

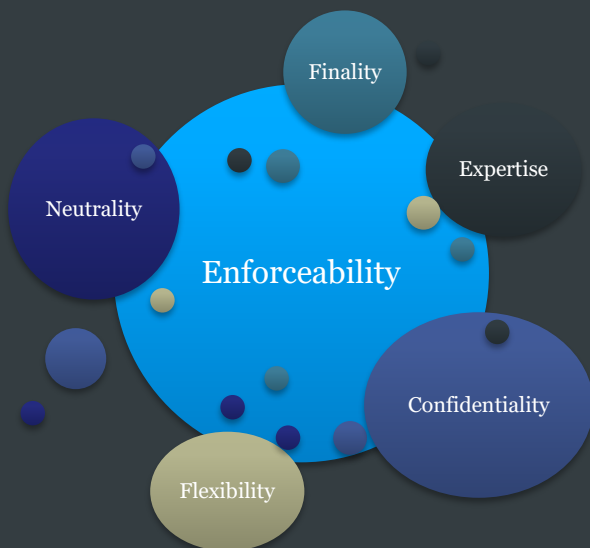
# Bird & Bird

## Reasons to Consider International Arbitration

### Dispute Resolution provisions are critical in M&A

- All cross-border commercial contracts should include a choice of dispute resolution: national court or international arbitration
- Insurers report that 1 in 5 M&A deals results in a Warranty and Indemnity (W&I) claim notification – the risk is not theoretical (AIG M&A Claims Report 2020)
- Arbitration awards benefit from worldwide enforcement under treaty in over 160 countries – there is no equivalent for court judgments

### Why choose arbitration?



- Enforcement advantages – based on the 1958 New York Convention (168 states globally are signatories)
- Confidentiality – arbitration and the consequent awards are generally confidential to the parties
- Neutrality – not tied to the home jurisdiction of either party
- Flexibility & Expertise – the ability to select expert decision-makers and decide the process

### Drafting international arbitration clauses

- Choose institutional rules (e.g. ICC, LCIA, AAA/ICDR, SIAC, etc) or *ad hoc* arbitration
- Use model clauses and law firm precedents
- Speak to the experts!

### Arbitration clause core elements

- Clear election for arbitration: parties 'shall' refer disputes to arbitration
- Avoid contradictory references to court jurisdiction
- Seat of arbitration – choose carefully (see below)
- Number of arbitrators and how selected (consider default positions under any institutional rules)
- Clarify the language of the arbitration proceeding
- Law of arbitration agreement (may be separate to law of the main contract)
- Confidentiality – state explicitly if this is important

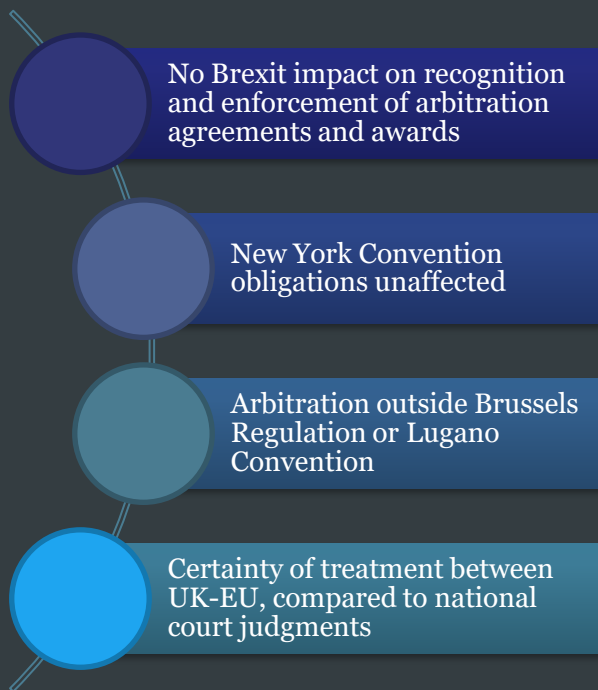
### Importance of 'seat' of arbitration

- The seat determines which national courts have supervisory jurisdiction (and decide challenges to awards)
- Choose national courts that will support arbitration with minimal intervention
- Name the city and country
- Choose a New York Convention signatory
- Geographical convenience relevant, but hearings can be held elsewhere by agreement

## Arbitration ‘innovations’

- Emergency Arbitration – an alternative to national courts for urgent injunctions and interim relief. Available under many institutional rules
- Expedited procedure – fast-track arbitration for low value, simple or urgent claims
- Quasi-‘Summary Judgment’ for ‘manifestly’ bad claims or defences - avoids delay and costs

## Brexit impact



## Bird & Bird expert assistance

- Drafting and structuring dispute resolution provisions – helping you choose the right option and use best-practice drafting
- Early case assessment and dispute avoidance – helping you manage disputes at an early stage to prioritise time and investment, and successfully resolve cases early where possible
- Robust handling of claims and defences – plan and execute a strategy for the optimal conduct of your case, including developing and presenting evidence and arguing forcefully as advocates
- Challenges to awards – bringing or resisting challenges to arbitral awards in national courts
- Enforcement strategies – helping with the enforcement of awards across the globe and managing assets in enforcement scenarios

## Key contacts

If you would like to discuss International Arbitration further, please get in touch.

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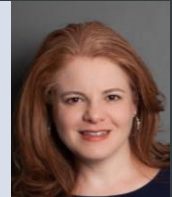
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