

Editors: Torsten Lörcher, Guy Pendell and Jeremy Wilson

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# CMS Guide to Arbitration

VOLUME I

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With contributions from law firms Hergüner Bilgen Özeke Attorney Partnership,  
Khaitan & Co, Minter Ellison and Setterwalls

Fourth Edition

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# FOREWORD

As shown by the recent financial crisis and global economic downturn, the worldwide business community is increasingly connected. The policies and activities in one area of the world can impact and shape the commercial realities for businesses everywhere. Reflecting this global market, the number and complexity of international business transactions is increasing.

In this environment, parties engaged in international commerce should be able to rely on efficient and reliable mechanisms to resolve their disputes. In this respect, arbitration has long been – and still is – the preferred method for resolving international commercial disputes. The reasons for the success of arbitration, particularly for international commercial relationships, include:

- the neutral forum it creates for the resolution of disputes that transcends the restrictions of national court systems and procedural law;
- the flexibility of the arbitral process, adaptable to the individual circumstances of the case and the needs and expectations of the parties;
- the higher level of confidentiality of arbitration compared to state court proceedings; and
- above all, the ease of enforcement of arbitral awards (compared to national court judgments) in almost 150 jurisdictions worldwide under the New York Convention.

The development of international arbitration has to a large extent been influenced by the work of the UNCITRAL, notably the UNCITRAL Model Law, which was first published in 1985 and revised in 2006. The Model Law now forms the basis of, or significantly influences, the arbitration laws of most major trading nations and the adoption of new laws of arbitration across the world invariably follow this pattern. The resulting harmonisation of national arbitration laws has increased the efficacy of arbitration as the preferred method for the resolution of international commercial disputes.

Even with the wide scale adoption of Model Law principles, if not the Model Law itself, certain key elements of arbitration law still vary across jurisdictions. This fourth edition of the CMS Guide to Arbitration provides insight into arbitration law in many jurisdictions. It does not seek to provide an exhaustive academic analysis of arbitration in each of the jurisdictions covered, but aims to provide the reader with a detailed overview of arbitration, written by practitioners from the relevant jurisdictions. In this fourth edition, new chapters have been added, including Australia, Singapore, India, New York, Portugal, Sweden and Turkey. All other chapters of the fourth edition have been updated to reflect developments

in law and practice in the various jurisdictions covered in this work, including, for example, a revised French chapter that represents the new French arbitration law passed in 2011.

The CMS Guide to Arbitration now exists in two volumes. Volume I contains an overview of international arbitration practice and chapters on the law and practice of arbitration in the jurisdictions covered. Volume II provides a compilation of essential resources and materials arbitration practitioners should have at their disposal. It includes international arbitration conventions, the UNCITRAL Model Law, the most relevant international sets of arbitration rules, guidance materials and a compilation of model arbitration and ADR clauses.

I hope you will find the fourth edition of the CMS Guide to Arbitration to be a helpful and valuable resource for work in arbitration.

*Klaus Sachs*

# ACKNOWLEDGEMENTS

It is our pleasure to present this fourth edition of the CMS Guide to Arbitration. With each edition we aim to improve on the last and in this fourth edition we cover a large variety of jurisdictions not only from Europe but also from other important arbitration and business centres around the world. As you will see from the Guide, CMS authors have produced 27 out of the 32 chapters. We are also very grateful for the contribution and support of our colleagues at Minter Ellison, Khaitan & Co, Setterwalls, and Hergüner Bilgen Özeke in regard to the following jurisdictions: Australia and Singapore (Minter Ellison), India (Khaitan & Co), Sweden (Setterwalls) and Turkey (Hergüner Bilgen Özeke).

Sincere thanks go to all of the contributors who have written the country chapters, without whom this Guide would not have been possible. You will find the contact names for the respective jurisdictions at the end of each country chapter. Particular thanks go to William Lowery, Juliette Huard-Bourgeois and Ilan Hanohov for their considerable and valuable assistance in producing this fourth edition and the CMS associates and trainees, who are too numerous to identify individually, for their enormous help in preparing this work, as well as all those others who have made their valuable contributions to the production of this Guide.

We would also like to thank all the institutions and other organisations who have generously given us permission to reproduce their rules and other materials.

The Guide aims to provide an accurate statement of arbitration law in each jurisdiction as at 31 January 2012, or later if specified.

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## COMMON TERMS

Some common terms used in CMS Guide to Arbitration are set out below.

Terms	Meaning
1923 Geneva Protocol	The Geneva Protocol on Arbitration Clauses (1923)
1927 Geneva Convention	The Geneva Convention on the Execution of Foreign Arbitral Awards (1927)
1961 European Convention	European Convention on International Arbitration (1961)
DIS	German Institution of Arbitration
DIS Arbitration Rules	German Institution of Arbitration – Arbitration Rules 1998
ECJ	European Court of Justice
ICC	International Chamber of Commerce
ICC Rules	International Chamber of Commerce Arbitration Rules
ICDR	International Centre for Dispute Resolution
LCIA	London Court of International Arbitration
LCIA Rules	London Court of International Arbitration Rules
Model Law (1985)	UNCITRAL Model Law on Commercial Arbitration (as adopted in 1985)
Model Law (2006)	UNCITRAL Model Law on Commercial Arbitration (as amended in 2006)
New York Convention	New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 10 June 1958
SCC Rules	Stockholm Chamber of Commerce Arbitration Rules
Swiss Rules	The Chambers of Commerce and Industry of Basel (et al) Arbitration rules
UNCITRAL	United Nations Commission on International Trade Law
UNCITRAL Rules (1976)	UNCITRAL Arbitration Rules adopted on 28 April 1976

Terms	Meaning
UNCITRAL Rules (2010)	UNCITRAL Arbitration Rules as revised in 2010
Washington Convention	Convention on the Settlement of Investment Disputes between States and Nationals of Other States
WIPO Rules	World Intellectual Property Organisation Arbitration Rules

Please note that the individual chapters include additional defined terms. Defined terms are capitalised within the chapter and the proper meaning can be taken by reference to where the definition first appeared, in brackets, with bold and italicised type font: ***(Definition)***.

