Arbitration

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Delays in resolving commercial matters in New Zealand courts are of increasing concern, with larger civil claims filed this year not being scheduled until 2028-2029. As court system delays reach unprecedented levels, and the cost and length of hearings continue to increase, we are increasingly supporting clients to consider arbitration as a flexible and efficient option for resolving complex disputes.

1 Arbitration clauses should now be an essential consideration for all commercial contracts. Arbitration is similar to court, but offers much more privacy and flexibility. Parties present their dispute to an independent arbitrator who makes a binding decision following evidence and submissions. Like judges, arbitrators are independent and impartial, applying the law to the issue, giving reasons and granting an enforceable award. However, arbitrators are privately contracted, giving parties far more procedural control.

2 Arbitration is procedurally flexible: parties can agree to a procedure that fits the complexity, nature, and value of their dispute. For example, parties can decide to apply expedited rules, do without an oral hearing, have limited (or no) discovery, or use memorials instead of court-style pleadings. The flexibility also extends to costs: arbitrators do not need to apply the High Court scale of costs.[1] For a successful party, this can mean obtaining a substantial portion (or even all) of their arbitration costs and reasonable legal costs (however, it does correspondingly increase the costs risk for the unsuccessful party).

3 Parties must agree to arbitrate, either (more commonly) by including an arbitration clause in the substantive agreement or (less commonly) specifically agreeing to arbitrate after a dispute arises. Model arbitration clauses are widely available but usually require adjustments to reflect the nuance of the particular parties, their location, assets, and the likely type and quantum of dispute. Poorly drafted arbitration clauses can create significant issues including parallel proceedings, additional costs, delay, and uncertainty. Careful attention is particularly required for cross-border and multi-party/multi-contract disputes.

There are many benefits to arbitration, including:

Speed

Arbitration is typically faster than court proceedings, which suffer from significant backlogs. Expedited arbitration rules allow for completion within 60, 90 or 120 days.

Expertise

Parties can agree to a decision-maker with relevant expertise in the subject matter of the dispute.

Procedural flexibility

Parties are able to choose a procedure that suits their preferences, either through the adoption of a set of arbitral rules or their own bespoke process.

Enforceability

Arbitral awards are directly enforceable in 173 jurisdictions under the New York Convention with limited grounds to refuse to enforce. Arbitration will therefore usually be a safer option for NZ clients needing to enforce their awards against offshore assets.

Confidentiality

Arbitrations are typically confidential, which creates an ideal forum to resolve sensitive disputes, as opposed to the public court process.

Finality

Parties can agree to exclude any ability to appeal. If appeals are allowed, they will be limited to questions of law.

Chapman Tripp is the only New Zealand firm ranked as among the top 100 practices worldwide by Global Arbitration Review. Our specialised team is experienced in conducting arbitrations under all major arbitral institutions and rules internationally including LCIA, ICC, SCC, SIAC, AMINZ, ICSID and the UNCITRAL Rules. Please contact our experts.

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1. *McCracken v Boyer* [2025] NZHC 546 at [21].