

# Practical Perspectives on Dispute Resolution and Enforcement

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## Key points

1. When negotiating long term contracts, it is particularly important to carry out a proper risk analysis and to ensure that the proposed governing law is the most likely to give commercial efficacy to the bargain.
2. An area of practical difficulty in the arbitration of disputes under long term contracts is the maintenance of the confidentiality of evidence (particularly evidence relating to market sensitive information such as price). Consideration should be given to the applicable confidentiality regime by reference to, for example, the opt-in provisions of the IAA, some other source such as the IBA Rules on the Taking of Evidence in International Arbitration, or a separate confidentiality regime agreed between the parties.
3. The key to a successful arbitration is flexibility. Some practical steps that can be taken by the arbitrator include: seeking guidance from Articles 18 and 19 of the UNCITRAL Model Law (and other protocols and guidelines published by arbitral institutions) to manage the arbitration process; using the pre-hearing conference to settle evidentiary matters; avoiding pro-forma litigation-style procedural orders; and limiting oral evidence and the cross-examination of witnesses.

The intention behind my brief commentary paper is to touch upon some of the main themes canvassed by Lucy Reed and Stephen Boyle and to add a few additional practical observations which may be of assistance.

Long term contracts, by their very longevity, have characteristics which distinguish them from the normal run of commercial contracts. Ken Hayne QC (as he then was) put it succinctly in the *AMPLA Yearbook* of 1986:

The problems that occur in relation to long term contracts often stem from the fact that the commercial circumstances surrounding the transaction change ... so too can the law.<sup>1</sup>

<sup>1</sup> KM Hayne QC 'Problem with Long Term Contracts: Conflicts of Law' (1986) *AMPLA Yearbook* at 467.

This is a preview. Not all pages are shown.