

Table of Contents

About the Author	v
Preface	xi
Acknowledgments	xiii
INTRODUCTION	
International Contracts and Dispute Resolution	1
CHAPTER 1	
Arbitration Agreement and Applicable Law Clause	7
(a) Arbitration Agreement	7
(b) Institutional or <i>Ad hoc</i>	10
(c) Seat, <i>Lex Arbitri</i>	15
(d) Procedure before the Arbitral Tribunal	20
(e) Interpretation of Arbitration Agreements, Pathological Arbitration Agreements	28
(f) Language of the Arbitration	33
(g) Applicable Law Clause	40
CHAPTER 2	
Performing International Contracts, Pre-arbitration Problems	43
(a) Performing International Contracts	43
(b) Pre-arbitration Problems: Strategic Choices	46
(c) Settlement	50
(d) Measures by State Courts	55
CHAPTER 3	
Setting Up the Arbitral Tribunal	59
(a) One or Three Arbitrators, Party-Appointed?	59

Table of Contents

(b) Conflict of Interest, Misconduct, Challenge, Removal, Replacement of Arbitrators	75
CHAPTER 4	
Initial Steps in an Arbitration	81
(a) Request for Arbitration	81
(b) ICC Terms of Reference or Constitution Order	85
(c) Procedural Order No. 1	93
(d) Provisional Procedural Timetable	95
CHAPTER 5	
Written Submissions, Evidence	99
(a) Written Submissions	99
(b) Documents and Production of Documents	110
(c) Witness Statements and Testimony	117
(d) Adverse Witnesses and Tribunal Witnesses	125
(e) Live Testimony	127
(f) Witness Conferencing	129
(g) Assessing the Evidence	131
(h) Party-Appointed Experts	135
(i) Tribunal-Appointed Experts	139
(j) Pre-hearing Case Management Conference	143
CHAPTER 6	
Hearing	147
(a) Before the Hearing	147
(b) Time Management	150
(c) Hearing Incidents	158
(d) Arguing the Law	161
(e) Closing Proceedings on the Merits and Costs Submissions	175
CHAPTER 7	
Deliberation and Award	179
(a) Deliberation	179
(b) Award Writing	187
(c) Cover Page and Introduction	190
(d) Procedural History and Prayers for Relief	195
(e) Substance	202
(f) Interest	206
(g) Costs	207
(h) Operative Part	211
(i) Non-unanimous Tribunal	214
(j) Final Deliberation Meeting	217
(k) Scrutiny of Awards	221

Table of Contents

CHAPTER 8	
Judicial Remedies at the Seat	225
CHAPTER 9	
Enforcement of Awards in the Country of Enforcement	229
CHAPTER 10	
History of Arbitration	233
CHAPTER 11	
Philosophy of Arbitration	239
ANNEXES	
	249
ANNEX (A)	
Our Arbitration Team, and Theirs, Internal Party Worksheet	251
ANNEX (B)	
First Letter from Co-arbitrators to Parties on Appointment of Presiding Arbitrator	253
ANNEX (C)	
Letter from Co-arbitrators to Parties after Having Found a Presiding Arbitrator Candidate	255
ANNEX (D)	
First Letter of the Presiding Arbitrator Candidate to the Co-arbitrators	257
ANNEX (E)	
Letter of the Presiding Arbitrator to Co-arbitrators Re the Draft "Three Documents"	259
ANNEX (F)	
First Letter of the Arbitral Tribunal to the Parties	261
ANNEX (G)	
Cover Letter to Parties for the Arbitral Tribunal's First Draft Terms of Reference	263
ANNEX (H)	
ICC Terms of Reference or Constitution Order	265
ANNEX (I)	
Cover Letter to Parties for First Draft Procedural Timetable	277

Table of Contents

ANNEX (J) Procedural Timetable	279
ANNEX (K) Cover Letter to Parties for First Draft of Procedural Order No. 1	289
ANNEX (L) Procedural Order No. 1	291
ANNEX (M) Challenge of Arbitrators	309
ANNEX (N) Instructions to Our Fact Witnesses	317
ANNEX (O) Instructions to Tribunal-Appointed Expert	321
ANNEX (P) Correspondence Preparing for Experts' Hearing	325
ANNEX (Q) Checklist for Hearing Rooms	329
ANNEX (R) A Few Tables of Contents of Awards	333