

INTERNATIONAL ARBITRATION: PRACTICE AND ARBITRATION COURTS

The use of international arbitration is increasingly frequent due to the complexity of international operations, as well as the existence of multiple contracts and the plurality of parties. Therefore, it is important to take this aspect into account when drafting the dispute resolution clause, as well as when choosing the applicable arbitration rules.

Arbitration is a process of dispute resolution in which a neutral third party (arbitrator) renders a decision after a hearing in which both parties have an opportunity to be heard. Arbitration may be voluntary or contractually required. The advantages of arbitration - as opposed to litigation - are neutrality, confidentiality, reduced costs, faster procedures and the arbitrator's expertise. Internationally, the main arbitration body is the ICC International Chamber of Commerce. Other arbitration institutions include the London Court of International Arbitration, the International Center of Dispute Resolutions (ICDR) and the China International and Economic Trade Arbitration Commission (CIETAC).

With the upsurge in the complexity of international commercial transactions, which often involve multiple contracts, parties, jurisdictions and third parties, international arbitration has witnessed a growing pressure by its users for it to develop increasingly appropriate mechanisms in response to the disputes emerging from such transactions. One of these mechanisms is precisely the joinder of third parties, which is, broadly speaking, triggered when a third party, at its own initiative or at the request of a party to the arbitration, is authorized to participate within a pending arbitration.

In the context of proceedings taking place in national state courts, the existence of joinder mechanisms is common and well defined within the procedural law applicable, whereby the main characterizing features are:

- that the participation of a third party does not require the consent of all the parties involved, and
- that the court has significant discretion for ordering joinder of third parties.

Underlying these mechanisms in the state jurisdiction are reasons of efficiency and procedural economy, but also, above all, these mechanisms aim to avoid the risk of inconsistent or contradictory decisions arising from the existence of two or more separate proceedings discussing the same or related issues involving different parties. Essentially, its purpose is for the state court to be able to hand down a decision that definitively regulates the specific situation of all those interested (parties and/or third parties) relating to the subject matter in dispute.

These reasons would also be welcome to international arbitration. However, in international arbitration the availability and scope of these mechanisms is far more limited, first and foremost, due to the different nature of the powers underlying the state and arbitration jurisdictions.

In fact, in state jurisdiction, the court is a sovereign body, previously established and regulated. In contrast, in arbitration the legitimacy of the arbitral tribunal is based on the parties' consent, expressed within the arbitration agreement, deciding to submit certain disputes to the decision of arbitrators they have chosen or which were chosen following previously agreed rules.

The consensual nature of arbitration is so striking that the idea of having third parties intervening in a pending procedure without their consent and/or without the consent of the parties thereof immediately appears to be in conflict with this structural principle of party autonomy inherent to arbitration.

In addition, the joinder of third parties in arbitration brings to light certain issues that may prove to be difficult to solve, such as those related to confidentiality, arbitrators' appointment or certain concerns relating to an increase of the complexity, length and costs of the arbitration along with a potential increased risk of the arbitral award being challenged.

Most national legislations on arbitration do not establish mechanisms for joinder of third parties, which is also the case of the UNCITRAL Model Law (contrarily to what occurs with the UNCITRAL Arbitration Rules, applicable to *ad hoc* arbitrations). However, there are some exceptions, such as the Portuguese Law, the Dutch Law, the Belgian *Code Judiciaire* and the Italian Law, which expressly regulate joinder of third parties in arbitration proceedings.

In an attempt to address the pressure exercised by international arbitration users and to which we referred at the beginning of this article, some leading arbitral institutions have been introducing into their Arbitration Rules mechanisms allowing a joinder, with differing degrees of flexibility amongst them. Such is the case of the International Chamber of Commerce (ICC), the London Court of International Arbitration (LCIA), the Swiss Chambers' Arbitration Institution (SCAI), the Singapore International Arbitration Centre (SIAC) and the Vienna International Arbitration Centre (VIAC).

Thus, when facing complex multi-contract and multi-party international transactions, particular care must be given to the wording of the dispute resolution clause and to the choice of arbitration rules as it may prove to be useful to include provisions making third-party intervention more flexible.

In the following link can be found models of international contracts in which the arbitration clause for the resolution of controversies between the Parties is incorporated.



[Models of International Contracts](#)

NEGOTIATION AND ETIQUETTE GUIDES IN 70 COUNTRIES

How to negotiate and do business in
BRAZIL

Introduction
Brazil is the third largest country in Latin America with over 200 million people. It is a great geographical position and very important in manufacturing of consumer goods. There are many trade opportunities and export markets. Infrastructure and technology are rapidly developing. Brazil is one of the few countries that are not an industrial industry. Brazil is the largest of the tropical "great nations". Tom Coppen in China are interviewed in Brazil.



KEY FACTS

POPULATION	191 m
AREA	8,511,965 sq km
FORM OF GOVERNMENT	Federal republic (26 states and 1 Federal district)
GDP PER CAPITA (PPP)	USD 1,300
COUNTRY RISK RATING	Medium (A1, A2, A3, A4, B, C, D)
CURRENCY	Real (R\$) = 100 cents
OFFICIAL LANGUAGE	Portuguese

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Negotiation and Etiquette in Brazil

How to negotiate and do business in
CHINA

Introduction
China is the most populous country in the world. It is a great geographical position and very important in manufacturing of consumer goods. There are many trade opportunities and export markets. Infrastructure and technology are rapidly developing. China is one of the few countries that are not an industrial industry. China is the largest of the tropical "great nations". Tom Coppen in China are interviewed in China.



KEY FACTS

POPULATION	1,300 m
AREA	9,596,961 sq km
FORM OF GOVERNMENT	People's Republic of China (PRC)
GDP PER CAPITA (PPP)	USD 1,300
COUNTRY RISK RATING	Medium (A1, A2, A3, A4, B, C, D)
CURRENCY	Yuan (RMB) = 100 cents
OFFICIAL LANGUAGE	Mandarin Chinese

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Negotiation and Etiquette in China

How to negotiate and do business in...
RUSSIA

Introduction
Russia is the largest country in the world. It is a great geographical position and very important in manufacturing of consumer goods. There are many trade opportunities and export markets. Infrastructure and technology are rapidly developing. Russia is one of the few countries that are not an industrial industry. Russia is the largest of the tropical "great nations". Tom Coppen in Russia are interviewed in Russia.



KEY FACTS

POPULATION	142 m
AREA	17,098,242 sq km
FORM OF GOVERNMENT	Federal republic (81 Federal administrative districts)
GDP PER CAPITA (PPP)	USD 1,300
COUNTRY RISK RATING	Medium (A1, A2, A3, A4, B, C, D)
CURRENCY	Ruble (RUB) = 100 kopecks
OFFICIAL LANGUAGE	Russian and other (Chechen, Ukrainian, Armenian, etc.)

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Negotiation and Etiquette in Russia

How to negotiate and do business in
AUSTRALIA

Introduction
Australia is the sixth largest country in the world. It is a great geographical position and very important in manufacturing of consumer goods. There are many trade opportunities and export markets. Infrastructure and technology are rapidly developing. Australia is one of the few countries that are not an industrial industry. Australia is the largest of the tropical "great nations". Tom Coppen in Australia are interviewed in Australia.



KEY FACTS

POPULATION	22 m
AREA	7,688,284 sq km
FORM OF GOVERNMENT	Federal republic (6 states, 2 territories and 8 independent territories)
GDP PER CAPITA (PPP)	USD 23,500
COUNTRY RISK RATING	Medium (A1, A2, A3, A4, B, C, D)
CURRENCY	Australian dollar (AUD) = 100 cents
OFFICIAL LANGUAGE	English

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Negotiation and Etiquette in Australia

How to negotiate and do business in
GERMANY

Introduction
Germany is the seventh largest country in the world. It is a great geographical position and very important in manufacturing of consumer goods. There are many trade opportunities and export markets. Infrastructure and technology are rapidly developing. Germany is one of the few countries that are not an industrial industry. Germany is the largest of the tropical "great nations". Tom Coppen in Germany are interviewed in Germany.



KEY FACTS

POPULATION	82 m
AREA	357,021 sq km
FORM OF GOVERNMENT	Federal republic (16 states in Länder)
GDP PER CAPITA (PPP)	USD 39,000
COUNTRY RISK RATING	Medium (A1, A2, A3, A4, B, C, D)
CURRENCY	Euro (EUR) = 100 cents
OFFICIAL LANGUAGE	German

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Negotiation and Etiquette in Germany

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JAPAN

Introduction
Japan is the thirteenth largest country in the world. It is a great geographical position and very important in manufacturing of consumer goods. There are many trade opportunities and export markets. Infrastructure and technology are rapidly developing. Japan is one of the few countries that are not an industrial industry. Japan is the largest of the tropical "great nations". Tom Coppen in Japan are interviewed in Japan.



KEY FACTS

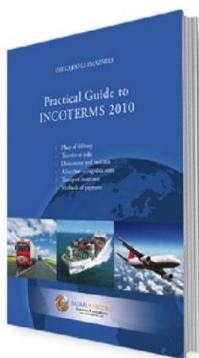
POPULATION	127 m
AREA	377,837 sq km
FORM OF GOVERNMENT	Constitutional monarchy (10 prefectures)
GDP PER CAPITA (PPP)	USD 29,000
COUNTRY RISK RATING	Medium (A1, A2, A3, A4, B, C, D)
CURRENCY	Yen (JPY) = 100 cents
OFFICIAL LANGUAGE	Japanese

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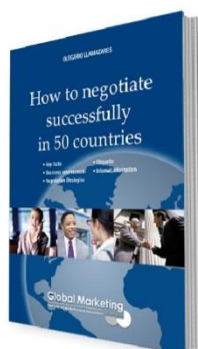
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Negotiation and Etiquette in Japan

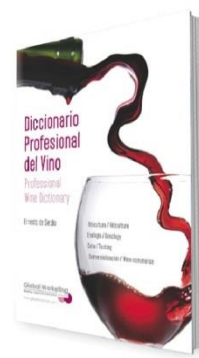
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