

# ARBITRATE SUCCESSFULLY

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# Introduction

- Various forms of dispute resolution
  - ❖ Negotiation
  - ❖ Mediation
  - ❖ Arbitration
  - ❖ Litigation
- Arbitration used in Shipping and Commercial Disputes
- Arbitration can also be combined with other forms of dispute resolution
  - ❖ SIAC Arb-Med-Arb Clause
  - ❖ Initiate Arbitration to protect time and negotiate the dispute



# Why Arbitrate?

## ➤ Arbitration:

“submission of parties’ disputes by agreement (which may be provided in the contract or agreed after the dispute has arisen) to one or more arbitrators, commonly called as the arbitral tribunal, who make a binding decision on the dispute.”

## ➤ Intention to Arbitrate starts at Contract Formation

- ❖ Life Cycle Theory - Terotechnology
- ❖ Can request for Arbitration after Contract formed but ....



# Dispute Resolution Clauses

## ➤ Arbitration Clause

generally part of the underlying contract.

- ❖ independent of the contract and “severable” ( invalidity of the underlying agreement will not have an impact on the arbitration clause and vice versa)

## ➤ Improper / Defective arbitration clauses

- ❖ *Both parties shall at first, amicably settle any dispute arising out of or in relation to this contract. If the dispute remained unsolved, it shall be finally settled by the High Court in xxx . The lost party will be in charge of the arbitration expenses. Steps, contents and methods of solution must be informed and confirmed in written form.*
- ❖ *Arbitration, if any, to be held in \_\_\_\_\_ and English Law to*



# Types of Arbitration Clause

## ➤ Arbitration Clause

- ❖ One size fits all
- ❖ Individually crafted for every contract
- ❖ Will depend on the contract

## ➤ Size of claim

- ❖ Small Claim say less than USD 150,000
- ❖ Large Claim
- ❖ Intermediate Claims say upto USD 500,000



# Types of Arbitration Clause

- Domestic Arbitration & International Arbitration
- Institutional & Adhoc Arbitration
  - ❖ Institutions such as ICA, SIAC, HKIAC
  - ❖ Ad Hoc – LMAA
  - ❖ SCMA a mix of both
- Multiplicity of laws in arbitration – at least 5 for International Arbitrations!



# Pre-Dispute

➤ All the previous points

➤ KYC

- ❖ Basic tenet of doing business
- ❖ In case of problems, will your counterparty work together
- ❖ Does your counterparty have the financial strength to handle claims
- ❖ Jurisdiction where your counterparty is sited for enforcement



# Post-Dispute

- Will it affect the ongoing business relationship?
- Late Prof Tetley with respect to initiating litigation:
  - ❖ The facts are on your side
  - ❖ The law is on your side
  - ❖ Whether the judgement would be socially acceptable & morally proper
- Arbitration similar except Arbitrators need
  - ❖ To fulfill their duties
  - ❖ Not consider the social & moral issues
- Arbitrators duties are
  - ❖ Procedural fairness
  - ❖ Rendering an accurate award
  - ❖ Efficiency keeping in mind these two goals
  - ❖ Enforceable award





# Post-Dispute

- Always be in control i.e. decision maker
  - ❖ Loss will be felt by you
  - ❖ Change in circumstances
  - ❖ Opponents story and your story
  - ❖ Whether the dispute can be limited to specific issues?
  
- Assistance required?
  
- Engage counsel
  - ❖ Type of Dispute
  - ❖ Special knowledge
  
- Engagement of Arbitrators
  - ❖ Skill / knowledge required for the specific dispute
  - ❖ Availability
  - ❖ Price



# Conduct

## ➤ Professional

- ❖ Put your best case forward
- ❖ Be willing to concede weak arguments
- ❖ Calm, composed and professional respect
- ❖ Not court room – so more business like

## ➤ Award

- ❖ Be willing to accept the award
- ❖ Appeal may be an option – only appeal if you believe in it

## ➤ Dispute Management

- ❖ Can separate the chaff from the wheat
- ❖ Showcase this and your clients will do repeat business



# Conclusion

- Avoid Disputes
- If Disputes do occur, be prepared to deal with it (Pre-Dispute)
- Professional relationships to be maintained during dispute
- Always relook at your position and if a settlement can be reached, this will be best to save costs and continuity of business
- Believe in the system and be in control
- Thank you



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