

## CHAPTER 8

# Dispute Resolution and Enforcement

### Introduction

On one view, commercial law is essentially concerned with holding people to their bargains. This will, in many instances, require legal proceedings for the vindication and protection of rights.

There is nothing to suggest that there is a greater or lesser prospect of disputes in the context of long term contracts. However, in view of the relational aspects of long term contracts, and the mutual benefits that the contract may allow, there would appear to be a significant interest in the minimisation of disputes. The task of eliminating or reducing the prospect of dispute is one fraught with difficulty; indeed, one could be forgiven for hypothesising that contract drafters deliberately insert a Persian Flaw<sup>1</sup> into instruments to demonstrate their humanity. In any event, few practitioners would be bold enough to venture a view as to the perfection of the contract that they have drafted. This makes way for the possibility of dispute. It adds to the likelihood of such disputes arising in the face of changing circumstances and commercial interests.

The papers by Lucy Reed, Stephen Boyle, and Mark Darian-Smith attack the question of disputes from the perspective of forum, enforcement, applicable law, and the conduct of arbitral proceedings. Regardless of the type of the proceedings provided for in the contract, there are some fundamental matters that ought to be addressed during the various stages of the proceeding. The checklist on the following page, which can profitably be read with the papers, identifies some of the pertinent matters for analysis at all stages of the dispute resolution process.

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<sup>1</sup> The practice of Persian rug makers of deliberately including a flaw in each carpet to remind them that nothing human is perfect.

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