What is Arbitration?

Arbitration is a procedure in which a dispute is submitted, by agreement of the parties, to one or more arbitrators who make a binding decision on the dispute. Parties normally agree to arbitration by means of an arbitration clause in a contract made by them before a dispute has arisen. As a matter of good practice, you should take note as to whether the contracts you enter into, have such arbitration clauses.

The attraction of arbitration is that it is a much-simplified version of a trial involving less complicated rules and procedures. Arbitrators have more flexibility than Court judges to decide on how the arbitration should proceed, and on the amount of weight to be accorded to the different types of evidence presented. It enables the parties to adopt a framework which incorporates a mix of procedures and legal practices that both parties are comfortable with, often only subject to the rules of the arbitration centre chosen by the parties. This is of particular importance where parties are from different cultural, legal and linguistic backgrounds; or are geographically far apart.

The role of an arbitrator is similar to that of a judge, though the procedures may be less formal. An arbitrator is usually an expert in certain industries.

The general types of disputes that use arbitration are:

- Commercial;
- Construction/engineering;
- Corporate;
- Shipping/maritime; and
- Trade and insurance.

Why choose arbitration?

1. *Private method of dispute resolution*

   Arbitration enables parties to keep their dispute private. The hearing will take place in private at a neutral venue and the final award is not made known to third parties. Unlike litigation, where the claim form is a public document, the arbitration hearing does not take place in the formal surroundings of a Courtroom and, generally, a party cannot use publicity to bolster its case or force a settlement.

2. *Flexibility to tailor to the needs of parties*

   In arbitration, the parties can choose their own arbitration rules or select their own procedures. It is important, therefore, that when

negotiating a contract, the parties take time to consider how any arbitration is going to be run.

However, parties also have the option of choosing to adopt ready-made sets of rules, or alternatively, an amended version of them. Several bodies and institutions have produced what are generally fair and commercially acceptable rules for conducting arbitrations – for example, the International Chamber of Commerce and United Nations Commission on International Trade Law. Parties do not, therefore, need to spend hours drafting their own arbitration rules and yet more hours negotiating them. In litigation, however, the Court rules will dictate the procedure and frequently they are inflexible and cannot be avoided.

The parties are also given the flexibility to decide on the number of arbitrators (usually one (1) or three (3)) and can also appoint their own arbitrators. Therefore, they may appoint, as arbitrator, experts in the area of dispute having skill and experience not found in the ordinary Courts and who are sometimes better able to view the dispute in its commercial setting.

3. Finality in award

Unlike mediation, an award made by the arbitrator is binding. There is limited scope for appeal after the award is given. International awards are enforced by national Courts under the New York Convention, which permits such awards to be set aside only in very limited circumstances. More than 140 States are party to this Convention.

Arbitration process

1. A party wishing to commence arbitration, the claimant, will file a notice of arbitration and serve this notice on the other party, the respondent.
2. Arbitrators can be appointed directly by the parties.
3. The parties and arbitral tribunal will meet to discuss and agree an appropriate process and timetable at a preliminary meeting.
4. The Claimant will set out a statement of claim, which provides a summary of the matters in dispute and the remedy sought.
5. The Respondent will admit or deny the claims. The Respondent may also introduce a counterclaim.
6. The parties will exchange relevant documents and then review each others' documents.

7. The hearing will take place at a time and location agreed between the parties and the arbitral tribunal.
8. The arbitral tribunal will write its decision in the form of an award which the successful party can then enforce against the losing party.

Other Useful Resources

State Courts: www.stateCourts.gov.sg

Supreme Courts: www.supremecourt.gov.sg

Singapore Mediation Centre: http://www.mediation.com.sg

Singapore International Arbitration Centre: www.siac.org.sg

The Law Society Arbitration Scheme: http://www.lawsociety.org.sg/For-Public/Dispute-Resolution-Schemes/Arbitration-Scheme

The Law Society Mediation Scheme: http://www.lawsociety.org.sg/For-Public/Dispute-Resolution-Schemes/Mediation-Scheme

"Well, yes, there are some alternative modes of dispute resolution that haven't quite been embraced by our Courts..."