



## **Arbitration of International Commercial Disputes**

The general strength and momentum of the international marketplace accentuates the need to have clear rules for the resolution of international business disputes. Fortunately, since the challenges that face companies engaged in international business are not new, laws addressing the adjudication of the associated disputes have been created and continue to evolve.

### **Federal Arbitration Act**

In 1925, President Coolidge signed into law the Federal Arbitration Act (FAA) which ensured the validity of arbitration agreements evidencing a "transaction involving commerce." In addition, the FAA precluded states from requiring disputants to litigate claims that the parties had previously agreed to arbitrate. As a result of this federal policy favoring arbitration, many states enacted their own arbitration statutes. In its early days, the FAA's coverage of international business disputes was deemed perfunctory and inadequate.

### **Uniform Arbitration Act**

Due to the proliferation of varying state arbitration statutes, lawmakers came to believe that a uniform arbitration act would provide the opportunity for state uniformity in general arbitration law (although not necessarily in international business disputes). For this reason, in 1955, the National Conference of Commissioners of Uniform State Laws completed and approved the Uniform Arbitration Act (UAA). Since then, at least 35 states have adopted the UAA in its entirety, while at least 14 others have adopted substantially similar legislation.

### **New York Convention**

To help eliminate some of the confusion regarding the enforceability of foreign arbitral judgments, in 1958, the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) was created. In 1970, the United States ratified it and placed it within the FAA. Today, more than 130 nations are parties to the New York Convention. These nations are generally obligated to recognize the validity of agreements between parties from such nations and enforce arbitral awards handed down in foreign jurisdictions.

### **United Nations Commission on International Trade Law Model Law**

To further eliminate confusion regarding international arbitral awards, in 1985, the United Nations created the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration (the Model Law). Since that time, at least 47 countries have enacted legislation adopting the Model Law, including a few U.S. states. With specific application to international commercial

disputes, the Model Law has established itself as one of the most comprehensive sets of international arbitration laws.

### **Revised Uniform Arbitration Act**

In 2000, the UAA was revised (RUAA). A common complaint about the UAA was its lack of rules addressing international disputes; however, despite such complaints, the revision did not offer a remedy. The Prefatory Note of the RUAA acknowledges this omission and explains that many states had already enacted legislation addressing international disputes or apply the Model Law.

### **Determining Which Laws Apply**

In light of the numerous arbitration laws affecting international commercial law, determining which apply may be challenging. However, parties may generally set forth in agreements which specific laws will govern their contractual relationship. In states and countries that have adopted the Model Law, if the parties do not contract otherwise, the Model Law will generally apply.

For instance, if a business in a U.S. state that has adopted the Model Law enters into a contract with a country that is also a party to the Model Law, the Model Law will control unless another law is specified. Courts have held that in an arbitration between a party from a state that has not adopted the Model Law and a party from a foreign jurisdiction that has adopted the Model Law, the Model Law may be applied to enforce an arbitration award in the foreign jurisdiction.

Other issues to consider include overlapping provisions between the Model Law and the New York Convention. Although the Model Law generally compliments the New York Convention, both laws should be given special attention with respect to the enforcement of an arbitral award. Businesses from states that have not adopted the Model Law will likely be governed by the New York Convention or the Inter-American Convention, both under the FAA.