

# Chapter 11

## Developments in International Commercial Arbitration: The Regulatory Framework

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### I Introduction

This concluding chapter reviews current regulatory developments in the field of international commercial arbitration, with some mention of investor-state arbitration. At the international level it focuses on the review of the 1976 UNCITRAL Arbitration Rules (UNCITRAL Rules); at the national level on Australia's review of the *International Arbitration Act 1974* (Cth) (IAA) and associated controversies.

As outlined at the outset of this book,<sup>1</sup> the regulatory framework of international commercial arbitration involves three instruments at the general multilateral level:

- the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 (NYC);
- the UNCITRAL Model Law on International Commercial Arbitration (ML);
- the UNCITRAL Rules.

The NYC<sup>2</sup> forms Sch 1 to the IAA, which gives it the force of law. The NYC was in turn based on the Geneva Protocol on Arbitration Clauses of 1923<sup>3</sup> and the Geneva Convention on the Execution of Foreign Arbitral Awards of 1927.<sup>4</sup> Being a widely ratified international convention<sup>5</sup> there is no hope of amendment until after the next world war.

The ML is given the force of law by and forms Sch 2 to the 1974 Act.<sup>6</sup> The ML was first adopted in 1985; it was amended in several important respects

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1 See Nottage and Garnett, Chapter 1 of this volume, Part I; Garnett, Chapter 2; Pryles and Garnett, Chapter 3.

2 330 UNTS 3, signed 10 June 1958 (entered into force 7 June 1959).

3 27 LNTS 157.

4 92 LNTS 301.

5 It has 144 states parties as of 2 July 2010.

6 UN Doc A/40/17, Annex I, adopted 21 June 1985, revised 2006. The UNCITRAL Model Law on International Commercial Arbitration 1985 with amendments as

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