

IRAQ AND THE NEW YORK CONVENTION

**HOW THE IRAQI ECONOMY AND
THE PRIVATE SECTOR WILL
BENEFIT FROM INTERNATIONAL
ARBITRATION TREATIES**

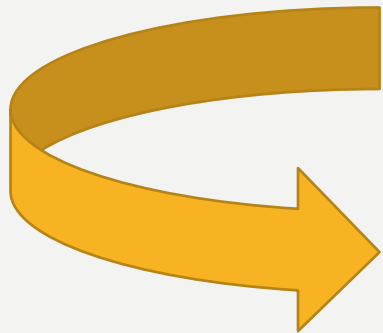


WHAT'S THE **BIG DEAL
ABOUT INTERNATIONAL
ARBITRATION?**

**PROVIDING ASSURANCE FOR THE
IRAQI AND FOREIGN BUSINESS
COMMUNITY**

THE BENEFITS OF INTERNATIONAL ARBITRATION FOR IRAQ'S ECONOMY

- Improving access to justice through neutral tribunals.
- Counterparties can choose specialised adjudicators.
- Confidentiality and preservation of relationships.
- Enforceability of the final award.
 - Attract business from states that respect rule of law .
 - Perceptions, not just reality, count.
 - No longer an outsider in the international community.





**WHAT IS THE NEW YORK
CONVENTION AND WHAT
SECURITY DOES IT PROVIDE
TO BUSINESSES?**

**IT'S NOT ROCKET SCIENCE. IT'S ALL
ABOUT THE 'E' WORD...**

ENFORCEABILITY, ENFORCEABILITY.

- What is the good of a judgment that can't be enforced? International law forces respect for awards through the New York Convention.
- Most Arab states are members (not Libya / Yemen). Over 150 states.
- International conventions take precedence over domestic law.
- For commercial matters: important for business with private sector.
- Outside the hands of the local courts.
- Limited grounds of refusal under articles V and III.
- Independent systems of recognition and enforcement.
- Promotes certainty (no appeal).
- Encourages improvement of domestic law (e.g. arbitration law).




WASHINGTON VERSUS NEW YORK?

**WHAT ARE THE BENEFITS OF THE NEW
YORK CONVENTION OVER THE
WASHINGTON (ICSID) CONVENTION?**

INVESTMENTS OR CONTRACTS? OR BOTH?

- Jurisdiction: at ICSID you must prove “investor” and “investment”.
- Need a treaty or reference to ICSID in a contract.
- ICSID enforcement outside court system: depends on ICSID membership and pressure of World Bank and IMF blacklisting.
- Relevance of ICSID only for State entities and the State.
- Two current ICSID cases against Iraq: Agility and Ittisaluna
- ICSID panels: the “usual suspects”. A tribunal can make or break.
- Damages amounts: usually greater at ICSID, but unpredictable.
- Greater numbers of cases are commercial not treaty arbitrations.



THE NEXT GENERATION OF IRAQI BUSINESS CONTRACTS?

**THE RISE OF THE WELL DRAFTED
ARBITRATION CLAUSE**

HOW TO CRAFT A BULLET-PROOF CONTRACT?

- **Clarity.** Don't waste time/cost arguing in court over poorly drafted clauses (arbitration is based on consent – which needs to be clear).
- **Capacity.** Make sure the other side has capacity to arbitrate. If a State – get the relevant approvals.
- **Appointment.** Try to agree on the chairman of the tribunal. The tribunal's identity is vital – do not leave it to an institution.
- **Ad hoc or institutional?** Be prepared if ad hoc, and get some experienced counsel.
- **Gird for battle.** Get local counsel advice and a sense of where the arbitration will go – and if it will settle – before it even starts.



ANY QUESTIONS?

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