International Arbitration is currently one of the most resorted to dispute resolution methods, due to the efficiency. Although arbitration is certainly the best form of the dispute resolution, arbitration still remains the most user-friendly, fastest, and less expensive method of dispute resolution. All participants have an interest in ensuring that arbitration delivers the well-known advantages associated with it. Such as speed, cost, efficiency, technical expertise, and so on. Construction, financial services, and energy are some industries where arbitration is perceived as the preferred mechanism of dispute resolution.

Litigation process in Turkey can take substantially long time to get to final award and can become rather expensive. And in Hong Kong, The Hong Kong Court has always been supportive of the arbitration process. As Hong Kong is a model law Jurisdiction, The role of the court is understood to be supportive of process.

Clear and enforceable arbitration clauses are extremely important. A good and valid arbitration clause must not only be clear and its terms, it should also meet requirements. The most practical consideration is an effective dispute resolution clause that it is crucial, therefore, to negotiate clear and enforceable arbitration clause into international business agreements. It is important to keep mind that the basic characteristic of arbitration clause is that part of a contract. It is paramount importance to ensure that arbitration clauses are carefully thought through and clearly drafted.

Multinational companies do tend to pay greater attention to their arbitration clauses. Companies, should have a standard clause which provides for a venue and process which is clear and which can be put into every first draft of a contract. Getting to arbitration clause right may save much time and expense should a dispute actually arise. Although parties intend to settle their dispute via arbitration, they find themselves before a state court simply, because their arbitration clause was poorly drafted and couldn’t be implemented. The company should make sure its drafts arbitration provision with sufficient breadth encompass a wide variety of possible claims between the parties.
Best tailored arbitration procedure, it is advisable to use simple wording in order to avoid ambiguities and future disputes regarding their meaning and effects. Any ambiguity will lead to arbitration becoming impossible or perhaps lead to arbitration award unenforceable in some jurisdiction.

Although model clauses exist in all major arbitration centres and these can be incorporated directly into the contract. To avoid confusion, a generic and internationally accepted model should be used. Many institutes give model clauses that can be posted into the contract and these are normally perfectly innocuous. That parties who choose to arbitrate must make sure that arbitration clause is valid under the applicable law. It is advisable to include a standard arbitration clause.

It is when a drafter decides the make up the arbitration clause and writes in an ambiguity or unforeseen issue occurs. Most pathological clauses are often derived from inexperience in drafting of an arbitration clause or due to companies minimising the importance when negotiating a contract or agreement. Therefore if this issue is left the last hour of negotiations. The arbitration clause is often referred to as midnight clause as it is the last thing the drafter do before packing up for the night. Because the drafter are tired after hours negotiating terms. Those who involved in contract negotiations may know that the dispute resolution clause and in particular the arbitration clause, is very often known also as the ‘ midnight clause” meaning that it is one that comes at the end of contract negotiations when the whole structure of the contract has been set out. Yet, the most important clause in any contract is the dispute resolution clause for so many reasons, not the least of which is that the way contracting parties manage any dispute, disagreement or controversy that arises in the course of implementing the contractual agreement, would invariably determine their future commercial relationship. The companies should consider their dispute resolution requirements as points of general principle and in advance, so that they don’t have to divert their attention unnecessarily from the substantive elements of a transaction each time a new contract entered into. Being aware of the options and familiarity with the process will ensure that the ‘ midnight clause,” as inevitably be-is one that the company is already comfort with.

In commercial transactions, dispute resolution clauses are drafted mainly in 3 circumstances

- During pre-contract negotiations
- Post contract but before dispute arises
- Post contract but after the dispute arises

In cable & Wireless Plc. vs IBM United Kingdom Limited the dispute resolution clause read partly that the parties shall attempt

‘"In good faith to resolve the dispute or claim through alternative dispute resolution (ADR) procedure as recommended to the parties by the centre for dispute resolution (CEDR)’’
While holding that the clause is enforceable, Colman J. stated the rationale as follows:

‘‘the parties have not simply agreed to attempt good faith to negotiate a settlement ……………….they have gone further than that by identifying a particular procedure………………that is the best known and most experienced dispute resolution providers in this country. ‘’

Important things for drafting arbitration clause:
- Understand the deal/transaction
- Know and understand the parties
- Conduct reality tests with the parties
- Authority to settle
Drafter must avoid 7 sins:
- equivocation
- inattention
- Omission
- overspecificity ; in instance

‘’The arbitration shall be conducted by 3 arbitrators each of whom shall be fluent in Hungarian and shall have 20 ore more years of experience in the design of buggy whips, and one of who shall act a chairman, shall be expert on the law of the Haps burg Empire’’

- unrealistic expectations
- litigation envy
- overreaching

In Summary; each arbitration clause should be carefully drafted to fit the needs of the parties and deal. Other matters that ought to be considered include number and qualification(s) of the arbitrators, seat of arbitration, law governing arbitration, rules governing arbitration, venue/place for hearing (where different from the seat of arbitration), language of arbitration, and possible impact of international Treaty or other international law of arbitration.

The following is a sample clause.

‘‘In the event the parties are unable to settle the dispute difference or controversy by mediation within 30 days of the appointment of the mediator as herein provided, it shall be referred to arbitration in accordance with the provision of the conciliation
Act Cap A.10, Laws of Federal Republic of Nigeria 2004. The arbitration shall be conducted by a sole arbitrator to be mutually agreed upon by the parties and failing such appointment to be appointed by the chairman. Chartered Institute of Arbitrators (UK), Nigeria Branch. The place of arbitration shall be Lagos, Nigeria, and the language of arbitration shall be English. The decision of the arbitrator shall be final and binding on the parties.

CONCLUSION:

I strongly recommend the parties to take advice on what is most suitable and ensure that the clause is enforceable. However, with proper consideration of the different options and well-drafted dispute resolution clause, a company can place itself in a strong position when disputes arise. It is important for a draftsman to pay close attention to matters that aid the drafting of a clause that creates an effective and efficient dispute resolution process for the parties, whether the process is multi-tiered and otherwise. Although a defective arbitration clause can indeed lead to protracted and expensive procedural developments before even getting to the merits of the dispute. In any case, the defective dispute resolution clauses cause the nefarious consequences. In the arbitration clause is avoided any ambiguity and unclear that cause the arbitration becoming impossible or perhaps lead arbitration award unenforceable in some jurisdiction. The draftsman should endeavour to use model clause in all major arbitration centres that may save much time and expense should a dispute actually arise.