

REDFERN AND HUNTER  
ON INTERNATIONAL ARBITRATION



REDFERN AND  
HUNTER ON  
INTERNATIONAL  
ARBITRATION

NIGEL BLACKABY  
CONSTANTINE PARTASIDES  
ALAN REDFERN  
MARTIN HUNTER

OXFORD  
UNIVERSITY PRESS



OXFORD

UNIVERSITY PRESS

Great Clarendon Street, Oxford ox2 6DP

Oxford University Press is a department of the University of Oxford.  
It furthers the University's objective of excellence in research, scholarship,  
and education by publishing worldwide in

Oxford New York

Auckland Cape Town Dar es Salaam Hong Kong Karachi  
Kuala Lumpur Madrid Melbourne Mexico City Nairobi  
New Delhi Shanghai Taipei Toronto

With offices in

Argentina Austria Brazil Chile Czech Republic France Greece  
Guatemala Hungary Italy Japan Poland Portugal Singapore  
South Korea Switzerland Thailand Turkey Ukraine Vietnam  
Oxford is a registered trade mark of Oxford University Press  
in the UK and in certain other countries

Published in the United States  
by Oxford University Press Inc., New York

© Nigel Blackaby, Martin Hunter, Constantine Partasides, Alan Redfern, 2009

The moral rights of the author have been asserted  
Database right Oxford University Press (maker)

Crown copyright material is reproduced under Class Licence  
Number C01P0000148 with the permission of OPSI  
and the Queen's Printer for Scotland

First published 2009

All rights reserved. No part of this publication may be reproduced,  
stored in a retrieval system, or transmitted, in any form or by any means,  
without the prior permission in writing of Oxford University Press,  
or as expressly permitted by law, or under terms agreed with the appropriate  
reprographics rights organization. Enquiries concerning reproduction  
outside the scope of the above should be sent to the Rights Department,  
Oxford University Press, at the address above

You must not circulate this book in any other binding or cover  
and you must impose the same condition on any acquirer

British Library Cataloguing in Publication Data  
Data available

Library of Congress Cataloging-in-Publication Data  
Data available

Typeset by Cepha Imaging Private Ltd, Bangalore, India  
Printed by CPI Antony Rowe, Chippenham, Wiltshire

ISBN 978-0-19-955718-9 (Hbk.)  
ISBN 978-0-19-955719-6 (Pbk.)

1 3 5 7 9 10 8 6 4 2



## PREFACE

Since the publication of the first edition in 1986, the five editions of this work have charted the major evolutions in the law and practice of international arbitration over the last quarter century. In some ways this fifth edition maintains a continuity with the past; in other ways it marks a departure.

Those who have grown familiar with the structure, content and style of past editions will recognise much in the new edition. Although two changes have been made to the chapter orders (the chapter on the Agreement to Arbitrate now follows immediately after the introductory chapter, and the chapter on investment treaties now precedes the chapters on challenge and enforcement of awards), the chapters continue to follow (indeed now more logically) the chronological ordering in which the anatomy of an international arbitration is best understood, taught and practised. The content continues to cover many of the key subjects relevant to the law and practice of international arbitration that appeared in the fourth edition, with some notable new additions that are identified below. And as for style, we have made a determined attempt to retain what many readers tell us is the valued signature of this commentary; a clarity and economy of expression that actively discriminates between notable authorities and repetitive citations.

Such discrimination, it seems to us, is increasingly important in a field in which writing proliferates at an extraordinary pace. It is now easy to write a two, or three, or four volume work on international arbitration. Such works no doubt have their place. But that is not the aim of this work, nor the approach we take in writing it. Volume and exhaustiveness is not what we seek. With the modern intelligently searchable electronic databases that now exist (and that are updated daily) what students and practitioners do not need, it seems to us, is a necessarily futile attempt at exhaustive coverage from a commentary that is re-worked only every five years.

In these ways there is continuity with this work's past, and the ultimate guardians of that continuity have been the original authors of this work: Alan Redfern and Martin Hunter. The fourth edition was said to be 'by' Alan Redfern and Martin Hunter 'with' Nigel Blackaby and Constantine Partasides. This fifth edition for the first time inverts these roles, and is said to be 'by' Blackaby and Partasides 'with' Redfern and Hunter. In implementing this change, we stated our hope in the fourth edition that Alan and Martin's critical contribution to their treatise

would continue long into the future. And so it has proven. They continue to hold the pen on two of the key chapters of this work, and have closely reviewed all of the work on the other chapters. They remain two of the world's leading arbitrators, with profound knowledge not only of international arbitration's past, but its present. Working with them on this edition has continued to be not only a pleasure, but an education. We remain grateful for the trust they have placed in us, and look forward to our continued collaboration on future editions.

Connecting continuity with change, this edition features a new title that cements this work's past. Prior editions were entitled *The Law and Practice of International Commercial Arbitration*. This edition is entitled *Redfern and Hunter on International Arbitration*. Thus, we have formally adopted the title by which this work is in any event universally known.

But what of change? As presaged in the fourth edition, in this edition we have for the first time taken responsibility for the vast majority of the text. As Alan and Martin intended, this edition therefore marks a generational change. And that change coincides with a debate that has begun to arise within the fraternity of arbitration practitioners. Some of those schooled in the practice of international arbitration over the last thirty years are growing concerned that the 'golden age' of international arbitration has come to an end. They believe that the streamlined process of the past—reliant not on rules, codes or guidelines, but on the discretion and judgment of the wise arbitrator—has regrettably given way to a 'judicialised' process that no longer serves users' interests in an efficient, tailored solution to a business dispute.

There is much in this sentiment that resonates. But practitioners of a younger generation—including the new authors of this work—are more likely to see these developments less as the death of international arbitration, but as the growing pains of a process that is coming of age. International arbitration is no longer a rarefied jurisdictional exoticism. As we say in the first sentence of the first chapter of the fifth edition, international arbitration has become the preferred method for resolving international commercial disputes around the world. There are today more users looking to the process to provide solutions to business disputes, and more lawyers counselling and arbitrating cases than ever before. This larger human constituency inevitably introduces complexities that did not exist before. Some of these complexities can and do introduce inefficiency—some to a depressing degree. However, it seems to us that such complexities should not be viewed as symptoms of decline, but rather as the companions of arbitration's emergence.

In this fifth edition, we deal with some of these new complexities. By way of notable example, and in addition to an entirely re-written introductory chapter,

this edition features in Chapter 2 a more developed section on the modern limits of arbitrability of disputes. Chapter 3 features for the first time a section on the law applicable to issues of privilege and practitioner ethics in international arbitration, as well as to the growing procedural ‘soft law’ of international arbitration. Chapter 4 looks more deeply at the ever increasing use of arbitrator challenges and Chapter 5 addresses the heated debate on arbitral interim measures. Chapter 6 has also been re-written and includes a new—though proportionate—section on electronic document production in international arbitration. Chapter 7 adds a section on the important powers of US courts to order discovery in support of a foreign arbitration, and Chapter 8 on investment treaties, formerly Chapter 11, has been vastly updated to take into account the explosion of treaty arbitration case law and practice that there has been since the publication of the last edition in 2004. In Chapter 9, there is greater treatment of the increasingly significant issue of awards of interest in international arbitration. And in Chapters 10 and 11, there now appears far greater treatment of non-English and European authority on the critical issues of award annulment and enforcement.

A final word in this preface on the temporal delimitation of this edition. In various places throughout the eleven chapters, reference is made to the text being correct ‘at the time of writing’. To be clear, writing ended in June 2009, and so cases and developments since that time are not taken into account. In particular, this means that this edition does not take account of the impending (or at least anticipated) revision of the UNCITRAL arbitration rules, and the likely (or at least possible) revisions to the ICC and LCIA Rules that may follow. Given the significance of these rules to the practice of international arbitration, we had considered delaying the publication of this edition until these revisions were introduced. In the event, and in light of the difficulty in predicting the timing of such introduction, we decided that it was best for us to proceed in accordance with our original schedule and publish no more than five years after the publication of the fourth edition. In so doing, we continue to keep a close eye on the rules revision process that is well underway at UNCITRAL and has now started at the ICC, and look forward to taking account of those changes and their first years of implementation in the next edition.

Nigel Blackaby and Constantine Partasides, August 2009

## ACKNOWLEDGEMENTS

Our purpose in preparing a new edition of *Redfern and Hunter* is to ensure that this classic text stays alive. Serving such a purpose requires far more than a straight updating of the last edition. It requires a fresh eye as to the new prevailing substantive, procedural and geographic trends emerging in international arbitration. Once those new trends have been identified, decisions—sometimes difficult—must be taken as to old text that no longer need appear, and new material that must now feature. Those decisions result in change to a text that we and our readers have grown familiar with. In a field of practice that develops and grows as much as international arbitration, those changes are in some cases significant.

It will be for others to determine whether our purpose of keeping this text alive has been well served in the fifth edition. We can ourselves, however, confirm that we could not even have seriously attempted such an undertaking without the contribution of many and the sacrifice of a few. In this acknowledgement, we choose to identify those whose contribution (and sacrifice) has been the most significant.

First and foremost, we thank Fred Bennett and his team at the Los Angeles offices of Quinn Emmanuel. It will be obvious to many participants in the arbitral process that US case law and practice is becoming an increasingly important source and influence for international arbitration. For this reason, we included far more US content in this fifth edition than appeared in past editions of *Redfern and Hunter*. It would be entirely wrong for the law and practice of one jurisdiction to predominate in a work that is aimed at international practice. Nevertheless, and without compromising this overriding imperative, there is now greater treatment of leading US court judgments and practices than in past editions, and for this we thank Fred for his guidance and views, and his team for their comprehensive research.

For similar reasons, and in a similar way, we have sought to give greater prominence to the arbitration law and practice from the so-called BRIC jurisdictions, namely Brazil, Russia, India and China. For this purpose, we acknowledge the valued contributions from respectively Luiz Aboim, Yaroslav Klimov, Prashant Kalra and Peter Yuen.

More generally, a work of this scope could not have been achieved without the research and ideas of a number of talented young lawyers, many of whom are



beginning the journey to becoming authorities in the field of international arbitration in their own right. In this regard, we would like to thank Devika Khanna, Patrick Taylor, Cristian Nitsch, Anne Hoffmann, Ashley Dunford, Caroline Richard, Anita Kundu, Alexandre Vagenheim, Gregory Travaini and Fatima-Zahra Slaoui as well as other colleagues too numerous to mention.

Most importantly, as we write of contribution and sacrifice, special mention must be made of our families. If any reader had any doubt about the time commitment necessitated by the preparation of a new edition of a classic text, we invite them to consult our loved ones. The practice of international arbitration is today an intensive professional activity. The writing of a work such as this tends therefore to take place during those hours that would otherwise be consecrated to family. These words themselves are written on a terrace above a bay in the Aegean during a family vacation, whilst that family makes do without this writer for a few more hours.

For their unfailing support Alan would like to thank Marie-Louise and Martin would like to thank Linda.

Nigel thanks Maria for her constant support, encouragement and journalist's eye for simple expression. Constantine wishes to thank Doros, Vera, Patricia, Nayeli and Artemis; the last of whom was not yet born on the publication of the fourth edition, and who celebrated her fourth birthday on the figurative eve of the publication of the fifth edition.

There remain for us two final acknowledgements. The observant reader will note that we have a new publisher for this fifth edition. With an unparalleled reputation in the publishing of titles on international law, in recent years Oxford University Press's investment in, and commitment to, titles on the subject of international arbitration has been truly impressive. This, coupled with the quality of its publishing process, convinced us to choose this moment to make the move. We would, in particular, like to thank Catherine Redmond for her support and relentless cajoling that helped to ensure that this edition became a reality almost on time.

And lastly, in the time-honoured tradition, we wish to thank those institutions who have kindly given us permission to publish their conventions, laws, rules and guidelines. In particular, and in no particular order, we are extremely grateful to make the following acknowledgments.

#### **United Nations Publications**

*UNCITRAL Arbitration Rules 1976; UNCITRAL Model Law 1985; New York Convention on the Recognition and Enforcement of Awards 1958; and UNCITRAL*

*Notes on Organizing Arbitral Proceedings 1996*. The United Nations is the author of the original material.

#### **International Chamber of Commerce**

*ICC Rules of Arbitration, 1998 edition*. Copyright ©1997- International Chamber of Commerce (ICC), Paris. The text reproduced here is valid at the time of publication of this book. As amendments may from time to time be made to the text, readers are referred to <[www.iccarbitration.org](http://www.iccarbitration.org)> for the latest version and for more information on this ICC dispute resolution service. The text is also available in the ICC Dispute Resolution Library at <[www.iccdrl.com](http://www.iccdrl.com)>.

#### **London Court of International Arbitration**

*LCIA Arbitration Rules, 1998 edition*

#### **International Centre for Dispute Resolution**

*International Arbitration Rules, 2003 edition*

#### **The World Bank**

ICSID Rules of Procedure for the Institution of Conciliation and Arbitration Rules 1965

#### **International Bar Association**

*IBA Rules on the Taking of Evidence in International Commercial Arbitration, 1999 edition; IBA Guidelines On Conflicts of Interest in International Arbitration*. These rules and guidelines are reproduced with the kind permission of the International Bar Association. © International Bar Association, London 2009.

## SUMMARY CONTENTS

<i>Table of Cases</i>	xxiii
<i>Table of Arbitration Awards</i>	xxxix
<i>List of Abbreviations</i>	xl
<b>1. An Overview of International Arbitration</b>	<b>1</b>
<b>2. The Agreement to Arbitrate</b>	<b>85</b>
<b>3. Applicable Laws</b>	<b>163</b>
<b>4. The Establishment and Organisation of an Arbitral Tribunal</b>	<b>241</b>
<b>5. Powers, Duties, and Jurisdiction of an Arbitral Tribunal</b>	<b>313</b>
<b>6. Conduct of the Proceedings</b>	<b>363</b>
<b>7. The Role of National Courts during the Proceedings</b>	<b>439</b>
<b>8. Arbitration under Investment Treaties</b>	<b>465</b>
<b>9. The Award</b>	<b>513</b>
<b>10. Challenge of Arbitral Awards</b>	<b>585</b>
<b>11. Recognition and Enforcement of Arbitral Awards</b>	<b>621</b>
<b>Appendices</b>	<b>681</b>
<i>Index</i>	803

# CONTENTS

<i>Table of Cases</i>	xxiii
<i>Table of Arbitration Awards</i>	xxxii
<i>List of Abbreviations</i>	xl

## 1. An Overview of International Arbitration

A. Introduction	1.01
(a) What is arbitration?	1.01
(b) The conduct of an arbitration	1.04
(c) A brief historical note	1.08
(d) International rules, treaties, and conventions	1.15
(e) The meaning of ‘international’	1.16
(f) The meaning of ‘commercial’	1.32
(g) The key elements of an international arbitration	1.37
(h) The agreement to arbitrate	1.38
(i) The need for a dispute	1.59
(j) Starting an arbitration: the appointment of the arbitral tribunal	1.66
(k) The arbitral proceedings	1.72
(l) The decision of the tribunal	1.74
(m) The enforcement of the award	1.78
(n) Summary	1.84
B. Why Arbitrate?	1.86
(a) Introduction	1.86
(b) The main reasons	1.89
(c) Additional reasons	1.94
(d) Perceived disadvantages of arbitration	1.99
(e) Summary	1.120
(f) Alternative dispute resolution	1.126
C. What Kind of Arbitration?	1.152
(a) Introduction	1.152
(b) <i>Ad hoc</i> arbitration	1.153
(c) <i>Ad hoc</i> arbitration—advantages and disadvantages	1.155
(d) Institutional arbitration	1.158
(e) Institutional arbitration—advantages and disadvantages	1.161
(f) Arbitral institutions	1.169
(g) Arbitrations involving a State	1.190



## Contents

D. Sovereign States, Claims Commissions, and Tribunals	1.199
E. Regulation of International Arbitration	1.206
(a) Introduction	1.206
(b) The role of national systems of law	1.207
(c) The role of international conventions and the Model Law	1.213
(d) The Revised Model Law	1.233
(e) The practice of international arbitration	1.237
F. Summary	1.250
<b>2. The Agreement to Arbitrate</b>	
A. Overview	2.01
(a) Introduction	2.01
(b) Categories of arbitration agreement	2.02
(c) International conventions	2.06
(d) International standards	2.09
B. The Validity of an Arbitration Agreement	2.13
(a) Formal validity—the need for writing	2.13
(b) A defined legal relationship	2.22
(c) A subject-matter capable of settlement by arbitration	2.26
C. The Parties to an Arbitration Agreement	2.28
(a) Capacity	2.28
(b) Third parties to the arbitration agreement	2.39
(c) Joinder and intervention	2.52
D. Analysis of an Arbitration Agreement	2.55
(a) Scope	2.55
(b) Basic elements	2.63
(c) Separability	2.89
(d) Summary	2.101
E. Submission Agreements	2.106
(a) Introduction	2.106
(b) Drafting a submission agreement	2.107
F. Arbitrability	2.111
(a) Introduction	2.111
(b) Categories of dispute for which questions of arbitrability arise	2.118
(c) Conclusion	2.144
G. Confidentiality	2.145
(a) Privacy and confidentiality	2.147
(b) Confidentiality—the classical position	2.149
(c) Confidentiality—the current trend	2.152





## Contents

(d) The award	2.158
(e) Confidentiality in investor–State arbitrations	2.165
(f) Revisions to rules of arbitration	2.170
(g) Conclusion	2.176
H. Defective Arbitration Clauses	2.177
(a) Inconsistency	2.178
(b) Uncertainty	2.179
(c) Inoperability	2.182
(d) Repudiation and waiver of arbitration agreements	2.184
I. Multi-Party Arbitrations	2.186
(a) Introduction	2.186
(b) Class arbitrations	2.197
(c) ‘String’ arbitrations	2.204
(d) Concurrent hearings	2.207
(e) Court-ordered consolidation	2.209
(f) Consolidation by consent	2.214
<b>3. Applicable Laws</b>	
A. Overview	3.01
(a) Introduction	3.01
(b) No legal vacuum	3.03
(c) A complex interaction of laws	3.07
B. The Law Governing the Agreement to Arbitrate	3.09
(a) Law of the contract	3.12
(b) Law of the seat of the arbitration	3.15
(c) The parties’ common intention: the French third way	3.30
(d) Combining several approaches: the Swiss model	3.33
C. The Law Governing the Arbitration	3.34
(a) Introduction	3.34
(b) What is the <i>lex arbitri</i> ?	3.39
(c) The content of the <i>lex arbitri</i>	3.40
(d) Procedural rules and the <i>lex arbitri</i>	3.45
(e) The seat theory	3.51
(f) Is the <i>lex arbitri</i> a procedural law?	3.60
(g) Choice of a foreign procedural law	3.63
(h) Where an award is made	3.67
(i) Delocalisation	3.71
(j) The ‘seat’ theory and the <i>lex arbitri</i>	3.81
D. The Law Applicable to the Substance	3.88
(a) Introduction	3.88





## Contents

(b) The autonomy of the parties	3.94
(c) National law	3.108
(d) Mandatory law	3.128
(e) Public international law and general principles of law	3.136
(f) Concurrent laws, combined laws, and the <i>trunc commum</i> doctrine	3.141
(g) Transnational law (including <i>lex mercatoria</i> ; the UNIDROIT Principles; trade usages; and the Shari'ah)	3.162
(h) Equity and good conscience	3.198
E. Conflict Rules and the Search for the Applicable Law	3.203
(a) Introduction	3.203
(b) Implied or tacit choice	3.206
(c) Choice of forum as choice of law	3.210
(d) Conflict rules	3.213
(e) Does an international arbitral tribunal have a <i>lex fori</i> ?	3.216
(f) International conventions, rules of arbitration, and national laws	3.219
(g) Conclusion	3.223
F. Other Applicable Rules and Guidelines	3.226
(a) Ethical rules	3.227
(b) Rules, guidelines, and recommendations	3.230
<b>4. The Establishment and Organisation of an Arbitral Tribunal</b>	
A. Background	4.01
(a) Introduction	4.01
(b) Commencement of an arbitration	4.04
(c) Commencement of an <i>ad hoc</i> arbitration under the applicable law	4.09
(d) Commencement of an arbitration under institutional rules	4.11
(e) Selecting an arbitral tribunal	4.14
(f) Sole arbitrators and multi-arbitrator tribunals	4.18
B. Appointment of Arbitrators	4.29
(a) Introduction	4.29
C. Qualities Required in International Arbitrators	4.48
(a) Introduction	4.48
(b) Restrictions imposed by the contract	4.49
(c) Restrictions imposed by the applicable law	4.51
(d) Professional qualifications	4.52
(e) Language	4.57
(f) Experience and outlook	4.58
(g) Nationality	4.59
(h) Education and training	4.65
(i) Interviewing prospective arbitrators	4.69





## Contents

D. Impartiality and Independence of Arbitrators	4.72
(a) Introduction	4.72
(b) Independence and/or impartiality	4.75
(c) Disclosure	4.80
E. Challenge and Replacement of Arbitrators	4.91
(a) Introduction	4.91
(b) Grounds for challenge	4.94
(c) Procedure for challenge	4.107
(d) The principal bases for challenge	4.119
(e) Waiver	4.132
(f) Conclusion on challenges	4.137
(g) Filling a vacancy	4.139
(h) Truncated tribunals	4.141
(i) Procedure following the filling of a vacancy	4.149
(j) Insuring against a vacancy	4.154
F. The Organisation of the Arbitral Tribunal	4.156
(a) Introduction	4.156
(b) Meetings and hearings	4.157
(c) Administrative aspects	4.165
(d) The role of an administrative secretary or registrar	4.183
G. Fees and Expenses of the Arbitral Tribunal	4.192
(a) Introduction	4.192
(b) Who fixes fees?	4.193
(c) Commitment or cancellation fees	4.194
(d) Methods of assessing fees	4.197
(e) Negotiating arbitrators' fees	4.203
(f) Expenses of the arbitral tribunal	4.205
(g) Securing payment of the fees and expenses of the arbitral tribunal	4.210
<b>5. Powers, Duties, and Jurisdiction of an Arbitral Tribunal</b>	
A. Background	5.01
(a) Introduction	5.01
(b) Practical considerations	5.03
B. Powers of Arbitrators	5.06
(a) Introduction	5.06
(b) Sources of arbitrators' powers	5.08
(c) Common powers of arbitral tribunals	5.14
(d) Supporting powers of the courts	5.34
C. Duties of Arbitrators	5.37
(a) Introduction	5.37





## Contents

(b) Duties imposed by the parties	5.39
(c) Duties imposed by law	5.43
(d) Ethical duties	5.73
D. Jurisdiction	5.85
(a) Introduction	5.85
(b) Challenges to jurisdiction	5.86
(c) The autonomy (or separability) of the arbitration clause	5.94
(d) Court control	5.111
(e) Procedural aspects of resolving issues of jurisdiction	5.118
(f) Options open to the respondent	5.120
(g) International agreements on the jurisdiction of national courts	5.129
<b>6. Conduct of the Proceedings</b>	
A. Overview	6.01
(a) Introduction	6.01
(b) Party autonomy	6.08
(c) Limitations on party autonomy	6.10
(d) International practice	6.20
(e) The procedural structure of a typical international arbitration	6.23
B. Preliminary Steps	6.27
(a) Introduction	6.27
(b) Preliminary issues	6.41
C. Written Submissions	6.54
(a) Introduction	6.54
(b) Terminology	6.71
D. Evidence Gathering	6.82
(a) Introduction	6.82
(b) Categories of evidence	6.96
(c) Documentary evidence	6.101
(d) Fact witness evidence	6.136
(e) Experts	6.152
(f) Inspection of the subject matter of the dispute	6.173
E. Hearings	6.182
(a) Introduction	6.182
(b) Organisation of hearings	6.185
(c) Procedure at hearings	6.198
(d) <i>Ex parte</i> hearings	6.232
F. Proceedings After the Hearing	6.242
(a) Introduction	6.242
(b) Post-hearing briefs	6.243



## Contents

---

(c) Introduction of new evidence	6.247
G. Other Matters	6.249
(a) Expedited procedures	6.249
(b) Fast-track arbitration	6.264
(c) Small claims	6.271
(d) Avoiding delay and disruption	6.274
<b>7. The Role of National Courts during the Proceedings</b>	
A. Introduction	7.01
(a) The increasing independence of arbitration	7.04
(b) Limitations on independence	7.06
(c) A relay race	7.07
B. At the Beginning of the Arbitration	7.09
(a) Enforcing the arbitration agreement	7.10
(b) Establishing the arbitral tribunal	7.11
(c) Challenges to jurisdiction	7.12
C. During the Arbitral Proceedings	7.13
(a) Interim measures: powers of the arbitral tribunal	7.14
(b) Interim measures: powers of the competent court	7.23
(c) Measures relating to the attendance of witnesses	7.33
(d) Measures related to the preservation of evidence	7.38
(e) Measures related to documentary disclosure	7.40
(f) Measures aimed at preserving the status quo	7.46
(g) Interim relief in respect of parallel proceedings	7.52
D. At the End of the Arbitration	7.63
(a) Judicial control of the proceedings and the award	7.63
E. Conclusion	7.64
<b>8. Arbitration under Investment Treaties</b>	
A. Introduction	8.01
B. Jurisdictional Issues	8.13
(a) Existence of an applicable treaty	8.13
(b) Protected investors	8.16
(c) Protected investments	8.23
(d) Other jurisdictional issues	8.31
C. Law Applicable to the Substance of the Dispute	8.47
D. The Merits of the Dispute	8.58





## *Contents*

---

(a) ‘Fair and equitable treatment’ and the international minimum standard	8.59
(b) Full protection and security	8.72
(c) No arbitrary or discriminatory measures impairing the investment	8.75
(d) No expropriation without prompt, adequate, and effective compensation	8.79
(e) National and ‘most favoured nation’ treatment	8.98
(f) Free transfer of funds related to investments	8.103
(g) Observance of specific investment undertakings	8.108
E. Measures of Compensation under BITs	8.113
(a) Expropriation remedies	8.114
(b) Compensation for other treaty breaches	8.122

### **9. The Award**

A. Introduction	9.01
(a) The destination of an international arbitration: the award	9.01
(b) Definition of an award	9.05
(c) Rendering an internationally enforceable award	9.10
B. Categories of Awards	9.14
(a) ‘Order’ or ‘award’	9.14
(b) Final awards	9.18
(c) Partial and interim awards	9.19
(d) Default awards	9.30
(e) Consent awards	9.33
C. Remedies	9.39
(a) Monetary compensation	9.40
(b) Punitive damages and other penalties	9.43
(c) Specific performance	9.52
(d) Restitution	9.53
(e) Injunctions	9.59
(f) Declaratory relief	9.61
(g) Rectification	9.64
(h) The adaptation of contracts and filling gaps	9.66
(i) Interest	9.74
(j) Costs	9.87
D. Validity of Awards	9.101
(a) Generally	9.101
(b) Form of the award	9.104





## Contents

(c) Contents of the award	9.114
(d) Time limits	9.127
(e) Notification of awards	9.135
(f) Registration or deposit of awards	9.137
E. The Effect of Awards— <i>Res Judicata</i>	9.139
(a) Existing disputes	9.143
(b) Subsequent disputes	9.145
(c) Effect of award on third parties	9.149
F. How an Arbitral Tribunal Reaches its Decision	9.153
(a) Deliberation	9.153
(b) Majority voting	9.169
(c) The bargaining process	9.178
(d) Tribunal psychology	9.182
(e) Separate, concurring, and dissenting opinions	9.186
G. Clarification and Review of the Award	9.198
(a) Proceedings after the award	9.198
(b) Publication of awards	9.212
<b>10. Challenge of Arbitral Awards</b>	
A. Introduction	10.01
(a) The purpose of challenge	10.03
(b) The meaning of challenge	10.04
(c) Preconditions to challenge	10.05
(d) Time limits for challenge	10.07
(e) Limits of challenge	10.08
B. Methods of Challenge	10.10
(a) Internal challenge	10.11
(b) Correction and interpretation of awards; additional awards	10.16
(c) Recourse to the courts	10.20
C. Grounds for Challenge	10.28
(a) Adjudicability	10.36
(b) Procedural grounds	10.46
(c) Substantive grounds	10.60
D. Time Limits and Effects of Challenge	10.87
(a) Time limits	10.87
(b) The effects of a successful challenge	10.89
<b>11. Recognition and Enforcement of Arbitral Awards</b>	
A. Background	11.01
(a) Introduction	11.01





## Contents

---

(b) Performance of awards	11.07
(c) The general principles governing recognition and enforcement	11.18
(d) The difference between recognition and enforcement	11.20
(e) Place of recognition and enforcement	11.25
(f) Methods of recognition and enforcement	11.31
(g) Time limits	11.34
(h) Consequences of refusal of recognition or enforcement	11.35
(i) The role of the international conventions	11.36
<b>B. Enforcement under the New York Convention</b>	<b>11.42</b>
(a) Introduction	11.42
(b) Refusal of recognition and enforcement	11.55
(c) Grounds for refusal	11.63
(d) First ground for refusal: incapacity; invalid arbitration agreement	11.66
(e) Second ground: no proper notice of appointment of arbitrator or of the proceedings; lack of due process	11.70
(f) Third ground: jurisdictional issues	11.76
(g) Fourth ground: composition of tribunal or procedure not in accordance with arbitration agreement or the relevant law	11.80
(h) Fifth ground: award not binding, suspended, or set aside	11.85
(i) Arbitrability	11.99
(j) Public policy	11.103
<b>C. Enforcement under the Washington Convention</b>	<b>11.121</b>
<b>D. Enforcement under Regional Conventions</b>	<b>11.125</b>
(a) The European Convention of 1961	11.125
(b) The Moscow Convention	11.127
(c) The Panama Convention	11.130
(d) Other regional conventions	11.134
<b>E. The Defence of State Immunity</b>	<b>11.135</b>
(a) Jurisdictional immunity	11.138
(b) Immunity from execution	11.140
<b>F. Practical Considerations</b>	<b>11.151</b>
(a) Enforcing under the New York Convention or a more favourable treaty or local law	11.151
(b) Options open to the successful party: a checklist	11.162
(c) Options open to the unsuccessful party: a checklist	11.163
(d) The need for local advice	11.169





## Contents

---

### Appendices

Appendix A UNCITRAL Model Law on International Commercial Arbitration (1985) with amendments as adopted in 2006	683
Appendix B The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958)	697
Appendix C The Washington Convention on the Settlement of Investment Disputes between States and Nationals of Other States (1965) (excerpts)	701
Appendix D UNCITRAL Arbitration Rules	705
Appendix E ICSID Rules for the Institution of Conciliation and Arbitration Proceedings and ICSID Arbitration Rules	717
Appendix F ICC Rules of Arbitration	735
Appendix G ICDR International Arbitration Rules	753
Appendix H LCIA Arbitration Rules	767
Appendix I UNCITRAL Notes on Organizing Arbitral Proceedings (checklist)	781
Appendix J IBA Rules on the Taking of Evidence in International Commercial Arbitration	783
Appendix K IBA Guidelines on Conflicts of Interest in International Arbitration	791

<i>Index</i>	803
--------------	-----

