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Northern Ireland Chapter

Alternative Dispute Resolution (ADR) - Resolving disputes economically

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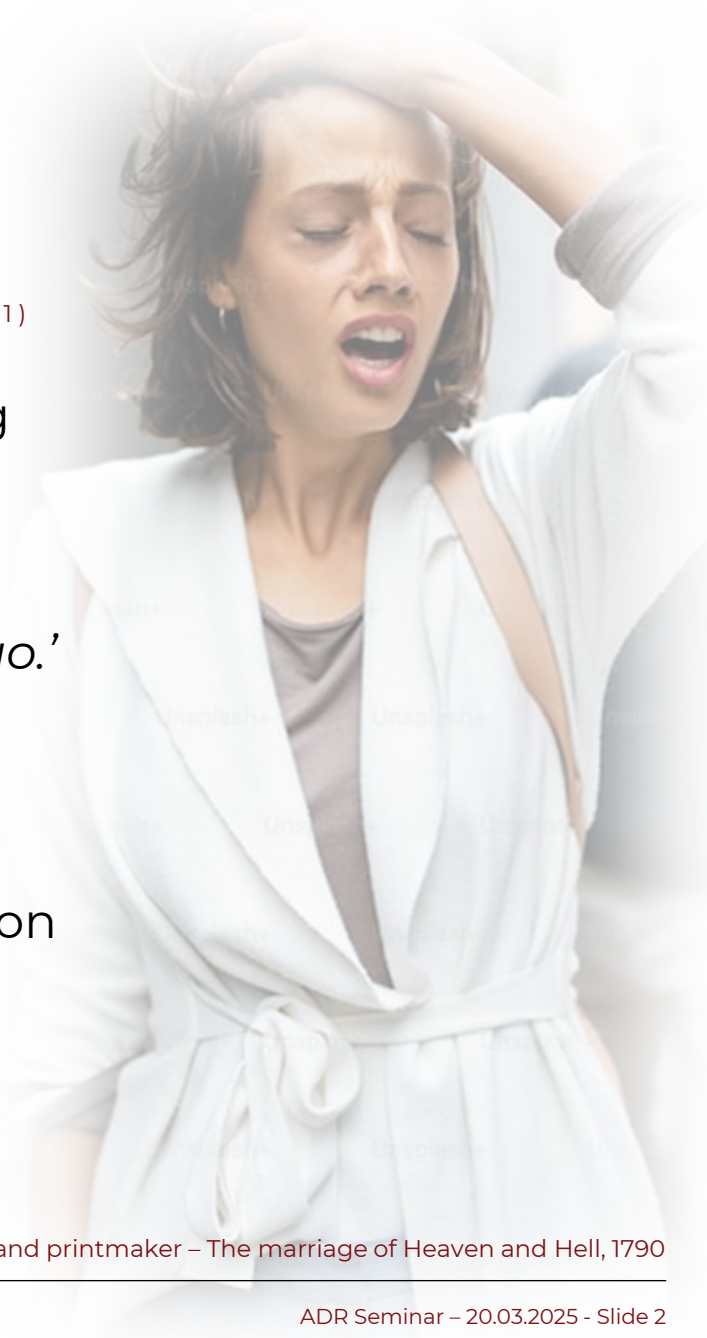
Is conflict necessary?

"Without contraries there is no progression. Attraction and repulsion, reason and energy, love and hate, are necessary to human existence". [1]

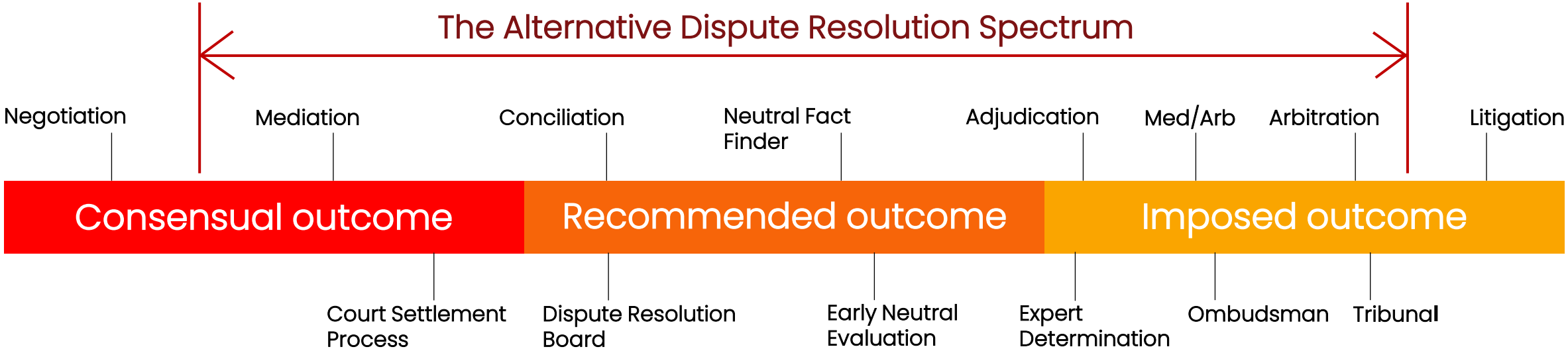
- Conflict could be said to be a procedural building block of life, being related to 'survival of the fittest'.
- It is needed to nourish change in all aspects of life.
- Conflict can temper the natural inclination to support the *'status quo.'*
- It facilitates mutual benefits and reconciliation.
- It can foster community, identity and unity.
- Conflict reflects the need to resolve in order to attain a higher position and improved circumstances.

But how do we address conflict in everyday life, we cannot continually resort to the courts to resolve our differences?



1. William Blake, English poet and printmaker – The marriage of Heaven and Hell, 1790

The ADR[1] spectrum and Arbitration



- Provides a range of available processes.
- Informal to formal proceedings.
- Choice to accommodate the breadth of simple to complex disputes.
- Choice of process according to cost and expediency.
- Permits party autonomy to decide on how to resolve the dispute.
- Provides privacy of proceedings.
- Allows for the 'forum to fit the fuss'.
- Capacity to resolve cross jurisdictional disputes.

1. The term Alternative Dispute Resolution (ADR) is generally credited to Professor Frank Sander who in 1976, at the Pound Conference in the US, coined the term 'Alternative Dispute Resolution' (ADR) to account for the use of 'alternative ways of resolving disputes outside the courts.'

What is Arbitration?

- Arbitration is a formal procedure, where the arbitrator's award, in providing a decision upon the dispute, will usually reflect the 'rights and obligations' between the parties in their contract.

"If parties have a dispute with each other respecting their private obligations, and desire to choose an arbitrator, be it lawful for them to select whomsoever they will. But when they have mutually selected an arbitrator, let them stand fast by his decision and by no means carry an appeal from him to another tribunal. But let the arbitrator's sentence be supreme."[1]

- Arbitration has the distinct advantage of unrivalled enforceability on a worldwide basis – it is the cornerstone of international trade.

1. The essence of Arbitration as expressed by the Athenian Demosthenes 384 BC.

Arbitration, the pros and cons

- Arbitration is a well established method of resolving disputes, that provides significant benefits:

  - The parties can agree upon the arbitrator.
  - An arbitrator can be chosen according to qualification and expertise.
  - The proceedings can be controlled by the parties – autonomy.
  - The parties can set their own timetable.
  - The expense of prolonged court proceedings can be avoided.
  - Legal representation is not necessary.
  - There is privacy of proceedings.
  - There is confidentiality of the award.

- However, there are disadvantages:

  - The parties bear the cost of the arbitrator.
  - Difficulty with disputes where there are more than two parties.
  - Due to the confidentiality of the process there is no body of precedent.

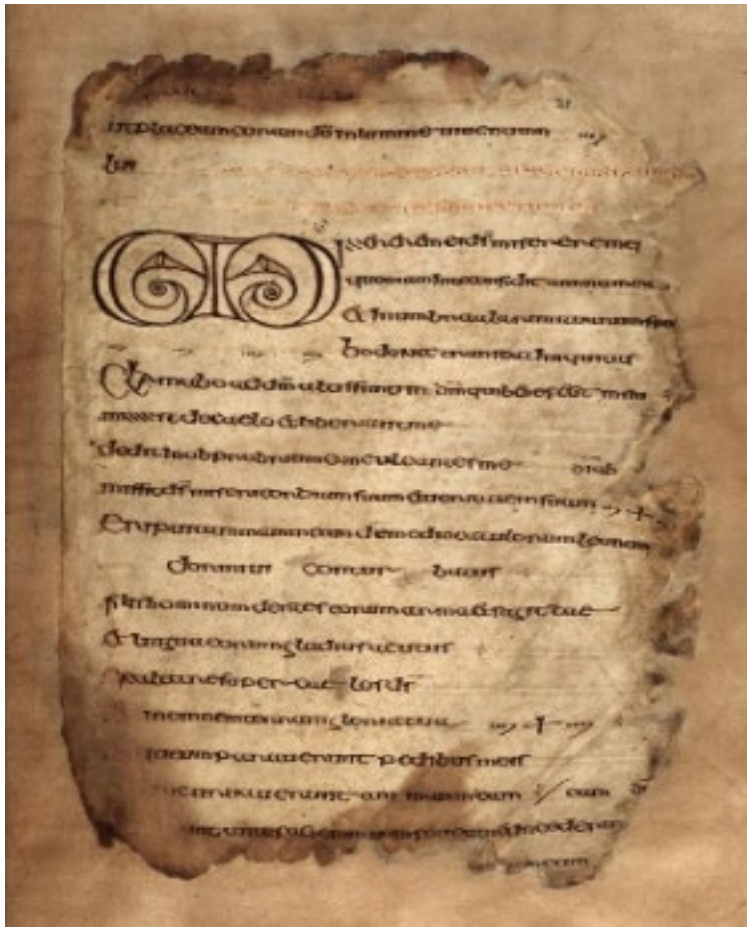
Roots of Arbitration in Ireland

- The principle of Arbitration is detailed in 'The Cathach'[1] the earliest known manuscript in Ireland that pre-dates The Book of Kells by approximately 250 years.

- The dispute concerned the provenance of The Cathach and its ownership. The Cathach, written on vellum by Saint Finian, is a copy of an earlier original Psalter (Book of Psalms) written by Saint Columba.

- On hearing of its existence Saint Columba sought to claim ownership of The Cathach as it was a copy of his original.

- In deciding on the dispute Diarmait Mac Cerghaill, the King of Tara, based his decision on the basis *'that as a calf must belong to its mother, the cow, it must follow that a copy of a book must belong to the original book.'*



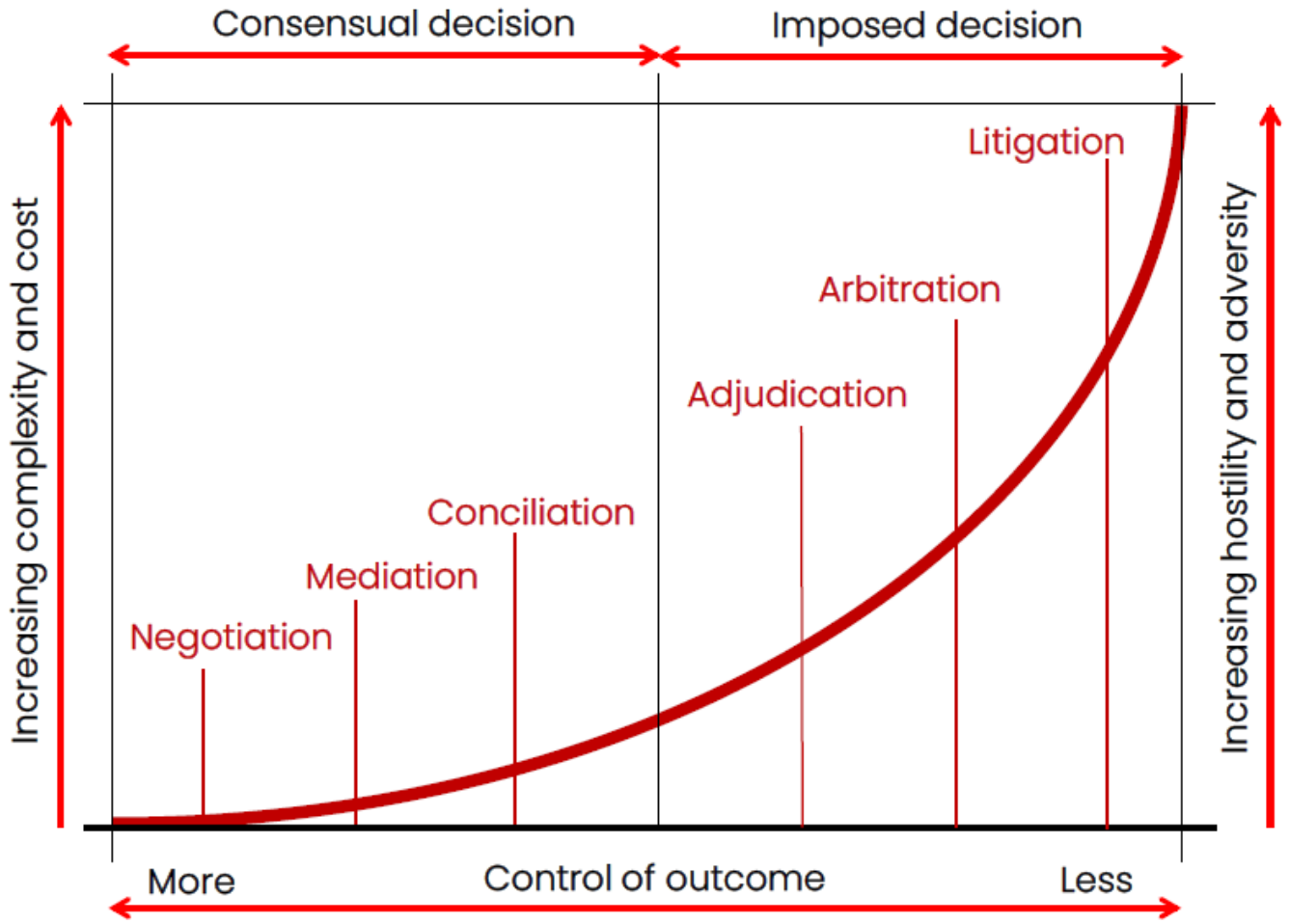
1. The Cathach can be viewed at the Royal Irish Academy (RIA) in Dublin

Legislative support for Arbitration

- Until recently arbitration in the United Kingdom, excluding Scotland, has been regulated under statute through the Arbitration Act 1996, enacted 17 June 1996.
- However the 1996 Act, now in use for just under 30 years, has recently been superseded by the English Arbitration Act 2025, enacted on 24 February 2025. The new 2025 Act seeks to make arbitration fairer and more efficient.
- In Scotland, Arbitration is legislated for under the Arbitration (Scotland) Act 2010.
- In the Republic of Ireland, Arbitration is legislated for under the Arbitration Act 2010.
- There is extensive support of arbitration both domestically and internationally across virtually all jurisdictions in the world.

Arbitration and cost

- Arbitration, particularly in the construction industry, has developed a reputation for high cost.
- Adjudication, primarily in Commonwealth jurisdictions, for construction disputes has now largely displaced arbitration.
- However, Arbitration still has a place in certain disputes of complexity, technicality or with an international element.
- Arbitration costs are being reduced through streamlined procedures such as 100 day Arbitration schemes.



Arbitration, estimation of cost

- The costs of Arbitration, will generally reflect the complexity of the case, the amount in dispute and the composition of the tribunal, being a single or three Arbitrators with one as Chair.
- For domestic Arbitrations, such as between a consumer and a business, or business to business, the cost can be reasonable.
- For international Arbitrations, organised through an institution such as the International Chamber of Commerce (ICC) or the London Court of International Arbitration (LCIA), as examples, the cost will be proportionately greater.
- For a $1m sum in dispute, being not too complex, being heard before a single arbitrator with a 8 to 10 day involvement the fee would be circa $50,000 with the LCIA or up to $64,000 with the ICC.[1]
- The LCIA fee would be circa $8,000 and the ICC's fees would be circa $23,000.[1]

International Chamber of Commerce

LCIA
Arbitration and ADR worldwide

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1. Linklaters – Institutional and Arbitrator's fees - https://www.linklaters.com/en/knowledge/topics-hub/toolkits/dispute-toolkit/arbitration/costs/institutional-and-arbitrators-fees

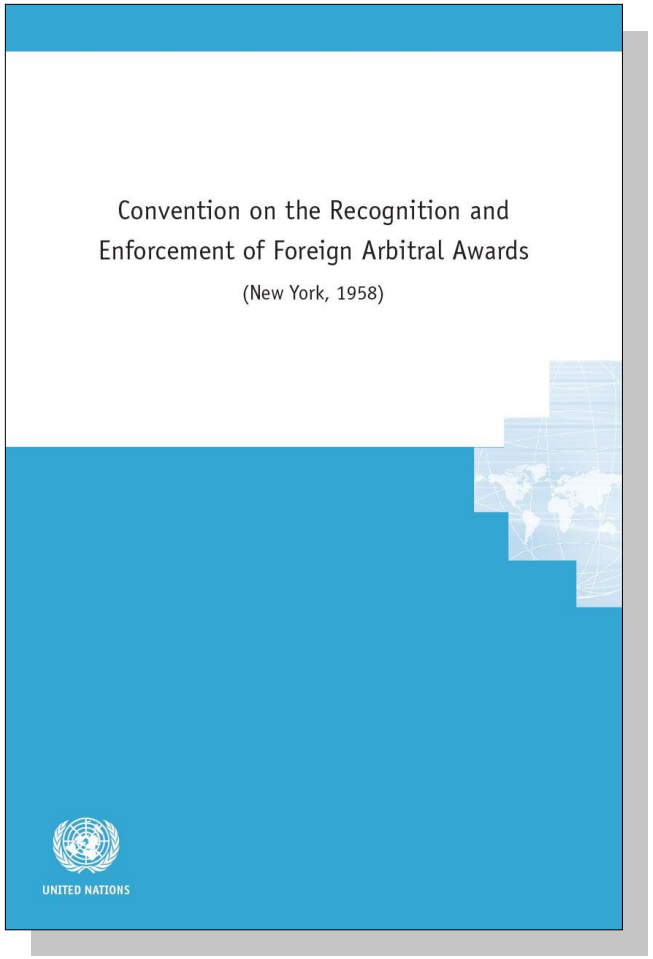
How is Arbitration invoked?

- Arbitration is usually invoked through the contract between the parties, where an Arbitration Clause is included within the terms and conditions.
- Arbitration clauses are common in both consumer contracts and commercial contracts.
- Where an arbitration clause is included, or even implied within a contract, the Courts will recognise and uphold the clause as the agreed process by which a dispute is to be resolved.
- A defectively worded dispute resolution clause can give rise to significant difficulties to parties in resolving their disputes.
- Alternatively, Arbitration can be arranged 'ad hoc' with agreement between the disputing parties.

Disputes and Arbitration
If a dispute or difference arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, is not resolved within thirty (30) days after the service of a Dispute Notice, whether or not a Dispute Meeting has been held, it may be referred by either Party to and finally resolved by arbitration under the Arbitration Rules of the DIFC-LCIA Arbitration Centre, which Rules are deemed to be incorporated by reference into this Clause. The number of arbitrators shall be one who shall be qualified both as a lawyer and as a civil engineer. The seat, or legal place, of arbitration shall be Dubai, United Arab Emirates. The language to be used in the arbitration shall be English.

Arbitration and enforcement

- The ‘New York Convention’ provides the legislative standard for the recognition of arbitration agreements and the enforcement of foreign and non-domestic arbitration awards.
- The convention requires courts to deny parties of access court proceedings, in seeking to contravene their agreement to refer their dispute to arbitration.
- The convention ensures that foreign and non-domestic arbitral awards are not discriminated against, are recognised and are generally capable of enforcement in their jurisdiction in the same way as domestic awards.
- There is an overriding presumption to enforce awards with only very narrow grounds upon which to refuse – the convention is essentially pro-enforcement.



The New York Convention 1958

"the most successful multilateral instrument in the field of international trade law." (2)

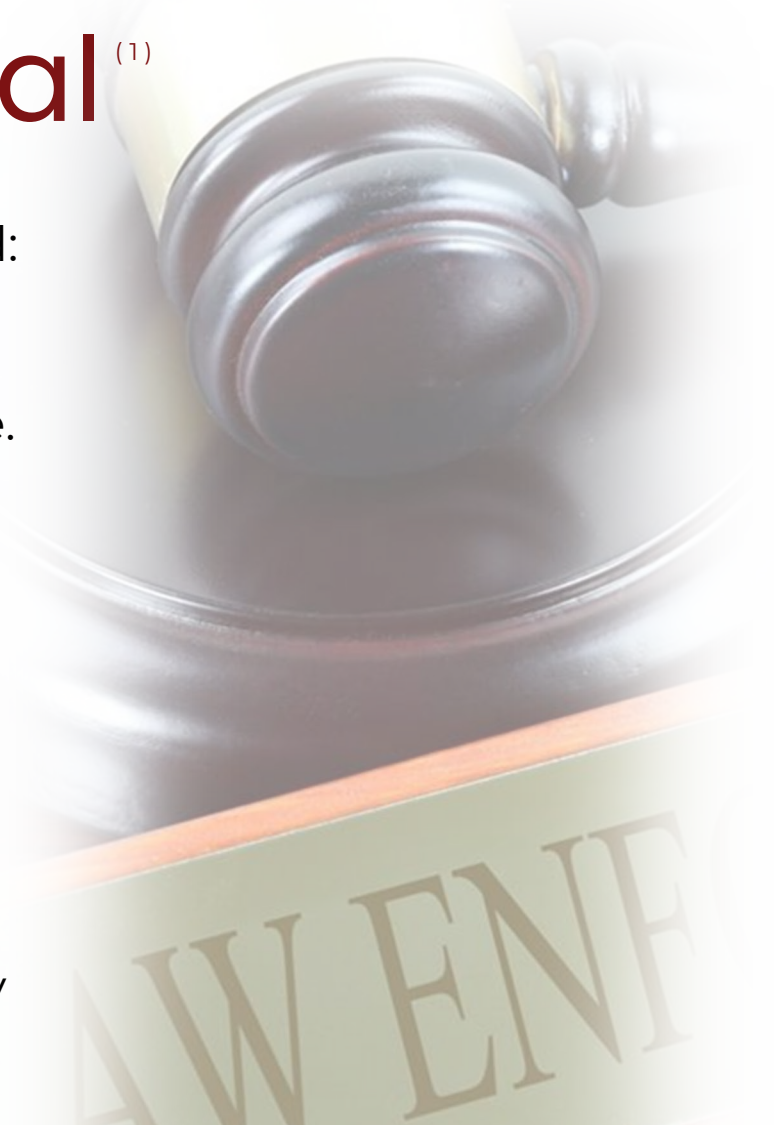
- The long title: Convention on the Recognition and Enforcement of Foreign Arbitral Awards.
- A virtually worldwide mechanism of international law.
- 172 state signatories, across the world with very few state exceptions.

(1)

Signatories to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958.

1. Signatories' Map – New York Convention Guide 1958
2. ICCA Guide to the interpretation of the 1958 New York Convention.

The narrow grounds for refusal [1]



Refusal of enforcement under the New York Convention is very limited:

1(a) incapacity or lack of a valid agreement.

1(b) a party not being given notice of opportunity to present their case.

1(c) the award being made outside the terms of the case.

1(d) composition of tribunal not being in accordance with the agreement between the parties.

1(e) the award is not binding or has been set aside.

2(a) the subject matter is not capable of settlement under the law of the country in which the award was made.

2(b) enforcement would be contrary to the public policy of the country in which enforcement is being sought.

1. For the full text upon which the enforcement of an arbitral award may be refused refer to United Nations Secretary General, *Convention on the Recognition and Enforcement of Foreign Arbitral Awards,* United Nations conference on International Commercial Arbitration 10 June 1958 at Article V, 1. (a) to (e) and 2. (a) and (b)

To conclude

- Arbitration is rarely the most cost efficient dispute resolution process when compared to other available processes.
- Arbitration preserves party autonomy in how the dispute is to be settled and is confidential.
- Arbitration has its place particularly for complex cases where expertise is required, or for cases where there is high value in dispute.
- Streamlined Arbitration schemes are making the process more affordable.
- Arbitration is unique as it is the only dispute resolution process where enforcement of an arbitrator's award is supported in default in virtually all jurisdictions of the world.

Thank you

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