Comparative Arbitration Law Reflected through Examples of Document Drafting

Kluwer Arbitration Blog
September 9, 2017

Sigvard Jarvin, Corinne Nguyen

Please refer tot his post as: Sigvard Jarvin, Corinne Nguyen, 'Comparative Arbitration Law Reflected through Examples of Document Drafting', Kluwer Arbitration Blog, September 9 2017, http://arbitrationblog.kluwerarbitration.com/2017/09/09/comparative-arbitration-law-reflected-examples-document-drafting/

Since 30 years, international arbitration of business disputes continues to increase. It has become the primary form, some say "the natural way", of settling commercial disputes between companies or individuals from different countries. As international arbitration becomes more popular and wide-spread it has also become more sophisticated, developing its own procedures and documents.

The steady growth means that an increasing number of new people enter the international arbitration community, on all continents. Young lawyers, fresh out of university and law school, enter law firms where they get involved in international arbitration. More experienced attorneys, who previously practiced predominantly in the courts of their own country, must now represent their clients in disputes governed by a set of arbitration rules, mostly held in another country. Retiring judges are asked to sit as arbitrators and apply international rules and procedures, different from the familiar practices of their own courts, a new experience. In-house lawyers in large private companies, in-house counsel in state-owned companies and ministers and directors in state agencies appear as counsel or advisors in international arbitrations or supervise and manage outside counsel. Law professors and other experts sit as arbitrators and/or draft legal opinions to be submitted in international arbitrations.

During our long practice of international arbitration we have seen a variety of drafting styles, of different ways of approaching a problem, of explaining a case, of presenting convincing evidence, of making an effective opening speech at a hearing, of summing it up at the end. We have also come across less fortunate examples. We have seen different ways of drafting an application to an arbitral tribunal, to an arbitral institution or to a local court for interim measures, all reflecting the style of the drafter's legal family – be it common law, civil law, Islamic law, hybrid law.

Today's arbitral process has become formalistic, technical and generally complicated. The procedural pattern is largely identical irrespective of the values at stake and where in the world the proceedings take place. The standard procedure in any ICC, ICDR, LCIA or UNCITRAL case is: two rounds of written pleadings (Statement of claim, Statement of defence, Reply and Rejoinder), or even more where a counterclaim is involved. Before the hearing parties submit skeleton arguments, at the beginning of the hearing they make opening statements (often reading from a script). Witnesses and experts submit written statements before the hearing, they are cross-examined at the hearing and after the hearing the parties submit post-hearing briefs.

Although the literature on international arbitration is extensive, and seminars take place every week somewhere on the globe, and universities and law schools teach international arbitration, and mock

arbitrations gather an increasing number of students, there is no systematic collection of the documents used in international arbitration. We thought it was time to put some of these documents together in a book so that new arbitration practitioners could see them and make use of them. In fact, not only the newcomers, but also more experienced counsel and arbitrators who, we hope, will be inspired by the examples and learn from what others have done.

The Compendium of International Commercial Arbitration Forms, written by Sigvard Jarvin and Corinne Nguyen is thus a collection of documents (or 'Forms') which are used in international commercial arbitration, both institutional and ad hoc. It is a book made by practitioners for practitioners. The examples originate from disputes under arbitration rules of general application in the commercial field, e.g. ICC, LCIA, ICDR, CRCICA and many others, both Asian, European, Middle Eastern, North American and others. It covers a range of topics. The Forms, which are taken from real cases, offer readers a critical mass of documents drafted in different styles by lawyers and arbitrators coming from different legal and cultural backgrounds. We have selected examples typical and representative for the kind of procedural document in question. Emphasis is on procedural aspects, not the merits of a dispute submitted to arbitration. Most of the Forms are provided with a short explanatory comment based on our professional experience to raise the readers' awareness on a specific issue or discussion.

To contact the authors, please send an email to arbitrationforms@outlook.com

For the Table of Contents, click on the following link: CCE30082017

For samples of Request for Arbitration, click on the following links: CCE30082017_2 and CCE30082017_3