

SUBJECT: Contract Form Forum Selection and Choice of Law and Use of Arbitration Methods – For Use with Commercial Contracts Only

Executive Summary

Choice of Law and Forum Selection (COL/FS) clauses are designed to make processes and outcomes favorable to a party by setting forth with specificity the law under which a contract will be interpreted, and the court system where that will occur. However, in global commercial contracting these clauses may increase risks (even if favorable to COMPANY on paper) where the counterparty’s local jurisdiction finds such clauses unenforceable (leaving COMPANY in an unfavorable local forum) or where judgments rendered in the chosen venue are deemed unenforceable against a party by that party’s local jurisdiction. Further, COL/FS clauses often represent an obstacle in “getting to yes” during contract negotiations, where compromises may consume valuable negotiating capital perhaps better reserved for other terms.

In order to reduce these risks and ease global commercial contracting, this memo recommends blending 1) the selection of a regionalized group of COL/FS clauses for jurisdictions with well-developed contractual law and court systems where COMPANY could reasonably expect relief and 2) selects binding arbitration for jurisdictions where general contractual risk is high (performance, enforcement, compliance, etc), the risk of COL/FS clauses being found unenforceable is high, or where local forums are otherwise disfavored.

This approach is proposed to take advantage of the wide network of countries who have ratified the key international treaty on enforcement of arbitral awards – the New York Convention (the “Convention”)¹ – allowing COMPANY to specify favorable arbitral terms and have reasonable expectation of the enforcement of that selection and of any award in such contractual high-risk countries in contrast to the lack of any such accords concerning enforcement of foreign courts’ judgments, and the need in such cases to rely only upon comity.

Legal Background:

1. Recognition of Foreign Judgments

Unlike arbitration, there is no broad international treaty governing the enforcement of foreign judgments obtained through the courts. Notably, there are some regional agreements including the Brussels League (all European Union Countries as well as Iceland, Norway, and Switzerland) and The Hague Convention (currently ratified by only Albania, Cyprus, Kuwait, the Netherlands, and Portugal). However, the limited scope of these agreements makes the recognition of foreign judgments, especially in high-risk countries, uncertain. In many of these nations, comity is the guiding force behind recognition and often prevents the implementation of judgments. Establishing comity also usually requires submitting the judgment to that country’s court system for judicial review, which is a time-consuming process with a questionable outcome. Additionally, differing views on public policy, due process, and jurisdictional authority present further barriers to enforcement. Therefore, even a decision rendered after a dispute is properly litigated according to the procedures of a foreign court system may be deemed unenforceable in certain countries.

¹ The Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958)

2. Arbitration

The New York Convention, first ratified in 1958, has over 149 countries as signatories, and requires that signatory countries enforce judgments in arbitration agreements that are compliant with specific terms set out in the treaty. While the treaty itself gives broad enforceability, certain countries interpret provisions to allow exceptions to enforcement where their public policy controls, or where certain nation-specific procedures are not followed. Regardless, when these idiosyncrasies are accounted for, arbitration in compliance with the New York Convention offers a method to address contractual risk in countries where the risks posed by COL/FS clauses are particularly high.

Under the New York Convention, arbitration clauses will only be enforceable when compliant with the terms of the Convention, including the requirements that the clause be in *writing*, and that it state:

- The Scope of the dispute (“any and all” is preferable and sufficient –carving out disputes that will not be arbitrated creates significant risk)
- Exclusivity of Arbitration as the mechanism (essential for enforcement – “or” clauses, option clauses or stepped approaches involving the possibility of litigation will result in nullification of the arbitration clause)²
- List of applicable arbitration rules

Preferentially, additional clauses should be included that state:

- Situs (must be a Convention contracting state) and Language of arbitration
- Number of Arbitrators and Selection Procedures
- Entry of Judgment Stipulation
- Provisional/Injunctive Relief clauses
- Waiver of Appeal
- Award of Fees/Costs
- Confidentiality of the arbitration

Absences from the list of NYC contracting states are few, including the following states, the most significant of which, is Taiwan:

- The Americas: Suriname
- Africa: Sierra Leone, Western Sahara, Libya, Chad, Sudan, Ethiopia, Somalia, Angola, Namibia, Zimbabwe, DRC, R. Congo
- The Middle East: Iraq, Yemen, Turkmenistan
- Asia: North Korea, Tajikistan, Papua New Guinea, Burma, Taiwan

COMPANY Background

The global nature of COMPANY’s commercial contracting (including NDAs and even engagement agreements with counsel) raises the possibility of COMPANY being a party to disputes based upon those contracts in a wide variety of forums and jurisdictions. While COMPANY defaults to [REDACTED] choice

² Mediation clauses may be inserted without harming exclusively provided that the clause specifies mediation is optional and allows it to run concurrent with arbitration. A sample mediation clause is located at the end of this document.

of law and forum selection clauses, the enforceability of those clauses, ability to hail parties into court based upon them, and enforceability of any judgments awarded from the selected forum, when viewed from a global perspective, is a source of contractual risk on several fronts, as set forth below:

Primary Risks/Concerns Relevant to choice of COL/FS on a Global Basis

- Local Respect³ of COL/FS Clauses
 - If the counterparty's home forum does not respect the parties' contractual agreement to a COL/FS clause that requires disputes to be settled outside the local jurisdiction:
 - Can COMPANY be hailed into the local courts by the counterparty?
 - Where can COMPANY sue for relief?
- Local Respect of Foreign Judgments
 - If a judgment is rendered against a counter-party, will the local jurisdiction recognize and enforce the judgment?
- Foreign⁴ Respect of Contractual choice of COL/FS
 - Will the foreign jurisdiction respect the COL/FS clause and exercise jurisdiction over the matter, especially if the validity of the COL/FS clause is in dispute?
- Appropriateness and Enforceability of the contract relative the law of the Jurisdiction
 - If the selected local or foreign court exercises jurisdiction over the matter, will the contractual terms, when interpreted in that jurisdictions, operate as intended to protect COMPANY's interests?
 - Will the litigation court award COMPANY damages in a reasonable period of time?
- Confidentiality
 - Does COMPANY want any dispute arising from a breach of the contract to be adjudicated outside of a public forum?
- Expertise
 - Do judges in the foreign court system have a firm understanding of their nation's contract law? Are they able to decipher the meaning of COMPANY's contracts per their legal system?
- Special Interests
 - Does the subject matter of the contract raise special interests that may induce a court to alter its policy on COL/FS due to policy interests?
 - Is the counterparty an entity that represents any arm of a foreign government, and, if so, does the subject of the contract fall under the exceptions to the Foreign Sovereign Immunities Act such that the sovereign is not immune from suit?
- Various permutations of these factors can result in even more negative outcomes, such as being "Squeezed Out" -- where both the local and foreign jurisdictions decline to exercise jurisdiction, leaving COMPANY without a forum in which to seek relief.

These issues, and assessment of their attendant risk, is complicated by various countries' policy concerns that may, in certain areas of law (of which employment and labor law is the most significant example), cause deviations from those jurisdictions' standard practices or traditional respect for comity. While complete mitigation of that risk would require extensive research and significant expense in

³ "Local" where used herein, refers to a jurisdiction in which the counterparty resides.

⁴ "Foreign" as used herein, refers to a jurisdiction in which the counterparty does not reside, but is designated by the FS/COL clause.

analyzing each country's COL/FS law, substantive law in various areas and treaty status, significant minimization of this risk can be achieved via the proposed strategy, which blends COL/FS clauses with arbitration clauses, and identifies particular countries where known legal concerns alter that calculus. The below table is a summary of the proposed recommendation, including which of the suggested arbitration clauses should be employed for each country (these are listed separately after the table).

Note: The recommendations in the following table are for commercial contracts only. They should not be employed for contracts involving employment law, labor law, or legal topics other than commercial contracts without further review.

Jurisdiction	Legal System	Recognition of Judgments	NYC	Recognition of Arbitration	Costs Rule	Recommendations	Notes	Profile of Arbitration
Guatemala	Civil law with no stare decisis	-Requires the filing of a petition for enforcement. -Recognition is heavily based on a treaty granting judicial reciprocity	Y	Y -Courts may not interfere with arbitration proceedings unless one or both parties seek their involvement	American Rule	-Arbitrate in Miami using ICC -US law -Proceedings in English -See Clause I at the end of the document	-Guatemalan law does not recognize attorney-client privilege	-Arbitration is widely used to resolve disputes involving Guatemala
Honduras	Civil law with no stare decisis	-Requires the filing of a separate petition in the relevant court of first instance	Y	Y -Honors contractual provisions stipulating international arbitration	British Rule	-Arbitrate in Miami using ICC -US law -Proceedings in English -See Clause I at the end of the document	-Corruption is rampant	-Arbitration is becoming a more frequent means of dispute resolution in Honduras
Panama	Civil law with no formalized stare decisis	-Requires petitioning the relevant court	Y	Y	British Rule	-Arbitrate in Miami using ICC -US law -Proceedings in English -See Clause I at the end of the document	-This year Panama opened CECOMAP, a local arbitration center to encourage arbitration	-Panama is trying to establish itself as the region's premier arbitration center
Peru	Civil law with stare decisis for Supreme Court decisions only	-Requires signed treaty outlining foreign courts reciprocity with Peru	Y	Y	British Rule	-Arbitrate in Miami using ICC -US law -Proceedings in English -See Clause I at the end of the document	-Judicial Reciprocity is required for the enforcement of any foreign decision	-Arbitration is available, but no local forum exists
Argentina	Civil law with no stare decisis	-Requires judicial reciprocity with the foreign nation issuing the judgment	Y	Y	Moderated British Rule	-Arbitrate in Miami using ICC -US law -Proceedings in English -See Clause I at the end of the document	-The government encourages arbitration to reduce the burden companies place on the legal system	-The government promotes arbitration to help lessen the judicial system's case load
Chile	Civil law with no stare decisis	-Requires judicial reciprocity with the foreign nation issuing the judgment	Y	Y	British Rule	-Arbitrate in Miami using ICC -US law -Proceedings in English -See Clause I at the end of the document	-The Chamber of Commerce of Santiago offers an arbitration forum in Chile	-Arbitration is becoming more frequent with the establishment of a local arbitration forum
Colombia	Civil law with no stare decisis	-Is based solely on judicial reciprocity with the foreign nation issuing the judgment	Y	Y	Moderated British Rule	-Arbitrate in Miami using ICC -US law -Proceedings in English -See Clause I at the end of the document	-The Chamber of Commerce of Bogota is the most important arbitration center in Colombia	-Colombia is amenable to all forms of arbitration and offers a local forum

Jurisdiction	Legal System	Recognition of Judgments	NYC	Recognition of Arbitration	Costs Rule	Recommendations	Notes	Profile of Arbitration
Hungary	Civil law with stare decisis for Supreme Court decisions only	-EU member states judgments will be recognized without any special procedures. -Non-EU decisions must be approved by a Hungarian court	Y	Y	British Rule	-Arbitrate in London using LCIA -English law -Proceedings in English -See Clause II at the end of the document	-As a newly admitted EU member, Hungary is willing to accept almost all foreign judgments or arbitrations from other EU members	-Hungary has recognized both domestic and international arbitration
Malaysia	Combination of English common law and statutory legislation	-The Reciprocal Enforcement of Judgments Act allows foreign judgments from former British Colonial possessions (and Britain herself) to be enforced with relative ease	Y	Y	Moderated British Rule	-Arbitrate in Singapore using SIAC or the UK using LCIA. -Use US or English law -Proceedings in English -See Clause II or III at the end of the document	- No party is entitled to recover their court costs unless payment is stipulated in an order of the Court. -Usually, court orders grant the successful party between one-third to one-half of their total costs	- Malaysia is relatively new to arbitration and is therefore cautious in their enforcement. While they usually enforce the agreements, the process can be lengthy
England	Common law with stare decisis	-Recognition of EU member states' judgments are almost automatic	Y	Y	British Rule	-Litigate in UK High Court or arbitrate in London using LCIA. -English law -Proceedings in English -See Clause II at the end of the document	-Foreign judgments not from EU states, Canada, or Australia must be filed in UK court	-Arbitration is available and widely used
Belgium	Civil law with no stare decisis	-An order must be obtained from Belgium courts to enforce US judgments. -EU judgments enforced after a quick examination by a Belgium court	Y	Y	Moderated British rule	-Arbitrate in London using LCIA -English law -Proceedings in English -See Clause II at the end of the document	-The Court will void any decision if the Belgian courts should have had jurisdiction	-Arbitration is available; however, arbitration rulings may not be appealed on the grounds of a misapplication of the law
Uzbekistan	Civil law with stare decisis for Supreme Court decisions only	-Enforcement is only possible with a bilateral enforcement treaty, none of which are with western nations	Y	Y	British Rule	-Arbitrate in UK using LCIA -Use English law -Proceedings in English -See Clause II at the end of the document	-Foreign judgments are generally not enforceable.	-The UK has an investment treaty with Uzbekistan that includes dispute resolution clauses

Jurisdiction	Legal System	Recognition of Judgments	NYC	Recognition of Arbitration	Costs Rule	Recommendations	Notes	Profile of Arbitration
Israel	Common law with stare decisis for Supreme Court decisions only	-Foreign awards are generally recognized and registered	Y	Y	British Rule	-Arbitrate in UK using LCIA -English law -Proceedings in English -See Clause II at the end of the document		-Israel takes a loose view on international arbitration; they will enforce any arbitration proceedings from a signer of the NYC
Pakistan	Common law with some influence from Islamic Sharia law. Stare decisis for Supreme Court decisions only	-Enforcement is heavily based on reciprocity	Y	Y	British Rule	-Litigate in UK High Court or Arbitrate using LCIA -English law -Proceedings in English -See Clause II at the end of the document	-The Federal Shariat Court can strike down any law or judgment that is contrary to Islam. -Pakistan signed the Foreign Judgment Enforcement Act with UK.	-Arbitration proceedings are generally upheld, but may be struck down if they violate Sharia law
Taiwan	Civil law with no stare decisis	-Enforcement is based on reciprocity	N	Y	British Rule	-Litigate in UK High Court, or arbitrate in London using LCIA -English law -Proceedings in English -See Clause II at the end of the document	-Has a specialized district court to deal with all patent, copyright, and trademark cases	-Has bilateral enforcement treaties for arbitration in Singapore, Thailand, and Malaysia. -However, little precedent exists because most parties avoid arbitration
UAE	Civil law that incorporates Sharia law. No stare decisis	-Riyadh Convention countries only need to submit their verdict ⁵ -Other countries verdicts will be submitted to the UAE court system	Y	Y	American Rule	-Arbitration in Dubai using LCIA-DIFC -English law -Proceedings in English -See Clause IV at the end of the document	-Reciprocal enforcement is the primary test to determine the enforceability of foreign judgments. -Judgments will be vacated if they violate Sharia law	-There are no specific arbitration boards in the UAE
Saudi Arabia	Sharia law with some special statutory tribunals for contract law and no stare decisis	-Riyadh Convention countries only need to submit their verdict. -Other countries must have a bilateral enforcement treaty with Saudi Arabia	Y	Y	British Rule	-Arbitration in Dubai using LCIA-DIFC -English law -Proceedings in English -See Clause IV at the end of the document	-Arbitration may be conducted in languages other than Arabic. -Saudi courts may strike down any arbitration award that is contrary to Sharia law	-Arbitration is becoming more liberal; disputes may now be submitted for international arbitration under that organization's rules

⁵ Signers include: Jordan, UAE, Bahrain, Tunisia, Algeria, Djibouti, Saudi Arabia, Sudan, Syria, Somalia, Oman, Iraq, Palestine, Qatar, Kuwait, Lebanon, Libya, Morocco, Mauritania, and Yemen.

Jurisdiction	Legal System	Recognition of Judgments	NYC	Recognition of Arbitration	Costs Rule	Recommendations	Notes	Profile of Arbitration
Jordan	Sharia law mixed with the Napoleonic Code and no stare decisis.	-Riyadh Convention countries only need to submit their verdict -Other countries verdicts will be submitted to the Jordanian court system	Y	Y	British Rule	-Arbitration in Dubai using LCIA-DIFC -English law -Proceedings in English -See Clause IV at the end of the document	-In practice, Jordanian courts will reject any judgment if that nation does not explicitly state it will reciprocate -Jordanian court may vacate judgments that violate Sharia law	-Arbitration is relatively new, but becoming more frequent -Jordan has no specific dispute resolution boards
South Africa	Mixture of Civil law, English common law, and African customary law with Stare decisis	-Foreign judgments are submitted to a local court for recognition under English common law	Y	Y	British Rule	-Arbitrate in London using LCIA -Use English law -Proceedings in English -See Clause II at the end of the document	-Punitive damages may not be awarded and are loosely defined as excessive damages	-Arbitration is popular and encouraged by the South African court system
India	Common law heavily based upon the British legal system with stare decisis.	-Enforcement is heavily based on reciprocity -It is then treated like a domestic judgment	Y	Y	British Rule	-Arbitrate in Mumbai using LCIA -Use British law -Proceedings in English -See Clause V at the end of the document	-The court system is notoriously slow	-Arbitration is encouraged to reduce the case load burdening their judicial system
Turkey	Civil law with stare decisis for the Joint Chamber of the Court of Appeals decisions only.	-Bilateral enforcement treaty required for enforcement. -Germany and Turkey have such a treaty	Y	Y	British Rule	-Litigate in German or UK High Court -The LCIA in London may also be used for arbitration -Use German or British law -Proceedings in German or English -See Clause II at the end of the document	-While no bilateral enforcement treaty exists, Turkey almost always enforces decisions from other EU Countries	-Arbitration is common
Philippines	Blend of Roman civil law and Anglo-American common law with stare decisis for Supreme Court decisions only	-Qualified recognition requiring the filing of a separate action in the Philippines for enforcement. -Comity considered	Y	Y	Moderated British Rule	-Arbitrate in Singapore using SIAC -US law -Proceedings in English -See Clause III at the end of the document	-Philippine courts are becoming increasingly hesitant to vacate or modify international arbitration agreements	-The Philippines are starting to promote arbitration and lessen the courts ability to prevent enforcement

Jurisdiction	Legal System	Recognition of Judgments	NYC	Recognition of Arbitration	Costs Rule	Recommendations	Notes	Profile of Arbitration
Singapore	A English common law model with stare decisis	-Countries privity to reciprocal enforcement acts have their decisions easily registered	Y	Y	British Rule	-Arbitrate in Singapore using SIAC -US law -Proceedings in English -See Clause III at the end of the document	-Singapore courts are renowned for their efficiency; they have a disposal rate of 85% within 18 months	-Arbitration is encouraged and multiple forums including the ICC, AAA, or SIAC are offered
South Korea	Civil law with no stare decisis.	-All foreign judgments are recognized if judicial reciprocity exists	Y	Y	British Rule	-Arbitrate in Singapore using SIAC. -US law -Proceedings in English -See Clause III at the end of the document	-The foreign jurisdiction must have a reasonable relationship to the dispute	-Foreign arbitration is respected and KCAB is a recognized arbitration body
Brazil	A federal system with stare decisis for Supreme Court decisions only	-Enforcement requires confirmation of the Superior Court of Justice.	Y	Y	British Rule	-Arbitrate in Rio or San Paulo using ICC -US law -Proceedings in English -See Clause VI at the end of the document	-All enforcement treaties are disregarded if they conflict with the Constitution	-Arbitration is considered internal as long as it takes place in Brazil. Meaning, it does not need to be confirmed by the superior Court of Justice
Japan	Civil law with stare decisis for Supreme Court decisions only	-Enforcement is based heavily on judicial reciprocity	Y	Y	British Rule	-Arbitration in Japan using ICC or London using LCIA -English law -Proceedings in English -See Clause VII at the end of the document	-In practice, foreign judgments based upon common law principles similar to Japanese principles will be enforced even if reciprocity is not formally guaranteed	-Arbitration is not a popular model of dispute resolution in Japan. -Arbitration awards are respected and court cases ordering their cancellation are very rare
Kazakhstan	Civil law with no stare decisis	-Enforcement is only possible with a bilateral enforcement treaty, none of which are with western nations ⁶	Y	Y	British Rule	-Arbitrate in London using LCIA arbitration. -English law -Proceedings in English -See Clause II at the end of the document	-A dispute involving two Kazakhstani parties or a wholly owned Kazakhstani subsidiary of a foreign company may not be submitted for arbitration -Judicial Corruption is rampant	-Arbitration is available; however, it is not widely used -Arbitration may not be used for any dispute involving immovable property located in Kazakhstan

⁶ Treaty countries include CIS nations, North Korea, Lithuania, Pakistan, China, Mongolia, and Turkey.

Jurisdiction	Legal System	Recognition of Judgments	NYC	Recognition of Arbitration	Costs Rule	Recommendations	Notes	Profile of Arbitration
Ukraine	Civil law with no stare decisis	-Enforcement is only possible if the Ukraine has an enforcement treaty with that nation	Y	Y -However, disputes related to IP rights may not be submitted for arbitration	British Rule	-Confer with Russian counsel; however, litigation in Ukrainian court system seems like the only viable option	-Appeals may be necessary because judges often struggle to interpret IP and contract law	-Arbitration is very restrictive in the Ukraine; IP disputes and disputes involving immovable property cannot be arbitrated
Australia	Common law with stare decisis	-Without a reciprocal enforcement treaty, judgments are only enforceable under common law	Y	Y	Moderated British Rule	-Arbitrate in London using LCIA -English law -Proceedings in English -See Clause II at the end of the document	-Defenses to enforcement have a high threshold of error, bias, fraud, or contrary to public policy	-Arbitration is widely used and accepted in Australia
China	-Civil law with no stare decisis	-Enforcement is dependent on whether China has a legal aid agreement with the country issuing the judgment	Y	Y Enforceability of convention awards is enhanced if the situs is Hong Kong, due to the <i>Memorandum of Understanding Concerning the Mutual Enforcement of Arbitral Awards between the Mainland and Hong Kong (2000)</i>	British Rule	-If foreign party v. Chinese party, use ICC arbitration in Hong Kong under Hong Kong Law -See Clause IX at the end of the document -If Chinese party v. Chinese party, use CIETAC arbitration in Beijing -See Clause X at the end of the document -English law -Proceedings in English	-A People's Court will review all foreign-party related convention awards -If the arbitration rules are vague, Chinese court will force COMPANY to settle the dispute using CIETAC, its internal arbitration body. This is not recommended	-The COL must be specified to be valid -First oral hearing in the arbitration cuts off the chance to challenge the arbitration clause
Mexico	-Civil law with modified stare decisis -Cases are only binding if five separate decisions are made on the same terms, or if a Supreme Court decision resolves contradictory lower court opinions	-Enforcement is only possible after an exequatur from the First Instance Federal, or Local Courts of the corresponding State	Y	Y	American Rule	-Arbitrate in Miami using ICC -US law -Proceedings in English -See Clause I at the end of the document	-The Mexican judicial system has implemented many Constitutional reforms that will be taking affect over the next eight years However, arbitration will remain unaffected	-Arbitration is valid and fairly common in Mexico -Experienced arbitration centers including the AAA, ICC, and Center of Mexican Arbitration (CAM) are located in Mexico

Conclusion

Regionalized arbitration under either English or US law provides COMPANY both with the most flexibility regarding COL and the greatest probability that those judgments will be globally enforceable. Simultaneously, arbitration offers a uniquely confidential setting to adjudicate disputes involving COMPANY's IP assets. Arbitration venues are not public domains and therefore may not be attended by anyone except the parties participating in the dispute. Internationally recognized arbitration forums also offer a large selection of qualified arbiters capable of interpreting and deciphering the contractual provisions. Therefore, this memo endorses using the arbitration forums outlined in the above chart to mitigate contractual uncertainty in high-risk countries.

Arbitration Clauses

Clause I: "All disputes arising out of or in connection with the present contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules. The number of arbitrators shall be [three]. The seat, or legal place of the arbitration shall be [Miami, United States]. The language to be used in the arbitral proceedings shall be [English]. The governing law of the contract shall be the substantive law of [The United States of America]."⁷

Clause II: "Any dispute arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the Rules of the LCIA, which Rules are deemed to be incorporated by reference into this clause. The number of Arbitrators shall be [three]. The seat, or legal place of the arbitration shall be [London, England]. The language to be used in the arbitral proceedings shall be [English]. The governing law of the contract shall be the substantive law of [The United Kingdom]."⁸

Clause III: "Any dispute arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration in Singapore in accordance with the Arbitration Rules of the Singapore International Arbitration Centre ("SIAC Rules") for the time being in force, which rules are deemed to be incorporated by reference in this clause. The Tribunal shall consist of [three] arbitrator(s) to be appointed by the Chairman of the SIAC. The language of the arbitration shall be [English]. The governing law of the contract shall be the substantive law of [The United States of America]."⁹

Clause IV: "Any dispute arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the Arbitration Rules of the DIFC-LCIA Arbitration Centre, which Rules are deemed to be incorporated by reference into this clause. The number of arbitrators shall be [three]. The seat, or legal

⁷ International Chamber of Commerce, *Standard ICC Arbitration Clauses*, <http://www.iccwbo.org/products-and-services/arbitration-and-adr/arbitration/standard-icc-arbitration-clauses/> (accessed November 10, 2014).

⁸ Santiago A. Cueto, *Sample Arbitration Clauses from the ICDR, ICC, LCIA, SIA, and SCC*, <http://internationalarbitrators.com/sample-arbitration-clauses-from-the-icdr-icc-lcia-sai-and-scc/> (accessed November 10, 2014).

⁹ Singapore Academy of Law, *Sample Clauses*, <http://www.singaporelaw.sg/sglaw/resources/sample-clauses> (accessed November 11, 2014).

place, of arbitration shall be [Dubai, UAE]. The language to be used in the arbitration shall be [English]. The governing law of the contract shall be the substantive law of [The United Kingdom].”¹⁰

Clause V: “Any dispute arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the Rules of the LCIA, which Rules are deemed to be incorporated by reference into this clause. The number of Arbitrators shall be [three]. The seat, or legal place of the arbitration shall be [Mumbai, India]. The language to be used in the arbitral proceedings shall be [English]. The governing law of the contract shall be the substantive law of [The United Kingdom].”¹¹

Clause VI: “All disputes arising out of or in connection with the present contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules. The number of arbitrators shall be [three]. The seat, or legal place of the arbitration shall be [Rio, Brazil]. The language to be used in the arbitral proceedings shall be [English]. The governing law of the contract shall be the substantive law of [The United States of America].”¹²

Clause VII: “All disputes arising out of or in connection with the present contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules. The number of arbitrators shall be [three]. The seat, or legal place of the arbitration shall be [Japan]. The language to be used in the arbitral proceedings shall be [English]. The governing law of the contract shall be the substantive law of [The United Kingdom].”¹³

Clause VIII: “All disputes arising out of or in connection with the present contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules. The number of arbitrators shall be [three]. The seat, or legal place of the arbitration shall be [Hong Kong]. The language to be used in the arbitral proceedings shall be [English]. The governing law of the contract shall be the substantive law of [The United States of America].”¹⁴

Clause IX: “Any dispute arising from or in connection with this Contract shall be submitted to China International Economic and Trade Arbitration Commission (CIETAC) for arbitration which shall be conducted in accordance with the CIETAC’s arbitration rules in effect at the time of applying for arbitration. The arbitral award is final and binding upon both parties. The number of arbiters shall be [three]. The seat, or legal place of the arbitration shall be [Beijing, China]. The language to be used in the arbitral proceedings shall be [English]. The governing law of the contract shall be the substantive law of [The United Kingdom].”¹⁵

¹⁰ DIFC-LCIA Arbitration Center, *Recommended Clauses*, http://www.difcarbitration.com/arbitration/arb_med_modl_clauses/.

¹¹ Cueto, *Sample Arbitration Clauses from the ICDR, ICC, LCIA, SIA, and SCC*.

¹² International Chamber of Commerce, *Standard ICC Arbitration Clauses*.

¹³ International Chamber of Commerce, *Standard ICC Arbitration Clauses*.

¹⁴ International Chamber of Commerce, *Standard ICC Arbitration Clauses*.

¹⁵ China International Economic and Trade Arbitration Center, *Model Arbitration Clauses*, <http://www.cietac.org/index/applicationForArbitration/47601fd59fcac97f001.cms> (accessed February 5, 2015).

Mediation Clause

Clause for ICC Mediation: “The parties may at any time, without prejudice to any other proceedings, seek to settle any dispute arising out of or in connection with the present contract in accordance with the ICC Mediation Rules.”¹⁶

¹⁶ International Chamber of Commerce, *ICC Mediation Clauses*, <http://www.iccwbo.org/products-and-services/arbitration-and-adr/mediation/suggested-clauses/> (accessed February 5, 2015).