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**ANNUAL JOINT CONFERENCE**

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**A New Era in International Franchising**

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**ENFORCING JUDICIAL DECISIONS & ARBITRATIONS**

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**WORKSHOP: Enforcing Judicial Decisions & Arbitrations - Having success in litigation or arbitration is only half the battle in achieving your goals and securing a remedy. The other half is being able to successfully enforce your award or order, and/or being able to collect monies owing. This workshop will consider those issues in the context of international franchising.**

In order to achieve your goals and secure a remedy in the franchise relationship, having success in litigation or arbitration could be seen as the solution.

But it is really only half the battle towards making sure you are able to successfully enforce your award or order, and/or simply being able to collect monies owing.

Another part of the battle is to avoid the battle by planning well beforehand, when the agreement is signed (A). This type of anticipation may assist in avoiding the litigation or arbitration process altogether, and save crucial time, money and efforts. *Si vis pacem, para bellum.*

When litigation or arbitration cannot be avoided, and the arbitration is filed (B), then there may be ways to seek advance security for costs and for the claims, determine if a Litigation Funder is involved, and to effectuate collections.

When the court order or the award is rendered, then it is all about getting paid (C), by making a demand for payment, then enforcing the award.

**A. First Step: avoid the need for litigation or arbitration by anticipating before entering into an agreement.**

**1. Seek a representation of the initial financial position of the franchisee.**

The selection of the franchisee is always important for franchisors, especially the first one in a foreign country, and even more than a Master franchisee. The franchisee needs to be trustworthy and have sufficient financial strength. Therefore, one of the first things that some franchisors do before executing a franchise agreement is to run a background check on their prospective franchisees and sending a questionnaire that includes experience but also a declaration of representation of the prospective franchisee's financial position. Any qualification form should require the franchisee to represent their financial position at the time of contracting.

This way, the franchisor will minimally have an idea of the level of financial risk at the time of the agreement. Plus, it allows a pre-contractual disclosure from the prospective franchisee, therefore encouraging good faith (and potentially ulterior proof of the lack thereof).

**2. Obtain a covenant that no deterioration of financial position will occur.**

Franchisor can request a covenant by franchisee that no deterioration of financial position will occur. The purpose of the covenant is to provide the franchisor with flexibility to limit its exposure by delaying development or imposing additional conditions on the franchisee if the covenant is breached. The covenant provides a window into the franchisor's financial performance which is necessary to influence proper growth. Such a covenant provides opportunities for imposing a default interest rate to balance risk, additional training requirements or enhanced financial reporting on the franchisee, but additional caution should be exercised in imposing additional financial burdens which could be counterproductive. The deterioration of financial position, however, may occur nonetheless. Such a covenant can also be used in connection with requesting guarantees, which would provide a baseline of financial strength.

### **3. Seek Guarantees- personal and third party (company or otherwise).**

One of the best methods to ensure the ability to collect monies is to request guarantees when signing the franchise agreement. There are many kinds of guarantees with varying degrees of security. Some are personal guarantees, some are third-party guarantees.

Personal guarantees include requesting from the franchisee's owners that they will individually pay Franchisor all monies payable by Franchisee under the Franchise Agreement on the dates and in the manner required for payment in the relevant agreement.

But, depending on local law, which might not always accept the validity of such personal guaranty without additional forms, and depending on the owner's financial condition, this might not be enough, or it could be too long and/or too costly to be truly effective.

Third-party guarantees include guarantors like a spouse, family member or business partner, but then the same risks as detailed above exist.

Experience proves that one of the best ways, if not the best, to ensure a secure financial relationship with franchisee is to require a first request bank guaranty or autonomous guaranty, especially for foreign franchisors dealing with far-away countries. It is common practice in France, for example, to request that the franchisee asks its local bank to guarantee the franchise fees up to a certain amount. Then, should franchisee accumulate debts, franchisor simply has to write to the bank, with no justification needed, and get paid right away. Then the bank will proceed to collect the money from franchisee. This is a very efficient time and money saver, no proceedings needed, it-is fast and effective. It becomes franchisee's responsibility to decide to launch a potential arbitration process and bear the costs, while franchisor already has the money.

### **4. Seek letters of credit and deposits and/or holdbacks.**

Yet another way to secure the collection of monies is to request letters of credit, which are a form of promise of payment issued by a bank in the event that certain requirements are met. It is a very common and efficient tool, however it is not as simple as the first request bank guarantee, with the letter of credit, documents need to be provided to the bank to prove that the amounts were not paid.

Unused deposits to be returned at the end of the relationship can also be a solution. The downside of requiring deposits is having to immobilize the money, which otherwise could be used for operations.

Another method could be holdbacks, the retaining of amounts withheld from payment until certain goals have been reached. Those are most often used in other areas of contract law, such as construction where there are clear milestones to be set as goals.

### **5. Rethink the financial flux within the agreement: Reverse royalty fee structure.**

A reverse royalty fee structure can be implemented so that the franchisor collects the revenues and the franchisor disperses all monies net of the franchise fees. Another option may be to convert the franchise agreement into a commission-based agreement. This is especially relevant when the franchise concept is in retail and there is a title retention clause, franchisor retaining ownership of the goods and of the money, minus a commission for franchisee. The most common example is within the clothing retail business. Service businesses with centralized appointment structures can call and pay at the same central place, and the funds collected can be transferred to the franchisee, net of royalties.

### **6. Drafting the agreement: think enforcement ahead.**

The use of arbitration clauses has become increasingly common as parties want to avoid costly and time-consuming litigation and maintain control in all aspects of their business relationships. However, arbitration is not always the best choice in every instance. Contracting parties need to consider

carefully the advantages and disadvantages of using arbitration clauses, and of the choices to be made within them, in deciding whether and how it is relevant and efficient for their agreement.

Arbitration has advantages over the national courts when it comes to enforcement. The 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the “New York Convention”) puts international arbitral awards on a higher level than court judgments. An award governed by the Convention is generally more readily enforceable around the world than a court judgment. The Convention provides very limited grounds for challenge of an award. None are mandatory, so even if one of the grounds exists, it does not automatically result in the award being set aside.

By way of illustration, a judgment rendered by state or federal courts in the United States, for instance, is not automatically recognized by a foreign country under any uniform law. Instead, you must institute a lawsuit in the national courts to recognize the judgment, which is similar to trying the case on an expedited basis, all over again. But under the New York Convention, an arbitration award can be reduced to judgment in 159 countries on an expedited basis, with few defenses, most of which can be dealt with summarily.

Once the award is confirmed as a judgment, however, you must rely on the national court system to enforce the local judgment.

**a. The choice of place of arbitration.**

One of the issues when drafting an arbitration clause in a franchise agreement is the consequences on the enforcement of the arbitral award. Indeed, Franchisor must choose a place of arbitration in a country that is a party to a treaty on the recognition and enforcement of arbitral awards (e.g. the New York Convention). Otherwise, “free circulation” of international awards which is one of the main advantages of international arbitration, will be drastically mitigated. For instance, if the award was to be issued in a country that is not a party to the New York Convention, its enforcement abroad would be nearly impossible.

While thinking about the choice between a litigation or an arbitration clause, since franchisor’s objectives may change depending on the nature of the dispute, it might want to consider stipulating different dispute resolution procedures for different kinds of disputes. Another suggestion from experience is to stipulate an additional clause stating Franchisor’s right to choose the Courts instead of arbitration, shall Franchisor deem it wise.

**b. The choice of arbitration center.**

There are now more and more arbitration centers created that can allow to avoid some of the disadvantages of the usual big arbitrations centers, which are quite often very expensive and not that fast. Especially, arbitration is growing in the field of franchising and distribution. We hereby present a few new arbitration clause examples:

**i. A European Example: The IDArb Expedited Arbitration Clause**

IDArb has been created in 2016 with the aim of facilitating arbitration for disputes in the field of international distribution. This project has been developed by the International Distribution Institute in collaboration with the Chamber of Commerce, Industry and Services of Geneva and the Swiss Chambers' Arbitration Institution (SCAI). It first offers a list of specialized arbitrators from several European countries having a specific experience in one or more fields of distribution law. And, it secondly offers a unique Expedited arbitration procedure: Tailoring an expedited and cost-effective arbitration procedure, managed by SCAI under the Swiss Rules of International Arbitration (“Swiss Rules”), specially adapted for small disputes in the field of distribution, for which at present the

recourse to international arbitration is considered to be inappropriate, i.e. for disputes not exceeding CHF 1,000,000 (about \$1,038,000).

*“Any dispute, controversy, or claim arising out of, or in relation to, this contract, including the validity, invalidity, breach, or termination thereof, as well as pre-contractual and extra-contractual related issues, shall be resolved by a sole arbitrator, in accordance with the Expedited Procedure under Article 42 of the Swiss Rules of International Arbitration of the Swiss Chambers' Arbitration Institution in force on the date on which the Notice of Arbitration is submitted in accordance with these Rules. The award shall be made within six months from the date on which the SCAI Secretariat transmitted the file to the sole arbitrator pursuant to Art. 42(1)(d) of the Rules. The seat of the arbitration shall be Geneva. Hearings may be held in any location worldwide. The language of the arbitration shall be [...]. In order to make the procedure as expedited as possible, the Parties agree to follow the IDArb recommendations for expedited arbitration published at: IDArb Recommendations. If the amount in dispute determined according to Article 42(2) of the Rules exceeds CHF 1.000.000, the ordinary procedure under the Swiss Rules will apply, unless the parties agree to have recourse to the expedited procedure.”*

This can be a great solution for franchisors expanding in Europe and wanting a faster, specialized Arbitration Center. Thus, it is possible for the parties to appoint an arbitrator that is a specialist in franchise disputes and is more likely to provide them with a better solution than the state courts. Indeed, having an arbitrator specialized in Franchising from a published, select list of franchise and distribution professionals can really help getting awards that make sense and are more easily enforceable.

## **ii. A French Legal Tech example: eJUST© platform clause**

Did you know, this platform created in 2016 allows a full cost-killing online arbitration process, benefitting from a fast method of dispute resolution with total control over costs and confidentiality, and a legally binding award in 159 countries, reached by a specialized and independent arbitrator. eJust created an intuitive and entirely secure platform (ISO 27001 certified) making the arbitration procedure economically accessible throughout the corporate world, allowing a resolution of disputes in complete privacy. The arbitrators commissioned to solve the disputes are independent specialists thoroughly selected and certified, they can reach a legally binding verdict within a deadline that is ten times faster than a traditional procedure (as little as a month), and with minimal costs thanks to the eJust technology (as low as €350). The pros and cons of online arbitration will be discussed in another article. But needless to say in many cases, Franchisors may dislike the easiness and user-friendliness of such platform because it counteracts one of the goals of the arbitration clause: dissuasion of franchisee, especially foreign franchisee.

Here is the template eJUST arbitration clause:

*“In the event of a dispute arising out of or in connection with the present agreement, the claimant may choose either arbitration according to the eJust Rules of Arbitration or the competent state court. This choice is final.”*

Then you simply add contact details for all parties, including their email addresses and phone numbers.

## **iii. An African example: the OHADA Arbitration Center option.**

The Organization for the Harmonization of Business Law in Africa (OHADA) regroups seventeen (mostly West) African Countries and has a Common Court of Justice and Arbitration which is also an arbitration institution since 2012. They are redoubling efforts to expand widely for business deals with African countries and has a specific Uniform Act for Arbitration. It has an institutional framework that

enables it to effectively administer arbitration proceedings conducted under its auspices. Coincidentally, there is a growing market for franchising especially in West Africa, with the African Franchise Expo being organized by Afrique Franchise Solutions in November 2018 in Dakar, Senegal, seen by some as the future franchise hub in Africa.

## **B. After the arbitration is filed.**

### **1. Seeking advance security for costs and for the claims.**

Once the arbitration has commenced, a party may seek interim relief and protective measures to ensure the reimbursement of legal fees and costs in the proper case. The showing to succeed on such a request is high, but becoming more and more common, especially in the environment of project companies and litigation funders. Obtaining security for costs is one method of recovering costs of defense and proceeding.

Security for both costs and claims is interim relief sought when your opponent may not have enough money to pay an adverse costs order, or to satisfy an adverse award. Because such interim relief may have the consequence of preventing a party from proceeding with viable claims, such relief can only be obtained upon a strong demonstration that such relief is warranted. Proof of mere inability to ultimately pay the costs and damages is insufficient to warrant such interim relief.

An order for security for costs allows the applicant to secure an amount representing its costs of arbitration. These costs are typically their legal fees, perhaps investigatory fees, and expenses charged by the tribunal. The origin of this relief is based on English common law rule that the prevailing party in legal proceedings should recover all legal and administrative costs from the party that did not prevail. A party ordered to provide for security for costs must provide available funds, secured by an escrow fund, or cash equivalents like a letter of credit, to be available if an adverse outcome occurs. In contrast, the civil court systems in France, England and China, court fees are paid by the plaintiff/moving party in the first instance and then apportioned by the court after decision.

A higher showing is necessary for a tribunal to order security for a claim as an interim measure. Such an order requires that adverse party to secure the amount being claimed against it before an adverse award is issued. The applicant has a greater burden to prove its need for security for a claim, because such relief could prevent the adverse party from having sufficient funds to robustly argue its dispute.

#### **a. The authority of the tribunal to grant an advance for security of costs and claims.**

Not all tribunals have an express grant of authority to grant a cost or claim advance. Being derived from the English common law tradition, the London Court of International Arbitration (**LCIA**) Rules provide express authority to award security to costs and claims, as do the Singapore International Arbitration Centre (**SIAC**) Rules.

More commonly, the authority of the tribunal to order an advance for security is implicit in the power of the tribunal to grant interim measures. The International Chamber of Commerce (**ICC**) Rules and the United Nations Commission on International Trade Law (**UNCITRAL**) Arbitration Rules do not make specific reference to these forms of relief in Article 28 (ICC Rules) and Article 26 (UNCITRAL Arbitration Rules), nevertheless, tribunals in these arbitration forums do grant such relief. Parties have obtained similar provisional measures in state investment-treaty arbitrations before the International Centre for Settlement of Investment Disputes (**ICSID**).

Applications for security are increasingly successful because the practitioners are bringing the claims in the right cases.

**b. Considerations in an application for security for costs or claims.**

The Chartered Institute of Arbitrators in 2015 suggested these considerations:

- the probability of success of the claims and defenses;
- the adverse party's ability to satisfy a future adverse cost award and the availability of its assets;
- whether a change in the financial circumstances since the parties agreed to arbitrate has occurred;
- and whether it is fair in the circumstances to make the order.

**c. Applicant's case for security**

**i. Proving the opposing party's inability or unwillingness to pay.**

The applicant must demonstrate that the other party does not have the financial strength to satisfy an order for costs or the award itself. The burden is to prove a high risk that the adverse party will not satisfy any final award of the claim or costs. The evidence needed to satisfy this burden may not be publicly available. The applicant should gather evidence of delayed or missed payments, and supplement this evidence with financial records or public announcement of the party's financial condition. The applicant can request the financial statements be voluntarily produced from the adverse party to avoid the bringing of such an application, and if the statements are not voluntarily produced, then the failure to produce the statements can support the application and a request for the statements to be produced.

When seeking security for a claim, the applicant really needs to prove that the adverse party is actively seeking to move or dissipate its assets to avoid paying a future award against it. As these actions are typically conducted by stealth, investigators and insolvency analysts should be employed to investigate, document, analyze and label such transactions.

**ii. Changed circumstances of the opposing party.**

Mere inability to pay is the threshold issue. The inquiry then becomes whether the applicant has unfairly caused the inability to pay beyond the good faith enforcement of the commercial terms of the contract. So good faith performance becomes an issue, as does whether the application is being sought merely to quash the financial ability of the adverse party to proceed with their claim.

The tribunal will look at the changes in financial condition of the adverse party from the time the arbitration agreement commenced to the commencement of the arbitration. If the inability to pay was foreseeable based on the adverse party's initial starting position, then the applicant may have accepted the risk. This change of position claim requires assessment of the financial strength of the counterparty at the time of contracting; accordingly, review of the counterparty's financial strength is advisable in order to preserve this argument.

**iii. Consideration of the merits.**

Interim relief may be granted without consideration of the merits, however, a strong case on the merits may be the winning argument on the application. Interim relief is often decided by an interim arbitrator to preserve the status quo ante. Insufficient time may exist to review the merits, and the arbitrator may not wish to prejudge the case. On the other hand, a strong merits case will add to the argument for interim relief. Even if interim relief is not granted, it does not hurt to ask for the asset freeze as part of the final award if a showing can be made that assets will be hidden.

#### **iv. Arguing the “moral hazard” of third party funding.**

Third party funding finances an arbitration case in return for a portion of the proceeds awarded in the financed party’s favor. The funder may expect to receive a percentage of the damages awarded or a multiple of the cost of arbitrating. Third party funding is becoming more common in international arbitration.

One could argue that third party funders improve access to justice. Critics say the practice introduces ethical challenges. Third party has the capacity to fund questionable claims, introduces conflicts of interest, promotes moral hazard without monetary consequences beyond investment, and may compromise a party’s authority to resolve a dispute. In the meanwhile, tribunals have concerns between disclosure and confidentiality regarding third party funders.

Applicants for security have argued third party funding justifies security for costs on the basis that (i) the adverse party is likely to lack the funds to satisfy arbitration obligations and has sold the case to the third party funder and (ii) the third party funder has no obligation to satisfy any costs award and can exit the dispute without responsibility for an adverse outcome.

In the investment treaty case of *RSM v St Lucia*, the claimant was relying on third party funding to bring the claim against St Lucia. The majority of the tribunal found that the third-party funding, coupled with the claimant's historical failure to comply with costs orders and awards supported the conclusion that the claimant would not comply with a costs award against it. One arbitrator suggested that the existence of third party funding shifted the burden to the claimant to show why a costs order should not be issued but a dissent argued passionately against such burden shifting. The controversy still exists with no particular practice dominant.

Security for costs and claims is more familiar to those from common law jurisdictions with civil law practitioners becoming more comfortable with such process. This distinction in philosophy may explain the continuing controversy about litigation funding and security for costs and claims. It is also advisable to consider these distinctions in the selection of arbitrators.

### **3. Perform asset investigation to determine the ability to satisfy any award.**

The purpose of performing an asset investigation at this stage is to assess whether recovery is possible, and to track the movement of any assets. The adverse party can be requested voluntarily to produce its financial statements so that an application for security of costs and claims need not be brought. In the event that request is rejected, it may be possible if good cause is shown to have the tribunal require the statements be produced if there is some reason to believe that any award not be satisfied. It is possible that the contract between the parties requires current financial statements to be produced.

In the event the financial statements are not forthcoming, companies specializing in international asset searches and investigations may be utilized. Companies like Kroll and Smith Brandon specialize in overseas asset searches and investigations and are experienced in examining complex corporate structures and off shore investments designed to mask the ownership of assets. These companies have

ancillary services which can help assess the cost/benefit analysis of collection. You will need companies which have multi-jurisdictional reach, experience with offshore capital flight havens, creditor-unfriendly jurisdictions, complex investment group structures and alter-ego companies. Debtors are crafty and you need someone who can locate value such as art work on loan to museums, and goods on shipment which are substitute cash equivalents.

### **C. Getting paid after the award is rendered.**

#### **1. Making a demand for payment.**

An arbitration award is not self-executing. After a costly arbitration battle, sometimes upon demand, the losing party will pay the award as rendered in order to avoid additional interest, counsel fees or further acrimony. Making a demand for payment is not a prerequisite for enforcement of the award.

#### **2. Enforcement of the award.**

Many international arbitrations seated in the United States occur before International Chamber of Commerce: International Court of Arbitration (ICC), JAMS International, and the International Centre for Dispute Resolution (ICDR). These organizations have similar rules regarding the form of award and the finality of the award. The rules provide that the awards are final and binding. The rules do not provide mechanisms for enforcement of awards. This is true of virtually all forum for international arbitration.

Enforcement is accomplished through the national courts. Most arbitral awards are governed by two international treaties, the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention), and the Inter-American Convention on International Commercial Arbitration (Panama Convention). The New York Convention is adopted by 159 countries and the Panama Convention is adopted by 18 Latin American countries.

##### **(i) Enforcement in the US.**

In the US, a party to a commercial arbitration issued by a foreign arbitrable tribunal may confirm an award in federal court, 9 U.S.C. section 207. The Federal Arbitration Act streamlines enforcement of arbitral awards from signatories from the New York Convention and the Panama Convention. 9 U.S.C. section 201-208, 301-307. These procedures apply where at least one party is not a citizen of the US, otherwise you may use the Federal Arbitration Act (FAA). The FAA will also apply to cases where none of these Conventions apply, or when the Convention on the Settlement of Investment Disputes Between States in Nationals of Other States (the ICSID Convention) applies in treaty cases.

Any party to the arbitration may file an application to confirm an award within three years. 9 U.S.C. section 207. A court must confirm an award unless it finds one of the grounds for refusal contained in the Convention. 9 U.S.C. section 207. The grounds for refusal include public policy prohibitions, incapacity of the parties, invalidity of the agreement, due process or procedural deficiency, awards beyond the scope of power of the arbitrators, or corruption of an arbitrator.

Once an award enters judgment confirming an award, the judgment may be enforced as any other judgment rendered in a civil case. 9 U.S.C. sections 13 and 208. The Federal Rules of Civil Procedure provide that federal courts have all the weapons of state courts in enforcement:

#### **Rule 64. Seizing a Person or Property**

(a) REMEDIES UNDER STATE LAW—IN GENERAL. At the commencement of and throughout an action, every remedy is available that, under the law of the state where the court is located, provides for seizing a person or property to secure satisfaction of the potential judgment. But a federal statute governs to the extent it applies.

(b) **SPECIFIC KINDS OF REMEDIES.** The remedies available under this rule include the following—however designated and regardless of whether state procedure requires an independent action:

- arrest;
- attachment;
- garnishment;
- replevin;
- sequestration; and
- other corresponding or equivalent remedies.

Interesting to note that several states allow the arrest of a debtor which fails to comply with the judgment collection procedure under a writ of *capias ad satisfaciendum*. This sanction is rarely granted by courts as it seems like imprisonment of a debtor, but it is used to compel payment where it is possible. More often, the seizure of the debtor's property under state law, in the hands of the debtor or a third party, is the most common method of collecting judgments.

Federal Court judgment collection similarly is modeled after state law:

#### Rule 69. Execution

##### (a) IN GENERAL.

(1) *Money Judgment; Applicable Procedure.* A money judgment is enforced by a writ of execution, unless the court directs otherwise. The procedure on execution—and in proceedings supplementary to and in aid of judgment or execution—must accord with the procedure of the state where the court is located, but a federal statute governs to the extent it applies.

(2) *Obtaining Discovery.* In aid of the judgment or execution, the judgment creditor or a successor in interest whose interest appears of record may obtain discovery from any person—including the judgment debtor—as provided in these rules or by the procedure of the state where the court is located.

State law allows broad supplementary rights, which can be enforced by federal court as well:

#### PA Rule 3118. Supplementary relief in aid of execution.

(a) On petition of the plaintiff, after notice and hearing, the court in which a judgment has been entered may, before or after the issuance of a writ of execution, enter an order against any party or person;

(1) enjoining the negotiation, transfer, assignment or other disposition of any security, document of title, pawn ticket, instrument, mortgage, or document representing any property interest of the defendant subject to execution;

(2) enjoining the transfer, removal, conveyance, assignment or other disposition of property of the defendant subject to execution;

(3) directing the defendant or any other party or person to take such action as the court may direct to preserve collateral security for property of the defendant levied upon or attached, or any security interest levied upon or attached;

(4) directing the disclosure to the sheriff of the whereabouts of property of the defendant;

(5) directing that property of the defendant which has been removed from the county or concealed for the purpose of avoiding execution shall be delivered to the sheriff or made available for execution; and

(6) granting such other relief as may be deemed necessary and appropriate.

(b) The petition and notice of the hearing shall be served only within the Commonwealth in the manner prescribed by Rule 440 for the service of legal papers other than original process.

(c) Violation of the mandate or injunction of the court may be punished as a contempt.

Other countries have additional remedies which can be useful. In China, enforcement of civil courts can include restrictions on exiting China, publishing the obliged parties' obligation to perform, and where a party disobeys and order, fines or detention.

#### Conclusion

International arbitration has great advantages over litigation for cross-border disputes as the awards can be confirmed as a judgment and transferred readily to the location of assets. Like domestic judgments and enforcement, those holding awards are ultimately subject to collection once reduced to judgment under the national court regimes. Although the national court systems introduce local bias to the collection process, arbitration awards stand as strong as any national judgment and are no less weak than the enforcement of any obligation in that country.

Arbitration has the additional opportunity at various stages to learn about the asset profile of the debtor, to sequester or freeze assets, or avoid their dissipation, or discovery to later enhance the asset freeze or collection activity. By starting early at the beginning of the relationship, we can track the financial representations of the adverse party, compare it at intervals during the arbitration process, and seek interim relief or actual collection activity when the case allows.

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