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Need for the Australian Centre for International Commercial Arbitration (ACICA) Rules and the International Arbitration Act (IAA) to be revised to include Arb-Med or other means to encourage early settlement of disputes

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Abstract

In the present paper a very prominent question has been addressed if there is a need to reform Australian Center for International Commercial Arbitration (ACICA) or in a more broader perspective International Arbitration Act(IAA) for facilitating early settlements of disputes in order to establish Australia as a preferred seat for resolving disputes. The paper takes a multi-dimensional approach, it sets the background and analyses the consequences of the problem. It takes inspiration from other nation states where arbitration rules with regard to Arb-Med are very effective i.e. Singapore and Hong Kong particularly. It then tries to suggest means and measures by which ACICA and IAA can be made more effective and how the reforms of ACICA and IAA revised rules can benefit Australia in wider context of economy and as the centre of international commercial arbitration legal system in the Asia –Pacific region .

Background

Traditionally there are three paths of justice : legal proceedings through courts of law; arbitration; and mediation. If disputes are not settled through by private negotiations ,civil disputes are adjudicated by court of law, or managed through arbitration or else are amicably resolved by mediation.[1] International Arbitration in the same way can be described as a method of dispute resolution that parties may select as an alternative to the courts. In this sense Arbitration is regarded as an alternative dispute resolution mechanism which is private and confidential in nature, outside of the courts. It comes as no surprise then, that resorting to lternative dispute resolution (ADR) is considered as a viable alternative. [2] The use of alternative dispute resolution method in the form of arbitration and mediation is very common in every business, trade and industry.

1.1 Arbitration

In simple terminology Arbitration means a process by which a dispute or difference between two or more parties as to their mutual rights and liabilities is submitted to and determined judicially and with binding effect by the application of the law by one or more persons (the arbitral tribunal) instead of by a court of law.

[1].Neil Andrews The Three Paths of Justice Court Proceedings, Arbitration, and Mediation in England Second Edition 123 Neil Andrews Clare College Cambridge UK 2018 Pg.1-3

[2] See PRICEWATERHOUSE COOPERS, Corporate choices in International Arbitration Industry Perspectives, http://www.pwc.com/gx/en/arbitration-dispute-resolution/assets/pwc-international-arbitration-study.pdf (last visited on April 5, 2017)

In this sense, Arbitration primarily arises from the agreement of parties in dispute and is conducted in a judicial manner and the decision of the arbitral tribunal is binding upon the parties and recognized by courts in arbitration. In this process the parties become the sole source of the arbitral tribunals power and have much control of the arbitral process than litigants have of judicial proceedings in the courts of law.
International Arbitration can take place either within the country or outside in cases where there are ingredients of foreign origin relating to the parties or the subject matter to the dispute. A foreign arbitration is an arbitration conducted outside the country of its origin and the resulting award is sought to be enforced as a foreign award.

According to Donna Ross, Arbitration agreement or clause is generally incorporated in the contract of the parties to the dispute. However, parties in certain cases may go for an arbitration accord where instead of litigation agreement a dispute has arisen. Arbitration agreement, therefore, serves as one of the most popular and well known forms of arbitration. As Arbitration focuses on each party's interest, it happens very often that arbitration begins with the arbitration clause. [3]

Settlement of dispute facilitated by the arbitral tribunal is preferred precisely because of at least three reasons. First, the arbitrator has prior knowledge of the case and acts accordingly without additional expenses and delays. Secondly, the arbitrator is the master of the timing of the business proceedings, and is in the best position to select the appropriate moment to offer the tribunal's services for settlement purposes. And finally, a settlement agreement entered into in the course of a pending arbitration, may form part of a consent award and become enforceable under the New York Convention.* [4]

Arbitration is therefore the product of an agreement between the parties. In accordance with their agreement, the parties appoint an arbitrator or set of arbitrators (an arbitral tribunal) to decide the dispute. The final decision of an arbitrator or arbitral tribunal is known as an award. This is final and binding on the parties.[5]

1.2 Mediation

In many advanced countries , mediation (also known as Conciliation in some countries[6]) is a accepted means of commercial dispute resolution.[7] Mediation is a dispute resolution process which helps the parties to end their problem more diligently and at less expenses than the existing adversarial processes.
Mediation, according to Donna Ross may be termed, as a true alternative to litigation since it is not adversarial in nature. In mediation, a neutral third-party assists the parties to resolve their settlement agreement. With the help of the

[3]Donna Ross-Dispute resolution
<-http://www.donnarossdisputeresolution.com/services/arbitration/>

*. There are two major conventions namely: the Convention on the Recognition and Enforcement of Foreign Arbitral Awards(commonly known as New York Convention, 1958) and the UNICITRAL Model Law on commercial arbitration .The New York Convention is restricted to the imposition of duties on state parties to recognize and enforce foreign arbitral awards. The UNCITRAL Model Law is more extensive code. The New York Convention , does not actually use the term 'International' but applies its provisions to 'arbitral awards made in the territory of a state other than the state where the recognition and enforcement of such awards was "Sought" and to 'arbitral awards not considered as domestic awards in the state where their recognition and enforcement are sought'. The UNCITRAL Model Law gives a more detailed account of what constitutes 'International Arbitration'.

4 .Gabrielle Kaufmann-Kohler "When Arbitrators Facilitate Settlement: Towards a Transnational Standard: Clayton Utz/University of Sydney International Arbitration Lecture." Arbitration International 25.2 (2009): pp 189 https://core.ac.uk/download/pdf/85214401.pdf

[5].Stuart Dulstron, et al. International Arbitration: A Practical Guide. Globe Law and Business, 2012. Pp7-8.

6 . A/CN.9/485 Report of the Secretary General, UNCITRAL Working Group on Arbitration, 33rd Session. <www.uncitral.org>. p3
7 . A/CN.9/487 Report of the UNCITRAL Working Group on Arbitration, 33rd and 34th Session. <www.uncitral.org>. 2001 p25

mediator, parties can also customize the process. The parties can choose to mediate discrete questions or issues, or organize sessions at their convenience.[8]
In this sense, mediation provides the distinct advantage of allowing the parties to design their own resolution by means of a mutually agreed –upon solution.[9]

The mediator serves as a facilitator , guiding the parties to reach an agreement . The mediator expands the parties' available resources by providing an understanding of the complicated issues at hand as well as an unemotional analysis of the underlying problem. Mediation deflects the focus of the dispute away from rights, winners and losers.[10]Instead, mediation focuses on the parties' interest and mutual gains. As a result , mediation gives the parties an opportunity to reinforce their relationships with one another.[11]

Parties in mediation may strengthen relationships of trust and respect or terminate the relationship altogether in a manner that minimizes mental anguish as well as monetary costs.
The job of the mediator is to relocate concerns, share the concerned information between the parties and identify the issues of conflict in a proper perspective. Mediation enables the parties to focus on the invisible conditions that compound the dispute , instead of an legal issue.

As mediation focuses on each party's interest and assist the parties going for an mutually beneficial agreement, court-requested mediation sometimes turns into court judgment. In this sense , mediation provides the distinct advantage of allowing the parties to design their own resolution by means of a mutually agreed upon solution.
A skilled mediator serves as a facilitator and helps parties to resolve their disputes in a more expedient, sensible and cost-effective manner and often with a better end result than with a litigious process or even settlement negotiations.

1. Effect of Mediation Process in Arbitration

Various international dealings, tend to produce their own characteristic patterns of disputes and put different kinds of strain on courts. The confusions and uncertainties that beset litigation in national courts where cross border matters are at stake , are so confounding that at times parties prefer to go for Alternative Dispute Resolution (ADR) mechanism for the redressal of disputes whenever they enter into contracts / agreements with counterparts from other countries. In this sense, ADR refers to procedures for settling disputes by means other than litigation. [12]ADR primarily consists of two basic forms –arbitration and mediation, and other hybrid forms of dispute resolution to settle their disputes without proceeding through the trial process.[13]

Med-Arb practitioners , therefore, offer a process that guarantees a final resolution but incorporates informal opportunities for settlement. Thus, as both mediation and arbitration become increasingly formalized, Med-Arb is perceived as one way to correct the adversarial disadvantages of each by providing for both "finality" and "flexibility."[14]Further ,it can help parties fast-track their way to obtaining an enforceable arbitral award or order of court if used in conjunction with other modes of dispute resolution.

8 .ibid 3

9 Howard C Anawalt& Elizabeth E, IP Strategy : complete Intellectual Property Planning, Access and Protection Clark Boardman Callaghan p 26 (2003)
10.DannyCoraco, Forget the Mechanics and Bring in the Gardeners,9U/Balt, Intell.PropL... (2000) p47
11.KathyL.Cerminara, Contextualizing ADR in Managed Care: A Proposal Aimed at Easing Tensions and Resolving Conflict, Loy U.Chi. L.J 547,557 (2002)
12 . Adam Epstein "Alternative Dispute Resolution in Sport Management and the Sport Management Curriculum." J. Legal Aspects Sport 12 (2002): p153 and. Pp2-4
13 .Ibid.p-5
14. Brian A.Pappas "Med-arb and the legalization of alternative dispute resolution." Harv. Negot. L. Rev. 20 (2015): p-157.

'Med-Arb' proponents promote Med-Arb as a corrective strategy to combat procrastination,[15] and the adversarial nature of legalized mediation by placing the decision-maker in the room .
Although to some, the Med-Arb "solution" is not a solution at all because it relies on a false premise that Mediation and arbitration is an independent process since the process has inherent problems that needs to be corrected .

However, more likely reason for promoting Med-Arb is that arbitration increasingly resembles litigation, and mediation's popularity is a threat to the financial viability of private arbitration practice. For example, as in the decision in **Gleancot V Barret Case** ,when an adjudicator , at the request of the parties (and after taking legal advice to mediate an issue) became mediator; these negotiations broke down as the mediator gave the decision in favour of Glencot. Subsequently, Ben Barret resisted arbitrator's decision on the ground for reason of loss of impartiality. Based on the ground , the judge held the view that there was the possibility that Adjudicator was partial and hence decision should not be imposed by the court on the ground that Ben Barret had good prospects to prove its defense that the Adjudicator could no longer be considered as neutral in the light of his involvement in the mediation process.[16]
Nonetheless , it is well established that 'Arb-Med' is the dispute resolution method of choice for cross-border transactions and disputes relating to international commercial transactions.

2. ADR and International Commercial Arbitration

It is necessary that effective and functional institutions are in place to handle matters that may arise between the parties in foreign investments and commercial transactions

To save time and for the purpose of convenience it was felt necessary to use the alternative dispute resolution methods to resolve the dispute expeditiously , with less expenses and saving of time.Thus the use of alternative dispute resolution method in the form of 'Arb-Med' is very common in every business , trade and industry. This is in the sense that accept few model reforms principles[17],each dispute is required to be treated differently with a different trajectory.

Needless to say , there are wide divergence and disparity in laws relating to various aspects of business contracts in different countries based on international conventions which establish special rules for facilitating commercial arbitration and for the reconciliation and enforcement of international arbitration awards.

3.1 Arbitral Dispute Resolution in Asia

Business and commercial organisation every day enter into numerous contracts with their clients and consumers due to enormous increase in the volume of business. Further, when a large number of contracts have got to be entered into by giant and large size of the commercial organisations, it practically becomes difficult for these commercial entities to litigate the matter in court of justice. Needless to say, in this framework every investment faces the risk if there is not an effective dispute resolution mechanism in place .

With the rise of Asia as the dominant global economic hub[18], major arbitral venues are coming up and competing for an increasing number of disputes. One can witness therefore, that international arbitration centres have their roots firmly established in Asia, with Singapore and Hong Kong featuring prominently at the vanguard of its continued development in the region. Over the years Singapore and Hong Kong have maintained an aggressive course to promote their respective jurisdictions as pro-arbitration and business-friendly communities and it is precisely because of this reason that the International Court of Arbitration of the International Chamber of Commerce (ICC) decided to locate their Asian offices in both Hong Kong and Singapore in 2008.

15 . James Hayes, Grievance Mediation: Why Some Use It and Others Don't, in Arbitration 2009: Due process in the workplace: Proceedings of the sixty-second annual meeting of the National Academy of Arbitrators 224, 230 (Paul D. Staudohar ed., 2010).
16 . Glencot Development & Design Co Ltd v Ben Barrett & Son (Contractors) Ltd,Case reference: [2001] EWHC Technology 15, Tuesday, February 13, 2001
17 Vinayak Pradhan , ' The Continuing Growth of International Arbitration in Asia ' (2013) 79 (4) The InternationalJournal of Arbitration, Mediation and Dispute Management p 407
18 Richard E Baldwin "The Spoke Trap: hub and spoke bilateralism in East Asia." China, Asia, and the new world economy (2008): p51-52

2.2 ADR Methods in Singapore

The development and growth of specialized international arbitration centre in Singapore is a fairly recent phenomenon, dating back about 25 years. The country's International Mediation Centre (SIMC) since its establishment in 2014 has actively collaborated with the Singapore International Arbitration Centre (SIAC) to offer a service known as Arbitration-Mediation Arbitration (Arb-Med-Arb). This allows the parties to attempt mediation after they start arbitration proceedings.[19] If they resolve their dispute, this is categorized as a consent award, which can be enforced in more than 150 countries. If they cannot settle, the parties continue to arbitration.

It is an innovation that deals with issues arising out of combining mediation and arbitration, including enforceability of mediated settlement agreements and maintaining the integrity of the mediation and arbitration process.

The SIAC-SIMC Arb-Med-Arb Protocol in Singapore governs the SIAC-SIMC –Arb-Med Service in an orderly manner . The protocol is mandated to enhance the process of enforceability and fairness in mediated settlement agreement by licensing its conversion into an arbitral award whilst at the same time by providing control mechanisms to provide efficient and functional disputes resolutions. process.[20] The purpose is to establish Singapore, at least as a regional centre for arbitration, governed by the laws at par with most internationallyaccepted principles.[21]

Singapore has taken a major step in this direction by adopting UNCITRAL Model Regime under the Singapore 1994 International Arbitration Act. The government also subsequently amended in 2004 its Legal Profession Act to remove all restrictions on foreign lawyers representing clients in Singapore.

Singapore governments dual track arbitration regime, with separate statutory governing international and domestic arbitration institutions, makes it stand-out neutral and independent arbitration centre in the region. [22]

2.3 Hong Kong: A Leading Arbitration Venue

The Hong Kong as a special semi-autonomous territory of China is governed under the principle of 'One Country, Two Systems' and maintains a capitalist economy and a high degree of autonomy. Further while mainland China has adopted Civil Law tradition in its dealings, Hong Kong maintains a capitalist economy.[23]

Hong Kong's International Arbitration Centre (HKIAC) is a non-profit company limited by guarantee incorporated under Hong Kong law .Since its establishment in 1985, it has evolved from a regional hearing center to one of the world's top four arbitral institutions.[24]

Initially HKIAC used to provide administrative and support services only in arbitrations under the UNCITRAL Arbitration Rules (UNCITRAL Rules)[5] or the arbitration legislation of Hong Kong. However from 2018, HKIAC introduced its first Administered Arbitration Rules (HKIAC Rules) and started its Administration under its own rules. The Rules have subsequently been amended twice and became operational in 2013 and 2018 respectively.

Apart from facilitating arbitration and hearing facilities, HKIAC also provides mediation and domain name dispute resolution services. In the present, the centre is recognized as a well-known body to mediate disputes and provide mediation services under its mediation rules since 1999.

19Elizabeth MacArthur, "Regulatory Competition and the Growth of International Arbitration in Singapore." Appeal: Rev. Current L. & L. Reform 23 (2018): 165.

20.Ibid p 166.

21 .Ibid p 167

22 . Nish Shetty, "Arbitration In Singapore — Financier Worldwide", Financier Worldwide (Webpage, 2011) <https://www.financierworldwide.com/arbitration-in-singapore#.XV_vtehKiUk>.

23.Anselmo Reyes and Weixia Gu. "Introduction: Towards a Model of Arbitration Reform in the Asia Pacific." (2018) p13

24 .White and Case, 2018 International Arbitration Survey: The Evolution Of International Arbitration (Queen Mary University London, 2018). P9

Over the years, the HKIAC has made considerable efforts in promoting and implementing effective methods of resolving international commercial and investment disputes through the introduction of institutional rules and practice, the facilitation of law reforms, and the implementation of its extensive outreach program connecting HKIAC and Hong Kong's legal and business community with numerous other jurisdictions.

HKIAC's contribution to the development of international arbitration can be attributed in three key ways[25]. These are :

- the promulgation of procedural rules,
- participation in legislative reforms, and
- promotion of best arbitration practice through its outreach program and events.

One may conclude, therefore, that both Singapore and Hong Kong offer efficient dispute resolution solutions for the world business community. While Hong Kong benefits from its proximity to China, Singapore largely caters to the rest of Asia including India. In the present there are very many instances where parties have shown their interest to arbitrate in Asia – specially in Singapore or Hong Kong. In the past, these contracts for arbitration largely used to go to Europe or the US.

3. International Commercial Arbitration in Australia

Currently, there have been lots of efforts on the part of people and associations, open and private, to energize and create arbitration in Australia. These comprise of different initiatives by the government and by different organisations to utilize and encourage services of specialists and judges, through services and training programs by arbitral organizations and institutes and or through structural changes. Arbitral establishments supporting and fortifying the process are also playing the role of arbitration-mediation in Australia.

This is to match to the remarkable achievement of arbitration, seen over numerous years, in Europe and the United States and the countries of Asia –Pacific region such as Singapore and Hong Kong, for instance.

4.1 Arbitration Procedures and Practice in Australia: Overview

The constitution provides Australia to be a federal country having six states and two union territories with two levels of government. Each state and territory is empowered to exercise jurisdiction over commercial disputes in their respective domains. State and territory courts are also authorized to review decisions of tribunals as per the applicable Union Commercial Arbitration Act. [26]

Over the years, Australia's accession to the New York Convention and Enforcement of Foreign Arbitration Awards, the enactment of the Federal International Arbitration Act in ('IAA') 1994 and subsequent adaptation of the United Nation's Commission on International Trade Law (UNCITRAL) Model Law –all- have led to enforcement and facilitation of Foreign seated arbitration in the country successfully. Further, the 2011 legislative amendments by the government to the International Arbitration Act were largely adopted to promote greater consistency between domestic and international arbitrations.

In the recent years, due to increasingly acceptance of arbitration as a dispute resolution mechanism, Australia is trying to become as an accepted safe and neutral seat of commercial arbitration in the Asia-Pacific region. This has also resulted in the revision and reform to both the ACICA arbitration rules[27] and Australian legislation to administer the benefits of arbitration with uniformity, objectivity and expediency.[28]

However, despite Australia's transparent legal judiciary and legal framework in operation with highly professional arbitrators, there is need to examine as to what extent the ACICA and IAA Rules have also been updated and revised in order to include Arb-Med or other means to encourage early settlement of disputes in the country.

25 Ibid p 10

26 . Leon Trakman, "The Reform of Commercial Arbitration in Australia: Recent and Prospective Developments." The Developing World of Arbitration,(Hart, 2018) ch 12 (2018): pp 253

27.Arbitration Rules - ACICA, <https://acica.org.au/wp-content/uploads/Rules/2005/ACICA_Arbitration_Rules.pdf>

28.Arbitration Rules - ACICA, <https://acica.org.au/wp-content/uploads/Rules/2005/ACICA_Arbitration_Rules.pdf>

Ever since Australia's accession to the 1958 New York Convention on Recognition and Enforcement of Foreign Arbitral Awards (NYC) which led to the enactment of the federal International Arbitration Act 1974 ('IAA'), there have been a number of recent amendments to the International Arbitration Act (IAA) in 1989 to adopt the United Nations Commission on International Trade Law (UNCITRAL) Model Law for International Commercial Arbitration, aimed at supporting international arbitrations in Australia.

Amendments to the IAA in 2010 also adopted almost all of the 2006 Revised Model Law[29] . In accordance with the 2010 amendments to the IAA, disputing parties can no longer choose to exclude the application of the Model law insofar as it is incorporated into the IAA. Further, the 2011 legislative amendments to the International Arbitration Act (IAA) were eventually adopted to promote greater consistency between domestic and international arbitrations.

These amendments have resulted in a more effective and efficient arbitral process consistent with international best practices and have been reflected in recent pro-arbitration court decisions. Subsequently, each state and territory of Australia has also enacted uniform legislation regulating domestic arbitration based on the UNICITRAL Model Law.

It is in this backdrop, one may state that International commercial arbitration , with a recently revised International Arbitration Act embodies best international practice in Australia. Australian courts are generally supportive of ICA, and have lists of judges with expertise in both commercial matters and arbitration. In addition, Australia has an established international arbitration centre, ACICA, with recently revised rules and procedures that are directed at facilitating ICA proceedings.

Through facilitating and strengthening the structure of arbitration as a means of an alternative dispute resolution method to resolve the dispute, the government of Australia allows both institutional and ad hoc arbitration . [30] This enables conflicting parties to tailor the procedural rules to their specific circumstances and requirements. Distinctively it permits the parties to adopt the rules of an arbitration association in whole or part, such as the rules of the Australian Centre for International Commercial Arbitration (ACICA), or to adopt ICA without resort to the rules of any arbitral association, or to choose an option between institutional and ad hoc arbitration.[31] A major impetus behind this is Australia's aim of being, at least a regional centre for arbitration, having laws governing arbitration in line with most international standards and practices.

It is precisely because of this reason that there has been a significant increase in resort to international arbitration in ICA proceedings in Australia , notably with the adoption of new Arbitration Rules by the Australian Centre for International Commercial Arbitration (ACICA) and the establishment of the Australian International Dispute Centre (AIDC).[32]

5. Development of Commercial Arbitration in Australia

5.1 Background of ACICA

The establishment of The Australian Centre for International Commercial Arbitration (ACICA) in 1985 is Australia's international dispute resolution institution. It was established with the purpose of promotion, education and utilization of Commercial Arbitration as a measure for resolving the conflicts and disputes throughout Australia and internationally . The headquarter of ACICA is located at the AIDC (Australian International Dispute Centre) in Sydney,[33] with its registries

29 . Richard Garret and Luke Nottage. "The 2010 Amendments to the International Arbitration Act: A New Dawn for Australia?." Asian International Arbitration Journal 7.1 (2011): 29-53.pp 3-5

30 . Ad hoc Arbitration and International Arbitration: Two types of arbitration exist, ad hoc and institutional. In ad hoc arbitration , parties organize and plan their own arbitration including the selection of arbitrators, designation of rules and applicable law, and the powers of the arbitrators. All aspects of the arbitration must be specified in the arbitration agreement. When parties select Institutional arbitration, an arbitral institution provides the rule of procedure and performs supervisory and administrative functions such as keeping the proceeding on a time tableParties can select an international institution such as the International Court of Arbitration .

31 . Peter Wood , Phillip Greenham and Roman Rozenberg , ' Arbitration in Australia ' , CMS Guide to Arbitration 1 (2012) pp52.

32 . Leon.Trakman "The Reform of Commercial Arbitration in Australia: Recent and Prospective Developments." The Developing World of Arbitration,(Hart, 2018) ch 12 (2018): 18-17.pp 252

33 . Australian Disputes Centre.<www.disputescentre.com.au>

in Melbourne and Perth. In the present ACICA is considered as a reliable and cost effective option for arbitrating in main financial centre in the Asia -Pacific region.

Since 2005 ACICA has built up an increasingly elaborate suite of Arbitration Rules and guidelines along with the procedures regulating ICA proceedings. Prior to the 2005 rules, ad hoc international arbitrations seated in Australia were administered under UNCITRAL Arbitration rules. [34]

The latest version of ACICA rules were revised and updated in 2011.[35] Considering the multifaceted nature of issues that are involved, the expedited standards of ACICA aims to provide arbitration that is fast, financially viable and reasonable. It has also developed mechanism for expediting Arbitration rules that came into effect on 1 January 2016.[36] The Government of Australia in 2011 also designated ACICA as the only authority which is competent to appoint the arbitrator and to work under IAA.[37] The rules that applied for appointment of arbitrator's are in accordance with the UNCITRAL Arbitration rules[38] - Model Law and statutory forces allowed by the IAA. Model law and statutory forces allowed by the IAA on 26 Nov 2015, framed new efficiency focused arbitration rule that became effective from 1st Jan 2016. ACICA also provides for mediation, including through a model mediation clause. [39]

There has been an increase in International arbitration centres in settling ICA disputes in Australia after the enactment of ACICA new Arbitration rules such as the establishment of Australian Internal Dispute Centre (AIDC) and the Institute of Arbitrators and Mediators Australia (IAMA). All the institutions as established are regarded as a cost effective alternative to articulating in other major financial centres in the Asia- Pacific region.[40]

In this way, Australian legislatures have responded transparently to the need to make Australia as a more attractive site for international commercial arbitration within the Asia Pacific region. The fact that such measures are already significantly underway is really commendable.

There is room, however, for improving the culture of arbitration in country to be able to become more efficient, fruitful and cost-efficient dispute resolution seat of arbitration. The enacted legislations need to address and promote innovation in both arbitration practice and the legal construction of that practice.

Although Australia has adopted the diligent Model Law , there are identified limitations in the amended IAA. The IAA is viewed as having gaps, such as for not providing for 'Arb-Med'[41] despite resolution clause as is provided in section 27D of the Commercial Arbitration Act 2011 (SA) in NSW, Tasmania, Victoria and South Australia and in Commercial Arbitration Bill 2011 (QLD). The Australian Commercial Dispute Centre also reiterates that an arbitrator may act as a mediator during the course of the arbitration, but only if the parties are in agreement to that appointment in accordance with the legislative provisions. However, there are more serious issues about the viability of the revised IAA beyond those provisions as raised above.

One may submit , therefore , that to refine Australia's international commercial arbitration regime within the Asia Pacific region, there is a need for a continuous dialogue about what 'best international practice ' means, and how regulators, arbitrators and parties to ICA can best accomplish it.

5. Suggested Changes to ACICA and IAA to Ease the Process of Arbitration and Mediation in the International Arena.

34 . Luke Nottage and Richard Garnett, `Australian Centre for International Commercial Arbitration 'in Helenz Rule Fabri (gen ed) Max Planck Encyclopaedia of International Procedural Law (oxford University Press, 2019)

35. ACICAExpeditedArbitrationRules. http://acica.org.au/acica-services/expedited-arbitration-rules

36 . New ACICA Rules,< http://acica.org.au/acica-services/acica-rules-2016> .

37. Leon Chung, Elizabeth Macknay and Elizabeth Puolos, "Arbitration Procedures And Practice In Australia", Uk.Practicallaw.Thomsonreuters.Com (Webpage, 2015) <https://uk.practicallaw.thomsonreuters.com/1-618-2164?transitionType=Default&contextData=%28sc.Default%29>

38. Ibid 34 and UNCITRAL Arbitration Rules .<uncitral.un.org/en/texts/arbitration/contractual...>

39 . ACICA Mediation Rules 2007, < http://acica.org.au/assets/media/Rules/Mediation-Rules. pdf >.

40 . Ibid 34

41 . Luke Nottage , ' Addressing International Arbitration ' s Ambivalence : Hard Lessons from Australia ' in Vijay K Bhatia , Christopher N Candlin and Maurizio Gotti (eds), Discourse and Practice in International Commercial Arbitration (Farnham , Ashgate , 2012) p 11

Needless to say, however, that the Australian Centre for International Commercial Arbitration (ACICA) and the International Arbitration Act (IAA) have, no doubt, eased the problems of people who desired to resort to international arbitration in Australia and could not do so earlier due to the absence of properly enacted laws.

6.1 Arbitration –Mediation in Australia

The process in Arb-Med is broad wherein arbitrator acting as mediator in the Arbitral process. The disputants are directly involved and speak freely in an informal manner and thus the information is exchanged between the parties to facilitate a way for amicable settlement. Of late, Judges and common lawyers have started to become used to such hybrid procedures that their own courts tend to promote more aggressive case management , and sometimes ADR more generally. One may need to understand that the option of authorising the arbitrator also to attempt mediation ('Arb-Med')[42] is important and different from regular court procedures. It is been more common among jurists and firms familiar with the Civil law traditions such as German , Chinese and Japanese law.

Although, ACICA has been revamped over the last 10-15 years and has refocused on International Arbitration, differentiating itself from domestic arbitration, (coinciding with significant IAA amendments), further legislative measures and rule changes are needed to reduce delays and costs associated with the international arbitration relates cases in the country . [43]
The IAA in Australia which was significantly amended in 2010 and in 2015 respectively, should therefore, encourage a more global and informal approach by including provisions specifically on Arb-Med. Nonetheless, the provisions should try to take note on the concerns of the lawyers about natural justice.

The other possible provision which can be adopted is based on '**Kaufmann –Kohler's Alternative Model'** . According to this model only one agreement in writing is required that commits the parties to retain the same arbitrators even if their mediation attempts is failed, but this also prohibits the arbitrator from caucusing. [44]

It is in this sense that the mediation process is commonly viewed as progressively immediate, fair and straightforward than a formal suit. It helps the parties to focus on the hidden factors that may add to the dispute, instead of on legal issues. In this way the mediation process does not focus on truth or shortcoming and the persistent issues as to which party is correct or wrong has become less significant than the issue and how it can be settled.

The IAA Act and the IAA Amendment Act of 2010 does not include any 'Arb-Med' provision, wherein an arbitrator is also authorized to act both as arbitrator and mediator (or conciliator). Needless to mention that the international arbitration laws of almost all of Australia's Asia- Pacific neighbors (including Hong Kong and Singapore) allow for an arbitrator to promote settlement of disputes cordially and amicably by engaging the parties in negotiation.
One needs to understand that, mediation and negotiation as legislated in Asian countries are also part and parcel of their cultural ethos. The promotion of amicable settlement by international arbitrators as now called, 'International Best Practice',[45] and so far not contained in the IAA Amending Act, is somewhat disappointing.[46]

A complete overhaul of the IAA is long overdue and much work needs to be done in this direction. For many, this may be an once-in-a-lifetime opportunity to bring Australia's ICA regime up again to world standards. In the same way ,future revision of IAA regulations should also include to reform of the CAA regime, designed initially for domestic arbitration in line with the accepted norms of mediation, adjudication and other newer forms of ADR.

42 . Luke Nottage, 'Arb-Med in Australia: The Time Has Come' (2007) 5 Australian ADR Reporter (Chartered Institute of Arbitrators – Australian Branch) pp18.

43 . D Hu and L Nottage, 'The International Arbitration Act Matters in Australia: Where to Litigate and Why (Not)' (2016) 35(1) The Arbitrator and Mediator p91.
44 .Universally Speaking: the Language of Resolution (2008) Clayton Utz International Arbitration <http://www.ialecture.com> at 2 April 2009 (forthcoming in Arbitration International);

45CEDRRulesfortheFacilitationofSettlementin InternationalArbitration(November2009)
46JohnHatzistergos,'ArbitrationreformmustcontinueFinancialReview,18June2010,p33.

The reality is that Australia is not yet 'an attractive venue for international arbitration' – at least in terms of numbers of ICA cases conducted in this country, as opposed to now very well-established arbitral venues such as Singapore (especially in SIAC), Hong Kong (HKIAC) and China (CIETAC). 2018 saw a huge rise in HKIAC cases. Out of a total of 521 new cases registered, 265 pertained to arbitration and 21 to mediation. As high as 72% of total cases registered were international arbitrations with over 40% cases involving no Hong Kong party.[47] The quantum of amount in disputes submitted to HKIAC was $6 billion- a rise of 28% as compared to that of 2017[48]

This is to make an effort to revise and generate legislations that may provide a comprehensive and clear framework for governing cases relating to international commercial arbitration in Australia'.[49]

One may, however, notice that as compared to many large Arbitration centre in the Asian pacific region, ACICA remains a "late comer" though it persistently struggle for making Australia as a seat for international Arbitrations. Although, apart from others, a major problem is its geographical inconvenience, compared to say -SIAC.

One may also notice that in the federal court of Australia IAA proceedings are still slow, despite the fact that it is the leader in developing more pro-arbitration case law over the last decade. Some commentators, Therefore, have argued that to make Australia a more attractive seat and to expand ACICA's competitively low case load, more focused legislations along with changes in rules are required to minimize delays and costs in the International Arbitration.

A particular challenge ahead is that many lawyers who advise corporate clients in Australia are more familiar with negotiation and litigation and less so with ICA. Reform measures are needed, not only for such lawyers to appreciate the potential cost and time advantages of ICA, but also how to maximize their services. There is need therefore to ensure that the practice of ICA in Australia evolves in accordance with ' best international practice'. It will also entail continuing to demonstrate how the stability associated with Australia 's ' rule of law ' traditions can foster greater confidence in ICA in Australia.

6.2 Confidentiality and Arbitration Practice in Australia

Similarly, Arbitral proceedings in Australia are by their nature private , but not necessarily confidential. However, documents used in private arbitrations are regarded as confidential in commercial arbitration. The reference of Australian High Court ruling in ***Esso Australia Resources Ltd.Plowman***[50] 1995 case can be cited in this regard.

Nonetheless, the optional provisions added by the IAA Amendment Act in sections 23C to 23G are directed to list a perceived deficiency in Australia in relation to the confidentiality of arbitral proceedings .The confidentiality provisions in sections 23C to 23 G of the IAA as mentioned above are opt-in provisions . That is, they will not automatically apply to arbitral proceedings unless the concerned parties are in agreement to include those provisions except provided by the Act.[51]

These sections give some protection but considering the international perception of the treatment of confidentiality in Australia, it is desirable to adopt a more comprehensive approach such as that adopted in sections 14 A to 14I of the *Arbitration Act 1996*(New Zealand).

It seems that Australian government support for international arbitration whether through financial resources or human resources, or prompt and regular law-reforms- has remained weak, compared to more successful arbitral venues in Asia (such as SIAC). Singapore provides tax incentive to attract and incentivize international arbitration in Singapore. A five

47 Gearing, Matthew, and Joe Liu. "The Contributions of the Hong Kong International Arbitration Centre to Effective International Dispute Resolution." International Organizations and the Promotion of Effective Dispute Resolution. Brill Nijhoff, 2019. Pp-49

48 Ibid p49

49.ACRC Report 80: Legal Risks in International Transactions(1996), Australian Law Reform Commission.<http://www.austlii.edu.au/au/other/alrc/publications/reports/807>.

50 .Esso Australia Ltd v.Plowman [1995]183 CLR 10

51 . Leon Chung, Elizabeth Macknay and Elizabeth Puolos, "Arbitration Procedures And Practice In Australia", Uk.Practicallaw.Thomsonreuters.Com (Webpage, 2015) <https://uk.practicallaw.thomsonreuters.com/1-618-2164?transitionType=Default&contextData=%28sc.Default%29>

year tax break is provided for international arbitration practitioners with hearings held in Singapore[52]. This has led to reduction in arbitration fees and hence the cost of arbitration.[53] Additionally, international arbitration practitioners can obtain temporary work VISA for working in local arbitration and mediation.[54]Part of the reason may be ideological, namely a perception that international arbitration is just like any other business and therefore should rely on private initiatives and funding. Yet the Australian government still partly subsidizes other services particularly in cross border contexts, for example through EFIC (the government`s export credit agency) and the Australian Trade and Investment Commission.[55]

6.3 Additional Suggested Changes

Arbitration costs can be reduced by having multitude methods of payments. The parties should have an option in completing the payment through most cost effective system. Hourly rate system and ad valorem system can be adapted from HKIAC[56]. Administration fees can be reduced by again adopting the system used in HKIAC which uses a light touch approach[57]. HKIAC has comparatively lower administrative costs as compared to other similar arbitral institutions. Premium spaces can be provided for hearing- involving a developing state enlisted in OECD development assistance.[58] The rules can be amended to allow consolidation of multiple arbitrations and allowing multiple parties to be joined in the arbitration. Procedure should be added to facilitate expedited proceedings, for example to assess meritless point of law. Appointment of emergency arbitrator can grant urgent relief before the constitution of arbitral tribunal.[59]

7. Conclusion

With considerable increments in the number of disputes, commercial arbitration emerged as a more feasible method of dispute resolution. This solid pattern can be mostly ascribed to creating and quickly industrializing economies and the resulting rise in commercial prospects and related disputes. In this sense ,there is always a dimension of competition between arbitral jurisdictions.

Australia has taken major reforms in its arbitration law in recent years . Simultaneously many steps have been taken to bring commercial arbitration reforms in the country , the thrust being on minimizing of court's intervention in the arbitration process by adoption of United Nation's Commission on International Trade Law (UNICTRAL) Model Law on international commercial arbitration similar to developing position in Australia. The focus of the government has been as much on the simplification of the law as on its rationalization- in order to meet the requirements of a competitive economy. These endeavours are progressively utilized to beat Australia's absence of high volume commercial arbitration business, especially when arbitration is blasting in a more extensive Asia-Pacific region.

Recent years have also witnessed Australia taking great strides forward, with an increasing acceptance of arbitration as a dispute resolution mechanism and there is a sharp increase in the use of Australian seats by international parties. This has coincided with reforms to both the ICICA Arbitration Rules [60]and Australian Arbitration Act (IAA) to reinforce the benefits of arbitration; ensuring the expediency and neutrality of the process and the enforceability of the outcome.

However, what is significant and needs to be examined that despite the country's legal structure (with regard to its commercial arbitration law) is now based on UNICTRAL Model Law and its Commercial Arbitration Acts are largely

52Singapore International Arbitration Centre, "What Singapore Has to Offer" www.siac.org.sg/64-why-siac

53 Joshua Karton, The Culture of International Arbitration and the Evolution of Contract Law (Oxford: Oxford University Press, 2013) pp 70.

54 Ibid p70

55 . Luke Nottage and Richard Garnett, `Australian Centre for International Commercial Arbitration 'in Helenz Rule Fabri (gen ed) Max Planck Encyclopaedia of International Procedural Law (oxford University Press, 2019)

56 Ibid at 41 pp 53

57 Ibid at 41 pp 54

58 Ibid at 41 pp 54

59 Ibid at 41 pp 55

60 .Arbitration Rules-ACICA,<acica.org.au/arbitration-rules>

based on the revised Model Law[61], Australia is yet to become a favorite destination for international arbitration as opposed to Singapore and Hong Kong.

In this context, Australia needs to display that the structural revisions to the IAA and ACICA are truly extensive , ingenuous and functional and ICA proceedings are at par with accepted international principles. It is in this sense ,the government will have to improve the training of Australia's new generation of lawyers as arbitration experts. [62] This is important because many lawyers who advice corporate clients in Australia are more familiar with negotiation and litigation and less so with ICA. Reform measures are required , not only for such lawyers to appreciate the serious issues involved and time advantages of ICA, but also how to maximize their services. If properly addressed, these measures will also help to open up opportunities for increasing Australia's share of lucrative market of cross border dispute resolution in the region.

One may also appreciate that while international commercial arbitration (ICA) is still the most accepted process for resolving international commercial disputes, there is also an increasing demand for the inclusion of other forms of ADR, such as mediation and facilitated negotiation in Australia as an adjunct to the ICA process.[63]

Despite the fact that in recent years the governing laws of ACICA to a large extent have revised and are re- focused on international arbitration, one can still figure out that the set of rules as prescribed in ACICA, suffers from a plethora of pitfalls. These problems are vast, deep and widespread, and have been a source of bickering and resentment for those practicing commercial arbitration.
This daunting challenge has caused ripples at international forums of arbitration. It would be very appropriate to point out that if arbitral provisions such as 'Arb-Med' are not properly addressed, their absence would affect the very concept of international arbitration in Australia. It is necessary, therefore, that efforts are to be made to add provisions of Arb-Med in the IAA .[64]It is high time that all the concerned should not only address these issues but also present a roadmap for the betterment.

Needless to say that Arbitration and Mediation is a key component of ADR as it offers avenues for parties to solve their problems with the aid of professional facilitator. The government, therefore, has to ensure that the future revisions to the IAA and ACICA are updated with an input of ADR . Care should also be taken that the added provisions to this effect are user friendly and consistent with the growing needs of the time.

Needless to say, if these measures are appropriately taken into consideration and are adequately adopted , these will not only save the precious time of the stakeholders , but will also re-ensure the mutual trust of the parties on International Commercial Arbitration legislations in Australia.

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Bibliography

[1] Andrews, Neil. "International Commercial Arbitration." *The Three Paths of Justice*. Springer, Cham, 2018.
[2] COOPERS, PRICEWATERHOUSE. "Corporate choices in International Arbitration Industry Perspectives." (2018).http://www.pwc.com/gx/en/arbitration-dispute-resolution/assets/pwc-international-arbitration-study.pdf
[3] Donna Ross-Dispute resolution
<-http://www.donnarossdisputeresolution.com/services/arbitration/>

61 . Australia's (in) Capacity in International Commercial Arbitration, Luke Nottage and NobumichiTeramura, Sep.20, 2018.<http://arbitrationblog.kluwerarbitration.com/2018/09/20/australias-incapacity-international-commercial - arbitration/>
62 . Nottage, Luke R., and Richard Garnett. "The Top Twenty Things to Change in or around Australia's International Arbitration Act." International Arbiration in Australia', Federation Press: Sydney (2010).

63 John Arthur and Rudi Cohrssen, Arbitration And ADR In Australia — Meeting The Needs Of International Trade And Commerce (Australian alternative dispute resolution law bulletin, 2015).pp76
64 . Garnett, Richard, and Luke Nottage. "What Law (If any) Now Applies to International Commercial Arbitration in Australia." UNSWLJ 35 (2012): pp953 and pp 970-974

[4] Kaufmann-Kohler, Gabrielle. "When Arbitrators Facilitate Settlement: Towards a Transnational Standard: Clayton Utz/University of Sydney International Arbitration Lecture." *Arbitration International* 25.2 (2009)
[5] Dutson, Stuart, et al. *International Arbitration: A Practical Guide*. Globe Law and Business, 2012.
[6] A/CN.9/485 Report of the Secretary General, UNCITRAL Working Group on Arbitration, 33rd Session. <www.uncitral.org>.
[7] 1 . A/CN.9/487 Report of the UNCITRAL Working Group on Arbitration, 33rd and 34th Session. <www.uncitral.org>.2001
[9] Anawalt, H. Clarke, and Elizabeth Enayati. *IP Strategy: Complete Intellectual Property Planning, Access, and Protection*. Clark Boardman Callaghan, 2009.
[10] Ciraco, Daniel. "Forget the Mechanics and Bring in the Gardeners." *U. Balt. Intell. Prop. LJ* 9 (2000)
[11] Cerminara, Kathy L. "Contextualizing ADR in Managed Care: A Proposal Aimed at Easing Tensions and Resolving Conflict." *Loy. U. Chi. LJ* 33 (2001): 547.
[12] Epstein, Adam "Alternative Dispute Resolution in Sport Management and the Sport Management Curriculum." J. Legal Aspects Sport 12 (2002)
[14] Pappas, Brian A. "Med-arb and the legalization of alternative dispute resolution." Harv. Negot. L. Rev. 20 (2015)
[15] Hayes,James Grievance Mediation: Why Some Use It and Others Don't, in Arbitration 2009: Due process in the workplace: Proceedings of the sixty-second annual meeting of the National Academy of Arbitrators 224, 230 (Paul D. Staudohar ed., 2010).
[16] Glencot Development & Design Co Ltd v Ben Barrett & Son (Contractors) Ltd,Case reference: [2001] EWHC Technology 15, Tuesday, February 13, 2001
[17] Pradhan, Vinayak , ' The Continuing Growth of International Arbitration in Asia ' (2013) 79 (4) The International Journal of Arbitration, Mediation and Dispute Management
[18] Baldwin, Richard E. "The Spoke Trap: hub and spoke bilateralism in East Asia." China, Asia, and the new world economy (2008)
[19] MacArthur, Elizabeth. "Regulatory Competition and the Growth of International Arbitration in Singapore." Appeal: Rev. Current L. & L. Reform 23 (2018)
[20] Shetty, Nish "Arbitration In Singapore — Financier Worldwide", Financier Worldwide (Webpage, 2011) <https://www.financierworldwide.com/arbitration-in-singapore#.XV_vtehKiUk>.
[23] Reyes, Anselmo, and Weixia Gu. "Introduction: Towards a Model of Arbitration Reform in the Asia Pacific." (2018)
[24] White and Case, 2018 International Arbitration Survey: The Evolution of International Arbitration (Queen Mary University London, 2018).
[26] Trakman, Leon. "The Reform of Commercial Arbitration in Australia: Recent and Prospective Developments." The Developing World of Arbitration,(Hart, 2018) ch 12 (2018): pp 253
[27] Arbitration Rules - ACICA, <https://acica.org.au/wpcontent/uploads/Rules/2005/ACICA_Arbitration_Rules.pdf>
[28] Tomkinson, Deborah and Juliana Camacho, *Conducting Efficient Arbitration Under The ACICA Arbitration Rules* (ACICA, 2016)
[29] Garret R, and Nottage, Luke. "The 2010 Amendments to the International Arbitration Act: A New Dawn for Australia?." Asian International Arbitration Journal 7.1 (2011)
[31] Wood , Peter, Greenham Philip and Roman Rozenberg , ' Arbitration in Australia ' , CMS Guide to Arbitration (2012).
[32] Trakman, Leon "The Reform of Commercial Arbitration in Australia: Recent and Prospective Developments." The Developing World of Arbitration,(Hart, 2018) ch 12 (2018): 18-17.pp 252
[33] Australian Disputes Centre.www.disputescentre.com.au
[34] Nottage, Luke and Garnett, Richard `Australian Centre for International Commercial Arbitration 'in Helenz Rule Fabri (gen ed) Max Planck Encyclopedia of International Procedural Law (oxford University Press, 2019)

[35] ACICA Expedited Arbitration Rules. <http://acica.org.au/acica-services/expedited-arbitration-rules>
[36] New ACICA Rules,<http://acica.org.au/acica-services/acica-rules-2016>
[37] Chung, Leon, Macknay Elizabeth and Puolos, Elizabeth "Arbitration Procedures And Practice In Australia", Uk.Practicallaw.Thomsonreuters.Com (Webpage, 2015)
<https://uk.practicallaw.thomsonreuters.com/1-618-2164?transitionType=Default&contextData=%28sc.Default%29>
[38] UNCITRAL Arbitration Rules .<uncitral.un.org/en/texts/arbitration/contractual...>
[39] ACICA Mediation Rules 2007, < http://acica.org.au/assets/media/Rules/Mediation-Rules. pdf >.

[41] Nottage , Luke ' Addressing International Arbitration ' s Ambivalence : Hard Lessons from Australia ' in Vijay K Bhatia , Christopher N Candlin and Maurizio Gotti (eds), Discourse and Practice in International Commercial Arbitration (Farnham , Ashgate , 2012)
[42] Nottage, Luke 'Arb-Med in Australia: The Time Has Come' (2007) 5 Australian ADR Reporter (Chartered Institute of Arbitrators – Australian Branch)
[43] Hu, D and Nottage, L 'The International Arbitration Act Matters in Australia: Where to Litigate and Why (Not)' (2016) 35(1) The Arbitrator and Mediator
[44] Universally Speaking: the Language of Resolution (2008) Clayton Utz International Arbitration <http://www.ialecture.com> at 2 April 2009 (forthcoming in Arbitration International);
[45] CEDR Rules for the Facilitation of Settlement in International Arbitration (November 2009)
[46] Hatzistergos, John'Arbitration reform must continue', Financial Review, 18 June 2010,
[47] Gearing, Matthew, and Joe Liu. "The Contributions of the Hong Kong International Arbitration Centre to Effective International Dispute Resolution." International Organizations and the Promotion of Effective Dispute Resolution. Brill Nijhoff, 2019.
[49] ACRC Report 80: Legal Risks in International Transactions (1996), Australian Law Reform Commission.<http://www.austlii.edu.au/au/other/alrc/publications/reports/807>.
[50] Esso Australia Ltd v.Plowman [1995]183 CLR 10
[51] Leon Chung, Elizabeth Macknay and Elizabeth Puolos, "Arbitration Procedures And Practice In Australia", Uk.Practicallaw.Thomsonreuters.Com (Webpage, 2015)
<https://uk.practicallaw.thomsonreuters.com/1-618-2164?transitionType=Default&contextData=%28sc.Default%29>
[52] Singapore International Arbitration Centre, "What Singapore Has to Offer" www.siac.org.sg/64-why-siac
[53] Karton, Joshua The Culture of International Arbitration and the Evolution of Contract Law (Oxford: Oxford University Press, 2013) pp 70.
[55] Nottage, Luke and Garnett, Richard `Australian Centre for International Commercial Arbitration 'in Helenz Rule Fabri (gen ed) Max Planck Encyclopaedia of International Procedural Law (oxford University Press, 2019)
[60] Arbitration Rules-ACICA,<acica.org.au/arbitration-rules>
[61] Australia's (in) Capacity in International Commercial Arbitration, Luke Nottage and NobumichiTeramura, Sep.20, 2018.<http://arbitrationblog.kluwerarbitration.com/2018/09/20/australias-incapacity-international-commercial -arbitration/>
[62] Nottage, Luke and Garnett Richard. "The Top Twenty Things to Change in or around Australia's International Arbitration Act." International Arbiration in Australia', Federation Press: Sydney (2010).
[63] Arthur John andCohrssen, Rudi, Arbitration And ADR In Australia — Meeting The Needs Of International Trade And Commerce (Australian alternative dispute resolution law bulletin, 2015)
[64] Garnett, Richard, and Nottage. Luke "What Law (If any) Now Applies to International Commercial Arbitration in Australia." UNSWLJ 35 (2012)