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International Arbitration Center



Why Choose New York for International Arbitration

- A Legal Framework that Strongly Supports International Arbitration
- Neutral Courts that Enforce Arbitration Agreements and Awards
- Leading Arbitral Institutions, Arbitrators, Mediators, and Lawyers
- Infrastructure for Any Type of Case

New York: A Century as a Center for International Arbitration



Lake Mohonk Conference on International Arbitration, circa 1915

Source: Lake Mohonk Conference on International Arbitration Records, Swarthmore College Peace Collection (photograph cropped)



Chartered Institute of Arbitrators (CIArb) NY Branch/Columbia Center for International Commercial and Investment Arbitration (CICIA) Annual Course on International Arbitration, conducted at the New York International Arbitration Center (NYIAC), June 2016



Introduction

Arbitration is the dispute resolution mechanism of choice for many international commercial and investment disputes, and New York is among the very best places in the world for international arbitration. Parties from all over the world regularly choose to arbitrate in New York.

Sophisticated parties have good reasons for choosing New York. New York has a long and rich tradition of promoting international arbitration, including having hosted some of the seminal meetings that created the very fabric of modern international arbitration. Today, New York continues that tradition of leadership in international arbitration.

It offers:

- A legal framework that strongly supports international arbitration.
- Neutral courts that consistently enforce arbitration agreements and awards with deference to arbitrators' decisions.
- A vast and diverse pool of professionals with unparalleled expertise in resolving international disputes.
- The infrastructure necessary to host any type of case.

New York's robust arbitration culture is strengthened by the presence of leading arbitral institutions, excellent professional organizations, and major universities with preeminent international arbitration experts and an unparalleled number of highly active international arbitration centers. Notably, New York is also home to an independent, not-for-profit international hearing center, the New York International Arbitration Center ("NYIAC"). NYIAC's state-of-the-art hearing facilities are available to commercial parties, not-for-profit entities, governmental and quasi-governmental authorities in connection with the arbitration of commercial or investment disputes under any governing law and arbitral rules and under the auspices of any arbitral institution.

The benefits of international arbitration are well known, including, among other things, neutrality of forum, efficiency of process, internationally enforceable awards, cost effectiveness, and confidentiality. However, choosing the right place or "seat" for an arbitration is a crucial part of ensuring that those benefits are fully reaped: the law of the seat can determine certain procedural matters, and courts in that seat may be called upon to supervise the arbitration. In New York you can have the kind of international arbitration that you choose, from the most traditional to the most innovative, and with confidence that the courts will support that choice.

This brochure summarizes some of the benefits of choosing New York as the seat for international arbitrations and as the place to conduct arbitral hearings.



New York Has a Clear Legal Framework that Strongly Supports International Arbitration

United States Policy in Favor of International Arbitration

The United States has a long established policy in favor of arbitration as an alternative to courts as a method of dispute resolution. The United States Supreme Court itself has recognized the “emphatic federal policy in favor of arbitral dispute resolution...[that] applies with special force in the field of international commerce.” *Mitsubishi Motors Corp. v. Chrysler Soler-Plymouth, Inc.*, 473 U.S. 614, 631 (1985).

This strong policy in favor of arbitration is reflected in the Federal Arbitration Act (the “FAA”), whose “principal purpose...is to ensure that private agreements to arbitrate are enforced according to their terms.” *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 344 (2011) (internal quotations omitted).

Additionally, the United States has ratified the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the “New York Convention”) and the 1975 Inter-American Convention on International Commercial Arbitration (the “Panama Convention”). Among other things, these conventions impose on the courts of all contracting states the general obligation to recognize and give effect to agreements to arbitrate and to enforce arbitral awards, including awards duly rendered in arbitrations that take place in the other 155 contracting states to the New York Convention and 18 contracting states to the Panama Convention.

Manifestations of the United States’ Pro-Arbitration Policy

New York courts recognize various legal doctrines and rules that promote and support arbitration, including:

- > ***Presumption in Favor of Arbitration.*** Once a court has determined that there is a valid and binding arbitration agreement, and that the subject matter is arbitrable, the court applies a presumption that “any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration.” *David L. Threlkeld & Co., Inc. v. Metallgesellschaft Ltd. (London)*, 923 F.2d 245, 248 (2d. Cir. 1991) (internal quotations omitted).
- > ***Parties’ Freedom to Choose Procedures.*** Once a court has determined that there is a valid and binding arbitration agreement, and that the subject matter is arbitrable, the court must “rigorously enforce arbitration agreements according to their terms, including terms that specify with whom [the parties] choose to arbitrate their disputes, and the rules under which that arbitration will be conducted.” *Am. Exp. Co. v. Italian Colors Rest.*, 133 S. Ct. 2304, 2309 (2013) (internal quotations omitted).
- > ***The Separability Doctrine.*** Arbitration clauses are treated separately from the contracts in which they are embedded, thus allowing arbitrators to retain jurisdiction notwithstanding certain challenges to the validity of a contract containing the arbitration clause. *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 402 (1967).
- > ***Kompetenz-Kompetenz.*** This doctrine affirms that arbitrators have the authority to determine questions concerning their own jurisdiction whenever an arbitration clause manifests the parties’ clear and unmistakable intention to confer such authority upon them. New York courts find such intention whenever the parties “explicitly incorporate [institutional arbitration] rules that empower an arbitrator to decide issues of arbitrability,” including the ICC, ICDR, UNCITRAL, CPR, and JAMS rules. *Contec Corp. v. Remote Sol., Co.*, 398 F.3d 205, 208 (2d Cir. 2005).
- > ***Limited Grounds for Vacatur.*** The statutory grounds for vacatur of an award rendered in New York are limited and narrowly construed “in order to avoid undermining the twin goals of arbitration, namely, settling disputes efficiently and avoiding long and expensive litigation.” *Folkways Music Publishers, Inc. v. Weiss*, 989 F.2d 108, 111 (2d Cir. 1993). Those statutory grounds are limited to such things as procuring the award through fraud or corruption, evident partiality or misconduct of an arbitrator, an arbitrator exceeding his or her powers or executing them so imperfectly that a mutual, final, and definite award upon the subject matter submitted was not made. F.A.A., 9 U.S.C. § 10.”

New York Courts Support the Arbitration Process

In addition to protecting the arbitration process when one party does not comply with its obligations under an arbitration agreement, New York courts may assist arbitrators in managing the dispute resolution process by:

- > ***Assisting in the Appointment of Arbitrators*** if the arbitration agreement does not provide for a method of appointment of an arbitrator, if the agreed method fails or for any reason is not followed, or if an arbitrator fails to act and his or her successor has not been appointed. F.A.A., 9 U.S.C. § 5.
- > ***Issuing Attachments*** in aid of pending or prospective arbitrations if an “award to which the applicant may be entitled may be rendered ineffectual” without the attachment. N.Y. C.P.L.R. 7502 (McKinney).
- > ***Authorizing the Arbitral Tribunal in New York-Seated Arbitrations to Issue Subpoenas*** to individuals or businesses in New York or its environs to provide documentary or testimonial evidence. In the event a person or entity within its jurisdiction refuses to comply with a properly served subpoena, a New York court will carefully review the subpoena for relevance and burden and may exercise its power to compel such person to appear or to impose sanctions for contempt of court. F.A.A., 9 U.S.C. § 7.
- > ***Enforcing Emergency Arbitrators’ Awards*** which, pursuant to provisions in certain institutional arbitral rules, allow parties to obtain interim relief before a case is referred to the arbitral tribunal. *Yahoo! Inc. v. Microsoft Corp.*, 983 F. Supp. 2d 310, 312 (S.D.N.Y. 2013).



New York Courts are Neutral, Experienced and Deferential to Arbitration and the Parties' Agreed Process

New York courts are neutral, independent, and experienced. New York courts respect parties' agreements to use arbitration to resolve their commercial disputes and actively protect the arbitration process by, for example, preventing a party to an arbitration agreement from proceeding with litigation. At the same time, courts respect the freedom of parties to choose the procedures for their case and the authority of arbitrators to control the process. In fact, New York courts often affirmatively support the arbitration process, including by assisting in the appointment of arbitrators and enforcing orders issued by emergency arbitrators.

Most applications for judicial relief in connection with international arbitration in New York fall within the province of New York's sophisticated and arbitration-friendly federal judges. Moreover, in order to ensure a similar level of sophistication in New York state court, any international arbitration-related applications filed in state court in Manhattan are referred to a single Justice of the Commercial Division of the Supreme Court of the State of New York.

New York Courts Protect the Arbitration Process

Consistent with the purpose of the FAA and the United States' obligations under the New York Convention, New York courts will enforce an agreement to arbitrate when called upon to do so by a party to an arbitration agreement. Section 4 of the F.A.A., 9 U.S.C. § 4. New York courts also protect the arbitration process by:

- > *Compelling a Party to Arbitrate* if the party refuses to live up to its obligation to do so. F.A.A., 9 U.S.C. § 4.
- > *Staying or Dismissing Litigation* brought in breach of an arbitration agreement calling for arbitration in New York, once it has determined that the parties have agreed to arbitrate that dispute and that its subject matter is arbitrable. F.A.A., 9 U.S.C. § 3.
- > *Issuing Anti-Suit Injunctions* enjoining parties from pursuing litigation commenced outside of the United States in breach of an arbitration agreement calling for arbitration in New York. *Paramedics Electromedica Comercial, Ltda v. GE Med. Sys. Info. Techs., Inc.*, 369 F.3d 645, 653-4 (2d Cir. 2004).



> New York Courts Defer to Arbitrators

Courts in the United States, including New York, accord great deference to arbitrators throughout the arbitral process, beginning with questions of arbitrability and through the review of arbitration awards. As an initial matter, if a court finds that the parties have shown a “clear and unmistakable intent” for the arbitrators to decide certain aspects of the dispute, then the arbitrators’ decision on that matter is entitled to great deference. See *Contec Corp. v. Remote Solution Co.*, 398 F.3d 205, 208 (2d Cir. 2005); *T.Co Metals, LLC v. Dempsey Pipe & Supply, Inc.*, 592 F.3d 329, 344 (2d Cir. 2010).

If the parties’ intent is unclear because the arbitration agreement is silent or ambiguous as to a particular question, then courts apply two presumptions. First, courts apply the presumption that “the parties intend courts, not arbitrators, to decide...disputes about arbitrability.” *BG Group v. Republic of Argentina*, 134 S.Ct. 1198, 1206–7 (2014) (internal quotations omitted). Second, courts apply the presumption that “the parties intend the arbitrators, not courts, to decide disputes about the meaning and application of particular procedural preconditions for the use of arbitration,” such as disputes regarding the interpretation of a reference to the local courts contained within an agreement to arbitrate. *Id.* at 1207; see also *T.Co Metals*, 592 F.3d at 344. The Supreme Court has also confirmed that these presumptions apply regardless of whether the arbitration agreement was contained in a contract or treaty. *BG Group*, 134 S.Ct. at 1209.

Finally, courts generally apply “an extremely deferential standard of review for arbitral awards” in order to “encourage and support the use of arbitration by consenting parties.” *Porzig v. Dresdner, Kleinwort, Benson, N. Am. LLC*, 497 F.3d 133, 139 (2d Cir. 2007); see also *Halligan v. Piper Jaffray, Inc.*, 148 F.3d 197, 199 (2d Cir. 1998).



New York Is Home to First Class Legal Expertise and Infrastructure

Leading Lawyers and Arbitrators

Among the benefits of designating New York as the location to conduct international arbitrations is access to the most highly qualified lawyers, experienced in international arbitration as well as in the substantive law and business aspects relating to many areas of commerce. Many of them are bilingual or multilingual and have experience with multiple legal systems. Many leading international law firms are headquartered or have offices in New York and have the capacity to perform services in multiple jurisdictions as the dispute may require. New York also has a wealth of expert mediators should the matter require, or the parties desire, such services.

New York also offers a wealth of choices for the selection of arbitrators. New York is well known for its international arbitration practitioners and scholars, and affords access to rosters of highly experienced international arbitrators of many nationalities drawn from the ranks of the legal profession as well as other disciplines.

Leading Arbitral Institutions, Universities, and Professional Organizations

New York is home to an array of leading arbitral institutions that administer cases with great sophistication, including the American Arbitration Association/International Center for Dispute Resolution (“AAA/ICDR”), JAMS, CPR Institute, and the recently opened ICC New York office. NYIAC offers a state-of-the-art hearing facility and a high level of logistical support to parties and arbitrators without regard to the rules under which the case may be arbitrated or administered. In addition, several universities and professional organizations in New York host a large and vibrant arbitration community that includes academics, practitioners, and arbitrators and regularly offers conferences, roundtables and discussions aimed at developing theory and practice in the field of international arbitration. New York also is home to a broad selection of highly qualified consulting and testifying experts.



Frequently Asked Questions

Absence of Punitive Damages

Question

If a party chooses New York as the place of arbitration, will the arbitrators have the power to award punitive damages?

Answer

While arbitrators in the United States do, in principle, have the authority to award punitive damages, such awards are extremely rare in domestic cases and even rarer in international cases. Parties may deprive arbitrators of such authority in their contract or by adopting rules, such as the ICDR or JAMS Rules, that prohibit arbitrators from awarding punitive damages. The parties may also adopt New York law as the substantive law governing their contract. Generally, under New York law, punitive damages are not available to redress a breach of contract.

Unlikelihood of Class Actions

Question

If I choose New York as the place of arbitration, do I have to be concerned that my arbitration proceeding which involves two parties to a contract will be transformed into a class-action arbitration?

Answer

No. The United States Supreme Court's decision in *Stolt-Nielsen S.A. et al. v. Animal Feeds International Corp.*, 559 U.S. 662, 685 (2010) makes it clear that a party to a bilateral contract seeking to bring a case on behalf of a class has to demonstrate an agreement between the parties to allow class actions. This is because, as the Supreme Court held, "[a]n implicit agreement to authorize class arbitration . . . is not a term that the arbitrator may infer solely from the fact of the parties' agreement to arbitrate." *Id.* at 685.



Costs and Attorneys' Fees

Question

In New York, is each party responsible for its own attorneys' fees and costs for the arbitration notwithstanding the outcome?

Answer

Arbitrators have the authority to award the prevailing party its attorneys' fees and costs if the arbitration clause or the applicable rules provide arbitrators with the authority to do so, or if all parties submit claims for an award of attorneys' fees and costs during the course of the arbitration. Conversely, if the parties agree that attorneys' fees and costs shall not be awarded against the losing party, such agreements are generally respected.

Manifest Disregard of the Law

Question

Will an award that is rendered in New York be subject to a challenge that the arbitral tribunal acted in manifest disregard of the law?

Answer

The application of the judicially-created ground for vacatur in domestic arbitration – “manifest disregard of the law” – is exceedingly rare, and few, if any, New York Convention awards have ever been vacated on this ground.

Neutrality of Party-Appointed Arbitrators

Question

In a New York-seated arbitration, will the party-appointed arbitrators in a three-member tribunal be neutral?

Answer

Yes. The Code of Ethics for Arbitrators in Commercial Disputes promulgated jointly by the American Bar Association (“ABA”) and the AAA requires that all arbitrators, including party-appointed arbitrators, be neutral, unless all parties agree otherwise in writing. Among other things, the Code requires that arbitrators uphold the integrity and fairness of the process, disclose any interest or relationship likely to affect impartiality or which might create an appearance of partiality, make decisions in a just, independent and deliberate manner, and be faithful to the relationship of trust and confidentiality inherent in that office.





Annex I: Drafting Arbitration Clauses for International Arbitration in New York

The standard arbitration clauses recommended by the leading arbitral institutions are generally appropriate for cases seated in New York. Drafters of arbitration clauses designating New York as the place of arbitration may wish to take into account the following considerations:

- > *Authority to Decide on Arbitral Jurisdiction.* An arbitral tribunal has authority to determine its own jurisdiction where there is “clear and unmistakable” evidence that the parties intended to grant such authority to the tribunal. Although most international arbitration rules already empower the arbitrators to decide these questions, for greater clarity, the drafters may also include language along the following lines in their arbitration clause:

“The arbitral tribunal shall have the power to rule upon any challenge to its jurisdiction.”

- > *Allocation of Costs and Fees.* New York respects the parties’ freedom of contract with respect to the allocation of costs and fees in arbitration. Nevertheless, if drafters of arbitration clauses with New York as the seat of the arbitration want to make crystal clear that the arbitrators have the authority to allocate fees and expenses, they may so provide in their arbitration clause, by including the following language:

“The arbitrators are authorized to include in their award an allocation to any party of such costs and expenses, including attorneys’ fees, as the arbitrators shall deem reasonable.”

- > *Punitive Damages.* While the award of punitive damages in arbitrations is rare, any possibility of punitive damages may be eliminated by choosing arbitration rules that prohibit the award of punitive damages (such as the ICDR or JAMS International Arbitration Rules), or by adding the following language to the arbitration clause:

“The arbitrators are not empowered to award punitive or exemplary damages, and each party hereby waives any right to seek or recover punitive or exemplary damages with respect to any dispute resolved by arbitration.”

- > *Exchange of Evidence.* The most commonly adopted guidelines in international arbitrations are the IBA Rules on the Taking of Evidence in International Arbitration (2010), which only allow parties to request from the opposing party narrow and specific categories of documents that are relevant to the case and material to its outcome. These international standards are supported by guidelines for arbitrators promulgated by the New York State Bar Association and leading arbitral institutions, including ICDR, CPR and JAMS,



whose guidelines and protocols make clear to arbitrators and counsel alike that broad discovery, as practiced in some courts, has no place in international arbitration. For greater certainty that the IBA Rules and similar guidelines or protocols shall apply, and that broad discovery is not permitted between the parties, the drafters may wish to add language that makes express reference to such guidelines or protocols.

- > *Confidentiality.* Arbitration proceedings are private, but if parties choosing New York as the seat of their arbitration wish to provide for confidentiality, they should include a clause providing for confidentiality. The following is an example:

“The parties and arbitrators shall keep confidential all awards in the arbitration, together with all communications in the arbitration, all materials exchanged by the parties or created for the purpose of the arbitration and all other documents produced by another party in the proceedings not otherwise in the public domain, except and only to the extent that disclosure may be required of a party or arbitrator by legal duty, to protect or pursue a legal right or to enforce or challenge an award in legal proceedings before a court or other judicial authority.”

- > *Provisional Measures.* If drafters want to signal clearly to a court that a court order in support of provisional measures would not be inconsistent with the arbitration agreement, the following language can be added to an arbitration clause:

“Nothing in this Agreement shall prevent either party from seeking provisional measures from any court of competent jurisdiction, and any such request shall not be deemed incompatible with the agreement to arbitrate or a waiver of the right to arbitrate.”

- > *Forum Non Conveniens Clause.* Some U.S. courts have dismissed actions to enforce foreign arbitral awards on the grounds of forum non conveniens, reasoning that it is allowed under the New York Convention because it is a procedural, rather than substantive, rule of the forum state. See e.g., *Monegasque de Reassurances SAM v. Nak Naftogaz of Ukraine*, 158 F.Supp.2d 377, 383 (S.D.N.Y. 2001); *Figueiredo Ferraz e Engenharia de Projeto Ltda v. Repub. of Peru*, 665 F.3d 384, 392 (2d Cir. 2011). In order to avoid the possible dismissal of an enforcement action on these grounds, the drafters may consider including the following clause:

“To the fullest extent permitted by law, the parties hereby irrevocably waive any defense on the basis of forum non conveniens in regard to any proceedings to enforce an arbitration award rendered by a tribunal constituted pursuant to this Agreement.”





Annex II: Practical Matters

Finding Hearing and Conference Facilities

A number of organizations that promulgate arbitration rules and administrative services, including AAA/ICDR, CPR, and JAMS, also maintain hearing facilities in New York City. If those facilities are not available at the time of a particular hearing or conference, or if the hearing or conference relates to international arbitration or mediation conducted under any other recognized rules or administration, NYIAC rents hearing and conference rooms and provides related logistical support at:

The New York International Arbitration Center
150 East 42nd Street
New York, NY 10017 USA
Tel: +1.917-300-9550
www.nyiac.org

Finding Mediators and Arbitrators

Highly qualified arbitrators and mediators can be found by contacting various provider organizations. All of these organizations have international panels of arbitrators and mediators, as well as panels dedicated to specific subject areas. The following is a representative list of provider organizations.

1. International Centre for Dispute Resolution (“ICDR”), the international arm of the American Arbitration Association. The ICDR’s global headquarters are in New York:

120 Broadway, 21st Floor
New York, NY 10271 USA
Tel: +1 212-484-4181
www.icdr.org
2. CPR International Institute for Conflict Prevention and Resolution. CPR’s global headquarters are in New York:

30 East 33rd Street, 6th Floor
New York, NY 10016 USA
Tel: +1 212-949-6490
www.cpradr.org
3. SICANA, Inc. offers ICC arbitration-related services in New York:

1212 Avenue of the Americas, 9th Floor
New York, NY 10036 USA
Tel: +1 646-699-5704
ica9@iccwbo.org
4. Judicial Arbitration and Mediation Services (“JAMS”). The contact information for its New York office is:

620 Eighth Avenue, 34th Floor
New York, NY 10018 USA
Tel: +1 212-751-2700
www.jamsadr.com/jams-new-york/

Local bar associations also have alternative dispute resolution sections/committees and may be a good source of recommendations for neutrals, facilities, attorneys, and service providers. The sections and committees include leading international arbitration practitioners in New York, hold regular meetings, and present a broad range of programs to facilitate the exchange of information and views on international arbitration. In addition, New York is home to several not-for-profit groups that provide training and promote best practices in international arbitration.

New York's notable bar associations and arbitration-related groups include:

1. New York State Bar Association (Dispute Resolution Section and International Section). Further information may be obtained at the website (www.nysba.org).
2. New York City Bar Association (International Commercial Disputes Committee, Arbitration Committee and Alternative Dispute Resolution Committee). Further information may be obtained at the website (www.nybar.org).
3. New York County Lawyers Association ("NYCLA") (Arbitration Committee and Alternative Dispute Resolution Committee). Further information may be obtained at the website (www.nycla.org).
4. Chartered Institute of Arbitrators (CIArb) New York Branch. Further information may be obtained at the website (www.ciarny.org).
5. The International Arbitration Club of New York. Further information may be obtained at the website (www.arbitrationclub.org).

Finding Law Firms Specializing in the Field

Many leading international law firms are headquartered or have offices in New York. Among the benefits of designating New York as the place for international arbitrations is access to highly qualified lawyers who are experienced in international arbitration, many of whom are bilingual or multilingual. Information can easily be located in legal directories or on the internet.

Support Services

Other services to support international arbitration needs, such as translators, interpreters, and court reporters, are also readily available. A search of the membership directories of the New York Circle of Translators, Inc. (www.NYCtranslators.org) under "Find Translator/Interpreter," or New York City Online Directory & Guide (www.citidex.com) under "Category Indexes" letter "T," and "Translation Services & Interpreters," will provide information on translators and interpreters by language skills and numerous sub-categories relating to industry specialties and areas of law. Court reporting services provide such services as video streaming over the internet, real time depositions, electronic transcripts, video conferencing, videography, meeting and conference rooms.

Major Airports

Three major international airports serve the New York metropolitan area:

- > John F. Kennedy International Airport (about 15 miles from midtown Manhattan)
- > LaGuardia Airport (about 8 miles from midtown Manhattan)
- > Newark Liberty International (about 16 miles from midtown Manhattan)

Information about all three airports is available at www.panynj.gov/airports. For information about U.S. visas, see <http://travel.state.gov>.

Lodging and Activities

Most New York law firms have arrangements with first class hotels where clients of the firms can enjoy excellent accommodations at significantly reduced rates.

New York is a world capital in which every language, culture, nationality and religion is represented and welcome. Excellent restaurants abound and offer diverse cuisine from around the world at a wide range of prices. New York theaters (on and off Broadway) are among the finest. New York's concert, opera, and dance venues are home to or host many of the world's finest performers. New York's famed architecture, museums, shops, parks, athletic teams, and other attractions offer an array of activities sufficient to satisfy most interests.



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