ASSOCIATION OF CORPORATE COUNSEL

Desktop Learning Webcast Transcript
Effective Use of ADR and Other Tools in International Business
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Presented by ACC's International Legal Affairs Committee and Eversheds LLP

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Moderator: Kathryn Chapman, Attorney

(Catherine Chapman): Good morning, everyone, or good afternoon, or good evening, depending on where you're calling in from. My name is (Catherine Chapman), and I am currently the Secretary of the ACC International Legal Affairs Committee. My most recent in-house position was as the international legal director for Comdisco, Inc., a global technology services and equipment leasing company.

I'm pleased to be the moderator for today's web cast. There are a couple of items relating to the logistics of the web cast that I'd like to go through first, and then I'll have the pleasure of introducing today's speaker.

The title for today's web cast is the effective use of alternative dispute resolution and other tools in international business. You are able to ask your questions online. If you have your screen open right now, you should look to the bottom left-hand corner. You'll find a box which says "Questions." You type in your questions there and click "Send." You can enlarge that box if you need to. There's a little corner in the upper right-hand corner, a little icon that you click on to expand or contract the box. I will see your questions as they are submitted, and so will our speaker, and it is his intention to answer them as they arrive. However, we know that there is quite a bit to cover today, so please understand that if there are a lot of questions, we may not have time to get through all of them today. However, the presenter has agreed to provide answers to your questions that we will post on the committee web site.

One other matter, which is very important to the speakers, to ACC and to the International Legal Affairs Committee, is the evaluation form, which you are also asked to complete. In the middle of the left-hand side of your screen, you should see a link to the web cast evaluation. We would very much appreciate your taking a few moments to complete that evaluation form at the end of today's presentation. Those forms will be reviewed, and they will be used to improve these web casts so that they can remain a superior resource available from ACC.

Please note that this web cast is being recorded and will be made available on the ACC web site. If you do have technical difficulties, as was mentioned earlier during the session, please email ACC Web Cast at commpartners.com. Please note that there are two M's on the CommPartners.

Having said that, I am pleased to introduce to you today our presenter, and we'll go from there. I'm looking forward to what they have to say on today's topic. Our speaker is a partner from Eversheds, who is a sponsor for the International Legal Affairs Committee. Eversheds is one of the largest full-service law firms in the world. They're headquartered in London and have 29 offices in major cities across the U.K., Europe, Middle East and Asia. Their six main practice areas are commercial, corporate, human resources, legal systems, litigation and dispute management, and the industry sectors that they cover include government, education, energy, financial institutions, food, health care, local government, retail and telecom.

Our speaker today is Stewart Shackleton, who is a partner with Eversheds, who has specialized in international arbitration since 1991, having practiced in Paris, Hong Kong and London. He has acted as full arbitrator, party-appointed arbitrator and counsel in over 150 international arbitration's under all of the major institutional rules, including treaty claims under the ICSID Convention and venues around the world and disputes arising out of commercial, investment, infrastructure, mining, financing, engineering and construction transactions. Stewart is admitted as a barrister in Ontario. He is an Avocat au Barreau in Paris, a solicitor advocate in England and a solicitor in Hong Kong. He's a member for Canada of the ICC Commission on International Arbitration and a Canadian delegate to the International Commercial Arbitration Subcommittee of the International Law Association.

We're delighted to have Stewart with us today, and welcome to you. I'll turn it over to you now, Stewart.

Operator: Stewart, you may now go ahead.

Stewart Shackleton: Hello.

(Catherine Chapman): Hi, Stewart.

Stewart Shackleton: Hi. Sorry. I went off line, there. I don't know why.

(Catherine Chapman): OK, well, you're back with us, and we introduced you, so why don't you go ahead with your presentation, please.

Stewart Shackleton: Thank you. Good day, everyone. We will be examining a number of basic techniques today to ensure enjoyment of international contractual rights by using arbitration as a means for enforcing those rights should anything go wrong with the contract.

The first technique, of course, is to have a valid and binding arbitration clause, and that is what we will be looking at first of all, and examining some of the specific features of an arbitration clause, it's in some ways unlike other contractual provisions, and looking at various ways to draft an effective arbitration clause, one that will be enforced by courts worldwide and will avoid you ending up in the courts of a jurisdiction where you may not have wished to end up in.

An arbitration agreement is, first and foremost, a treaty requirement. The United – sorry, the New York Convention, 1958 New York Convention requires an agreement in writing to arbitrate as a condition of the enforcement of arbitration award, first of all, but also requires

the courts of member states to enforce arbitration agreements; in other words, not to hear cases that are brought where a valid arbitration agreement is in place. The arbitration agreement plays, therefore, this important role of evidence of the party's consent to arbitration.

An arbitration agreement is separable from the main contract that has a number of important consequences. First of all, it can survive determination of the main contract. It is valid independently of the main contract, as well, and the governing law may not be the same as the law that is applicable to the main contract. Contracts, in other words, that may be void for other reasons, including illegality, will not end up litigated before the courts. If there is an arbitration agreement, the arbitrators will have jurisdiction to decide for the questions as illegality, regulatory matters – even European Competition Law has recently been held to be (arbitrable) under such agreements.

The separability of the arbitration agreement is an internationally accepted principle. It is reflected in most arbitration rules, and you have on this slide an example of the ICC rule at Article 6.4, which provides for the separability of the arbitration agreement. Separability is often known as strong or weak. The strong version of separability refers to an arbitration agreement that can come into effect, even before the contract. In other words, if the contract is not completed, not signed, not fully negotiated even, there are situations where the arbitration agreement where nonetheless be held to be valid and binding. Disputes arising out of the contract – you can imagine a situation where parties begin performance of the contract before they've actually completed their negations. Disputes arise under a strong notion of separability. Those disputes can be referred to arbitration.

There is a divergent jurisprudence on this, the courts in France having recently applied the strong notion of separability, where the courts in England have been reluctant to do so, holding that there – where there is no contract yet in existence there can be no arbitration agreement. These decisions are several by the English courts are in contradiction to the provisions of the 1996 Arbitration Act, however, which provides that an arbitration agreement is not null and void merely because the contract that contains it has not come into effect.

The objective of an arbitration agreement are worthwhile reviewing because these are what you will be aiming at in drafting a binding arbitration agreement. You will want, first of all, to exclude local courts. This is normally done simply by the reference, the mandatory reference, to arbitration. You will want to identify an appointing authority or an administering institution; the ICC, for example, in Paris, the Hong Kong Center in Hong Kong, CTAC in Beijing and so on. You will also want to confer jurisdiction to decide disputes under the contract on the arbitrators. You will want to identify their jurisdiction as well, both in relation to the parties that they are to have jurisdiction over, and the scope of the dispute that the arbitrators are to decide.

The exclusion of local ports is sometimes approached differently, depending on whether one is in a common law or a civil law jurisdiction, and normally, in most civil law jurisdictions, the local courts are excluded because they are not competent in the presence of an arbitration at all. They simply have no jurisdiction for various reasons related to common law theory. However, the jurisdiction, of course, is stayed instead of nonexistent in the presence of an arbitration agreement.

The ultimate objective, of course, of having an arbitration agreement that is effective is to allow one party only, if need be, to constitute the arbitral tribunal; in other words, to move forward with the dispute resolution agreement with – in the absence of any cooperation from the other party who, not always, but in many cases, can be counted on not to cooperate with the setting up of an arbitral tribunal.

If you fail to meet in your drafting of an arbitration clause, if you fail to meet any of these objectives, you may end up with what is known as a pathological clause. These are, in many cases, curable by the courts. So an incorrect reference to the institution may be read in a certain way, either by the institution itself or by the court. Failures to state certain things in the arbitration clause, again, may be remedied by the tribunal, but again, only at the cost of normally a lot of dispute and by the lawyers on either side as to the meaning of the provision or the identity of the appointing authority, the language of the arbitration and so on.

The provision of the New York Convention defining arbitration clauses that must be enforced is also noteworthy. The courts will not have to enforce an arbitration agreement where they find that the agreement is null and void, inoperative or incapable of being performed – normally a provision that receives a very narrow interpretation by the courts, who generally will look kindly on arbitration clauses, even if they are poorly drafted.

The essential ingredients of an arbitration clause, it is, of course, absolutely necessary to identify the parties, not usually such a difficult matter where the contract defines – otherwise defines the parties. The arbitration clause may simply refer to the parties or either party may refer disputes to arbitration, that sort of language. This can become more complex, however, where there are groups of contracts or groups of companies involved.

You will want to identify the legal relationship that is subject to arbitration, and again, this is normally simply a reference to this agreement, any disputes arising under this agreement. The identification of the disputes, usually, as well, a simple matter. There are, however, complications where parties attempt to divide a jurisdiction, defining often technical disputes as opposed to legal disputes, and this is not recommended. Again, once a dispute arises, enormous fees will simply be lost in disputing what is a technical dispute and what is a legal dispute. A number of cases have had to be resolved by the courts (similarly), because, again, such questions affect the arbitrator's jurisdiction, a matter that is reviewable before the courts. This, of course, defeats the whole purpose of setting up a neutral and independent forum.

Ensure that your reference to arbitration is mandatory. Use words like "shall" be referred to arbitration, not "may." There is now a long line of jurisprudence in the United States, Canada and England, where optional language has been read or interpreted as mandatory clauses that say that either party may refer disputes to arbitration have been read as mandatory, not option. But again, many of these cases have had to be litigated in the courts before the arbitration is able to get under way.

You will want to identify the arbitration rules that are to govern the proceeding. These may be ad hoc rules; in other words, rules that are not administered by any permanent institution. They may, on the other hand, be institutional rules, as these are rules which are administered by an institution. The AAA in the United States or the ICC in Paris are

examples. A body of professionals will look after the proceeding, appoint the arbitrators and look after such things as fees charged by the arbitrators, other expenses of the arbitration as well as the replacement of arbitrators for reasons of bias or conflicts of interest and so on.

More essential ingredients that you may wish to identify – not only the number of arbitrators, but also the nationality of the arbitrators if that is an important factor. Most often, the – it is that certain nationalities are excluded rather than included, so a simple phrase that none of the arbitrators shall be a national of, and then two or three countries where it is not desirable, usually for reasons of neutrality and conflict of interest to have arbitrators appointed. You will want to identify a place of arbitration. Again, if you do not, the administering institution or the arbitrators may identify the place of arbitration. But again, this will only be done after lengthy submissions and costly submissions by the parties where that question is less open.

It is important in international, many international contracts to identify a language of arbitration. There are default rules. The language of the arbitration is generally the language of the correspondents between the parties and the contract, but these, again, are not anything that can be counted on. I have, myself, had numerous examples of, both as party and arbitrator, of arbitration's proceeding in two or even more languages. One went ahead in three languages – Danish, French and English – simply because the parties had not specified a language of arbitration. They then, of course, get into disputes. They appoint their local lawyers to represent them, and the lawyers commence writing in their own languages. Again, very expensive. There are all sorts of solutions. There can be a bilingual arbitration, where everyone writes in their own language. If the arbitrators understand all of the languages used, that's generally not a problem and can result in a much less expensive proceeding than one where all documents are required to be translated.

You will want to identify the applicable law. You might have a thought about the applicable law that is to govern both the arbitration agreement and the contract, of course, and in certain circumstances you may wish to give consideration to alternatives to a national law. Some of these are increasingly used. The (Unitwa) principles, for example, and the Vienna Convention on the Sale of Goods are two of the most commonly used (anational) legal norms.

You then, in drafting an arbitration clause, will want to consider any of a variety of options. These are options because they are not necessarily a requirement for the binding nature of the – of the arbitration agreement. They are simply things that may facilitate or speed up the proceeding by resolving in advance a number of procedural questions. You may wish – or it's often – it's often recommended, when parties get into arbitration, it's often thought to be a good idea that there should be preconditions to arbitration, usually because parties feel that an arbitration, if it gets going, will be costly, it will be out of anyone's control and so on, and so there are – there are all sorts of escalation provisions, preconditions, meetings at various levels of executives, notice of disputes is required to be given, and so on as preconditions. In my practice, I generally recommend against this except as a – as a voluntary sort of – you know, if you're going to have ADR as a precondition to arbitration or mediation, this should be worded so that it does not in any way stop the arbitration from going ahead as soon as arbitration does become required.

There is nothing to prevent mediation from proceeding in parallel with an arbitration proceeding. One does not have to come before the other, and arbitration, of course, can be withdrawn. It can be stopped at any time. It's generally very much in the control of the – of the claimant or both parties, so the notion that it is something that will get out of the party's control somehow isn't really a determinative. It's no more the case with arbitration than it is with litigation, and for some reason jurisdiction clauses are not usually accompanied by all the concern to attach preconditions to a – to a local jurisdiction clause. It's the same with arbitration. The only – the only exception I would identify for this would be in the – in the area of construction contracts, where there are very carefully drafted preconditions to arbitration, generally revolving around decisions by a dispute for it or an engineer's decision. (Clause 59) of the – of the city contract is a good example.

You may wish to specify qualifications of your arbitrators, either in a system of law or an area of technical expertise, or even an area of business – a sector of business practice. This can be useful. It can ensure a better quality of decision maker. One needs to be careful, however, not to add too many qualifications because this could impede the smooth appointment of an arbitrator when it comes to find someone who might be – might not have all of the qualifications. I'm thinking, in particular, of software disputes that I've been involved in, where some parties have insisted on a lawyer with experience of software arbitration. Now, there are very few lawyers with that experience, software disputes being relatively recent a phenomenon.

Additional options may also include interim measures, either to exclude them – and that's not always possible in all jurisdictions – or to include them mostly for clarification since, again, most jurisdictions that I'm aware of will allow parties to apply to the courts for interim measures despite an arbitration agreement and for so long as the arbitrators are not appointed. You may wish to waive rights to appeal. This is important if you are arbitrating in England, where the Arbitration Act allows the parties to appeal to the courts on questions of law unless the parties have specifically and expressly opted out of that regime.

Confidentiality may be important. There may be special provisions that you might wish to incorporate in your arbitration agreement to provide for confidentiality, and arbitration itself is confidential, but here I'm thinking more in terms of the protection of sensitive trade information, copyright patent information, that sort of thing. The – probably the most sophisticated confidentiality provisions are found in the WIPO Rule, where a provision is made for a number of eventualities during an arbitration where confidentiality might be uppermost, including the appointment of someone external to the arbitral tribunal to vet and document information and so on and (reduct) materials before they are passed either to the arbitrators or to the other party. The power to adopt the contract is if it's considered important, and it may be in some circumstances, where contracts are very long term, is also something that may merit specific mention since not all jurisdictions recognize this power for arbitrators.

Special problems will arise where the parties are addressing a provision for a situation that involves either multiple parties or groups of contracts. Now, the parties may wish to join in some way related parties, related contracts and related disputes, and in their arbitration it is important to bear in mind that if that is the desire of the party, this must be clearly spelled out. The arbitrators must be given the power to join parties, and those parties must give written consent in some form to be enjoined to the arbitration.

In these circumstances, what is generally recommended is the drafting of an entirely separate contract, which would consist of an arbitration agreement all on its own, and that contract would identify all of the other contract members of groups of companies and other parties that would eventually come under the jurisdiction of an arbitral tribunal, again, should that be the wish of the parties. It may also be the party's wish that no other member of the group – a parent company or an affiliate – be involved in the dispute in any way or be brought in as a party to the arbitration, and in this – in this event, consideration may be given to express exclusion of certain parties or the extension of an arbitration agreement to other parties, particularly important in certain jurisdictions where extensions of arbitration agreements might be allowed in certain circumstances.

In ICC arbitration in Europe, there is what is known as the "Group of Companies" doctrine, which is a body of case law that sometimes allows the extension of an arbitration agreement to a non-signatory group of the party who has signed the agreement on the basis that the non-signatory, often the parent company, participated in the negotiation, performance or termination of the underlying contract. So, again, it's either the situation that you wish at all events to avoid. It may be advisable to specifically exclude that in the arbitration agreement itself.

The next slide sets out a couple of model arbitration clauses. You see the first one from the ICC and the second from the Stockholm Chamber of Commerce. There's a growing divergence in the language of such clauses, and indeed the rules themselves that apply between the institutions. Two examples here, of course, are sufficient to give rise to a binding agreement to arbitrate, but again, are incomplete with respect to the place of arbitration, the number of arbitrators, the applicable law and the language of the arbitration. Again, these matters should be added in any careful drafting.

The next slide sets out the (UNC) trial model arbitration agreement. The (UNC) trial rules are a set of rules devised in the 1970s to govern an arbitration proceeding. There is, however, no institution. The (UNC) trial itself often receives requests for arbitration from parties who believe that (UNC) trial administers arbitration's, but (UNC) trial does not do so. The rules are simply there to be used by the parties, who are relied on to cooperate as much as possible in the organization of their proceeding. Again, once arbitrators are appointed, that becomes easier since the arbitrators will take on that role, but there may be problems getting the arbitrators appointed. Usually, under ad hoc rules, the important thing is to identify an appointing authority for this purpose.

Arbitration – international arbitration invariably involves counsel and parties drawn from a diversity of legal and cultural backgrounds, and it is important to be aware of some of the cultural differences. International arbitration itself is drawn from a number of these traditions and will not necessarily follow, even very closely, the substantive law governing the contract. It is an internationally accepted principle that the rules, local rules of procedure and evidence of the place of arbitration or, indeed, the substantive law governing the contract, will not apply to the arbitration proceedings. This can have important consequences for the merit if not properly understood.

In England, for example, the courts normally do not look at precontractual documents. They will not look at precontractual correspondence or draft contracts in determining the

intention of the parties to the contract. They will derive the intention of the parties usually only from the wording of the contract itself. There is no such rule in international arbitration, and the arbitrators are free to look at such evidence as may be available. There is, in fact, no rule on admissibility of evidence in order to stop that – those documents from coming in, and parties are, therefore, well advised to look at that evidence in preparing an arbitration to see if it assists their case or not, if English law applies to the contract or if English law governs the procedure because it's the place of arbitration that will not import into the proceedings any rule against the admission of precontractual documentation.

Proceedings in international arbitration are normally written. The emphasis is on – not on the oral presentation of the case, and so again, an – this gives rise to important considerations from a tactical point of view. The written correspondence before the arbitral tribunal is normally becomes a form of written advocacy. The hearings – the oral hearings are much shorter than a trial would be in the United States or Canada or the U.K., and it is important, therefore, to expose the case as much as possible in the written proceedings in the course of exchanging what are often referred to as parties memorials or full statements of case because there will be no opportunity to do this orally in a short hearing of three days or five days, where a trial may take – an equivalent trial would take three to five weeks.

Arbitrators may take a more active role. There's no general rule, but depending on their own legal background, and sometimes their own experience and personalities, arbitrators may step in at a certain point and even start to play the role that – common law lawyers, anyway, would normally expect to be played only by the advocates. They will question or cross-examine witnesses, request to see certain witnesses, refuse to see other witnesses and so on, anything that they consider may be necessary for the efficient conduct of the proceeding.

The practice in some jurisdictions, and particularly in Asia, of – by arbitrators to mediate or settle the dispute is something that you may wish to consider. It is often – in England, anyway, it's certainly frowned upon and would give rise to a conflict of interest for any arbitrator who attempted this and then sought to continue the arbitration. It is something to be aware of, and it may happen in certain jurisdictions. It's important to beware of the composition of the tribunal. This can be determinative of the merits. You may – you may have a common law governing the contract, but you may, for tactical reasons, wish to have a civil law lawyer, because you know that the approach taken by a civil law lawyer may be – may not be as restricted as the approach of a common law arbitrator, and this will give rise to more flexibility with respect to the application of the legal norms. Of course, if your case depends on a restrictive approach to the law, then you will be looking for more conservative arbitrators and often a former judge or barrister if it – if it is English law.

The – for these reasons, it's important to be aware of the broader range of legal norms that are potentially applicable. There is now a body of arbitral case law that is available and frequently cited in arbitration, not just on procedural matters, but including on the – on the merits. The House of Lords in England recently endorsed a statement by Lord Wilberforce in the – in the House of Lords, who stated that he had always wanted to see arbitration moving in the direction of creating not only its own procedural law, but its own substantive law. This case, only two years old here, is widely viewed as liberalizing English arbitration law, which had, until then, been largely hostile to international principles of law or Lex Mercatoria or any legal norms that could not be readily attached to a national legal system.

The comparative benefits of arbitration are worthwhile reviewing. Some of them well known, no doubt, arbitration is, first of all, a mechanism that allows the parties to constitute a neutral forum. Often, in parties' negotiations, neither party wants to end up in the courts of the other party. There is a perception of unfairness, if only because the other party will know how the legal system operates better in its own backyard. With arbitration, a neutral forum can be assured. The parties may not have – may not share the nationality of either of the parties, and the place of arbitration, again, can be a third country.

Enforceability is another major consideration. Again, under the 1958 New York Convention, which we mentioned earlier, an arbitration award that is made in the territory that is made in the territory of any member state must be enforced and recognized in other member states. The convention arbitration awards under this convention have a better circulation, so to speak, then judgments. There is no equivalent treaty enforcing judgments made worldwide. Arbitration awards have this greater circulation. It is to be remembered, as well, and many people forget this, that an arbitration award, once it's rendered against your opponent, can be enforced not only in the country of that opponent, but also in any other state where your adversary operates, conducts business, has assets, bank accounts and so on. This is a – it makes arbitration a very effective tool when it comes to enforcement.

Confidentiality, of course, is another advantage. Litigation is public. It becomes a matter of the public – of public record. Arbitration proceedings are, of course, held in private. When parties have ongoing commercial relations, they often prefer that their dispute not be a matter of public record, and arbitration assists to ensure that that remains the case. In England, this has gone so far recently as to – as to cause the non-publication of a court case. A challenge brought before the court involving Russian parties, where political sensitivities were involved, the English courts held that the decision of the court itself, let alone the arbitration, should not be published in the interest of protecting the confidentiality of arbitration.

Flexible procedures – the proceeding in an international arbitration can be tailored to the needs of the parties. You don't necessarily have to follow a court rules, including with respect, especially in international arbitration, to discoveries, such things as discovery, which can often take months, involves a great expense and not really advance the parties in their case. Discovery is conducted very differently in international arbitration, where normally, at the end of the written (seating), either party can request the production of documents which are obviously relevant to the proceedings, and the arbitrators are left to draw negative inferences by the failure of the – either party to produce such documents.

Arbitration can assist by bringing relevant expertise to bear on the dispute. If it is an engineering or construction dispute, one member of the panel may be, not a lawyer, but an engineer or a construction specialist. I have also have seen arbitrators appointed with backgrounds in software and banking and so on, where this expertise assists. It doesn't, in my experience, hasn't taken away the need for the parties to appoint their own experts, but it has assisted the tribunal to deal with the technical matters in dispute much quicker than if all of the members of the tribunal were simply lawyers.

There are disadvantages to arbitration, of course. Arbitrators are normally weak when it comes to interim measures. One, they are not present – they are not a permanent fixture like the courts are, and therefore they are not in place when interim measures are needed in

the first few months of a dispute. Any interim measures that are required after the arbitrators are appointed, of course, will require the intervention ultimately of local courts in order to enforce orders by the tribunal.

The tribunal may sometimes be limited in the powers that it can exercise in relation to specific performance. If this involves corporations, land and so on, arbitrators may not be able to give the same remedies that courts are free to – free to order, local courts, of course. There is, as we have already discussed, an inability in arbitration to consult – sorry, to consolidate multi-party disputes, either to join other parties or to bring proceedings under one – under one tribunal, unless all parties consent. In the presence of a major dispute, of course, such consent is normally not forthcoming.

The other side of the expert coin is, as well, the fact that arbitrators who are appointed fore their expertise may not have the technical ability – or have, sorry, the legal ability to resolve certain questions. I have had the experience, for example, of an arbitrator appointed for his expertise in construction in international infrastructure project in the Middle East so that went sour. It involved the merger of two states; however, one state claiming that it was no longer a party to the contract. Because the state had merged with another state party that signed the contract, it no longer existed. The engineer in this instance, who was appointed full arbitrator, found himself having to deal with all kinds of complicated issues relative to succession of states and public international law, experts appointed on both sides to provide evidence of public international law. But again, the expert struggling with those questions.

That is the end of the presentation. I don't know if we have any questions at all at this point. I haven't seen any …

(Catherine Chapman): I see one there, and the question is can one provide that the parties can seek and obtain interim (investors) relief from courts of proper jurisdiction …

Stewart Shackleton: Yes …

(Catherine Chapman) … question that I had at one point, and I think I know the answer. You can do that, can't you?

Stewart Shackleton: You can. Not only can you, it's not normally even necessary to provide for it. Most jurisdictions allow you to apply to courts for interim relief before an arbitral tribunal is appointed. The model law specifically sets out, this is the (UNC) trial model law, specifically sets out, for example, that applications to the courts for interim relief is not incompatible with the arbitration provision. I know that there have been some jurisdictions where this has been, possibly still is, problematic. One of them is Russia, which adopted the model law, but the courts in Russia did issue a number of decisions with respect to interim relief, holding that the court could not grant interim relief because of an arbitration agreement. So there's no harm in providing for it specifically in the – in the arbitration agreement. It should probably have some cutoff point. It should probably have a limited duration – only for such time or during such time as the arbitrators are not yet appointed, for example. In England, this is the statutory provision, which includes even a handing over; in other words, the courts are there to give you interim order for the first few months, but these orders themselves, the orders of court, are then handed over to the arbitrators once the

arbitrators are appointed, and the arbitrators are recognized under English law in having the power to vary those court orders, continue them or terminate them.

(Catherine Chapman): OK, if there are no further questions, then that will conclude today's web cast. On behalf of the International Legal Affairs Committee, I'd like to thank Stewart Shackleton for his fine presentation. I found it quite interesting. It's a subject which comes up more and more often in deals that I work on.

I just want to remind everyone who's been on the web cast today to please take a few minutes to complete the evaluation form, and may I also suggest that you look at the International Legal Affairs Committee Mission Statement on the ACC web site. Please think about joining the Committee if you're not already a member.

And having said that, I see no more questions, so you may disconnect now.

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