

Planning on doing business with  
overseas companies, then be  
prepared to arbitrate

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# Establishment and Goal of New York Treaty

- Established in 1958
- Adopt a uniform set of rules on the recognition and enforcement of foreign arbitral awards

# United States acceptance of treaty

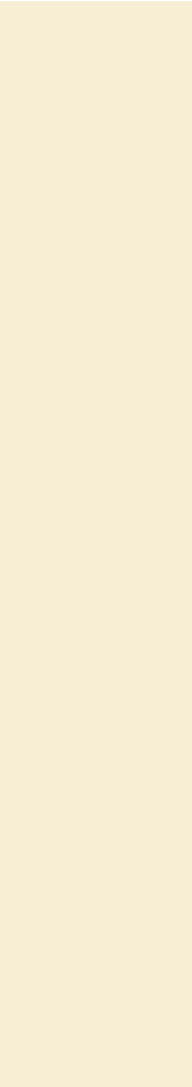
- In 1970
- Certain restrictions

# China's acceptance of treaty

- In 1987
- Only applies to certain legal issues including the sale of goods and intellectual property issues



# Treaty contains 16 articles- Key articles



# Article I

- Situations where treaty applies;
- Covers arbitration awards made by arbitrators appointed for individual cases

## Article II

- Recognition of agreements in writing that contain an arbitration clause
- Courts of contracting states will refer case to arbitration if requested by one of the parties

## Article III

- Binding awards
- Enforceable awards



## Article IV

- Requirements for a party seeking recognition and enforcement of an arbitration award
- Certified translation required

## Article V

- Certain exceptions to recognizing or enforcing arbitration award
- Incapacity, improper notice, matter not covered by arbitration clause, arbitration panel not constituted correctly, and not proper subject matter for an arbitration award

## Article VI

- Allows for decision to be set aside
- Allows for decision to be stayed if security issued by losing party

## Article VII

- Does not affect other treaties
- Replaced two other treaties relating to arbitration

## Articles VIII-XVI

- Set forth process by which treaty became effective
- Established how countries could be bound to treaty



## Enforcement of arbitration awards issued pursuant to New York treaty in China

- China regularly enforces foreign arbitration awards in China
- Approximately thirty cases

# Suggested standard language for arbitration clause

- “Any dispute, controversy or claim arising out of or relating to this contract, including the validity, invalidity, breach, or termination thereof, shall be finally settled by binding arbitration [administered by the AAA or ICC or some other arbitration commission], and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction. The arbitration shall be conducted in English in [name of city, state, United States] in accordance with [the chosen arbitration rules, e.g., the United States Arbitration Act or the ICC Rules of Arbitration] and [the chosen governing law, e.g., the substantive law of the state of New York]. There shall be [one to three] arbitrators, named in accordance with such rules.”
- Consider adding a mediation clause as well



## Reasons why standard language is important to use

- It will be enforceable in any country that signed New York treaty
- Promotes consistency in process



# Questions?



# Thank You!

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