challenged in court under certain circumstances. The UNCITRAL Model Law on International Commercial Arbitration, adopted by many jurisdictions, provides a comprehensive framework for this process.

仲裁裁决虽然通常是终局裁决并具有约束力，但在某些情况下可以在法庭上受到质疑。许多司法管辖区采用的《贸易法委员会国际商事仲裁示范法》为这一过程提供了全面的框架。

Application to Set Aside Arbitral Awards Under UNCITRAL Model Law 根据《贸易法委员会示范法》申请撤销仲裁裁决

- Article 34(1) stipulates that recourse against an arbitral award is strictly limited to applications for setting aside the award.

第 34 条第 (1) 款规定，对仲裁裁决的追索权严格限于申请撤销裁决。

- Key Grounds for Setting Aside :

搁置的主要理由：

- Notice and Presentation : The applicant was not given proper notice of the arbitrator's appointment or the arbitral proceedings and was unable to present their case (Art. 34(2) (a)(ii)).

通知和陈述：申请人没有收到有关仲裁员的任命或仲裁程序的适当通知，并且无法陈述其案件（第 34(2)(a)(ii) 条）。

- Public Policy : The award conflicts with the public policy of the forum where the court is based (Art. 34(2)(b)(ii)).

公共政策：该裁决与法院所在地的公共政策相冲突（第 34(2)(b)(ii) 条）。

- Timing for Applications 申请时间：

The application must be made within three months from the date the applicant received the award or from the date on which any request was disposed of by the arbitral tribunal (Art. 34(3)).
申请必须在申请人收到裁决之日或仲裁庭处理任何请求之日起三个月内提出（第 34(3) 条）。

Hong Kong Context

- Hong Kong’s Arbitration Ordinance (Cap 609, Section 81) follows the same principles set by the UNCITRAL Model Law, providing a legal basis for setting aside arbitral awards within the jurisdiction.

香港《仲裁条例》（第 609 章第 81 条）遵循《贸易法委员会示范法》所规定的相同原则，为在管辖范围内撤销仲裁裁决提供了法律依据。

Case Study: Sun Tian Gang v Hong Kong & China Gas (Jilin) Ltd [2016] HKEC 2128

案例研究：孙天刚诉香港中华煤气（吉林）有限公司 [2016] HKEC 2128

- This landmark case confirms the grounds on which Hong Kong courts may set aside an arbitral award.

这一具有里程碑意义的案件证实了香港法院可以撤销仲裁裁决的理由。

- Case Details :

案例详情：

- The plaintiff was detained in Mainland China due to criminal charges and could not participate in the arbitration held in Hong Kong.

原告因刑事指控被拘留在中国内地，无法参加在香港举行的仲裁。

- The arbitration proceeded without the plaintiff’s knowledge, and the plaintiff did not receive proper notice.

仲裁在原告不知情的情况下进行，原告也没有收到适当的通知。

- The court found the invalid notice and absence from proceedings as a breach of natural justice, fairness, due process, and public policy.

法院认为无效通知和缺席诉讼违反了自然正义、公平、正当程序和公共政策。

- Despite the late application, the court recognized the exceptional circumstances of the plaintiff's detention and extended the statutory period, emphasizing the importance of upholding natural justice.

尽管申请较晚，法院还是承认原告被拘留的特殊情况，延长了法定期限，强调维护自然正义的重要性。

The Sun Tian Gang case demonstrates the Hong Kong courts' commitment to upholding the fundamental principles of natural justice when considering applications to set aside arbitral awards, ensuring fairness and due process in international arbitration practice.

孙天罡案表明香港法院在考虑撤销仲裁裁决的申请时致力于维护自然正义的基本原则，确保国际仲裁实践中的公平性和正当程序。

仲裁费用

International arbitration offers a specialized framework for resolving global disputes but involves significant costs that can impact the overall outcome for the parties involved.

Understanding these costs, as defined by the UNCITRAL Arbitration Rules 2013, is critical for anyone engaging in or studying international arbitration.

国际仲裁为解决全球争议提供了一个专门的框架，但涉及大量成本，可能会影响有关各方的整体结果。了解《2013年贸易法委员会仲裁规则》所定义的这些费用对于任何从事或研究国际仲裁的人都至关重要。

Categories of Costs

1. Arbitration Costs (Procedural Costs) 仲裁费用（程序费用）

These costs include fees and expenses for arbitrators, administrative charges from arbitral institutions, and any additional assistance required by the tribunal, ensuring a structured process.

这些费用包括仲裁员的费用和开支、仲裁机构的行政费用以及仲裁庭为确保结构化流程所需的任何额外协助。

2. Party Costs :

Each party incurs legal fees and expenses, including those for outside counsel, experts, witnesses, and translators, reflecting the bespoke nature of arbitration and its complex procedural requirements.

各方都会产生法律费用和开支，包括外部律师、专家、证人和翻译的费用和开支，这反映了仲裁的定制性质及其复杂的程序要求。

UNCITRAL Arbitration Rules 2013

- Article 40: Definition of Costs :

The tribunal is responsible for fixing arbitration costs in the final award or a separate decision. Costs include arbitrators' fees, reasonable travel and other expenses, expert advice, witness expenses, legal costs, and fees of appointing authorities and the PCA Secretary-General.

第 40 条 成本的定义：仲裁庭负责在最终裁决或单独决定中确定仲裁费用。费用包括仲裁员费用、合理差旅费和其他费用、专家建议、证人费用、法律费用以及指定机构和常设仲裁法院秘书长的费用。

- Article 41: Fees and Expenses of Arbitrators :

Arbitrators' fees should be reasonable, considering dispute complexity, amounts involved, time spent, and relevant case circumstances. Appointing authority schedules may guide fee determination, ensuring fairness and transparency.

第 41 条：仲裁员的费用和开支：考虑到争议的复杂性、涉及金额、花费的时间以及相关案件情况，仲裁员的费用应合理。指定机构时间表可以指导费用确定，确保公平和透明。

- Article 42: Allocation of Costs :

Generally, the unsuccessful party bears arbitration costs, but the tribunal can apportion costs based on case specifics. The final award or subsequent decisions outline any payable amounts between parties, emphasizing the tribunal's equitable discretion.

第 42 条：费用分配：一般情况下，败诉方承担仲裁费用，但仲裁庭可以根据案件具体情况分摊费用。最终裁决或随后的决定概述了双方之间的任何应付金额，强调仲裁庭的公平自由裁量权。

- Article 43: Deposit of Costs :

Tribunals may request equal deposits from parties as an advance on costs, with supplementary deposits as proceedings continue. Failure to meet deposit requests can result in suspension or termination of proceedings, highlighting the importance of financial diligence. Post-termination or final award, the tribunal provides an accounting of deposits and refunds any unspent amounts.

第 43 条：费用押金：仲裁庭可以要求当事人缴纳等额押金作为费用预付款，并在诉讼程序继续进行时补充押金。未能满足存款要求可能会导致程序暂停或终止，这凸显了财务尽职调查的重要性。终止或最终裁决后，仲裁庭会提供押金账目并退还任何未用金额。

Cost Considerations

Due to the high stakes involved, arbitration costs can be substantial, frequently exceeding US\$1 million and sometimes reaching tens of millions for significant disputes. Parties value cost recovery as part of total compensation claims, with cost decisions significantly influencing the overall case outcome. However, unpredictable standards for cost decisions by arbitrators can affect parties' strategies, making the choice between litigation and settlement more complex.

由于涉及高风险，重大争议的仲裁费用可能会很高，通常超过 100 万美元，有时甚至高达数千万美元。各方将成本回收视为总赔偿索赔的一部分，成本决策对整个案件结果有重大影响。然而，仲裁员成本决策的不可预测的标准可能会影响当事人的策略，使诉讼与和解之间的选择变得更加复杂。

Understanding these detailed aspects of arbitration costs ensures better prepared, informed participation in the international arbitration process, reflecting the nuanced balance of procedural fairness and financial consideration inherent in these proceedings.

了解仲裁费用的这些详细方面可确保更好地准备、知情地参与国际仲裁程序，反映这些程序固有的程序公平性和财务考虑之间的微妙平衡。

Yukos v the Russian Federation Arbitration Costs

The arbitration costs in the landmark case of Yukos v the Russian Federation have been meticulously documented, providing a comprehensive view of the financial burdens incurred during various phases of the proceedings.

尤科斯诉俄罗斯联邦这一具有里程碑意义的案件中的仲裁费用已被详细记录，提供了诉讼各个阶段所产生的财务负担的全面视图。

Phase 1 Costs

The first phase involved substantial legal representation costs, where Claimants employed 4 legal assistants and 31 attorneys. The total expenses amounted to USD 27,960,598.79 and GBP 996,962.10, covering extensive hours billed by both legal assistants and attorneys.

第一阶段涉及大量法律代理费用，索赔人雇用了 4 名法律助理和 31 名律师。总费用达 27,960,598.79 美元和 996,962.10 英镑，涵盖法律助理和律师的大量工作时间。

Phase 2 Costs

The second phase saw an increase in the number of legal assistants to 7 and attorneys to 27, leading to an aggregate cost of USD 51,667,456.77 and GBP 69,500.00. This phase also included expenses, expert fees, and compensation for witnesses, highlighting the increased complexity and duration of the arbitration process.

第二阶段将法律助理人数增加到 7 名，律师人数增加到 27 名，总费用为 51,667,456.77 美元和 69,500.00 英镑。这一阶段还包括费用、专家费用和证人报酬，凸显了仲裁过程的复杂性和持续时间的增加。

Tribunal's Decision on Costs

The tribunal allocated a total arbitration cost of EUR 8,440,000, equally shared by both Claimants and Respondent, with detailed breakdowns of fees for each arbitrator reflecting their significant contributions. Furthermore, the tribunal recognized the Claimants' higher costs due to the burden of proof and noted some expert fees as excessive but justified part of the cost awards due to the egregious nature of the Respondent's actions.

仲裁庭分配的仲裁费用总额为 8,440,000 欧元，由申请人和被申请人双方平均分担，并详细列出了每位仲裁员的费用细目，反映了他们的重大贡献。此外，仲裁庭承认原告因举证责任而承担较高费用，并指出，由于被申请人行为的恶劣性质，一些专家费用过高，但属于费用裁决的合理部分。

In conclusion, the extensive documentation of costs in the Yukos arbitration showcases the financial complexities and burdens of international arbitration, underscoring the importance of careful cost management and allocation in high-stakes legal disputes.

总之，尤科斯仲裁案中大量的费用记录显示了国际仲裁的财务复杂性和负担，强调了在高风险法律纠纷中仔细管理和分配费用的重要性。

提高国际仲裁效率的努力

In recent years, the arbitration community has focused on addressing escalating concerns about the rising costs and prolonged duration of arbitral proceedings. This effort has led to various innovative techniques and guidelines aimed at promoting time- and cost-efficiency in arbitration, as well as enhancing the overall transparency and predictability of cost decisions.

近年来，仲裁界一直致力于解决人们对仲裁程序成本上升和持续时间延长的担忧。这项努力催生了各种创新技术和指南，旨在提高仲裁的时间和成本效率，并提高成本决策的整体透明度和可预测性。

Techniques and Guidelines for Time- and Cost-Efficiency 时间和成本效率的技术和指南

1. Expedited Procedures for Small Claims 小额索赔加急程序

- These streamlined procedures are designed for minor disputes, aiming to reduce both the time and costs associated with arbitration by simplifying and accelerating the process.
这些简化的程序是针对轻微争议而设计的，旨在通过简化和加速流程来减少与仲裁相关的时间和成本。

2. Cost Orders to Deter Disruptive Tactics 阻止破坏性策略的成本命令：

- Arbitrators issue cost orders to penalize parties who engage in behavior that unnecessarily prolongs or complicates proceedings, thereby encouraging more efficient conduct.
仲裁员发布费用令来惩罚那些不必要地延长诉讼程序或使诉讼程序复杂化的当事人，从而鼓励更有效的行为。

3. Incentives for Arbitrators 对仲裁员的激励：

- Arbitrators are motivated to issue their awards promptly through a system that adjusts their fees based on how quickly they complete their work. This could involve fee reductions for delays or increases for expedited resolutions.
仲裁员有动力通过一个系统迅速颁发裁决，该系统根据他们完成工作的速度调整费用。这可能涉及因延误而减少费用或因加急解决而增加费用。

Increasing Transparency and Predictability 提高透明度和可预测性

1. Establishing 'Best Practices' 建立“最佳实践”：

- The arbitration community is working towards developing standardized best practices for awarding costs, providing greater clarity and fairness in cost decisions.

仲裁界正在努力制定裁决费用的标准化最佳实践，以提高费用决策的清晰度和公平性。

2. ICC Commission Report (2015) 国际商会委员会报告 (2015)：

- The ICC's 2015 report on "Decisions on Costs in International Arbitration" is a pivotal document aimed at guiding arbitrators and parties in making more informed and transparent cost-related decisions.

国际商会 2015 年关于“国际仲裁费用决定”的报告是一份关键文件，旨在指导仲裁员和当事人做出更明智、更透明的费用相关决定。

3. Revised Arbitration Rules 修改后的仲裁规则：

- Recent revisions to several sets of arbitration rules now include a rebuttable presumption that the successful party is entitled to recover its reasonable costs. This change promotes fairness while allowing the tribunal to consider specific circumstances of each case.
- 最近对几套仲裁规则的修订现在包括一项可反驳的推定，即胜诉方有权收回其合理费用。这一变化促进了公平，同时允许仲裁庭考虑每个案件的具体情况。

Queen Mary University of London's 2015 Survey

- The survey on Improvements and Innovations in International Arbitration highlighted that costs and delays are perceived as the worst characteristics of international arbitration. This finding underscores the necessity for ongoing reforms to address these critical issues.
- 关于国际仲裁的改进和创新的调查强调，成本和延误被认为是国际仲裁最糟糕的特征。这一发现强调了持续改革以解决这些关键问题的必要性。

Through these continuous efforts, the arbitration community aims to make international arbitration a more efficient, predictable, and cost-effective means of dispute resolution while maintaining its essential principles of fairness and impartiality.

通过这些不断的努力，仲裁界的目标是使国际仲裁成为一种更高效、可预测和更具成本效益的争议解决方式，同时保持公平和公正的基本原则。

争议解决的成本结构

Dispute resolution processes often involve significant time and financial resources. There's a notable disconnect between the reasons behind these delays and costs and what users expect from dispute resolution institutions. Users frequently rely on institutions to streamline processes and reduce costs, yet much of the responsibility actually lies with the parties involved.

争议解决过程通常涉及大量时间和财务资源。这些延迟和成本背后的原因与用户对争议解决机构的期望之间存在明显的脱节。用户经常依赖机构来简化流程并降低成本，但实际上大部分责任在于相关各方。

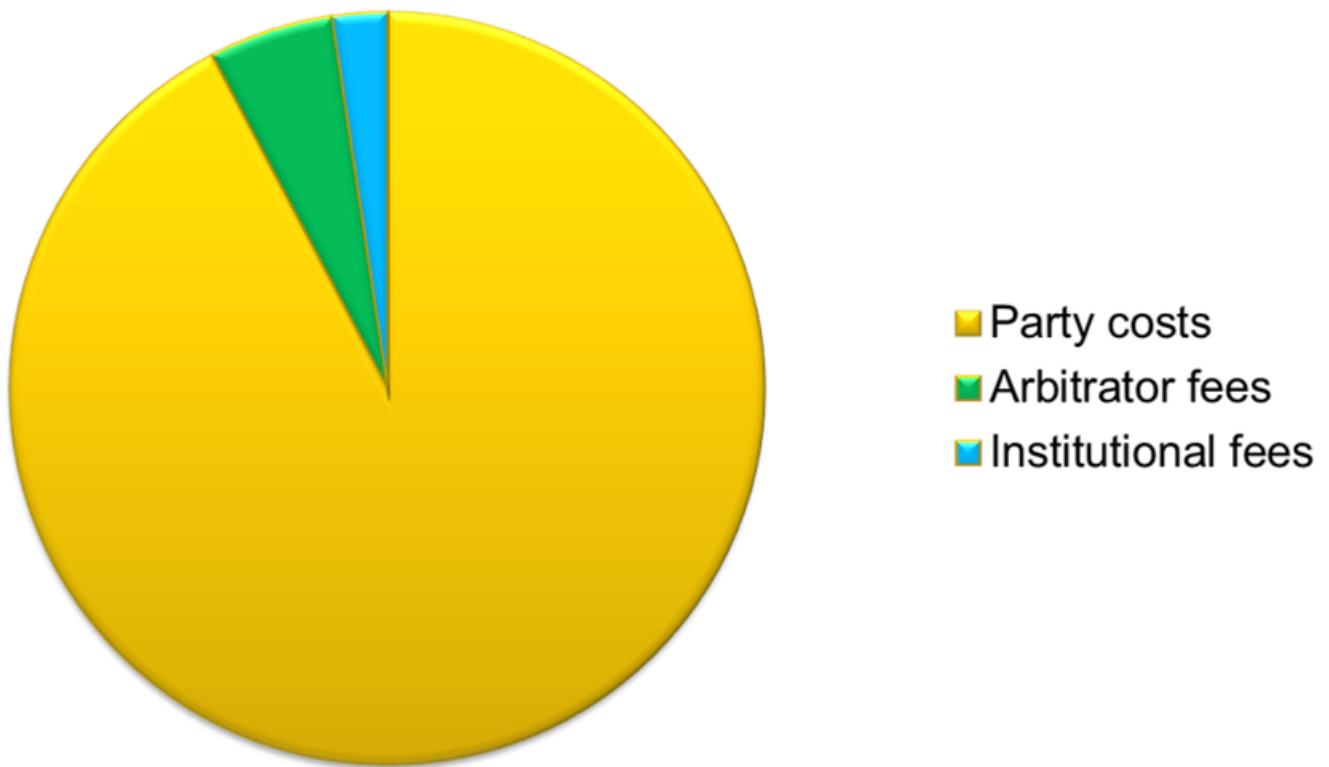
Findings from the 2010 Queen Mary Survey

The 2010 Queen Mary Survey on "Choices in International Arbitration" highlighted that the parties themselves, rather than dispute resolution institutions, are primarily responsible for the delays and costs incurred. This finding emphasizes the need for better management and efficiency from the parties involved.

2010 年玛丽女王大学关于“国际仲裁选择”的调查强调，对延误和产生的费用负主要责任的是当事人本身，而不是争议解决机构。这一发现强调了有关各方需要更好的管理和效率。

Typical Cost Structure in Arbitration

A pie chart illustrates the typical cost structure in arbitration:



- **Party Costs :** This constitutes the largest portion of expenses, including legal fees, expert witness costs, and other associated expenditures directly borne by the parties.
当事人费用：这是费用的最大部分，包括律师费、专家证人费用以及当事人直接承担的其他相关支出。
- **Arbitrator Fees :** These fees are a significant but smaller part of the overall costs, reflecting the compensation for the arbitrators' time and expertise.
仲裁员费用：这些费用占总成本的很大一部分，但反映了对仲裁员时间和专业知识的补偿。

- Institutional Fees : The smallest segment of the cost structure, covering administrative fees charged by arbitration institutions for case management and other services.

机构费用：成本结构中最小的部分，包括仲裁机构为案件管理和其他服务收取的行政费用。

Relative Time and Costs of Different Dispute Resolution Methods

A flow chart by the WIPO Arbitration and Mediation Center provides a comparative view of the time and cost associated with various dispute resolution methods:

产权组织仲裁与调解中心的流程图提供了与各种争议解决方法相关的时间和成本的比较：

1. Mediation and Expert Determination 调解和专家裁决：

- This method incurs the lowest time and cost, making it the most efficient and economical option for resolving disputes.

这种方法所需的时间和成本最低，是解决纠纷最有效、最经济的选择。

2. Expedited Arbitration 快速仲裁：

- While more time-consuming and costly than mediation, expedited arbitration still offers a balanced approach, bringing quicker resolutions than full arbitration processes.

虽然比调解更耗时、成本更高，但快速仲裁仍然提供了一种平衡的方法，比完整的仲裁程序更快地得到解决。

3. Arbitration 仲裁：

- Standard arbitration involves more extensive time and higher costs compared to mediation and expedited arbitration. It is still often preferred over litigation for international disputes due to its relative speed and expertise.

与调解和加急仲裁相比，标准仲裁需要更长时间和更高的成本。由于其相对速度和专业知识，在国际纠纷中，它仍然比诉讼更受青睐。

4. Court Litigation (Home Jurisdiction) 法院诉讼（本国司法管辖区）：

- Litigation within a party's home jurisdiction is more time-consuming and costly. The procedural requirements and legal system complexities contribute to these heightened expenses.

在一方所在司法管辖区内进行诉讼更加耗时且成本更高。程序要求和法律制度的复杂性导致了这些费用的增加。

5. Court Litigation (Foreign Jurisdiction) 法院诉讼（外国管辖区）：

- This approach has the highest time and cost. Navigating a foreign legal system, compliance with different procedural laws, and potential international travel all add to the expense and duration of resolving the dispute.

这种方法的时间和成本最高。了解外国法律体系、遵守不同的程序法以及潜在的国际旅行都会增加解决争议的费用和时间。

Understanding the cost structure in dispute resolution is crucial for parties to make informed decisions. Despite the expectation for institutions to manage costs and delays, much responsibility lies with the parties themselves. Parties should consider the relative costs and time associated with mediation, expert determination, expedited arbitration, arbitration, and litigation to choose the most appropriate and efficient method for their specific dispute.

了解争议解决的成本结构对于当事人做出明智的决定至关重要。尽管人们期望机构能够管理成本和延误，但大部分责任都在于各方本身。当事人应考虑与调解、专家裁决、快速仲裁、仲裁和诉讼相关的相对成本和时间，以针对其具体争议选择最合适、最有效的方法。

控制国际仲裁的时间和成本

Effective cost management is a critical aspect of international arbitration, as highlighted by the ICC Commission Report on Controlling Time & Costs in Arbitration . The report identifies that the largest portion of arbitration costs typically arises from the parties' presentation of their cases, particularly due to lengthy and complex proceedings, unfocused document disclosure requests, and unnecessary witness and expert evidence. Moreover, costs can escalate when counsel from diverse legal backgrounds duplicate familiar procedures.

正如国际商会委员会关于控制仲裁时间和成本的报告所强调的那样，有效的成本管理是国际仲裁的一个重要方面。报告指出，仲裁费用的最大部分通常来自当事人对案件的陈述，特别是由于程序冗长而复杂、文件披露要求不明确以及不必要的证人和专家证据。此外，当来自不同法律背景的律师重复熟悉的程序时，成本可能会上升。

To address these challenges, the International Chamber of Commerce (ICC) has proposed several solutions, though each comes with potential hurdles:

为了应对这些挑战，国际商会 (ICC)提出了几种解决方案，但每种方案都存在潜在的障碍：

- Keeping Clauses Simple : While simplicity aids clarity, it may not suit complex, multi-party transactions.

保持条款简单：虽然简单有助于清晰，但它可能不适合复杂的多方交易。

- Use of the ICC Model Clause : Standard clauses offer consistency but may not meet all parties' preferences.

国际商会示范条款的使用：标准条款提供一致性，但可能无法满足所有各方的偏好。

- Selection and Appointment of Arbitrators : The decision between a sole arbitrator and a three-member panel can be contentious.

仲裁员的选择和任命：独任仲裁员和三人小组之间的决定可能会引起争议。

- Fast-Track Procedures : Efficient but potentially unsuitable for intricate disputes.

快速通道程序：高效但可能不适合复杂的争议。

- Time Limits for Final Awards : Establishing deadlines can create a perception of rushed justice.

最终裁决的时间限制：设定最后期限可能会造成正义匆忙的感觉。

- Detailed Arbitration Agreements After Disputes Arise : These may not be viable if respondents are uncooperative.

争议发生后详细的仲裁协议：如果被申请人不合作，这些协议可能不可行。

- Reducing Arbitrators' Fees for Delays : While it incentivizes timely actions, most costs are attributed to counsel, not arbitrators.

减少仲裁员因延误而支付的费用：虽然它鼓励及时采取行动，但大部分费用都由律师而非仲裁员承担。

The Chartered Institute of Arbitrators further addresses these issues through guidelines on various arbitration processes, notably in Drafting Arbitral Awards Part III – Costs :

英国特许仲裁员协会通过各种仲裁程序的指南进一步解决了这些问题，特别是在起草仲裁裁决第三部分——费用中：

- Best Practice Guidance : Outlines the current best practices for awarding costs.

最佳实践指南：概述当前授予成本的最佳实践。

- Cost Control Techniques : Describes arbitrators' methods for managing costs effectively.

成本控制技术：描述仲裁员有效管理成本的方法。

- Cost Allocation Criteria : Identifies factors to consider when allocating costs between parties.

成本分配标准：确定在各方之间分配成本时要考虑的因素。

- Recoverable Costs : Details what costs can be recovered.

可收回成本：详细说明哪些成本可以收回。

- Timing and Content of Cost Awards : Specifies procedural requirements for awarding costs.

费用授予的时间和内容：指定费用授予的程序要求。

- Two Broad Cost Categories : Distinguishes between procedural and party-incurred costs.

两大成本类别：区分程序成本和当事人承担的成本。

In Hong Kong , the arbitration framework allows tribunals to limit recoverable costs either on their initiative or at a party’ s request, per section 57(1) of the Arbitration Ordinance, Cap 609 . This mechanism aims to prevent excessive and unnecessary expenditures, aligning with global best practices in cost control.

在香港，根据《仲裁条例》（第 609 章）第 57(1) 条，仲裁框架允许仲裁庭主动或应一方当事人的请求限制可追偿费用。该机制旨在防止过度和不必要的支出，符合全球成本控制最佳实践。

The visual aids provided, including the analysis of the ICC solutions and a cost flow chart, further underscore the importance of structured approaches to minimize arbitration costs and time, promoting efficient and equitable dispute resolution.

所提供的视觉辅助工具，包括对国际商会解决方案的分析和成本流程图，进一步强调了结构化方法的重要性，以最大限度地减少仲裁成本和时间，促进高效和公平的争议解决。

国际仲裁中的利益裁决

Interest in international arbitration serves crucial functions, primarily to compensate the receiving party for the lost opportunity to use money it is entitled to while preventing the counterparty from benefiting unjustly by holding onto money it does not own. Given the often significant time lapse between initiating a dispute and receiving a final award, interest can play a critical role in bridging financial gaps and can form a substantial portion of the total awarded amount.

国际仲裁的利益发挥着至关重要的作用，主要是为了补偿接收方失去的使用其有权获得的资金的机会，同时防止交易对手通过持有不属于其的资金而获得不公正的利益。鉴于发起争议和获得最终裁决之间通常存在很长的时间间隔，利息在弥合财务缺口方面可以发挥关键作用，并且可以构成裁决总额的很大一部分。

Challenges for Arbitrators

Arbitrators face challenges due to the differing approaches in various legal systems regarding interest. National laws and arbitration rules typically provide limited guidance on handling interest requests and calculating it, adding layers of complexity. Additionally, some jurisdictions prohibit interest due to religious beliefs, while others view certain types of interest as contrary to public policy. Despite these challenges, arbitrators often possess broad discretion to award interest, unless expressly prohibited by the arbitration agreement or the law of the place of arbitration (*lex arbitri*).

由于不同法律体系对利益的处理方式不同，仲裁员面临着挑战。国家法律和仲裁规则通常对处理利息请求和计算利息提供有限的指导，从而增加了复杂性。此外，一些司法管辖区因宗教信仰而禁止利息，而另一些司法管辖区则认为某些类型的利息违反公共政策。尽管存在这些挑战，仲裁员通常拥有广泛的自由裁量权来裁定利息，除非仲裁协议或仲裁地法律（仲裁法）明确禁止。

In Hong Kong, for example, the Arbitration Ordinance (Cap 609) sections 79 and 80 explicitly allow arbitral tribunals to award interest on money and costs.

例如，在香港，《仲裁条例》（第 609 章）第 79 条和第 80 条明确允许仲裁庭裁定金钱和费用的利息。

Principles for Awarding Interest

1. Arbitrator's Powers :

Arbitrators must ascertain their authority to award interest under the arbitration agreement, any applicable arbitration rules, and the substantive and procedural laws related to the dispute.

仲裁员的权力：仲裁员必须确定其根据仲裁协议、任何适用的仲裁规则以及与争议相关的实体法和程序法裁决利息的权力。

2. Party Submissions : Early in the proceedings, arbitrators should invite the parties to present their submissions and evidence on whether interest should be awarded, at what rates, on what sums, and for what periods.

当事人提交材料：在仲裁程序的早期，仲裁员应邀请当事人就是否应支付利息、利息多少、金额多少以及期限多等问题提交意见和证据。

3. Considerations : The decision on awarding interest should be based on the circumstances of the case and the economic realities of the parties involved, aiming for a fair outcome.

注意事项：利息的决定应当根据案件情况和当事人的经济实际，力求公平。

4. Nature of the Award :

Interest should be awarded to compensate the receiving party, not to punish the paying party. Decisions regarding interest must be reasoned, detailing the rates, dates, and whether interest is simple or compound.

裁决性质：利息的发放应该是为了补偿接收方，而不是为了惩罚支付方。有关利息的决定必须经过论证，详细说明利率、日期以及单利还是复利。

计息期间 Period of Interest Accrual

Arbitrators need to pinpoint the start dates for the liability of interest and ensure their awards include:

仲裁员需要确定利息责任的开始日期，并确保其裁决包括：

- Pre-Award Interest : Interest payable up to the date of the award.

授予前利息：截至授予之日应付的利息。

- Post-Award Interest : The necessary information to calculate interest due between the award date and the payment date.

授予后利息：计算授予日期和付款日期之间到期利息的必要信息。

Rate of Interest

After determining the accrual period, arbitrators should decide the applicable interest rates. While it is common to use the same rate for both pre-award and post-award interest, arbitrators should consider if different rates are more appropriate for each period.

确定计提期限后，仲裁员应决定适用的利率。虽然裁决前和裁决后利息使用相同的利率是很常见的，但仲裁员应考虑不同的利率是否更适合每个时期。

By understanding and implementing these principles, arbitrators can ensure that the awards of interest in international arbitration are fair, just, and well-reasoned, addressing the financial impacts of delays in dispute resolution comprehensively.

通过理解和执行这些原则，仲裁员可以确保国际仲裁中利益的裁决公平、公正、合理，全面解决争议解决延误所造成的财务影响。

09 笔记

Proof of International Arbitral Awards 国际仲裁裁决证明

The proof of international arbitral awards is governed primarily by the New York Convention and supplemented by national arbitration statutes. These legal frameworks aim to expedite and simplify the process, ensuring efficient recognition and enforcement of awards across jurisdictions.

国际仲裁裁决的证明以《纽约公约》为主，各国仲裁法规为辅。这些法律框架旨在加快和简化流程，确保跨司法管辖区有效承认和执行裁决。

Legal Framework

The New York Convention, a cornerstone of international arbitration, establishes formalistic requirements for proving the existence of an arbitral award. These requirements are designed to streamline the recognition and enforcement process across the convention's contracting states.

《纽约公约》是国际仲裁的基石，它规定了证明仲裁裁决存在的形式要求。这些要求旨在简化公约缔约国的承认和执行流程。

Article VI

Maximum Standard of Proof

Article VI of the New York Convention sets out the maximum standard for proving the existence of an arbitral award, prohibiting contracting states from imposing stricter requirements than those specified.

第六条 - 最高证明标准：《纽约公约》第六条规定了证明仲裁裁决存在的最高标准，禁止缔约国提出比规定更严格的要求。

Specific Proof Requirements 具体证明要求

Article IV mandates that a party seeking recognition and enforcement of an award must provide:

第四条规定寻求承认和执行裁决的当事人必须提供：

1. The duly authenticated original arbitral award or a certified copy thereof.
经正式认证的仲裁裁决原件或其核证副本。
2. The original arbitration agreement or a certified copy thereof.
仲裁协议原件或其核证副本。

3. A certified translation of these documents if they are not in the official language of the country where enforcement is sought.

如果这些文件不是寻求执行的国家/地区的官方语言，则提供经过认证的翻译。

Similar Provisions 类似规定

These requirements are mirrored in Article 35(2) of the UNCITRAL Model Law, ensuring consistency in international arbitration practices.

这些要求反映在《贸易法委员会示范法》第 35(2) 条中，确保了国际仲裁实践的一致性。

Burden of Proof 举证责任

- The award-creditor bears the burden of proving the existence of an award under Article IV.
裁决债权人有责任证明第四条规定的裁决的存在。
- Conversely, the award-debtor must establish exceptions to recognition and enforcement under Article V.
相反，裁决债务人必须根据第五条规定承认和执行的例外情况。

Interpretation and Application

The interpretation of Article IV should adhere to the New York Convention's general pro-enforcement policies. Judicial rulings, such as those by the Swiss Federal Tribunal and the Amsterdamer Rechtsbank, emphasize a minimalistic approach to formal requirements, focusing on substance over form.

对第四条的解释应遵循《纽约公约》的总体支持执行政策。瑞士联邦法庭和阿姆斯特丹法律银行等司法裁决强调对形式要求采取简约的方法，注重实质而非形式。

No Requirement for Validity Proof 无需提供有效性证明

Article VI clarifies that the creditor need only present specified documents under Article IV. There is no requirement to prove the substantive or formal validity of the arbitration agreement. Courts, such as the Bermuda Court of Appeal in *Sojuynefteexport v. JOC Oil Ltd*, have affirmed that producing the required documents fulfills the creditor's obligations.

第六条明确债权人只需提交第四条规定的特定文件。无需证明仲裁协议的实质或形式有效性。法院，例如百慕大上诉法院在 *Sojuynefteexport v. JOC Oil Ltd* 案中确认，提供所需文件即履行了债权人的义务。

In summary, the New York Convention provides a robust framework for proving the existence of international arbitral awards. By setting clear requirements and limiting formalistic barriers, it facilitates the efficient enforcement of arbitral awards, thus promoting international commercial arbitration.

总之，《纽约公约》为证明国际仲裁裁决的存在提供了一个强有力的框架。通过明确要求、限制形式障碍，有利于仲裁裁决的高效执行，从而促进国际商事仲裁的发展。

不同司法管辖区既判力

In the complex landscape of international arbitration, understanding the doctrines and statutory requirements surrounding the enforcement of arbitral awards is crucial. Key elements include the application of the res judicata doctrine to recognition applications under Article IV of the New York Convention and the specific evidentiary requirements for proving an arbitral award under various national arbitration legislations.

在国际仲裁的复杂格局中，了解仲裁裁决执行的原则和法定要求至关重要。关键要素包括对《纽约公约》第四条规定的承认申请适用既判力原则，以及根据不同国家仲裁立法证明仲裁裁决的具体证据要求。

根据第四条驳回承认申请的决定的既判力 Res Judicata Effect of Decision Dismissing Recognition Application Under Article IV

1. Res Judicata Doctrine :

既判力原则：

- In some jurisdictions, a decision dismissing recognition of an arbitral award under Article IV of the New York Convention is treated as res judicata. This means that it precludes subsequent efforts to enforce the award within that jurisdiction.

在一些司法管辖区，根据《纽约公约》第四条驳回承认仲裁裁决的决定被视为既判力。这意味着它排除了随后在该管辖范围内执行该裁决的努力。

- However, critics argue that this interpretation undermines the Convention's goal of promoting the enforcement of arbitral awards.

然而，批评者认为，这种解释破坏了公约促进仲裁裁决执行的目标。

- The preferred approach suggests that national laws should allow parties to cure recognition defects under Article IV, thereby fostering the broader purpose of the Convention.

首选的方法是，国家法律应允许缔约方纠正第四条规定的承认缺陷，从而促进《公约》的更广泛目标。

Proof of Arbitral Award Under National Arbitration Legislation 国家仲裁立法下的仲裁裁决证明

1. UNCITRAL Model Law (Article 35(2)) 贸易法委员会示范法（第 35(2) 条）：

- Requires parties to provide the original arbitral award and arbitration agreement, or their duly certified copies for recognition and enforcement.

要求当事人提供仲裁裁决和仲裁协议的原件或经过正式认证的副本，以供承认和执行。

2. United States Federal Arbitration Act (FAA § 13) 美国联邦仲裁法 (FAA § 13) :

- Specifies detailed documentation requirements for enforcement:
规定了执行的详细文件要求：

- The arbitration agreement.
仲裁协议。
- Selection or appointment documents of any additional arbitrator.
任何额外仲裁员的选择或任命文件。
- Written extensions for making the award.
颁发裁决的书面延期。
- The arbitral award itself.
仲裁裁决本身。
- Accompanying notices, affidavits, and related documents.
随附通知、宣誓书和相关文件。

3. Hong Kong Arbitration Ordinance 香港仲裁条例:

- Section 82 : Explicitly states that Article 35 of the UNCITRAL Model Law is not applicable.
第 82 条：明确规定《贸易法委员会示范法》第 35 条不适用。
- Section 85 : Outlines required evidence for enforcing arbitral awards not classified under Convention, Mainland, or Macao awards:
第 85 条：概述执行不属于公约、内地或澳门裁决的仲裁裁决所需的证据：
 - The duly authenticated original award or a certified copy.
经正式认证的裁决原件或经认证的副本。
 - The original arbitration agreement or a certified copy.
仲裁协议原件或经核证的副本。
 - If the documents are in a foreign language, a translation certified by an official, sworn translator, or diplomatic/consular agent into one of the official languages.
如果文件为外语，则需由官方、宣誓翻译或外交/领事代表认证为其中一种官方语言的译文。

4. Singapore International Arbitration Act 新加坡国际仲裁法:

- Section 19 : States that an arbitral award may be enforced as a high court judgment or order.
第 19 条：规定仲裁裁决可以作为高等法院判决或命令予以执行。
- Section 29 : Indicates that foreign awards can be enforced similarly to domestic awards under Section 19.
第 29 条：表明外国裁决的执行方式与第 19 条规定的国内裁决类似。
- Section 30 : Conditions for enforcement include:
第 30 条：执行条件包括：
 - Producing the duly authenticated original award or a certified copy.
出示经过正式认证的裁决原件或经过认证的副本。
 - Providing the original arbitration agreement or a certified copy.
提供仲裁协议原件或经认证的副本。

- If in a foreign language, providing a certified English translation.
如果是外语，请提供经过认证的英语翻译。
- Documents presented under this section are accepted as *prima facie* evidence upon mere production.
根据本节提供的文件只需出示即可作为表面证据。

These varying requirements and legal interpretations highlight the complexity and necessity of understanding specific national laws and international conventions to effectively navigate the enforcement of arbitral awards.

这些不同的要求和法律解释凸显了理解具体国家法律和国际公约以有效指导仲裁裁决执行的复杂性和必要性。

国际仲裁裁决获得承认和执行的程序

Obtaining recognition and enforcement of international arbitral awards involves a series of procedural steps that ensure the arbitral award is recognized as binding and enforceable across different jurisdictions. The cornerstone of these procedures is the New York Convention, particularly Article III, which harmonizes the enforcement mechanisms while emphasizing non-discrimination.

获得国际仲裁裁决的承认和执行涉及一系列程序步骤，以确保仲裁裁决在不同司法管辖区被认为具有约束力和可执行性。这些程序的基石是《纽约公约》，特别是第三条，它在强调非歧视的同时协调了执行机制。

Application of Local Rules

The general procedure for enforcing arbitral awards is dictated by the local rules of the jurisdiction where enforcement is sought. Courts and legal frameworks within each country have their own set of procedural rules that parties must follow to recognize and enforce international arbitral awards.

执行仲裁裁决的一般程序由寻求执行的司法管辖区的当地规则规定。每个国家的法院和法律框架都有自己的一套程序规则，当事方必须遵循这些规则来承认和执行国际仲裁裁决。

Article III of the New York Convention

Article III serves as a fundamental provision under the New York Convention, establishing two crucial requirements:

第三条是《纽约公约》的一项基本条款，规定了两项关键要求：

1. **Recognition and Binding Nature** : Each Contracting State must recognize arbitral awards as binding and enforce them in accordance with their procedural rules.

承认和约束性：各缔约国必须承认仲裁裁决具有约束力，并根据其程序规则执行仲裁裁决。

2. Non-discrimination : It prohibits imposing substantially more onerous conditions, fees, or charges for the recognition or enforcement of foreign arbitral awards than those applied to domestic awards.

非歧视：禁止对外国仲裁裁决的承认或执行施加比国内裁决更为严格的条件、费用或收费。

Non-discrimination Requirement 非歧视要求

A critical aspect of Article III is ensuring that foreign arbitral awards are not subjected to more burdensome criteria compared to domestic awards. This principle promotes fair treatment and fosters international confidence in the arbitration process.

第三条的一个关键方面是确保外国仲裁裁决不会受到比国内裁决更为繁琐的标准的约束。这一原则促进了公平待遇并增强了国际社会对仲裁程序的信心。

Commentary on the New York Convention

The commentary acknowledges that while Contracting States may devise distinct procedures for foreign and domestic awards, such procedures must remain reasonable. States are restricted by the "substantially more onerous conditions" rule, meaning any requirement beyond verifying the award's coverage under the Convention would violate the non-discrimination principle.

评注承认，虽然缔约国可以为外国和国内裁决制定不同的程序，但此类程序必须保持合理。各国受到“实质上更为严格的条件”规则的限制，这意味着除了核实《公约》规定的裁决覆盖范围之外的任何要求都将违反非歧视原则。

Quigley, Yale Law Journal Reference

Referencing Quigley's analysis in the Yale Law Journal, the legislative history indicates that the New York Convention intends to prevent any condition that exceeds a straightforward method of determining the award's applicability under the Convention. This interpretation limits the discretion of Contracting States, ensuring that awards are not unjustly encumbered.

引用奎格利在《耶鲁法律杂志》上的分析，立法历史表明《纽约公约》旨在防止任何超出《公约》确定裁决适用性的直接方法的条件。这一解释限制了缔约国的自由裁量权，确保裁决不会受到不公正的阻碍。

In conclusion, the New York Convention lays down a robust framework for the recognition and enforcement of international arbitral awards, primarily through Article III's non-discrimination provision. Ensuring compliance with these principles across jurisdictions enhances the reliability and effectiveness of international arbitration as a dispute resolution mechanism.

总之，《纽约公约》主要通过第三条的非歧视条款，为国际仲裁裁决的承认和执行奠定了强有力的框架。确保跨司法管辖区遵守这些原则可以增强国际仲裁作为争议解决机制的可靠性和有效性。

《纽约公约》下承认仲裁裁决的推定义务概述

The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958) is a cornerstone of international arbitration, aimed at ensuring the global enforceability of arbitration awards. Here we explore the purpose of the Convention, the legal burden it imposes, and its significant provisions.

《承认及执行外国仲裁裁决纽约公约》(1958年)是国际仲裁的基石，旨在确保仲裁裁决在全球的可执行性。在此，我们探讨该公约的目的、其施加的法律负担及其重要条款。

Purpose of the New York Convention

The New York Convention was established to facilitate the effective recognition and enforcement of foreign and nondomestic arbitral awards. This international treaty aims to:

《纽约公约》的制定是为了促进外国和非国内仲裁裁决的有效承认和执行。该国际条约旨在：

- Ensure the presumptive validity of arbitral awards.
确保仲裁裁决的推定有效性。
- Limit the grounds for denying recognition.
限制拒绝承认的理由。
- Shift the burden of proof to the party resisting enforcement, strictly defined by the seven grounds in Article V.
将举证责任转移给拒绝执行方，严格按照第五条七项理由进行界定。
- Eliminate the cumbersome double exequatur requirement, creating a more efficient recognition process.
消除繁琐的双重认证要求，创建更高效的识别流程。

Judicial Perspectives

Courts around the world underscore the Convention's purpose:

世界各地的法院都强调该公约的宗旨：

- English Court of Appeal (IPCO Ltd v. Nigerian Nat'l Petroleum Corp) : Highlighted the Convention's mission for effective and speedy enforcement of awards.
英国上诉法院 (IPCO Ltd 诉尼日利亚国家石油公司)：强调了公约有效、迅速执行裁决的使命。
- Canadian Supreme Court (Yugraeft Corp. v. Rexx Mgt Corp) : Emphasized the Convention's role in facilitating uniform cross-border recognition and enforcement.
加拿大最高法院 (Yugraeft Corp. v. Rexx Mgt Corp)：强调了《公约》在促进统一跨境承认和执行方面的作用。

Burden and Standard of Proof 举证责任和标准

The New York Convention clearly allocates the burden of proof to the party challenging an award's enforcement. Article V(1) outlines specific defenses that the resisting party can invoke,

and the burden lies on them to prove these defenses. Moreover, Article V(2) allows courts to raise defenses ex officio.

《纽约公约》明确将举证责任分配给对裁决执行提出质疑的一方。第五条第（1）款概述了抵抗方可以援引的具体抗辩理由，并且他们有责任证明这些抗辩理由。此外，第五条第（2）款允许法院依职权提出抗辩。

No Double Exequatur Requirement 不需要双重执行

One of the Convention's central achievements was the elimination of the double exequatur requirement, which previously necessitated awards to be confirmed in the arbitral seat before recognition abroad. The removal of this requirement, as evident from Article V and its drafting history, aimed to simplify and expedite the enforcement process.

该公约的核心成就之一是消除了双重执行要求，此前该要求要求裁决在国外得到承认之前必须在仲裁地得到确认。从第五条及其起草历史可以看出，取消这一要求的目的是简化和加快执行过程。

Exclusivity of Article V Exceptions 第五条例外的排他性

The Convention sets out exhaustive and exclusive grounds under Article V for denying recognition of an arbitral award. Jurisdictions adhering to the Convention agree that these grounds are limitative, ensuring a narrow and consistent application of defenses against recognition.

该公约第五条规定了拒绝承认仲裁裁决的详尽且排他性的理由。加入《公约》的司法管辖区一致认为这些理由是有限的，确保了针对承认的抗辩的适用范围狭窄且一致。

Permissive Non-Recognition 允许不承认

Crucially, the New York Convention does not compel courts to deny recognition of awards; rather, Article V's language indicates that non-recognition is permissive. Courts have the discretion to refuse recognition, but it is not mandatory, allowing for flexibility in enforcement based on the merits of each case.

至关重要的是，《纽约公约》并没有强迫法院拒绝承认裁决；相反，第五条的语言表明不承认是允许的。法院有权拒绝承认，但这不是强制性的，允许根据每个案件的具体情况灵活执行。

In summary, the New York Convention establishes a robust framework for the global recognition and enforcement of arbitral awards, providing predictability, efficiency, and legal uniformity. Its principles ensure that arbitration remains a viable and effective means of resolving international commercial disputes.

总之，《纽约公约》为全球承认和执行仲裁裁决建立了一个强有力的框架，提供了可预测性、效率和法律统一性。其原则确保仲裁仍然是解决国际商事纠纷的可行且有效的手段。

Waiving Rights to Oppose Recognition of Awards 放弃承认

In international arbitration, agreements sometimes include clauses that waive the parties' rights to oppose the recognition and enforcement of an arbitral award. The enforceability of these waivers is a complex issue that touches on principles of party autonomy and public policy, with different jurisdictions having varying approaches.

在国际仲裁中，协议有时会包含放弃当事人反对承认和执行仲裁裁决的权利的条款。这些豁免的可执行性是一个复杂的问题，涉及当事人意思自治和公共政策的原则，不同的司法管辖区有不同的做法。

Enforceability Context

1. Silence of Major Frameworks :

The New York Convention and the UNCITRAL Model Law, two principal frameworks governing international arbitration, do not explicitly address the enforceability of waivers that prevent parties from opposing the recognition and enforcement of awards. This silence leaves room for interpretation and reliance on national legislation and judicial interpretation.

主要框架的沉默：《纽约公约》和《贸易法委员会示范法》这两个管理国际仲裁的主要框架没有明确规定豁免的可执行性，以防止当事人反对承认和执行裁决。这种沉默为解释和依赖国家立法和司法解释留下了空间。

2. Party Autonomy 意思自治：

- The principle of party autonomy, which underpins international arbitration, suggests that parties should have the freedom to agree on the terms of their arbitration, including waiving certain rights.

国际仲裁的基础是当事人意思自治原则，该原则表明当事人应有就仲裁条款达成一致的自由，包括放弃某些权利。

- Swiss, Belgian, and French laws permit parties to waive their right to seek annulment of arbitral awards.

瑞士、比利时和法国法律允许当事人放弃寻求撤销仲裁裁决的权利。

- Nonetheless, such waivers must not contravene public policy or render the arbitration agreement null and void.

尽管如此，此类弃权不得违反公共政策或导致仲裁协议无效。

Institutional Rules with Waiver Provisions 具有豁免条款的机构规则

1. 2017 ICC Rules, Article 35(6) 2017 年国际商会规则，第 35(6) 条：

- This provision ensures that every arbitral award is binding on the parties.
该规定确保每项仲裁裁决对当事人都具有约束力。

- By submitting to ICC arbitration, parties are deemed to have waived their right to any form of recourse against the award, to the extent that such a waiver is legally valid.

通过提交国际商会仲裁，当事人被视为放弃对裁决进行任何形式追索的权利，只要此类放弃具有法律效力。

2. 2014 LCIA Rules, Article 26(8) 2014 年 LCIA 规则，第 26(8) 条：

- Awards, including reasons, are final and binding.

裁决（包括理由）是最终的且具有约束力。

- Parties agree to enforce awards immediately and waive their rights to any form of appeal, review, or recourse to state courts, except where such waiver is prohibited by applicable law.
- 各方同意立即执行裁决，并放弃任何形式的上诉、复审或向州法院追索的权利，除非适用法律禁止此类放弃。

3. 2013 SIAC Rules, Article 28(9) :

- Awards are final and binding from the date they are made.

裁决是最终的，自作出之日起具有约束力。

- Parties irrevocably waive their rights to appeal, review, or seek recourse through state courts, provided the waiver is valid under the applicable legal framework.

各方不可撤销地放弃上诉、复审或通过州法院寻求追索的权利，前提是该放弃在适用的法律框架下有效。

These examples demonstrate how major arbitration institutions incorporate waiver mechanisms in their rules to expedite dispute resolution and enhance the finality of arbitral awards. However, the enforceability of such waivers will ultimately depend on the legal context and public policy considerations in the jurisdiction where enforcement is sought.

这些例子展示了主要仲裁机构如何在其规则中纳入弃权机制，以加快争议解决并提高仲裁裁决的终局性。然而，此类豁免的可执行性最终将取决于寻求执行的司法管辖区的法律背景和公共政策考虑。

仲裁裁决撤销权的探讨 The Power to Set Aside an Award

The ability to set aside an arbitral award is a powerful tool in arbitration-related litigation. This power allows courts to annul an arbitral award as if it never existed, potentially undoing years of proceedings and substantial legal expenses. It is codified in instruments like the New York Convention and the UNCITRAL Model Law, and is widely upheld in most arbitration-friendly jurisdictions worldwide. While both the power to enforce and the power to set aside an award are fundamental to the system of international arbitration, their application and the parties' rights regarding them differ significantly.

撤销仲裁裁决的能力是仲裁相关诉讼中的一个强大工具。这项权力允许法院撤销仲裁裁决，就好像它从未存在过一样，这可能会抵消多年的诉讼程序和大量的法律费用。它被编入《纽约公约》和《贸易法委员会示范法》等文书中，并在全球大多数有利于仲裁的司法管辖区得到广泛支持。虽然执行权和撤销裁决的权力都是国际仲裁制度的基础，但它们的适用和当事人的权利却存在很大差异。

Enforcing Awards vs. Setting Aside Awards 执行裁决与撤销裁决

The right to enforce an arbitral award is indispensable and cannot be contracted away.

Arbitration would lose its purpose if the enforcement of awards could be waived, rendering the process futile. Therefore, no rational party would agree to waive the right to enforce an award.

执行仲裁裁决的权利是不可或缺的，不能通过合同剥夺。如果可以放弃执行裁决，仲裁就会失去其目的，从而使整个过程徒劳无功。因此，任何理性的当事人都不会同意放弃执行裁决的权利。

The Right to Waive Setting Aside an Award 放弃撤销裁决的权利

In contrast, there is considerable debate within the arbitration community about waiving the right to set aside an award. While the ability to set aside an award is recognized globally, waiving this right primarily depends on the principle of freedom to contract. If parties can choose arbitration over litigation, they should also be able to waive further court interactions, including the right to set aside an award.

相比之下，仲裁界内部对于放弃撤销裁决的权利存在相当多的争论。虽然撤销裁决的能力在全球得到认可，但放弃这一权利主要取决于合同自由原则。如果当事人可以选择仲裁而不是诉讼，他们也应该能够放弃进一步的法庭互动，包括撤销裁决的权利。

Jurisdictional Approaches 管辖权方法

Most jurisdictions uphold the parties' freedom to contract and thus recognize contractual waivers of the right to set aside an award, though exceptions do exist. For example:

大多数司法管辖区都维护当事人的合同自由，因此承认通过合同放弃撤销裁决的权利，但也存在例外情况。例如：

- Greece : A waiver of civil rights, including waivers of court recourse, is considered invalid.
希腊：放弃公民权利，包括放弃法院追索权，被视为无效。
- Russia : In a 2012 case, the Federal Commercial Court of the Moscow Circuit respected a waiver clause in an arbitration agreement, limiting remedies to resisting enforcement.
俄罗斯：在 2012 年的一起案件中，莫斯科巡回联邦商事法院尊重仲裁协议中的弃权条款，将补救措施限制为抵制执行。
- Switzerland : The Swiss Supreme Court in 2017 upheld a contractual waiver of the right to set aside, dismissing an application to set aside an award made under the UNCITRAL Arbitration Rules.
瑞士：瑞士最高法院于 2017 年维持了对撤销权的合同放弃，驳回了撤销根据《贸易法委员会仲裁规则》作出的裁决的申请。

While waiving the right to set aside an arbitral award is generally permissible under the freedom to contract principle, it is subject to jurisdictional variations. Understanding these nuances is essential for parties engaged in international arbitration to make informed decisions on dispute resolution clauses in their contracts.

虽然根据合同自由原则，放弃撤销仲裁裁决的权利通常是允许的，但它可能会受到管辖权变化的影响。了解这些细微差别对于参与国际仲裁的当事人就其合同中的争议解决条款做出明智的决定至关重要。

拒绝承认国际仲裁裁决的理由

The recognition and enforcement of international arbitral awards can be refused on several grounds defined under the New York Convention. These provisions are crucial for ensuring that the arbitration process is conducted fairly and in accordance with agreed-upon standards. Below are detailed explanations of these grounds and relevant judicial interpretations.

可以根据《纽约公约》规定的多种理由拒绝承认和执行国际仲裁裁决。这些规定对于确保仲裁程序公平并按照商定的标准进行至关重要。以下是对这些理由和相关司法解释的详细解释。

Overview of Key Grounds 主要理由概述

1. Lack of a Valid Arbitration Agreement or Excess of Jurisdiction (Article V(1)(a)) :

Recognition and enforcement can be refused if there is no valid arbitration agreement, or if the tribunal exceeded its jurisdiction. This includes situations where the arbitration agreement is invalid due to non-compliance with formal requirements, incapacity of parties, or other legal defects. For instance, in IMC Aviation Solutions Pty Ltd v. Altan Khuder LLC , it was emphasized that the award-debtor must prove the arbitration agreement, not just the underlying contract, is invalid.

缺乏有效仲裁协议或超越管辖权（第五条(1)(a)）：

如果没有有效的仲裁协议，或者仲裁庭超出其管辖范围，可以拒绝承认和执行。这包括因不符合形式要求、当事人无行为能力或其他法律缺陷而导致仲裁协议无效的情况。例如，在IMC Aviation Solutions Pty Ltd诉Altan Khuder LLC一案中，强调裁决债务人必须证明仲裁协议无效，而不仅仅是基础合同无效。

2. Denial of the Opportunity to Present a Case (Article V(1)(b)) :

Parties must be given a fair opportunity to present their case. If a party is denied this opportunity, enforcement of the award can be refused.

拒绝陈述案件的机会（第 V(1)(b) 条）：必须给予各方公平的机会陈述案情。如果一方被拒绝此机会，则可以拒绝执行裁决。

3. Award Outside the Scope of Submission (Article V(1)(c)) :

If the arbitral award addresses matters beyond the scope of what was submitted to arbitration, it may not be enforced

提交范围之外的裁决（第五条（1）（c））：

如果仲裁裁决涉及的事项超出了提交仲裁的范围，则不得执行。

4. Improper Tribunal Composition or Procedure (Article V(1)(d)) :

The arbitration must be conducted according to the procedures agreed upon by the parties. Any deviation from the agreed-upon composition of the tribunal or procedure could be grounds for refusal.

不当的仲裁庭组成或程序（第 V(1)(d) 条）：

仲裁必须按照当事人约定的程序进行。任何偏离商定的仲裁庭组成或程序的情况都可能成为拒绝的理由。

5. Non-Binding or Annulled Awards (Article V(1)(e)) :

An award that is not yet binding or has been annulled in the jurisdiction where it was made will not be recognized or enforced. This is critical for maintaining the integrity and finality of arbitral awards.

无约束力或无效的裁决（第 V(1)(e) 条）：尚未具有约束力或已在作出司法管辖区撤销的裁决将不会得到承认或执行。这对于维护仲裁裁决的完整性和最终性至关重要。

6. Non-Arbitrable Disputes/Claims (Article V(2)(a)) :

Some disputes may not be subject to arbitration under national laws. If a claim falls into this category, the recognition and enforcement of the award can be refused.

不可仲裁的争议/索赔（第 V(2)(a) 条）：根据国家法律，某些争议可能不需接受仲裁。如果索赔属于此类，可以拒绝承认和执行裁决。

7. Violation of Public Policy (Article V(2)(b)) :

Enforcement can be refused if the arbitral award violates the public policy of the country where enforcement is sought

违反公共政策（第五条（2）（b））：如果仲裁裁决违反寻求执行国的公共政策，可以拒绝执行。

No Valid Arbitration Agreement 无有效仲裁协议

- Article V(1)(a) New York Convention :

Recognition and enforcement of an award may be refused if there is proof that the parties were incapacitated or the arbitration agreement is invalid under the applicable law. Similar to the UNCITRAL Model Law Article 36(1)(a)(i), this provision emphasizes the importance of a valid arbitration agreement, which is fundamental to the arbitration process. Usual grounds for invalidity include non-compliance with formal requirements and lack of capacity to conclude the agreement. The principle of separability often applies, meaning the arbitration agreement is considered independent of the underlying contract, thus the award-debtor must demonstrate the invalidity of the arbitration agreement itself.

《纽约公约》第五条(1)(a)：

如果有证据证明当事人无行为能力或者仲裁协议根据适用的法律无效，裁决可以被拒绝承认和执行。与《贸易法委员会示范法》第 36(1)(a)(i) 条类似，该条款强调了有效仲裁协议的重要性，这是仲裁程序的基础。无效的常见理由包括不遵守正式要求和缺乏缔结协议的能力。分离性原则通常适用，这意味着仲裁协议被认为独立于基础合同，因此裁决债务人必须证明仲裁协议本身的无效性。

Judicial Interpretations 司法解释

- Various courts have interpreted Article V(1)(a) to ensure the chosen law by parties or the law of the arbitration seat is applied to determine the validity of arbitration agreements.

各法院对第五条第(1)(a)条进行了解释，以确保适用当事人选择的法律或仲裁地的法律来确定仲裁协议的有效性。

- In Shandong Textiles Imp. & Exp. Corp. v. Da Hua Non-Ferrous Metals Co. , the Hong Kong Court of First Instance applied PRC Mainland Law, the law of the arbitration seat.

山东省纺织品进出口公司& 经验。香港原讼法庭适用中华人民共和国内地法，为仲裁地法律。

- Similarly, in Catz Int'l BV v. Gilan Trading KFT , a Rotterdam court held that the validity of the arbitration agreement should be judged based on the law of the country where the awards were rendered, which was English law in this instance.

同样，在Catz Int'l BV v. Gilan Trading KFT一案中，鹿特丹法院认为，仲裁协议的有效性应根据裁决所在国的法律（本案中为英国法）来判断。

These provisions and interpretations ensure that international arbitration remains a robust, fair, and consistent mechanism for resolving cross-border disputes.

这些规定和解释确保国际仲裁仍然是解决跨境争议的稳健、公平和一致的机制。

《纽约公约》不承认的理由

聚焦于无有效仲裁协议

The New York Convention provides crucial grounds for the non-recognition of arbitral awards, prominently addressing the issue of a valid arbitration agreement. This becomes particularly

relevant under Article V(1)(a), which covers various aspects of invalid arbitration agreements and the lack of jurisdiction of arbitral tribunals.

《纽约公约》为不承认仲裁裁决提供了重要理由，突出解决了有效仲裁协议的问题。这在第五条第(1)款(a)项下显得尤为重要，该条涵盖无效仲裁协议的各个方面以及仲裁庭缺乏管辖权。

Preclusive Effect of Jurisdictional Awards 管辖裁决的排除效力

One critical aspect is whether a jurisdictional award rendered by an arbitral tribunal holds preclusive effect in subsequent recognition proceedings. Most national arbitration laws incorporate the "Competence-Competence doctrine," empowering arbitrators to decide on their jurisdiction. However, once an award on jurisdiction is issued, different courts may treat this differently during recognition:

一个关键问题是仲裁庭作出的管辖裁决在随后的承认程序中是否具有排除效力。大多数国家的仲裁法都纳入了“能力-能力原则”，授权仲裁员决定其管辖权。然而，一旦作出管辖权裁决，不同法院在承认时可能会采取不同的处理方式：

- In some jurisdictions, substantial weight is given to the tribunal's prior jurisdictional ruling.
在一些司法管辖区，仲裁庭先前的管辖权裁决受到很大重视。
- Contrarily, some courts prefer to conduct a de novo review, re-evaluating the tribunal's jurisdiction independently in recognition proceedings.
相反，一些法院更愿意进行重新审查，在承认程序中独立地重新评估仲裁庭的管辖权。

Article V(1)(a) - De Novo Consideration 第五条(1)(a) - 重新考虑

Article V(1)(a) of the New York Convention explicitly allows recognition courts to reassess the validity of the arbitration agreement. This process is known as de novo consideration, where courts can independently determine jurisdictional issues:

《纽约公约》第五条第 (1) 款 (a) 项明确允许承认法院重新评估仲裁协议的有效性。这个过程被称为从头考虑，法院可以独立确定管辖权问题：

- For instance, the US court in *China Minmetals Materials Imp. & Exp. Co. v. Chi Mei Corp* held that a party opposing the enforcement of an award due to an alleged void arbitration agreement is entitled to present evidence of such invalidity.
例如，美国法院在中国五矿材料进出口公司案中。& 经验。Co. v. Chi Mei Corp认为，因仲裁协议无效而反对执行裁决的一方有权提供该无效的证据。
- Similarly, the UK Supreme Court in *Dallah Real Estate & Tourism Holding Co. v. Ministry of Religious Affairs, Gov't of Pakistan* asserted that courts must independently investigate whether the challenger was a party to the arbitration agreement.
同样，英国最高法院在Dallah Real Estate & Tourism Holding Co. 诉巴基斯坦政府宗教事务部一案中主张，法院必须独立调查质疑者是否是仲裁协议的一方。

Lack of Capacity 能力不足

Under Article V(1)(a), the Convention also provides grounds for non-recognition if one of the parties lacked the capacity to conclude a binding arbitration agreement:

根据第五条第(1)款(a)项，如果一方当事人缺乏缔结具有约束力的仲裁协议的能力，《公约》还规定了不予承认的理由：

- The capacity is determined under the applicable national laws. In civil law jurisdictions, it is governed by the law of the entity's seat. In common law jurisdictions, the law of the place of incorporation applies.

该容量根据适用的国家法律确定。在大陆法系司法管辖区，受实体所在地法律管辖。在普通法司法管辖区，适用公司成立地的法律。

- This facet of capacity is also captured in Article 36(1)(a)(i) of the UNCITRAL Model Law, ensuring that parties to an arbitration agreement possess the necessary legal ability to enter into such agreements.

《贸易法委员会示范法》第 36(1)(a)(i) 条也体现了这一方面的能力，确保仲裁协议的当事人拥有签订此类协议所需的法律能力。

Through these provisions, the New York Convention aims to uphold the integrity and enforceability of arbitral awards, while also ensuring that fundamental legal principles, such as the validity of arbitration agreements and party capacity, are meticulously observed and verified.

通过这些规定，《纽约公约》旨在维护仲裁裁决的完整性和可执行性，同时确保仲裁协议的有效性和当事人能力等基本法律原则得到严格遵守和核实。

Excess of Authority 越权

The New York Convention provides a robust framework for the recognition and enforcement of international arbitral awards. However, it also outlines specific grounds under which recognition and enforcement may be denied. One critical ground is the "Excess of Authority" under Article V(1)(c).

《纽约公约》为国际仲裁裁决的承认和执行提供了强有力的框架。然而，它也概述了可能被拒绝承认和执行的具体理由。一个关键理由是第五条第(1)款(c)项下的“越权”。

Excess of Authority (Article V(1)(c)) 越权 (第 V(1)(c) 条) :

- Denial of Recognition :Article V(1)(c) allows for the denial of recognition and enforcement of an arbitral award if:

拒绝承认：第五条第(1)款(c)项允许在以下情况下拒绝承认和执行仲裁裁决：

- The award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration.

该裁决涉及未考虑或不属于提交仲裁条款的争议。

- It contains decisions on matters that exceed the scope of the arbitration submission.
它包含对超出仲裁提交范围的事项的决定。
- Exceeding Authority :
Arbitrators are deemed to have exceeded their authority if they rule on issues or claims not submitted by the parties or grant relief that was not requested. This ensures that the arbitration process adheres to the parties' initial agreement and scope of issues submitted for resolution.

超越权限：如果仲裁员对当事人未提交的问题或索赔做出裁决或准予未请求的救济，则被视为超越其权限。这确保仲裁程序遵守双方的初始协议和提交解决的问题范围。

Deference in Interpretation 尊重解释：

Despite these restrictions, arbitrators are afforded a degree of deference in interpreting the parties' claims. For instance, in the case of Millicom Int'l V NV v. Motorola, Inc. :

尽管有这些限制，仲裁员在解释当事人的主张时仍得到一定程度的尊重。例如，在Millicom Int'l V NV诉Motorola, Inc.案中：

- The arbitrators were permitted to grant remedies not explicitly provided for in the shareholder agreement.
仲裁员可以授予股东协议中未明确规定补救措施。
- The court upheld this decision, noting that the arbitration clause did not limit the arbitrators' authority to fashion appropriate remedies.
法院维持了这一裁决，并指出仲裁条款并未限制仲裁员采取适当补救措施的权力。

Scope of Article V(1)(c) 第五条(1)(c)的范围：

- Extra Petita / Ultra Petita :

Recognition can be denied if the award covers matters beyond the submission (extra petita or ultra petita).

特小/超小：如果裁决涵盖提交内容之外的事项（extra petita 或 ultra petita），则可能会被拒绝认可。

- Infra Petita :Similarly, an award may be refused recognition if it fails to address all issues within the scope of the submission (infra petita).

同样，如果裁决未能解决提交范围内的所有问题（infra petita），则裁决可能会被拒绝认可。

- Partial Non-Recognition :

Under Article V(1)(c), it is possible to recognize parts of an award while denying recognition to others that exceed the tribunal's jurisdiction. This allows for a nuanced approach where the enforceable parts of the award are preserved, promoting fairness and adherence to the parties' original agreement.

部分不认可：根据第五条第（1）款（c）项，可以承认裁决的部分内容，同时拒绝承认超出仲裁庭管辖权的其他部分。这允许采取细致入微的方法，保留裁决的可执行部分，促进公平并遵守双方的

原始协议。

In summary, the grounds for non-recognition under Article V(1)(c) of the New York Convention provide safeguards against arbitral overreach, ensuring awards adhere strictly to the agreed scope of arbitration. This maintains the integrity of the arbitration process and protects the parties' intentions and submissions.

总之，《纽约公约》第五条第(1)(c)款规定的不予承认的理由提供了防止仲裁越权的保障措施，确保裁决严格遵守商定的仲裁范围。这维护了仲裁程序的完整性并保护当事人的意图和意见。

拒绝陈述缔约方案件的机会 Denial of Opportunity to Present Party's Case

The New York Convention sets forth specific grounds under which the recognition and enforcement of arbitral awards may be denied. A crucial ground for non-recognition is articulated in Article V(1)(b), which addresses the denial of a party's opportunity to present its case. This issue pertains to procedural fairness, often termed as a "denial of procedural fairness" by European lawyers and a "denial of due process" by U.S. lawyers.

《纽约公约》规定了可以拒绝承认和执行仲裁裁决的具体理由。第五条第(1)款(b)项阐述了不予承认的一个重要理由，该条款涉及拒绝当事人陈述案情的机会。这个问题涉及程序公平性，通常被欧洲律师称为“拒绝程序公平”，被美国律师称为“拒绝正当程序”。

Article V(1)(b) of the New York Convention outlines that recognition may be refused if "the party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case." This is reinforced by the pro-enforcement objectives of the Convention, emphasizing the need for timely and efficient enforcement while safeguarding parties' interests.

《纽约公约》第五条第(1)(b)款概述了如果“被援引裁决的一方没有收到有关仲裁员的任命或仲裁程序的适当通知，或者因其他原因无法提出他的案子。”《公约》支持执行的目标强化了这一点，强调需要及时有效地执行，同时维护各方利益。

Rule of Application : The application of Article V(1)(b) aligns with the Convention's overarching aim to promote the enforcement of arbitration awards. It emphasizes the necessity of balancing procedural autonomy with the arbitral tribunal's discretion, recognizing attributes such as informality, simplicity, and expedition inherent to the arbitral process.

适用规则：第五条第（1）款（b）项的适用符合《公约》促进仲裁裁决执行的总体目标。它强调平衡程序自治与仲裁庭自由裁量权的必要性，承认仲裁程序固有的非正式性、简单性和迅速性等属性。

Relevant legal references include:

- Article 18 of the UNCITRAL Model Law : Mandates equality and ensures each party can fully present its case.

《贸易法委员会示范法》第18条：规定平等并确保各方都能充分陈述其案情。

- Article 36(1)(a)(ii) of the UNCITRAL Model Law : Similar protective provisions as in Article V(1)(b) of the New York Convention.
《贸易法委员会示范法》第 36(1)(a)(ii) 条：与《纽约公约》第 V(1)(b) 条类似的保护性规定。
- Swiss Law on Private International Law, Art. 190(2)(d) : Allows annulling awards violating equal treatment or the right to be heard.
瑞士国际私法法，第 1 条。190(2)(d)：允许撤销违反平等待遇或表达意见权的裁决。
- French Code of Civil Procedure (Arts. 1520, 1525) : Denies recognition of awards that don't respect the right to be heard.
法国民事诉讼法典（第 1520、1525 条）：拒绝承认不尊重表达意见权的裁决。
- Singapore International Arbitration Act, 2012, § 24(b) : Allows annulment if natural justice rule breaches occur, prejudicing parties.
新加坡国际仲裁法，2012 年，第 24(b) 条：如果发生违反自然正义规则、损害当事人利益的情况，则允许撤销仲裁。

The Baravati v. Josephtahl case exemplifies that parties can agree on specific arbitration terms, as long as these terms do not compromise fundamental procedural fairness.

Baravati 诉 Josephtahl 案表明，当事人可以就具体的仲裁条款达成一致，只要这些条款不损害基本的程序公平性。

Procedural Fairness Issues : Various procedural fairness matters may result in non-recognition of awards, including failure to notify parties of arbitrator appointments, insufficient preparation time, denial of the right to be heard in proceedings, inability to attend hearings, language barriers, and denial of opportunities to comment on or reply to evidence or arguments. Additionally, decisions based on facts or arguments not discussed with parties and uneven treatment may also constitute grounds for non-recognition.

程序公平性问题：各种程序公平性问题都可能导致裁决不被承认，包括未能通知当事人仲裁员的任命、准备时间不足、剥夺在诉讼中发表意见的权利、无法参加听证会、语言障碍和拒绝评论或回复证据或论点的机会。此外，基于未与当事人讨论的事实或论点做出的决定以及不公平的待遇也可能构成不予承认的理由。

Therefore, while the New York Convention promotes enforcement, it concurrently provides a safeguard against violations of procedural fairness, ensuring that the arbitral process remains equitable and just.

因此，《纽约公约》在促进执行的同时，也为防止违反程序公平性的行为提供了保障，确保仲裁程序的公平公正。

Irregular Procedural Conduct of Arbitration 仲裁程序不规范：

Under Article V(1)(d) of the New York Convention, recognition of an arbitral award can be refused if "the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance

with the law of the country where the arbitration took place." This provision applies in cases where:

根据《纽约公约》第五条第(1)款(d)项，如果“仲裁机构的组成或者仲裁程序不符合当事人的约定，或者不符合当事人的约定，或者不符合当事人的约定，可以拒绝承认仲裁裁决”。协议不符合仲裁发生地国家的法律。”本规定适用于以下情况：

- The agreed procedures in the arbitration agreement were not followed, such as an improper selection of the chairman.
未遵循仲裁协议约定的程序，如主席选任不当等。
- The agreed arbitral procedures violated the mandatory laws of the arbitral seat.
约定的仲裁程序违反了仲裁地的强制性法律。

Courts typically resist micro-managing arbitrators' compliance with procedural details, requiring a serious violation of the parties' agreement to uphold this ground for non-recognition. For instance, in the Third Millennium Company srl v. Guess? Inc. case in Florence, Italy, the court determined that only significant procedural violations that concretely harm the rights of a party could lead to the refusal of enforcement.

法院通常会抵制微观管理仲裁员遵守程序细节，要求严重违反当事人的协议才能维持不承认的理由。例如，在Third Millennium Company srl 诉 Guess? 在意大利佛罗伦萨的Inc.案中，法院认定，只有具体损害当事人权利的重大程序违规行为才可能导致拒绝执行。

Lack of Independence or Impartiality 缺乏独立性或公正性

Although the New York Convention lacks an explicit provision addressing tribunal bias or lack of independence, it implicitly accepts this ground for non-recognition through several articles:

尽管《纽约公约》没有明确规定解决仲裁庭偏见或缺乏独立性的问题，但它通过几项条款隐含地接受了不承认的理由：

- Article V(1)(d) : Non-recognition where tribunal composition does not align with the parties' agreement.
第五条(1)(d)：如果仲裁庭的组成与当事人的协议不一致，则不予承认。
- Article V(1)(b) : Non-recognition when a party is unable to present its case due to procedural unfairness.
第五条第(1)款(b)项：当一方当事人因程序不公平而无法陈述案情时，不予承认。
- Article V(2)(b) : Non-recognition for violations of public policy.
第五条第(2)款(b)项：不承认违反公共政策的行为。

Different standards apply for the non-recognition of an award versus the removal of an arbitrator. Non-recognition necessitates a substantial demonstration of bias, resulting in potentially higher expenses and more significant delays. Conversely, removing an arbitrator may only require showing "doubts" or "risks" concerning impartiality or independence.

不承认裁决与罢免仲裁员适用不同的标准。不承认就需要大量表现出偏见，从而可能导致更高的费用和更严重的延误。相反，罢免仲裁员可能只需要表现出对公正性或独立性的“怀疑”或“风险”。

仲裁员缺乏独立性或公正性

Independence and impartiality of arbitrators are cornerstones of the arbitration process. Ensuring neutrality is paramount for the legitimacy and fairness of arbitral awards. The legal standards for challenging an arbitral award on the grounds of an arbitrator's lack of independence or impartiality are stringent. Articles V(1)(b), V(1)(d), and V(2)(b) provide the conditions under which an award may be denied recognition due to such concerns.

仲裁员的独立性和公正性是仲裁程序的基石。确保中立性对于仲裁裁决的合法性和公平性至关重要。以仲裁员缺乏独立性或公正性为由质疑仲裁裁决的法律标准非常严格。第V(1)(b)、V(1)(d)和V(2)(b)条规定了因此类问题而拒绝承认裁决的条件。

1. **Neutrality and Independence :** The integrity of the arbitration process hinges on arbitrators remaining neutral and independent. This ensures a fair hearing and impartial decision-making. The threshold for challenging an award on these grounds is set very high to prevent frivolous objections that could undermine the arbitration process.

中立性和独立性：仲裁程序的完整性取决于仲裁员保持中立和独立。这确保了公平的听证会和公正的决策。基于这些理由对裁决提出质疑的门槛设置得非常高，以防止可能破坏仲裁程序的轻率反对。

1. Legal Grounds for Non-Recognition :

Non-recognition of an arbitral award can be considered under Articles V(1)(b), V(1)(d), and V(2)(b). Specifically:

不承认的法律依据：根据第五条(1)(b)、第五条(1)(d)和第五条(2)(b)，可以考虑不承认仲裁裁决。
具体来说：

- Article V(1)(b) : If a party was unable to present their case.
第五条(1)(b)：如果一方无法陈述其案件。
- Article V(1)(d) : If the arbitral procedure was not in accordance with the agreement of the parties.
第五条(1)(d)：如果仲裁程序不符合当事人的约定。
- Article V(2)(b) : If the recognition or enforcement of the award would be contrary to public policy.
第五条(2)(b)：如果裁决的承认或执行违反公共政策。

1. Case Analysis - RZS Holdings AVV v. PDVSA Petroleos :

In this case, the court addressed concerns over an arbitrator's interaction with a lawyer from one of the parties outside of the arbitration context. Despite this interaction:

案例分析 - RZS Holdings AVV 诉 PDVSA Petroleos :

在本案中，法院解决了对仲裁员与其中一方律师在仲裁范围之外进行互动的担忧。尽管有这种相互作用：

- The arbitration award was unanimous.
仲裁裁决是一致的。
- There were no claims of bias against the other two arbitrators.
没有人声称对其他两名仲裁员存在偏见。
- The court concluded that the interaction did not influence the arbitrator's decision-making process.
法院的结论是，这种互动并不影响仲裁员的决策过程。
- Consequently, the party seeking to vacate the award failed to meet the necessary criteria outlined in Article V of the Inter-American Convention.
因此，寻求撤销裁决的一方未能满足《美洲公约》第五条规定的必要标准。

This case underscores the rigorous standards applied when questioning the independence and impartiality of arbitrators. It illustrates that mere interactions or claims of bias must be substantiated by demonstrating a tangible impact on the arbitrator's decision-making to challenge the validity of an arbitral award effectively.

本案凸显了在质疑仲裁员的独立性和公正性时所采用的严格标准。它表明，单纯的互动或偏见主张必须通过证明对仲裁员决策的切实影响来证实，以有效质疑仲裁裁决的有效性。

In summary, the New York Convention balances the enforceability of international arbitral awards with protections against procedural irregularities and biases. These safeguards ensure the integrity and fairness of the arbitration process, maintaining trust and reliability in international dispute resolution mechanisms.

总之，《纽约公约》平衡了国际仲裁裁决的可执行性与针对程序违规和偏见的保护。这些保障措施确保仲裁过程的完整性和公平性，维护国际争议解决机制的信任和可靠性。

裁决不“binding”

The New York Convention provides a framework for the recognition and enforcement of foreign arbitral awards, emphasizing the importance of the awards being "binding" to ensure enforceability.

《纽约公约》为承认和执行外国仲裁裁决提供了框架，强调裁决具有“约束力”以确保可执行性的重

New York Convention Article V (1)(e) :

《纽约公约》第五条 (1)(e) 款：

- Recognition of an award can be denied if it has not become binding on the parties or has been set aside or suspended by a competent authority from the country where the award was made or under whose law the award was made.
如果裁决尚未对当事人产生约束力，或者已被裁决所在国或裁决所依据的国家的主管当局撤销或暂停，则可以拒绝承认该裁决。

Removal of "Double Exequatur"

- The "double exequatur" requirement, which necessitated confirming the award in the arbitral seat before seeking its recognition abroad, has been removed. This simplifies the process of international recognition and enforcement.
“双重执行”要求已被删除，该要求要求在寻求国外承认之前必须在仲裁地确认裁决。这简化了国际承认和执行的过程。

Article V(1)(2) Requirements :

- Awards need to be "binding," as opposed to "final". This distinction highlights the enforceability of the award rather than the conclusion of all possible reviews.
裁决必须是“有约束力的”，而不是“最终的”。这种区别强调了裁决的可执行性，而不是所有可能的审查的结论。

Definitions of "Binding"

1. Without Regard to Review 不考虑审查：

- The award is made by the arbitral tribunal and is considered binding even if there is a possibility of a review, reflecting confidence in the tribunal's decision.
该裁决由仲裁庭做出，即使有可能进行复审，也被视为具有约束力，反映了对仲裁庭裁决的信心。

2. No Internal Appellate Review 无内部上诉审查：

- The award is binding if no internal appellate review within the relevant arbitral institution has been invoked.

如果相关仲裁机构未援引内部上诉审查，则该裁决具有约束力。

3. No Judicial Review Filed 未提交司法审查：

- The award is binding if no application for judicial review has been filed in the arbitral seat, ensuring there are no pending challenges.

如果仲裁地未提出司法审查申请，则该裁决具有约束力，确保不存在悬而未决的质疑。

4. Expired Judicial Challenge Period 已过期的司法质疑期：

- The binding nature is confirmed once the period for ordinary judicial challenges has expired, solidifying the award's finality within the given timeframe.

一旦普通司法质疑期限届满，其约束力即得到确认，从而巩固了裁决在规定时间内的终局性。

5. Court Confirmation 法庭确认：

- An award that has been confirmed by a local court is considered binding, integrating judicial validation into the enforcement process.

经当地法院确认的裁决被视为具有约束力，将司法效力纳入执行过程。

6. Exhausted Judicial Review 耗尽司法审查：

- An award is binding when all possible avenues of judicial review have been exhausted, marking the end of all potential objections.

当所有可能的司法审查途径均已用尽时，裁决即具有约束力，标志着所有潜在异议的结束。

Alternative Definition of "Binding"

- According to Arbitration Agreement :

根据仲裁协议：

- An award is "binding" if the arbitration agreement specifies it as final or binding, regardless of subsequent judicial challenges.

如果仲裁协议指定该裁决为最终裁决或具有约束力，则该裁决具有“约束力”，无论随后的司法质疑如何。

- The parties' agreement is paramount, as mandated by Article V(1)(e), emphasizing the importance of consent regarding the binding nature of the award.

根据第五条第（1）款（e）项的规定，双方的同意至关重要，强调了就裁决的约束力而言同意的重要性。

In conclusion, understanding the concept of "binding" awards under the New York Convention is critical for ensuring their international recognition and enforcement. The nuanced definitions and the emphasis on the parties' agreements play a significant role in this legal framework, simplifying and reinforcing the arbitration process.

总之，理解《纽约公约》下“有约束力”裁决的概念对于确保其国际承认和执行至关重要。细致入微的定义和对当事人协议的重视在这一法律框架中发挥着重要作用，简化并加强了仲裁程序。

Annulment or Suspension of Award in Arbitral Seat 仲裁庭裁决的撤销或暂停

In international arbitration, the annulment or suspension of an award in its arbitral seat raises critical questions about the recognition and enforcement of such awards in foreign jurisdictions. Article V(1)(e) of the New York Convention provides that an award "may" be denied recognition if it "has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made."

在国际仲裁中，在其仲裁地撤销或中止裁决会引发有关外国司法管辖区承认和执行此类裁决的关键问题。《纽约公约》第五条第(1)款(e)项规定，如果一项裁决“已被所在国或根据该国法律撤销或中止”，则该裁决“可以”被拒绝承认。颁奖了。”

Consequences of Annulment 撤销的后果

The annulment of an arbitral award poses significant challenges:

仲裁裁决的撤销带来了重大挑战：

- Must courts in foreign states recognize either the annulment judgment or the annulled award?
外国法院必须承认撤销判决或撤销裁决吗?
- Can a foreign court recognize either the judgment or the award consistent with its obligations under the New York Convention and national law?
外国法院是否可以承认符合《纽约公约》和国内法义务的判决或裁决?

Recognition Under the New York Convention 《纽约公约》的承认

There is no explicit guidance within the New York Convention regarding the effects of annulment or non-recognition. The Convention's use of permissive language ("may deny recognition") in Article V(1)(e) suggests that recognition of annulled awards is not strictly prohibited. This silence can be interpreted as a deliberate choice to allow room for national courts to decide based on their own legal frameworks.

《纽约公约》中没有关于废除或不承认的影响的明确指导。《公约》第五条第(1)款(e)项中使用的宽容性语言（“可以拒绝承认”）表明承认被撤销的裁决并未被严格禁止。这种沉默可以解释为一种刻意的选择，为各国法院根据自己的法律框架做出裁决留出空间。

Recognition Under National Law 国家法律的认可

Different national courts have varied in their approach to recognizing annulled awards:

不同国家的法院承认无效裁决的方法有所不同：

- French Courts : Have long recognized annulled awards.
法国法院：长期以来一直承认被撤销的裁决。
- Belgian, Austrian, Dutch, and English Courts : Tend to follow the French approach, recognizing annulled awards.
比利时、奥地利、荷兰和英国法院：倾向于遵循法国的做法，承认被撤销的裁决。
- U.S. Courts : Under certain circumstances, have permitted the recognition of annulled awards. A notable case is Chromalloy Aeroservices v. Arab Republic of Egypt , where a U.S. district court recognized an award made in Egypt despite its annulment by an Egyptian court. The U.S. court interpreted the permissive language of Article V(1) of the New York Convention to mean that the annulment decision permits but does not mandate non-recognition of the award.

美国法院：在某些情况下，允许承认被撤销的裁决。一个著名的案例是Chromalloy Aeroservices诉阿拉伯埃及共和国一案，美国地方法院承认在埃及做出的一项裁决，尽管该裁决已被埃及法院废除。美国法院将《纽约公约》第五条第(1)款的许可性语言解释为意味着撤销裁决允许但不强制要求不承认该裁决。

In conclusion, the flexibilities provided by the New York Convention and the varying interpretations by national courts indicate that annulled arbitral awards can potentially be recognized and enforced in foreign jurisdictions. This adaptability underscores the nuanced balance between respecting national judgments and promoting the enforceability of international arbitral awards.

总之，《纽约公约》提供的灵活性和各国法院的不同解释表明，被撤销的仲裁裁决有可能在外国司法管辖区得到承认和执行。这种适应性强调了尊重国家判决和促进国际仲裁裁决的可执行性之间的微妙平衡。

Awards Contrary to Public Policy 违反公共政策的裁决

Article V(2)(b) of the New York Convention provides a mechanism for refusing the recognition of an arbitral award if that award is contrary to the public policy of the country where enforcement is sought. This clause serves as an "escape device" for contracting states to invoke local law to deny the recognition of awards. The statutory basis for this exception is governed by the law of the enforcement forum, and it is one of the most frequently cited grounds for refusing to recognize an arbitral award.

《纽约公约》第五条第(2)款(b)项规定了一种机制，如果仲裁裁决违反寻求执行国的公共政策，则可以拒绝承认该裁决。该条款充当了缔约国援引当地法律拒绝承认裁决的“逃避手段”。该例外的法定依据受执行地法律管辖，也是拒绝承认仲裁裁决最常被引用的理由之一。

Introduction

Public policy exceptions in international arbitration serve to balance the respect for arbitration with the protection of fundamental legal principles. Article V(2)(b) of the New York Convention underlines this balance by allowing recognition of an arbitral award to be refused if it is contrary to the public policy of the country where enforcement is sought. The term "public policy" can encompass domestic legal standards, but it must also consider international principles to ensure consistency and avoid isolation.

国际仲裁中的公共政策例外有助于平衡尊重仲裁与保护基本法律原则。《纽约公约》第五条第(2)(b)款强调了这种平衡，如果仲裁裁决违反寻求执行国的公共政策，则允许拒绝承认该裁决。“公共政策”一词可以涵盖国内法律标准，但也必须考虑国际原则，以确保一致性并避免孤立。

Public Policy in Practice

1. National vs. International Standards 国家标准与国际标准：

- Courts often derive public policy from their own legal frameworks (*lex fori*) but must also align these with internationally accepted norms.

法院通常根据自己的法律框架（法院法）制定公共政策，但也必须将这些政策与国际公认的规范保持一致。

- Examples: German courts emphasizing basic principles of state and economic life, while Hong Kong courts focus on fundamental conceptions of morality and justice.
例子：德国法院强调国家和经济生活的基本原则，而香港法院则侧重于道德和正义的基本概念。

2. Judicial Interpretations :

- Important case law from various jurisdictions provides practical interpretations of what constitutes public policy.
来自不同司法管辖区的重要判例法对公共政策的构成提供了实用的解释。
- Courts like the Higher Court of Appeal of Bavaria and Hong Kong Court of Final Appeal have articulated restrictive and internationally aligned definitions of public policy.
巴伐利亚高等上诉法院和香港终审法院等法院已经阐明了公共政策的限制性且国际一致的定义。
- Cases emphasize the need for international coherence, as seen in Colombian and U.S. case law, which warns against excessive national conservatism that could hinder international trade and arbitration.
案例强调了国际一致性的必要性，正如哥伦比亚和美国的判例法所表明的那样，这些案例警告不要出现可能阻碍国际贸易和仲裁的过度国家保守主义。

Grounds for Non-Recognition 不认可的理由

- Public policy objections typically arise in scenarios involving moral and legal indiscretions such as corruption, unlawful contracts, and excessive punitive measures.
公共政策反对通常出现在涉及道德和法律不当行为的情况下，例如腐败、非法合同和过度惩罚措施。
- Courts are cautious in applying this exception, recognizing its potential to undermine the arbitral process if used excessively.
法院在适用这一例外时持谨慎态度，认识到如果过度使用它可能会破坏仲裁程序。

International Limits 国际限制

- The New York Convention seeks to prevent contracting states from freely defining public policy in ways that could disrupt the international arbitration framework.
《纽约公约》旨在防止缔约国以可能破坏国际仲裁框架的方式自由定义公共政策。
- Notable decisions like Qinhuangdao Tongda Enter. Dev. Co. and Swiss Federal Tribunal stress the importance of a narrow and restrained approach to invoking public policy.
秦皇岛通达进入等著名决策。开发。公司和瑞士联邦法庭强调以狭隘和克制的方式援引公共政策的重要性。

In conclusion, the public policy exception under Article V(2)(b) serves as a critical check within the arbitration system, safeguarding essential legal principles without undermining the efficacy and reliability of international arbitration. Courts worldwide are urged to apply this exception judiciously, maintaining a balance between national legal integrity and international arbitration objectives.

总之，第五条第(2)款(b)项规定的公共政策例外是仲裁制度内的一项关键检查，在不损害国际仲裁有效性和可靠性的情况下维护基本法律原则。敦促世界各地的法院明智地适用这一例外，在国家法律完整性和国际仲裁目标之间保持平衡。

不可仲裁性：《纽约公约》第五条(2)(a)项下的限制和例外

Nonarbitrability is a critical concept in international arbitration, dictated by Article V(2)(a) of the New York Convention. This article empowers a country to refuse recognition of an arbitral award if the nature of the dispute is unsuitable for arbitration under the local laws of the enforcement forum. This exception to enforcement lacks a universal definition, allowing national laws to dictate its scope, serving as an "exceptional escape device" that overrides contractual arbitration agreements in specific contexts.

不可仲裁性是国际仲裁中的一个关键概念，由《纽约公约》第五条第（2）款（a）项规定。该条授权，如果争议的性质不适合根据执行地当地法律进行仲裁，国家可以拒绝承认仲裁裁决。这种执行例外缺乏通用的定义，允许国家法律规定其范围，作为一种“特殊的逃避手段”，在特定情况下凌驾于合同仲裁协议之上。

Typical Nonarbitrable Matters 典型的不可仲裁事项

Certain categories of disputes are universally recognized as nonarbitrable, including:

某些类别的争议被普遍认为是不可仲裁的，包括：

- Criminal matters 刑事事项
- Domestic relations and succession
家庭关系和继承
- Bankruptcy 破产
- Trade sanctions and export controls
贸易制裁和出口管制
- Consumer claims 消费者索赔
- Labor or employment grievances
劳工或就业申诉
- Certain competition claims
某些竞争声明
- Intellectual property disputes
知识产权纠纷

Hong Kong Arbitration Ordinance (Cap 609)

The Hong Kong Arbitration Ordinance (Cap 609) illustrates a pro-enforcement approach consistent with the New York Convention. Hong Kong courts generally promote the facilitation and enforcement of arbitral awards. However, they maintain the discretion to refuse

enforcement in exceptional cases involving significant procedural breaches or misconduct. Instances where enforcement has been refused include:

《香港仲裁条例》（第 609 章）体现了与《纽约公约》一致的支持执行方法。香港法院普遍促进仲裁裁决的便利和执行。然而，在涉及重大程序违规或不当行为的特殊情况下，他们保留拒绝执行的酌处权。拒绝执行的情况包括：

- Denial of opportunity to cross-examine tribunal-appointed experts.
剥夺对法庭指定专家进行盘问的机会。
- Tribunal conducting independent investigations without party notification.
仲裁庭在未通知当事人的情况下进行独立调查。
- Awards obtained through unlawful and oppressive conduct.
通过非法和压迫行为获得的裁决。

Judicial Interpretations and Influential Cases

Several key decisions underscore the balance courts strike in applying nonarbitrability principles:

几项关键判决强调了法院在适用不可仲裁性原则方面的平衡：

1. KB v S [2015] HKEC 2042 :

KB 诉 S [2015] HKEC 2042 :

- Emphasizes the court's role in supporting arbitration and minimizing interference, barring necessary safeguards in the public interest.
强调法院在支持仲裁和尽量减少干扰方面的作用，除非为公共利益提供必要的保障。

2. Re PetroChina International (Hong Kong) Corp Ltd [2011] :

关于中石油国际（香港）有限公司[2011]：

- Promotes almost administrative enforcement procedures with mechanistic court involvement.
促进几乎行政执法程序与机械法院的参与。

3. Grand Pacific Holdings Ltd v Pacific China Holdings Ltd [2012] :

Grand Pacific Holdings Ltd 诉 Pacific China Holdings Ltd [2012] :

- Focuses on structural integrity, requiring serious and egregious conduct to refuse enforcement, avoiding substantive examination of underlying transactions.
注重结构完整性，要求严重且过分的行为拒绝执行，避免对基础交易进行实质性审查。

4. Xiamen Xingjingdi Group Ltd v Eton Properties Limited [2009] :

厦门兴景地集团有限公司诉 Eton Properties Limited [2009] :

- Courts do not delve into merits or transaction substance when refusing enforcement.
法院在拒绝执行时不会深入研究案情或交易实质。

5. Hebei Import & Export Corp v Polytek Engineering Co Ltd (1999) :

河北进出口公司诉Polytek Engineering Co Ltd案 (1999年) :

- Residency discretion permits enforcement despite valid grounds for refusal, emphasizing the duty of good faith in arbitration.

尽管有正当理由拒绝，居住自由裁量权仍允许执行，强调仲裁中的诚信义务。

Nonarbitrability and the New York Convention

Article V(2)(a) represents an essential safeguard in the New York Convention framework, balancing the objective of upholding international arbitration agreements with the protection of national legal principles. While fostering a pro-enforcement paradigm, the convention acknowledges the sovereignty of national laws in defining nonarbitrable subject matters. Courts are instructed to apply these exceptions narrowly, ensuring that refusal to enforce is grounded in significant procedural or substantive violations.

第五条第 (2) 款 (a) 项是《纽约公约》框架中的一项重要保障措施，平衡了维护国际仲裁协议的目标与保护国家法律原则。在培育支持执行范式的同时，该公约承认国家法律在定义不可仲裁主题事项方面的主权。法院被指示严格适用这些例外情况，确保拒绝执行是基于重大的程序或实质性违规。

In conclusion, nonarbitrability under Article V(2)(a) exemplifies the intersection of international arbitration's global aspirations and the preservation of national legal integrity. Courts consistently strive to support arbitral processes and enforce awards, applying nonarbitrability exceptions judiciously and sparingly to uphold the legitimacy and finality of arbitration.

总之，第五条第(2)款(a)项规定的不可仲裁性体现了国际仲裁的全球愿望与维护国家法律完整性的交集。法院一贯努力支持仲裁程序并执行裁决，审慎而谨慎地适用不可仲裁性例外，以维护仲裁的合法性和终局性。

10 笔记

Correction, Interpretation, and Supplementation 更正、解释和补充

- Correction : Tribunals may correct any clerical, computational, or typographical errors in the award. This ensures that minor mistakes do not undermine the effectiveness of the final resolution.

更正：仲裁庭可以更正裁决中的任何文书、计算或印刷错误。这确保了小错误不会破坏最终决议的有效性。
- Interpretation : Parties or tribunals can seek clarification on ambiguous aspects of the award, ensuring the decision's intent is clear and accurately understood.

解释：当事人或仲裁庭可以就裁决中不明确的方面寻求澄清，以确保裁决的意图清晰且准确理解。
- Supplementation : Additional awards can be granted to address claims presented during the arbitration but inadvertently omitted from the final decision, ensuring comprehensive dispute resolution.

补充：可以针对仲裁期间提出的但最终决定中无意遗漏的索赔授予额外裁决，以确保全面的争议解决。

Annulment of Awards 撤销裁决

While the principle of finality is paramount, certain exceptional circumstances may warrant the annulment of an arbitral award, such as:

虽然终局性原则至关重要，但某些特殊情况可能需要撤销仲裁裁决，例如：

- Lack of Jurisdiction : Tribunal acted beyond its authority.

缺乏管辖权：仲裁庭超越其权限行事。
- Procedural Errors : Significant procedural irregularities that impact the fairness of the proceedings.

程序错误：影响诉讼程序公平性的重大程序违规行为。
- Public Policy Concerns : Award violates fundamental principles of public policy or morality.

公共政策问题：裁决违反公共政策或道德的基本原则。

The balance between finality and correctness is critical. It ensures awards are both conclusive and fair, providing parties with the confidence that arbitral decisions are reliable and just. This balance maintains the integrity of arbitration and upholds its role as a preferred mechanism for international dispute resolution.

最终性和正确性之间的平衡至关重要。它确保裁决具有决定性和公平性，让当事人相信仲裁裁决是可靠和公正的。这种平衡维护了仲裁的完整性，并维护了其作为国际争议解决首选机制的作用。

In conclusion, the correction, interpretation, supplementation, and, in rare cases, annulment of international arbitral awards, reinforce arbitration's dual goals of achieving finality and ensuring justice, making it a robust and dependable method for resolving global disputes.

总之，对国际仲裁裁决的更正、解释、补充，以及在极少数情况下的撤销，强化了仲裁实现终局性和确保正义的双重目标，使其成为解决全球争端的稳健而可靠的方法。

The Functus Officio Doctrine in International Arbitration 国际仲裁中的职权原则

The functus officio doctrine plays a pivotal role in the finality and reliability of arbitral awards in international arbitration. Derived from the Latin term meaning "office performed," the doctrine signifies that once arbitrators have issued their final award, their authority over the case concludes, and they cannot subsequently amend, reconsider, or alter the award.

职权原则在国际仲裁中对仲裁裁决的终局性和可靠性发挥着举足轻重的作用。该原则源自拉丁语，意思是“履行职务”，它意味着一旦仲裁员发布了最终裁决，他们对案件的权力就结束了，他们随后不能修改、重新考虑或更改裁决。

Application in International Frameworks 在国际框架中的应用：

1. The New York Convention 纽约公约

- Although the Convention does not explicitly mention the functus officio doctrine, it implicitly acknowledges it through its emphasis on "binding awards." This term suggests a status that prevents subsequent changes, underscoring the finality and enforceability of arbitral awards.
尽管《公约》没有明确提及职权原则，但它通过强调“有约束力的裁决”含蓄地承认了这一原则。该术语暗示了一种防止后续变更的状态，强调了仲裁裁决的最终性和可执行性。

2. UNCITRAL Model Law 贸易法委员会示范法

- Article 32 of the Model Law explicitly addresses the termination of arbitral proceedings:
《示范法》第32条明确规定了仲裁程序的终止：
 - Proceedings are concluded by the issuance of a final award or an order by the arbitral tribunal.
仲裁庭发布最终裁决或命令即结束诉讼程序。
 - Correspondingly, the mandate of the arbitral tribunal terminates alongside the conclusion of the proceedings.
相应地，仲裁庭的职权随着程序的结束而终止。
- This provision reinforces the doctrine by formally ending the tribunal's authority once the arbitration process is completed.
该条款通过在仲裁程序完成后正式终止仲裁庭的权力来强化这一原则。

Significance of the Doctrine 该学说的意义

The *functus officio* doctrine ensures the finality and integrity of the arbitration process by preventing arbitrators from revisiting and modifying their decisions post-award. This fosters trust in the arbitral process by providing certainty and closure to the parties involved, facilitating the smooth enforcement of final awards in international jurisdictions.

职权原则通过防止仲裁员在裁决后重新审查和修改其决定来确保仲裁程序的最终性和完整性。这通过为相关各方提供确定性和终结性，促进对仲裁程序的信任，促进最终裁决在国际司法管辖区的顺利执行。

In summary, the *functus officio* doctrine is a fundamental principle in international arbitration that ensures arbitral awards remain final and binding, once issued. It is implicitly supported by the New York Convention's emphasis on "binding awards" and explicitly reinforced by the UNCITRAL Model Law's provisions on the termination of arbitral proceedings and the arbitrator's mandate. This principle maintains the credibility and reliability of the arbitration process in resolving international disputes.

总之，职权原则是国际仲裁的一项基本原则，可确保仲裁裁决一经发布即保持终局性并具有约束力。《纽约公约》对“具有约束力的裁决”的强调隐含地支持了这一点，而《贸易法委员会示范法》关于仲裁程序终止和仲裁员授权的规定则明确强化了这一点。这一原则维护了仲裁程序解决国际争端的可信性和可靠性。

仲裁裁决的更正

The correction and supplementation of arbitral awards are critical mechanisms for ensuring accuracy without undermining the finality of arbitration. While the New York Convention does not expressly address the correction or supplementation of awards, it neither mandates nor prohibits such corrections. Instead, it defers these matters to national laws and the agreements between the parties.

仲裁裁决的更正和补充是确保仲裁裁决准确性且不影响仲裁终局性的重要机制。虽然《纽约公约》没有明确规定裁决的更正或补充，但它既不强制也不禁止此类更正。相反，它将这些事项交给国家法律和双方之间的协议处理。

National Law and Lex Arbitri 国家法律和仲裁法

The *Lex Arbitri*, or the law governing the arbitration seat, primarily determines an arbitral tribunal's authority to correct awards. Most national laws empower arbitrators to correct awards to address computational, clerical, or similar errors, even without explicit authorization from the parties. These statutory provisions help overcome potential constraints on a tribunal's powers after rendering a final award. However, the *functus officio* doctrine, a principle which limits the tribunal's ability to alter its decisions after making a final award, means that national

arbitration laws usually restrict the grounds for corrections to prevent undermining the award's finality.

Lex Arbitri (仲裁地法律) 主要决定仲裁庭纠正裁决的权力。大多数国家法律都授权仲裁员纠正裁决以解决计算、文书或类似错误，即使没有当事人的明确授权。这些法律规定有助于克服做出最终裁决后仲裁庭权力的潜在限制。然而，职权原则是一项限制仲裁庭在做出最终裁决后改变其决定的能力的原则，这意味着国家仲裁法通常会限制更正的理由，以防止损害裁决的终局性。

UNCITRAL Model Law 贸易法委员会示范法

Article 33 of the UNCITRAL Model Law exemplifies this restrictive approach by allowing parties to request the correction of any errors in computation, clerical, or typographical nature within thirty days of receiving the award. Such corrections are tolerated but regulated narrowly to uphold the award's finality and certainty. Correcting errors in the tribunal's reasoning is not permitted; the only remedy for such errors is the annulment of the award.

《贸易法委员会示范法》第 33 条举例说明了这种限制性做法，允许当事人在收到裁决书后三十天内请求更正计算、文书或印刷方面的任何错误。这种更正是可以容忍的，但受到严格监管，以维护裁决的最终性和确定性。不允许纠正仲裁庭推理中的错误；对此类错误的唯一补救办法是撤销裁决。

Institutional Arbitration Rules

Various leading arbitration institutions provide specific guidelines for the correction of awards: 各主要仲裁机构针对裁决更正提供了具体指南：

1. HKIAC Rules 2013 2013 年香港国际仲裁中心规则：

- Article 37 authorizes the tribunal to correct errors in computation, clerical or typographical errors within fifteen days of the award.

第 37 条授权仲裁庭在裁决后十五天内纠正计算错误、文书或印刷错误。

2. SIAC Rules 2016 2016 年新加坡国际仲裁中心规则：

- Article 33 allows the tribunal to correct similar types of errors within thirty days of the award issuance.

第 33 条允许仲裁庭在裁决作出后三十天内纠正类似类型的错误。

3. ICC Rules 2012 2012 年国际商会规则：

- Article 33 entails a process of constructive scrutiny before the finalization of the award. 第 33 条规定了在裁决最终确定之前进行建设性审查的过程。

- Article 35 grants the tribunal authority to correct clerical, computational, typographical, or similar errors.

第 35 条授予仲裁庭纠正文书、计算、印刷或类似错误的权力。

These provisions across various institutional rules showcase a harmonized approach to ensuring arbitral awards' accuracy while maintaining their finality and integrity.

这些跨越不同机构规则的规定展示了一种协调一致的方法，可确保仲裁裁决的准确性，同时保持其最终性和完整性。

In conclusion, while the New York Convention does not specify procedures for the correction and supplementation of arbitral awards, a consistent approach across national laws and institutional rules allows limited corrections to avoid undermining the finality of arbitral decisions. The statutory and regulatory frameworks strike a balance between addressing inadvertent mistakes and upholding the principle of finality, crucial for the efficacy and reliability of international arbitration.

总之，虽然《纽约公约》没有具体规定仲裁裁决的更正和补充程序，但各国法律和机构规则之间的一致做法允许进行有限的更正，以避免损害仲裁裁决的最终性。法律和监管框架在解决无意错误和维护终局性原则之间取得了平衡，这对于国际仲裁的有效性和可靠性至关重要。

仲裁裁决的解释

The interpretation of arbitral awards is a critical aspect of ensuring clarity and finality in arbitration proceedings. However, international arbitration conventions do not explicitly address the power of arbitral tribunals to interpret their awards, leaving this authority to be determined by the applicable Lex Arbitri (national arbitration law governing the arbitration process).

仲裁裁决的解释是确保仲裁程序的明确性和终局性的一个关键方面。然而，国际仲裁公约并未明确规定仲裁庭解释其裁决的权力，这一权力由适用的仲裁法（管辖仲裁程序的国家仲裁法）决定。

UNCITRAL Model Law (Article 33)

Article 33 of the UNCITRAL Model Law provides a framework for award interpretation, stipulating that parties may request the arbitral tribunal to interpret a specific point or part of the award within 30 days, provided there is mutual agreement. This provision underscores a more limited scope compared to corrections of awards, focusing strictly on clarification rather than revision.

《贸易法委员会示范法》第33条规定了裁决解释的框架，规定当事人可以在双方同意的情况下请求仲裁庭在30天内对裁决的具体要点或部分进行解释。与裁决更正相比，该规定强调了更为有限的范围，严格侧重于澄清而不是修订。

National Legislation

The authority to interpret awards varies by jurisdiction. Notably, countries such as England, Switzerland, and the United States do not universally grant this power to arbitral tribunals through their national statutes. Nonetheless, judicial decisions in many jurisdictions recognize the inherent authority of arbitral tribunals to interpret their awards, reflecting an understanding of the need for clarity and precision in arbitral decisions.

裁决的解释权因司法管辖区而异。值得注意的是，英国、瑞士和美国等国家并未通过其国家法规普遍授予仲裁庭这一权力。尽管如此，许多司法管辖区的司法判决承认仲裁庭解释其裁决的固有权力，反映了对仲裁判决清晰和精确的必要性的理解。

Judicial Recognition

Globally, courts tend to support the notion that arbitral tribunals can interpret their awards, particularly when it enhances the enforceability and understanding of the award. This judicial recognition often fills the gap left by the absence of explicit statutory authorization, thereby providing a practical solution for parties seeking clarification.

在全球范围内，法院倾向于支持仲裁庭可以解释其裁决的观点，特别是当它增强裁决的可执行性和理解时。这种司法承认往往填补了缺乏明确法定授权所留下的空白，从而为寻求澄清的当事人提供了切实可行的解决方案。

Institutional Arbitration Rules

Institutional arbitration rules often mirror the principles found in national arbitration legislation and international conventions. These rules generally permit request for interpretation under specific circumstances, ensuring consistency and predictability in arbitration.

机构仲裁规则通常反映国家仲裁立法和国际公约中的原则。这些规则通常允许在特定情况下请求解释，确保仲裁的一致性和可预测性。

Constraints on Interpretation Requests

It is crucial to understand that requests for interpretation must not serve as a means to challenge the tribunal's reasoning or to revisit unresolved issues. Interpretation is strictly for clarifying specific points or parts of the award, ensuring that the original intentions and conclusions of the tribunal are upheld without reopening the dispute.

重要的是要明白，解释请求不得作为质疑仲裁庭推理或重新审视未解决问题的手段。解释严格是为了澄清裁决的具体要点或部分，确保仲裁庭的初衷和结论得到维护，而不重新引发争议。

In conclusion, while the interpretation of arbitral awards is less prominently featured in international arbitration conventions, it plays a vital role in the clarity and enforceability of arbitral decisions. The framework provided by the UNCITRAL Model Law, supplemented by national legislation and judicial recognition, underscores the importance of maintaining consistency and limitations in the interpretative process. This ensures that arbitration remains an effective and reliable mechanism for dispute resolution.

总之，虽然仲裁裁决的解释在国际仲裁公约中的地位不那么突出，但它对于仲裁裁决的明确性和可执行性起着至关重要的作用。《贸易法委员会示范法》提供的框架，辅之以国家立法和司法承认，强调了在解释过程中保持一致性和限制的重要性。这确保仲裁仍然是有效且可靠的争议解决机制。

仲裁裁决的补充

In the realm of international arbitration, it is crucial to address all claims presented in the proceedings to ensure the completeness and enforceability of arbitral awards. The supplementation of awards allows arbitral tribunals to render additional awards for claims that were presented but omitted in the original award, thereby preventing challenges based on infra petita grounds under annulment proceedings.

在国际仲裁领域，解决诉讼程序中提出的所有索赔以确保仲裁裁决的完整性和可执行性至关重要。裁决的补充允许仲裁庭对原裁决中提出但遗漏的索赔作出额外裁决，从而防止在撤销程序下基于以下理由提出质疑。

UNCITRAL Model Law - Article 33(3)

Article 33(3) of the UNCITRAL Model Law permits an arbitral tribunal to make an additional award as to any claims that were presented during the arbitral proceedings but omitted from the final award. This supplementation must be carried out within a 30-day limit unless the parties have expressly agreed otherwise.

《贸易法委员会示范法》第 33 条第(3)款允许仲裁庭对仲裁程序期间提出但最终裁决中遗漏的任何索赔作出附加裁决。除非双方另有明确规定，该补充必须在 30 天内进行。

The mechanism under Article 33(3) serves to prevent infra petita challenges during annulment proceedings under Article V(1)(C) of the New York Convention. Such challenges arise when an award fails to address claims that were presented, leading to potential grounds for partial annulment or refusal of enforcement. It is noteworthy that tribunals are not required to expressly address every part of a claim, as implied rejection or acceptance is permissible.

第 33 条第(3)款规定的机制旨在防止《纽约公约》第五条第(1)(C)款规定的废止程序中出现以下质疑。当裁决未能解决所提出的索赔时，就会出现此类挑战，从而导致部分废止或拒绝执行的潜在理由。值得注意的是，仲裁庭不需要明确处理索赔的每个部分，因为暗示拒绝或接受是允许的。

Institutional Rules Allowing Additional Awards

Numerous institutional arbitration rules also recognize the provision for supplementary awards:

许多机构仲裁规则也承认补充裁决的规定：

- SIAC Rules 2016 : Rule 33(3) explicitly allows the making of additional awards.
SIAC 规则 2016：第 33(3) 条明确允许作出额外裁决。
- HKIAC Rules 2013 : Article 39 authorizes supplementary awards for omitted claims.
HKIAC 规则 2013：第 39 条授权对遗漏索赔进行补充裁决。
- VIAC Arbitration Rules 2013 : Article 39 provides for the same.
VIAC 仲裁规则 2013：第 39 条有相同规定。

- CEPANI Rules 2013 : Article 1715 § 3 covers the procedure for additional awards.
2013 年 CEPANI 规则：第 1715 条第 3 条涵盖了额外奖励的程序。
- ICC Rules 2012 : Although silent on the matter, supplemental awards are permitted if authorized under the Lex Arbitri (the law of the country where the arbitration is seated).
2012 年国际商会规则：虽然没有提及此事，但如果根据仲裁法（仲裁所在地国家的法律）授权，则允许补充裁决。

By integrating these mechanisms and rules, arbitration frameworks ensure that all presented claims are adjudicated, maintaining the award's integrity and enforceability. This underscores the tribunals' adaptability and focus on delivering comprehensive justice within the arbitration process.

通过整合这些机制和规则，仲裁框架可确保所有提出的索赔都得到裁决，从而保持裁决的完整性和可执行性。这凸显了仲裁庭的适应性以及对在仲裁过程中实现全面正义的关注。

Post-Award Relief in International Arbitration 国际仲裁中的裁决后救济

Post-award relief in international arbitration encompasses various mechanisms parties can use to address concerns with the arbitral award. These mechanisms ensure fairness and integrity in the arbitration process and provide parties with options to challenge, revise, or even revoke awards under certain conditions.

国际仲裁中的裁决后救济包括当事人可以用来解决对仲裁裁决的担忧的各种机制。这些机制确保了仲裁过程的公平性和完整性，并为当事人提供了在某些条件下质疑、修改甚至撤销裁决的选择。

Remission of an Award to the Arbitral Tribunal 向仲裁庭免除裁决

One significant post-award relief mechanism is the remission of an award to the arbitral tribunal. When an application to annul an award is filed, there may be a possibility to remit the award back to the tribunal for reconsideration. This can address procedural or substantive issues identified during the annulment process, providing a pathway for rectification.

一项重要的裁决后救济机制是将裁决免除给仲裁庭。当提出撤销裁决的申请时，可能有可能将裁决退回仲裁庭重新审议。这可以解决撤销过程中发现的程序性或实质性问题，提供纠正途径。

Revocation or Revision of Fraudulently Obtained Awards 撤销或修改以欺骗手段获得的裁决

In instances where an award is obtained through fraudulent means or comparable actions, parties can seek to have the award revoked or revised. This ensures that the arbitration process remains equitable and that awards reflect true and fair resolutions of the disputes.

如果通过欺诈手段或类似行为获得裁决，当事人可以寻求撤销或修改裁决。这确保了仲裁过程保持公平，并且裁决反映了争议的真实和公平的解决方案。

Institutional Appeals from International Arbitral Awards 国际仲裁裁决的机构上诉

While most institutional arbitration rules do not offer grounds for internal challenges within the arbitral procedure, leaving parties to pursue setting aside awards through judicial avenues, there are notable exceptions:

虽然大多数机构仲裁规则没有为仲裁程序中的内部质疑提供理由，使当事人可以通过司法途径寻求撤销裁决，但也有一些值得注意的例外：

- ICSID Convention :

ICSID 公约：

- Article 52(1) provides for the annulment of awards by an Ad Hoc Committee, offering a structured method for challenging awards within the ICSID framework.

第 52(1) 条规定由特设委员会撤销裁决，为在 ICSID 框架内质疑裁决提供了结构化方法。

- GAFTA Rules :

大亚自由贸易区规则：

- Article 10(1) allows for appeals to a standing board of appeal, providing another layer of review within the arbitral institution.

第 10(1) 条允许向常设上诉委员会提出上诉，从而在仲裁机构内提供另一层审查。

These provisions highlight how specific institutional rules have created avenues for post-award relief, ensuring that arbitral decisions can be revisited in exceptional cases.

这些条款强调了具体的制度规则如何为裁决后救济创造途径，确保在特殊情况下可以重新审视仲裁决定。

Post-award relief mechanisms such as remission, revocation, and institutional appeals serve critical roles in maintaining the legitimacy and reliability of international arbitration. While the general trend is towards limiting internal challenges within arbitration institutions, specific frameworks like the ICSID Convention and GAFTA Rules offer structured processes for addressing grievances post-award. These mechanisms ensure that arbitration remains a robust, fair, and trustworthy method of dispute resolution on an international scale.

减免、撤销和机构上诉等裁决后救济机制在维护国际仲裁的合法性和可靠性方面发挥着关键作用。虽然总体趋势是限制仲裁机构内部的挑战，但《ICSID 公约》和《GAFTA 规则》等具体框架提供了解决裁决后申诉的结构化流程。这些机制确保仲裁在国际范围内仍然是一种稳健、公平和值得信赖的争议解决方法。

撤销仲裁裁决

The annulment of arbitral awards is a critical facet of international arbitration, emphasizing the need for efficiency and the preservation of the finality inherent in arbitration. It is widely recognized that the review and potential annulment of arbitration awards should be limited and only possible under exceptional circumstances, as highlighted by the European Court of Justice.

撤销仲裁裁决是国际仲裁的一个关键方面，强调了效率和维护仲裁固有的终局性的需要。正如欧洲法院所强调的那样，人们普遍认为，仲裁裁决的审查和可能的撤销应该受到限制，并且只有在特殊情况下才可能进行。

管辖范围和纽约公约 Jurisdictional Limits and the New York Convention

The New York Convention significantly influences where annulment actions can be brought, primarily restricting them to:

《纽约公约》极大地影响了可以提起无效诉讼的地点，主要将其限制为：

1. The jurisdiction where the award was made.
作出裁决的司法管辖区。
2. The jurisdiction under whose law the award was made.
裁决所依据的司法管辖区的法律。

Article V(1)(e) of the New York Convention implies these limitations, which facilitate the Convention's objectives by preventing the circumvention of its narrow grounds for non-recognition. This avoids the dilution of the Convention's effectiveness by constraining annulment to jurisdictions closely linked to the arbitration.

《纽约公约》第五条第(1)款(e)项隐含了这些限制，通过防止规避其狭隘的不承认理由，促进了《公约》的目标的实现。这避免了因将废除限制在与仲裁密切相关的司法管辖区而削弱公约的效力。

国家法规和领土方法 National Statutes and Territorial Approach

Most national laws reflect a territorial approach, limiting annulment actions to awards made within their jurisdiction. For instance:

大多数国家法律都体现了地域性做法，将撤销诉讼限制在其管辖范围内作出的裁决。例如：

- UNCITRAL Model Law : Local courts cannot annul awards made outside the national territory.
贸易法委员会示范法：地方法院不能撤销在国家领土之外作出的裁决。
- English Arbitration Act : Annulment is only possible if the arbitration seat is in England, unless parties agree otherwise.
英国仲裁法：只有当仲裁地位于英格兰时才可能撤销，除非双方另有约定。
- U.S. Federal Arbitration Act : Annulment is limited to awards made within the United States.
美国联邦仲裁法：撤销仅限于在美国境内作出的裁决。

撤销的理由 Grounds for Annulment

Several grounds for annulment are recognized under both the UNCITRAL Model Law and the New York Convention, including:

《贸易法委员会示范法》和《纽约公约》均承认撤销的若干理由，包括：

- Lack of Valid Arbitration Agreement : Ensuring the parties' consent.
缺乏有效的仲裁协议：确保当事人同意。
- Excess of Authority : Arbitrators exceeding their mandate.
越权：仲裁员超越其职权范围。
- Denial of Opportunity to Present the Case : Fundamental procedural fairness.
拒绝陈述案件的机会：基本的程序公平。
- Awards Contrary to Public Policy : Protecting essential national norms.
违反公共政策的裁决：保护基本国家规范。
- Disputes Not Capable of Settlement by Arbitration : Reflecting core legal principles.
无法通过仲裁解决的争议：反映核心法律原则。
- Bias and Arbitrator Misconduct : Ensuring arbitrator impartiality and integrity.
偏见和仲裁员不当行为：确保仲裁员的公正性和诚信。
- Failure to Comply with Agreed Procedures : Adhering to procedural fairness.
不遵守商定程序：坚持程序公正。
- Failure to Comply with Lex Arbitri : Compliance with the governing arbitration law.
不遵守仲裁法：遵守适用的仲裁法。

实质性审查和形式缺陷 Substantive Review and Formal Defects

- While the trend is away from judicial review of the merits, some jurisdictions still allow it, including England, Ireland, China, and others.
尽管这种趋势已经不再对案情进行司法审查，但一些司法管辖区仍然允许这样做，包括英格兰、爱尔兰、中国等。
- Formal defects such as internally contradictory awards and failure to comply with formal requirements can also be grounds for annulment as seen in the Belgian Judicial Code and the English Arbitration Act.
正如《比利时司法法典》和《英国仲裁法》中所见，形式上的缺陷，例如裁决内部矛盾和不遵守形式要求，也可以成为撤销裁决的理由。

The framework set by international conventions and national statutes strives to balance between respecting the finality of arbitral awards and safeguarding essential legal principles, thereby ensuring arbitration remains an effective and reliable means of dispute resolution.

国际公约和国家法规制定的框架力求在尊重仲裁裁决的终局性和维护基本法律原则之间取得平衡，从而确保仲裁仍然是有效、可靠的争议解决方式。

Agreements Waiving the Right to Seek Annulment of International Awards 放弃寻求撤销国际裁决权利的协议

In the realm of international arbitration, the finality of an arbitral award is a crucial advantage. However, parties sometimes seek to further cement this finality by agreeing to waive their right to seek annulment of the award. These agreements and their validity vary significantly across different jurisdictions and legal traditions.

在国际仲裁领域，仲裁裁决的终局性是一个至关重要的优势。然而，当事人有时会同意放弃寻求撤销裁决的权利，以进一步巩固这一最终结果。这些协议及其有效性在不同的司法管辖区和法律传统中存在很大差异。

National Legislation Permitting Waiver Agreements 国家立法允许豁免协议

In some countries, national arbitration legislations specifically allow for agreements that exclude or limit applications for annulment under certain circumstances. For instance:

在一些国家，国家仲裁立法明确允许在某些情况下排除或限制撤销申请的协议。例如：

- England : Section 69 of the English Arbitration Act permits parties to exclude court review of arbitral awards, provided they explicitly agree.
英国：《英国仲裁法》第 69 条允许当事人在明确同意的情况下排除法院对仲裁裁决的审查。
- Belgium : Article 1717(4) of the Belgian Judicial Code allows the exclusion of annulment applications.
比利时：比利时司法法典第 1717(4) 条允许排除撤销申请。
- Switzerland : Articles 190 and 192 of the Swiss Law on Private International Law support such waivers, enhancing the autonomy of the parties involved.
瑞士：《瑞士国际私法》第 190 条和第 192 条支持此类豁免，增强了有关各方的自主权。

Invalidation of Waiver Agreements 豁免协议无效

Conversely, other jurisdictions do not uphold these agreements, emphasizing the importance of judicial oversight over arbitral awards to ensure fairness and justice:

相反，其他司法管辖区并不支持这些协议，强调司法监督仲裁裁决以确保公平和公正的重要性：

- France : The French Court d'Appel, in its decision on November 14, 2004 (2005 Rev.arb. 751), invalidated such waivers.
法国：法国上诉法院在 2004 年 11 月 14 日的裁决中（2005 Rev.arb. 751）宣布此类豁免无效。
- United States : The US Supreme Court, in Hall Street v. Mattel, ruled against agreements that exclude judicial review of arbitral awards.
美国：美国最高法院在霍尔街诉美泰案中驳回了排除对仲裁裁决进行司法审查的协议。

Heightened Judicial Review 加强司法审查

Parties may also agree to subject arbitral awards to heightened judicial review, beyond the typically limited scope:

当事人还可以同意对仲裁裁决进行强化司法审查，超出通常有限的范围：

- Not Upheld :

不予支持：

- The U.S. 9th Circuit Court of Appeals, in Kyocera Corp. v. Prudential Bache Trade Serv. , and Aerojet-Gen. Corp v. Am. Arbitration Ass'n , did not uphold such agreements.

美国第九巡回上诉法院，京瓷公司诉 Prudential Bache Trade Serv 案。和Aerojet-Gen. 公司诉Am。仲裁协会不支持此类协议。

- Upheld :

维持：

- The U.S. 5th Circuit Court of Appeals, in Gateway Tech v. MCI Telecom , upheld the agreement for heightened judicial review.

美国第五巡回上诉法院在Gateway Tech 诉 MCI Telecom 案中维持了加强司法审查的协议。

Consequences of Annulling International Arbitral Awards 撤销国际仲裁裁决的后果

The consequences of annulling an arbitral award as opposed to refusing recognition have significant implications:

与拒绝承认相比，撤销仲裁裁决的后果具有重大影响：

1. Non-Recognition of the Award :

不承认该裁决：

- The award remains legally binding within its issuing jurisdiction but loses its enforceability internationally.

该裁决在其裁决管辖范围内仍然具有法律约束力，但失去了国际可执行性。

2. Annulment of the Award :

撤销裁决：

- The award ceases to exist legally, meaning there is no longer any award to be recognized or enforced.

该裁决不再合法存在，这意味着不再有任何裁决可供承认或执行。

Annulment completely nullifies the legal standing of an award, removing it from the realm of enforceable decisions. This dramatically differs from non-recognition, where the award remains binding in its issuing jurisdiction but cannot be enforced elsewhere.

撤销裁决的法律地位完全无效，将其从可执行决定的范围中删除。这与不承认有很大不同，在不承认的情况下，裁决在其颁发管辖范围内仍然具有约束力，但不能在其他地方执行。

In summary, the global arbitration landscape reveals a mixed approach to agreements waiving the right to seek annulment. Jurisdictions vary from permitting to invalidating such agreements, influencing the finality of arbitral awards and shaping international arbitration practices.

总之，全球仲裁格局揭示了放弃寻求撤销权的协议的混合方法。司法管辖区从允许此类协议到无效此类协议各不相同，影响仲裁裁决的终局性并影响国际仲裁实践。

法院在投资者与国家仲裁中的作用

In investor-state arbitration, the role of national courts varies significantly between non-ICSID cases and those governed by the ICSID Convention. Understanding these differences is crucial when drafting arbitration agreements and selecting dispute resolution forums under investment treaties.

在投资者与国家仲裁中，国家法院的作用在非 ICSID 案件和受 ICSID 公约管辖的案件之间存在显着差异。在起草仲裁协议和选择投资条约下的争议解决论坛时，了解这些差异至关重要。

Comparison: ICSID Convention vs. New York Convention 比较：ICSID 公约与纽约公约：

1. Scope 范围：

- The ICSID Convention is designed exclusively for disputes between investors and states, while the New York Convention applies broadly to international arbitration.
ICSID 公约专门针对投资者与国家之间的争端，而纽约公约则广泛适用于国际仲裁。

2. Focus 重点：

- The ICSID Convention offers a comprehensive legal framework (*lex arbitri*) that governs the entire arbitration process and the resultant award. In contrast, the New York Convention is predominantly concerned with the post-arbitral process, focusing on the recognition and enforcement of arbitral awards.
ICSID 公约提供了一个全面的法律框架 (*lex arbitri*) 来管理整个仲裁过程和由此产生的裁决。相比之下，《纽约公约》主要关注仲裁后程序，重点关注仲裁裁决的承认和执行。

3. Dependence on National Courts 对国家法院的依赖：

- The ICSID Convention minimizes national court involvement, relying on them only as last-resort enforcers of awards. The New York Convention necessitates national courts to enforce both arbitration agreements and awards, thereby relying on national laws.
ICSID 公约最大限度地减少了国家法院的参与，仅依靠它们作为裁决的最后执行者。《纽约公约》要求国家法院执行仲裁协议和裁决，从而依赖国家法律。

4. Review Powers 审查权力：

- Under the ICSID Convention , national courts cannot review ICSID awards. However, the New York Convention permits national courts to refuse the enforcement of awards under specific conditions outlined in Article V.

根据ICSID公约，国家法院不能审查 ICSID 裁决。然而，《纽约公约》允许国家法院在第五条规定的特定条件下拒绝执行裁决。

Provisions of the Trans-Pacific Partnership (TPP) 跨太平洋伙伴关系协定 (TPP) 的规定

Article 4, Chapter 9 of the TPP outlines various arbitration options for claimants, including the ICSID Convention, ICSID Additional Facility Rules, UNCITRAL Arbitration Rules, or any mutually agreed arbitral institution or rules.

TPP第9章第4条概述了申请人的各种仲裁选择，包括ICSID公约、ICSID附加便利规则、UNCITRAL仲裁规则或任何共同商定的仲裁机构或规则。

ICSID's "Self-Contained" System ICSID 的“独立”系统

1. Exclusivity (Article 26) : Once parties consent to ICSID arbitration, it becomes the sole remedy.
排他性（第26条）：一旦当事人同意ICSID仲裁，它就成为唯一的补救措施。
2. Diplomatic Protection (Article 27) : Member states cannot provide diplomatic protection, except in limited circumstances.
外交保护（第27条）：除有限情况外，成员国不能提供外交保护。
3. Immunity (Articles 21 and 22) : Participants in ICSID arbitration enjoy immunity from legal processes.
豁免权（第 21 条和第 22 条）：ICSID 仲裁参与者享有法律程序豁免权。
4. Post-Award Remedies (Articles 49 to 52) : Remedies are limited to supplementation or rectification, interpretation, revision, and annulment as defined by the Convention.
裁决后补救措施（第 49 条至第 52 条）：补救措施仅限于《公约》规定的补充或纠正、解释、修订和废止。
5. Finality (Article 53) : ICSID awards are final and binding, and courts of member states cannot annul them.
最终性（第 53 条）：ICSID 裁决是最终裁决并具有约束力，成员国法院不能撤销裁决。
6. Enforcement (Article 54) : All member states are obligated to recognize and enforce the monetary parts of ICSID awards.
执行（第 54 条）：所有成员国都有义务承认和执行 ICSID 裁决的货币部分。
7. Place of Proceedings (Articles 62 and 63) : The location of arbitration hearings does not affect the legal significance of the proceedings.
诉讼地点（第 62 条和第 63 条）：仲裁审理地点不影响诉讼程序的法律意义。

In conclusion, while both the ICSID and New York Conventions play vital roles in supporting the investor-state arbitration system, their differences in scope, focus, reliance on national courts, and review powers illustrate the varying degrees of national court involvement. The ICSID Convention's self-contained nature underscores its autonomy from national legal systems, ensuring a more predictable and uniform arbitration process.

总之，虽然《投资争端解决中心》和《纽约公约》在支持投资者与国家仲裁制度方面发挥着至关重要的作用，但它们在范围、重点、对国家法院的依赖和审查权方面的差异说明了国家法院参与程度的不同。ICSID公约的独立性强调其独立于国家法律体系，确保仲裁程序更加可预测和统一。

国家法院的作用——《纽约公约》下的执行职能

In the realm of international arbitration, the interplay between the arbitral process and national courts is indispensable. Neil Kaplan aptly highlights this necessity by contrasting the unrealistic ideal of a perfect arbitration world with the pragmatic realities of arbitration practice. In practice, the national courts' enforcement function is crucial to ensure the efficacy and finality of arbitral awards.

在国际仲裁领域，仲裁程序与各国法院之间的相互作用是不可或缺的。尼尔·卡普兰通过将完美仲裁世界的不切实际理想与仲裁实践的务实现实进行对比，恰当地强调了这种必要性。在实践中，各国法院的执行职能对于确保仲裁裁决的有效性和终局性至关重要。

Enforcement Role under the New York Convention (NYC)

The New York Convention (NYC) is a cornerstone of international arbitration, with 156 state parties committed to recognizing and enforcing arbitral awards. Under Articles II and III of the NYC, contracting states must treat non-domestic awards similarly to domestic awards, ensuring their enforceability.

《纽约公约》(NYC)是国际仲裁的基石，有156个缔约国承诺承认和执行仲裁裁决。根据《纽约公约》第二条和第三条，缔约国必须以与国内裁决类似的方式对待非国内裁决，以确保其可执行性。

Court Obligations 法院义务

National courts under the NYC have two primary obligations:

纽约市下属的国家法院有两项主要义务：

1. Uphold and enforce arbitration agreements.
维护并执行仲裁协议。
2. Deny parties court access in contravention of their arbitration agreement, promoting the arbitration process and respecting parties' intentions.
拒绝当事人违反仲裁协议进入法院，促进仲裁进程并尊重当事人的意愿。

Grounds for Refusal of Enforcement 拒绝执行的理由

Article V of the NYC sets out specific grounds upon which courts can refuse to enforce an arbitral award:

《纽约公约》第五条规定了法院拒绝执行仲裁裁决的具体理由：

1. Incapacity or Invalidity : The parties to the arbitration agreement lacked capacity, or the agreement was not valid under governing law.
无行为能力或无效：仲裁协议当事人无行为能力，或协议根据适用法律无效。
2. Procedural Fairness : The party against whom the award is invoked was not given proper notice or was unable to present their case adequately.
程序公平性：裁决所针对的一方没有得到适当的通知或无法充分陈述其案件。
3. Scope of Arbitration : The award contains decisions beyond what was submitted to arbitration.
仲裁范围：裁决包含超出提交仲裁范围的决定。
4. Arbitration Procedure : The procedure or composition of the arbitral tribunal was not in accordance with the parties' agreement or local law.
仲裁程序：仲裁庭的程序或组成不符合当事人的协议或当地法律。
5. Binding Nature : The award is not yet binding or has been set aside/suspended in its country of origin.
约束性质：该裁决尚未具有约束力或已在其原籍国被搁置/暂停。
6. Arbitrability : The subject matter is not capable of settlement by arbitration under local law.
可仲裁性：根据当地法律，标的事项不能通过仲裁解决。
7. Public Policy : Enforcement would be contrary to the public policy of the enforcement state.
公共政策：执行将违反执行国的公共政策。

Recognition Across Jurisdictions 跨司法管辖区的认可

In theory, awards rendered in one signatory state should be enforceable in any other signatory state, except under the exceptional circumstances delineated in Article V. National courts, therefore, play an exclusive role in processing and enforcing these awards, emphasizing the need for judicial support in the international arbitration framework.

理论上，除第五条规定的特殊情况外，一个签署国作出的裁决应在任何其他签署国可执行。因此，国家法院在处理和执行这些裁决方面发挥着排他性作用，强调司法支持的必要性在国际仲裁框架内。

ICSID Annulment vs. NYC Set-Aside ICSID 撤销与纽约公约撤销

While the NYC focuses on enforcement, ICSID (International Centre for Settlement of Investment Disputes) and UNCITRAL (United Nations Commission on International Trade Law) systems also address annulment:

虽然纽约市侧重于执行，但 ICSID（国际投资争端解决中心）和 UNCITRAL（联合国国际贸易法委员会）系统也处理撤销问题：

- ICSID System : Annulment follows a structured process within the ICSID framework.
ICSID 系统：撤销遵循 ICSID 框架内的结构化流程。
- UNCITRAL System : Annulment is governed by national law, specifically the law of the arbitration seat. Only the courts at the seat of arbitration are competent to annul the award, following grounds specified in Article 34 of the UNCITRAL Model Law.
联合国国际贸易法委员会制度：撤销受国家法律管辖，特别是仲裁地的法律。只有仲裁地法院有权根据《贸易法委员会示范法》第 34 条规定的理由撤销裁决。

In conclusion, the national courts' role in enforcing arbitral awards under the New York Convention is pivotal. Their involvement ensures adherence to international arbitration agreements and awards, maintaining the integrity and consistency of the arbitration process globally. Courts must balance their national interests with international obligations, fostering a cooperative international arbitration environment.

总之，各国法院在执行《纽约公约》下的仲裁裁决方面的作用至关重要。他们的参与确保了国际仲裁协议和裁决的遵守，维护全球仲裁程序的完整性和一致性。法院必须平衡国家利益与国际义务，营造合作的国际仲裁环境。

国家法院在国际仲裁中的作用：《贸易法委员会示范法》下的职能

The UNCITRAL Model Law on International Commercial Arbitration outlines the specific and limited roles that national courts play in supporting the arbitration process. The overarching principle under Article 5 of the Model Law emphasizes that courts should not intervene in arbitration matters except as expressly provided. This framework ensures that arbitration remains a binding and effective method of dispute resolution.

《贸易法委员会国际商事仲裁示范法》概述了国家法院在支持仲裁程序方面发挥的具体和有限的作用。《示范法》第 5 条的总体原则强调，除非有明确规定，否则法院不应干预仲裁事务。该框架确保仲裁仍然是一种具有约束力且有效的争议解决方法。

Functions of National Courts Under the Model Law 《示范法》规定的国家法院的职能

1. Article 6: Designated Court Functions :

The Model Law delegates several key functions to national courts, as specified by the enacting state:

第六条：指定法院职能：

根据颁布国的规定，《示范法》将几项关键职能委托给国家法院：

- Article 11 : Courts assist in appointing arbitrators if parties are unable to agree on a selection.
第 11 条：如果当事人无法就选择达成一致，法院协助指定仲裁员。
- Article 13 : Courts address challenges to arbitrators, ensuring impartiality and fairness.
第 13 条：法院处理对仲裁员的质疑，确保公正和公平。
- Article 14 : Courts step in to replace arbitrators in cases of resignation or inability to perform their duties.
第 14 条：在仲裁员辞职或无法履行职责的情况下，法院介入以更换仲裁员。
- Article 16 : Courts make decisions on the jurisdiction of the arbitral tribunal when disputed by parties.
第十六条：当当事人有争议时，法院就仲裁庭的管辖权作出决定。
- Article 34 : Courts handle recourse against arbitral awards, particularly through the process of setting aside.
第 34 条：法院处理对仲裁裁决的追索，特别是通过撤销程序。

Recourse Against Awards (Chapter VII, Article 34) 对裁决的追索权（第七章第三十四条）

The exclusive mechanism for challenging an arbitral award under the UNCITRAL Model Law is specified in Article 34, which outlines the grounds and procedures for setting aside an award.

《贸易法委员会示范法》第 34 条规定了对仲裁裁决提出质疑的专属机制，该条概述了撤销裁决的理由和程序。

1. Exclusive Recourse Mechanism (Article 34(1)) :

Recourse to a court against an arbitral award can occur solely through an application for setting aside, streamlining the process and limiting judicial intervention.

专属追索机制（第34（1）条）：针对仲裁裁决向法院提起诉讼只能通过申请撤销、简化程序并限制司法干预。

2. Grounds for Setting Aside (Article 34(2)) :

An arbitral award may be set aside only if specific conditions are met:

撤销的理由（第 34 条第（2）款）：仅当满足特定条件时，仲裁裁决才可被撤销：

• By Application Proof :

通过申请证明：

- The parties were under incapacity or the arbitration agreement was invalid under applicable law.
根据适用的法律，当事人无行为能力或仲裁协议无效。
- One party was not given proper notice or was unable to present their case.
一方未收到适当通知或无法陈述其案件。

- The award addresses matters beyond the scope of the arbitration agreement.
该裁决涉及仲裁协议范围之外的事项。
- The composition of the tribunal or arbitral procedure was not in accordance with the parties' agreement or the law.
仲裁庭的组成或仲裁程序不符合当事人的约定或法律规定。

- By Court Findings :

根据法庭调查结果：

- The subject matter is not capable of resolution through arbitration under the state's law.
根据州法律，标的事项无法通过仲裁解决。
- The award is contrary to the public policy of the state.
该裁决违反了国家的公共政策。

3. Timeframe for Setting Aside Application (Article 34(3)) :

Applications for setting aside must be filed within three months from the date the award was received or from the disposition of a request under Article 33 by the arbitral tribunal.

搁置申请的期限（第 34(3) 条）：撤销申请必须在收到裁决之日或仲裁庭根据第 33 条处理请求之日起三个月内提出。

4. Suspension of Proceedings (Article 34(4)) :

The court may suspend the setting-aside proceedings to allow the arbitral tribunal to address and eliminate the grounds for setting aside, promoting finality and efficiency in the arbitration process.

中止诉讼（第 34(4) 条）：法院可以中止撤销程序，以便仲裁庭处理和消除撤销的理由，促进仲裁程序的终局性和效率。

In summary, the UNCITRAL Model Law delineates a clear structure for national court intervention in arbitration, highlighting the balance between supporting the arbitration process and upholding critical legal standards. By limiting the scope and setting strict guidelines for court involvement, the Model Law promotes the effectiveness and integrity of international arbitration.

总之，《贸易法委员会示范法》为国家法院干预仲裁划定了清晰的结构，强调了支持仲裁程序和维护关键法律标准之间的平衡。通过限制范围并为法院参与制定严格的准则，《示范法》促进了国际仲裁的有效性和完整性。

香港仲裁条例及支持仲裁裁决的执行

Hong Kong has established itself as a leading arbitration-friendly jurisdiction with a robust framework for the enforcement of arbitral awards. This is governed under the Hong Kong

Arbitration Ordinance, particularly addressing recourse against awards in Part 9 and closely aligned with the UNCITRAL Model Law.

香港已成为领先的仲裁友好司法管辖区，并拥有健全的仲裁裁决执行框架。这受《香港仲裁条例》管辖，特别是第 9 部分中针对裁决的追索权，并与《贸易法委员会示范法》密切一致。

Recourse Against Award under the Arbitration Ordinance 根据仲裁条例对裁决提出追索权

Article 34 of UNCITRAL Model Law :

Hong Kong's adoption of this article specifies that setting aside an arbitral award is the exclusive recourse available. However, certain exceptions under subsection (2) allow the Court to:

《贸易法委员会示范法》第 34 条：

香港采纳该条规定，撤销仲裁裁决是唯一可用的追索权。然而，第 (2) 款规定的某些例外情况允许法院：

- (a) Set aside an award under section 26(5).
(a) 根据第 26(5) 条撤销裁决。
- (b) Challenge under section 4 of Schedule 2.
(b) 根据附表 2 第 4 条提出质疑。
- (c) Appeal on a law question under section 5 of Schedule 2.
(c) 根据附表 2 第 5 条就法律问题提出上诉。

The Court does not have jurisdiction to remand or set aside awards on the grounds of errors of fact or law unless specified. Moreover, any appeal from a decision under Article 34 requires the Court's leave.

除非另有说明，法院无权以事实或法律错误为由发回重审或撤销裁决。此外，对根据第 34 条做出的决定提出的任何上诉都需要法院的许可。

Hong Kong Enforcement Record 香港执法记录

Hong Kong courts have demonstrated a consistent pro-enforcement stance. According to HKIAC, from 2011 to 2014, no enforcement refusals were recorded. This pro-enforcement approach is exemplified in recent case law such as *KB v S* (2015), where the Court reaffirmed its principles for the enforcement of arbitral awards.

香港法院一贯表现出支持执行的立场。据HKIAC称，2011年至2014年期间，没有出现拒绝执行的记录。这种支持执行的做法在最近的判例法中得到了例证，例如*KB v S* (2015)，其中法院重申了其执行仲裁裁决的原则。

Enforcement Principles in Hong Kong 香港的执行原则

Hong Kong courts aim to facilitate arbitration and assist in enforcement, intervening minimally per the Ordinance. Enforcement is treated almost as an administrative procedure, where courts

act "mechanistically" without delving into the merits or the underlying transactions, ensuring a streamlined enforcement process.

香港法院的目标是便利仲裁并协助执行，并根据该条例进行最低程度的干预。执行几乎被视为一种行政程序，法院“机械地”行事，而不深入研究案情或基础交易，从而确保简化的执行过程。

To refuse enforcement, substantial complaints must prove a real risk of prejudice, showing material rights violations. When examining challenges, the courts focus on the arbitration's structural integrity and due process adherence. Issues raised must be serious and egregious for the court to consider refusing enforcement.

要拒绝执行，实质性投诉必须证明存在真正的偏见风险，并显示严重的权利侵犯行为。在审查质疑时，法院重点关注仲裁的结构完整性和正当程序的遵守。提出的问题必须严重且严重，法院才会考虑拒绝执行。

Prominent cases like *Hebei Import & Export Corp v Polytek Engineering Co Ltd* highlight the courts' approach to enforce duties of good faith among arbitration parties. Even when grounds for refusal exist, the courts retain discretion to enforce awards, emphasizing a fair and principled arbitration system.

河北进出口公司诉保利泰克工程有限公司等著名案件凸显了法院在仲裁当事人中履行诚信义务的做法。即使存在拒绝的理由，法院也保留执行裁决的自由裁量权，强调公平和有原则的仲裁制度。

The case *China Solar Power (Holdings) Ltd v ULVAC Inc* (2015) reaffirms Hong Kong's commitment to these enforcement tenets, where the application to set aside an award was dismissed, upholding the established principles.

China Solar Power (Holdings) Ltd v ULVAC Inc (2015)一案重申了香港对这些执行原则的承诺，驳回了撤销裁决的申请，维护了既定原则。

In summary, Hong Kong's Arbitration Ordinance and judicial approach underscore a firm commitment to facilitating and enforcing arbitral awards, providing a reliable and efficient dispute resolution forum.

总而言之，香港的仲裁条例和司法方式强调了促进和执行仲裁裁决、提供可靠和高效的争议解决平台的坚定承诺。