

国际商事仲裁法 参考资料

赵秀文 谢菁菁 编著

International Commercial
Arbitration Law

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Commercial
Arbitration
Law

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国际法

国际私法

世贸组织法

国际贸易法

国际投资法

国际商事仲裁法

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国际税法

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本教学参考资料是专门为了配合国际商事仲裁法的教学与研究而编辑，是与《国际商事仲裁法》（21 世纪国际法学系列教材）相配套的学习参考资料。本书所收集的内容涉及国际商事仲裁的国际公约，联合国国际贸易法委员会主持制定的《国际商事仲裁示范法》、《仲裁规则》，包括我国在内的各主要国家的仲裁法，以及包括中国国际经济贸易仲裁委员会在内的世界上各主要仲裁机构的仲裁规则。

书中所选用的文件，主要参考了赵秀文主编《国际经济贸易仲裁法教学参考资料》一书（中国法制出版社，1999 年版）及 Tibor S. Varady, John J. Barcelo, III & Arthur T. von Mehren: Documents Supplement to International Commercial Arbitration (West Group, 1999)，此外还参照了一些相关网站上的中英文资料。在编辑本书的过程中，中国人民大学法学院的硕士研究生刘擎、牛洁、杜宁、孙可、杨雯、马一杰、郭秀娟、邓雪芳等同学帮助校对中英文稿件，提出了许多很好的意见。在此对上述人员一并表示感谢。对于书中的不妥之处，欢迎读者批评指正。

赵秀文、谢菁菁

2006 年 4 月



I INTERNATIONAL CONVENTIONS ON ARBITRATION

国际公约	(1)
1. United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards	(1)
联合国关于承认及执行外国仲裁裁决公约	(9)
2. European Convention on International Commercial Arbitration	(13)
欧洲国际商事仲裁公约	(25)

II UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW (UNCITRAL) ENACTMENTS

联合国贸法会文件	(31)
1. UNCITRAL Model Law on International Commercial Arbitration	(31)
国际商事仲裁示范法	(48)
2. UNCITRAL Arbitration Rules	(60)

联合国国际贸易法委员会仲裁规则	(80)
-----------------------	------

III NATIONAL LEGISLATIONS ON ARBITRATION

有关国家的仲裁法	(93)
1. Arbitration Law of the People's Republic of China	(93)
中华人民共和国仲裁法	(111)
2. United States Federal Arbitration Act	(122)
美国联邦仲裁法	(134)
3. French Code of Civil Procedure-Book IV-Arbitration	(142)
法国民事诉讼法典(节选)	(156)
4. German Arbitration Law	(167)
德国仲裁法	(188)

IV ARBITRATION RULES

有关国际商事仲裁机构仲裁规则	(202)
1. CIETAC Arbitration Rules	(202)
中国国际经济贸易仲裁委员会仲裁规则(2005版)	(230)
2. Rules of Arbitration of the International Chamber of Commerce	(248)
国际商会仲裁规则	(277)
3. Rules of the London Court of International Arbitration	(296)
伦敦国际仲裁院推荐性的仲裁条款	(321)
4. American Arbitration Association International Arbitration Rules	(338)
美国仲裁协会国际仲裁规则	(355)



made only in the territory of another Contracting State. It may also declare that it will apply the Convention only to differences arising out of legal relations—ships, whether contractual or not, which are considered as commercial under the national law of the State making such declaration.



I INTERNATIONAL CONVENTIONS ON ARBITRATION

国际公约

2. The term "agreement in writing" shall include an arbitral clause in a contract or an arbitration agreement, signed by the parties or contained in an exchange of letters or telegrams.

1. United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958)

Article I

1. This Convention shall apply to the recognition and enforcement of arbitral awards made in the territory of a State other than the State where the recognition and enforcement of such awards are sought, and arising out of differences between persons, whether physical or legal. It shall also apply to arbitral awards not considered as domestic awards in the State where their recognition and enforcement are sought.

2. The term "arbitral awards" shall include not only awards made by arbitrators appointed for each case but also those made by permanent arbitral bodies to which the parties have submitted.

3. When signing, ratifying or acceding to this Convention, or notifying extension under article X hereof, any State may on the basis of reciprocity declare

that it will apply the Convention to the recognition and enforcement of awards made only in the territory of another Contracting State. It may also declare that it will apply the Convention only to differences arising out of legal relationships, whether contractual or not, which are considered as commercial under the national law of the State making such declaration.

Article II

1. Each Contracting State shall recognize an agreement in writing under which the parties undertake to submit to arbitration all or any differences which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration.

2. The term “agreement in writing” shall include an arbitral clause in a contract or an arbitration agreement, signed by the parties or contained in an exchange of letters or telegrams.

3. The court of a Contracting State, when seized of an action in a matter in respect of which the parties have made an agreement within the meaning of this article, at the request of one of the parties, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed.

Article III

Each Contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon, under the conditions laid down in the following articles. There shall not be imposed substantially more onerous conditions or higher fees or charges on the recognition or enforcement of arbitral awards to which this Convention applies than are imposed on the recognition or enforcement of domestic arbitral awards.

Article IV

1. To obtain the recognition and enforcement mentioned in the preced-

ing article, the party applying for recognition and enforcement shall, at the time of the application, supply:

(a) The duly authenticated original award or a duly certified copy thereof;

(b) The original agreement referred to in article II or a duly certified copy thereof.

2. If the said award or agreement is not made in an official language of the country in which the award is relied upon, the party applying for recognition and enforcement of the award shall produce a translation of these documents into such language. The translation shall be certified by an official or sworn translator or by a diplomatic or consular agent.

Article V

1. Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that:

(a) The parties to the agreement referred to in article II were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or

(b) The party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; or

(c) The award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or

(d) The composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or

(e) The award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.

2. Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that:

(a) The subject matter of the difference is not capable of settlement by arbitration under the law of that country; or

(b) The recognition or enforcement of the award would be contrary to the public policy of that country.

Article VI

If an application for the setting aside or suspension of the award has been made to a competent authority referred to in article V (1) (e), the authority before which the award is sought to be relied upon may, if it considers it proper, adjourn the decision on the enforcement of the award and may also, on the application of the party claiming enforcement of the award, order the other party to give suitable security.

Article VII

1. The provisions of the present Convention shall not affect the validity of multilateral or bilateral agreements concerning the recognition and enforcement of arbitral awards entered into by the Contracting States nor deprive any interested party of any right he may have to avail himself of an arbitral award in the manner and to the extent allowed by the law or the treaties of the country where such award is sought to be relied upon.

2. The Geneva Protocol on Arbitration Clauses of 1923 and the Geneva

Convention on the Execution of Foreign Arbitral Awards of 1927 shall cease to have effect between Contracting States on their becoming bound and to the extent that they become bound, by this Convention.

Article VIII

1. This Convention shall be open until 31 December 1958 for signature on behalf of any Member of the United Nations and also on behalf of any other State which is or hereafter becomes a member of any specialized agency of the United Nations, or which is or hereafter becomes a party to the Statute of the International Court of Justice, or any other State to which an invitation has been addressed by the General Assembly of the United Nations.

2. This Convention shall be ratified and the instrument of ratification shall be deposited with the Secretary-General of the United Nations.

Article IX

1. This Convention shall be open for accession to all States referred to in article VIII.

2. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article X

1. Any State may, at the time of signature, ratification or accession, declare that this Convention shall extend to all or any of the territories for the international relations of which it is responsible. Such a declaration shall take effect when the Convention enters into force for the State concerned.

2. At any time thereafter any such extension shall be made by notification addressed to the Secretary-General of the United Nations and shall take effect as from the ninetieth day after the day of receipt by the Secretary-General of the United Nations of this notification, or as from the date of entry into force of the Convention for the State concerned, whichever is the

later.

3. With respect to those territories to which this Convention is not extended at the time of signature, ratification or accession, each State concerned shall consider the possibility of taking the necessary steps in order to extend the application of this Convention to such territories, subject, where necessary for constitutional reasons, to the consent of the Governments of such territories.

Article XI

In the case of a federal or non-unitary State, the following provisions shall apply:

(a) With respect to those articles of this Convention that come within the legislative jurisdiction of the federal authority, the obligations of the federal Government shall to this extent be the same as those of Contracting States which are not federal States;

(b) With respect to those articles of this Convention that come within the legislative jurisdiction of constituent states or provinces which are not, under the constitutional system of the federation, bound to take legislative action, the federal Government shall bring such articles with a favourable recommendation to the notice of the appropriate authorities of constituent states or provinces at the earliest possible moment;

(c) A federal State Party to this Convention shall, at the request of any other Contracting State transmitted through the Secretary-General of the United Nations, supply a statement of the law and practice of the federation and its constituent units in regard to any particular provision of this Convention, showing the extent to which effect has been given to that provision by legislative or other action.

Article XII

1. This Convention shall come into force on the ninetieth day following the date of deposit of the third instrument of ratification or accession.

2. For each State ratifying or acceding to this Convention after the deposit of the third instrument of ratification or accession, this Convention shall enter into force on the ninetieth day after deposit by such State of its instrument of ratification or accession.

Article XIII

1. Any Contracting State may denounce this Convention by a written notification to the Secretary-General of the United Nations. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.

2. Any State which has made a declaration or notification under article X may, at any time thereafter, by notification to the Secretary-General of the United Nations, declare that this Convention shall cease to extend to the territory concerned one year after the date of the receipt of the notification by the Secretary-General.

3. This Convention shall continue to be applicable to arbitral awards in respect of which recognition and enforcement proceedings have been instituted before the denunciation takes effect.

Article XIV

A Contracting State shall not be entitled to avail itself of the present Convention against other Contracting States except to the extent that it is itself bound to apply the Convention.

Article XV

The Secretary-General of the United Nations shall notify the States contemplated in article VIII of the following:

- (a) Signatures and ratifications in accordance with article VIII;
- (b) Accessions in accordance with article IX;
- (c) Declarations and notifications under articles I, X and XI;
- (d) The date upon which this Convention enters into force in accord-

ance with article XII;

(e) Denunciations and notifications in accordance with article XIII.

Article XVI

1. This Convention, of which the Chinese, English, French, Russian and Spanish texts shall be equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit a certified copy of this Convention to the States contemplated in article VIII.

联合国关于承认及执行外国仲裁裁决公约

(1958年6月10日订于纽约)

第一条

一、本公约适用于因自然人或法人之间争议而产生的且在申请承认及执行地所在国以外之国家领土内作成的仲裁裁决。被申请承认及执行地所在国不认为是内国裁决的，也适用本公约。

二、“仲裁裁决”不仅包括每一案件中指定的仲裁员所作的裁决，也包括当事人提请常设仲裁机构所作的裁决。

三、任何国家于签署、批准或加入本公约时，或于本公约第十条通知扩展适用时，可以在互惠的基础上声明本国只对另一缔约国领域内作出的仲裁裁决的承认及执行适用本公约。任何国家亦可声明，本国只对根据本国法律，无论契约性或非契约性，属于商事性质的法律关系所产生的争议适用本公约。

第二条

一、当事人以书面协议约定将当事人间基于特定的法律关系产生或可能产生的、可以通过仲裁解决的一切或者任何，无论契约性或非契约性，争议提交仲裁时，各缔约国应承认该协议。

二、“书面协议”包括当事人所签订或在互换函电中所载明的合同中的仲裁条款或仲裁协议。

三、当事人已经达成本条规定的协议的，如果缔约国法院受理了诉讼，那么依一方当事人的请求，应当令当事人将争议提交仲裁解决。除非法院认定前述协议无效、失效或不能履行。

第三条

各缔约国应承认仲裁裁决具有拘束力，并且依照援引裁决地的程序规则 and 下列各条所规定的条件执行。承认或执行适用本公约的仲裁裁决时，不应实质上规定比承认或执行内国仲裁裁决繁重的条件或收取更多的费用。

第四条

一、申请承认和执行裁决的当事人，应在申请前条规定的承认及执行时提供：

- (一) 裁决的正本或经正式认证的副本；
- (二) 第二条规定的协议的正本或经正式认证的副本。

二、如果上述裁决或协议不是以被援引裁决地的正式语言作成的，申请承认及执行裁决的当事人应提供这些文件的正式语言的译本。译本应经正式的或宣过誓的翻译员或外交或领事人员认证。

第五条

一、裁决仅在裁决针对的一方当事人向申请承认及执行地的主管机关提出证据证明有下列情形之一时，才可以根据该当事人的请求拒绝承认和执行：

(一) 第二条所提到的协议的当事人根据对其适用的法律处于某种无行为能力情形，或根据当事人约定的准据法协议无效，或未约定准据法时，依裁决地所在国法律协议无效；或

(二) 作为裁决执行对象的当事人没有得到关于指派仲裁员或进行仲裁程序的适当通知，或由于其他情况而不能陈述案情；或

(三) 裁决涉及仲裁协议所没有提到的，或者不属于仲裁协议规定的争议，或者裁决含有超出仲裁协议范围的裁定。但如果仲裁协议范围以内的事项可以和仲裁协议范围以外的事项分开，则裁决中关于提交仲裁事项部分的决定可以承认及执行；或

(四) 仲裁庭的组成或仲裁程序与当事人之间协议不符，或当事人之间没有协议时与仲裁地所在国法律不符者；或

(五) 裁决对当事人尚无拘束力，或已经由作出裁决的国家或由其法律作出裁决的国家的有权机关撤销或者停止执行。

二、被请求承认和执行地所在国的主管机关如果查明有下列情形之一，也可以拒不承认和执行仲裁裁决：

- (一) 依据该国法律，争议事项不能通过仲裁方式解决；
- (二) 承认或执行裁决违反该国公共政策。

第六条

如果已经向第五条第一款第五项提到的主管机关申请撤销或停止执行，受理承认或执行裁决申请的机关如果认为适当时可以延期作出关于执行裁决的决定，也可以根据请求执行裁决的当事人的申请，命令对方当事人提供适当的担保。