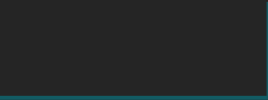




Where Professionalism, Efficiency & Ethics are met.

Attorneys at Law



International Commercial Arbitration Theory and Practice

i



**GENERAL
INTRODUCTION**

ii



**ARBITRATION
AND ADR**

iii



**ARBITRATION
AGREEMENT**

iv



**MULTI-PARTY
ARBITRATION**

v



**ARBITRATION
PROCEEDINGS**

vi



**SETTING ASIDE
PROCEDURES**

vii



**ENFORCEMENT
PROCEDURES**

GENERAL INTRODUCTION

GENERAL INTRODUCTION

01

**Historical
Overview**

.....

02

Definition

.....

03

Nature

.....

04

Types

.....

05

**Advantages and
Disadvantages**

1- Historical overview

- Importance for merchants
- Acceptance by merchants without the Laws
- Acceptance by the Laws starting by England in 1698 & France in 1806
- Then Establishment of ICC in 1919, and the ICC court of international arbitration in 1923
- Then NY Convention in 1958; UN model law in 1985

2- Definition

- “Arbitration is a device whereby the settlement of a question, which is of interest for two or more persons, is entrusted to one or more other persons – the arbitrator or arbitrators – who derive their powers from a private agreement, not from the authorities of a State, and who are to process and decide the case on the basis of such an agreement” René DAVID
- The Arbitration is “a private method of settling disputes, based on the agreement between the parties. Its main characteristic is that it involves submitting the dispute to individuals chosen, directly or indirectly, by the Parties. In international arbitration ... the principal characteristic ... is the fact that the dispute is removed from the jurisdiction of the courts”
DUTOIT – KNOEPFLER – LALIVE – MERCIER

2- Definition

- The English Arbitration Act 1996, Section 1 provides that:
 - ❑ The object of arbitration is to obtain the fair resolution of disputes by an impartial tribunal without unnecessary delay or expense;
 - ❑ The parties should be free to agree how disputes are resolved, subject only to such safeguards as are necessary in the public interest.

2- Definition

- The Egyptian Arbitration Act 1994, Article 4 disposes that:
 - For the purpose of this Law, the term “arbitration” means voluntary arbitration agreed upon by the two parties to the dispute according to their own free will, whether or not the chosen body to which the arbitral mission is entrusted by agreement of the two parties is a permanent arbitral organization or center.

3 - Nature

Arbitration

01

Contractual

02

Judicial

03

Mixed

04

Autonomous

**PARTIES
CONSENT**

**ARBITRATION
AGREEMENT
IS A MUST**

**POWER OF THE
ARBITRATOR(S)
COMES FROM
the parties'
consent**

**PRIVATE
JUSTICE**

Nature
Contractual

**JUDICIAL
MISSION**

**ISSUANCE OF
ARBITRAL AWARD
WITH RES
JUDICATA**

**ARBITRATOR
(S) HAS THE
JURSDICTION
(without
imperium)**

Nature
Judicial

Mixed

Autonomous

Nature

4- Typology



International

Commercial

Institutional

Vs.

Vs.

Vs.

Domestic

Non-commercial

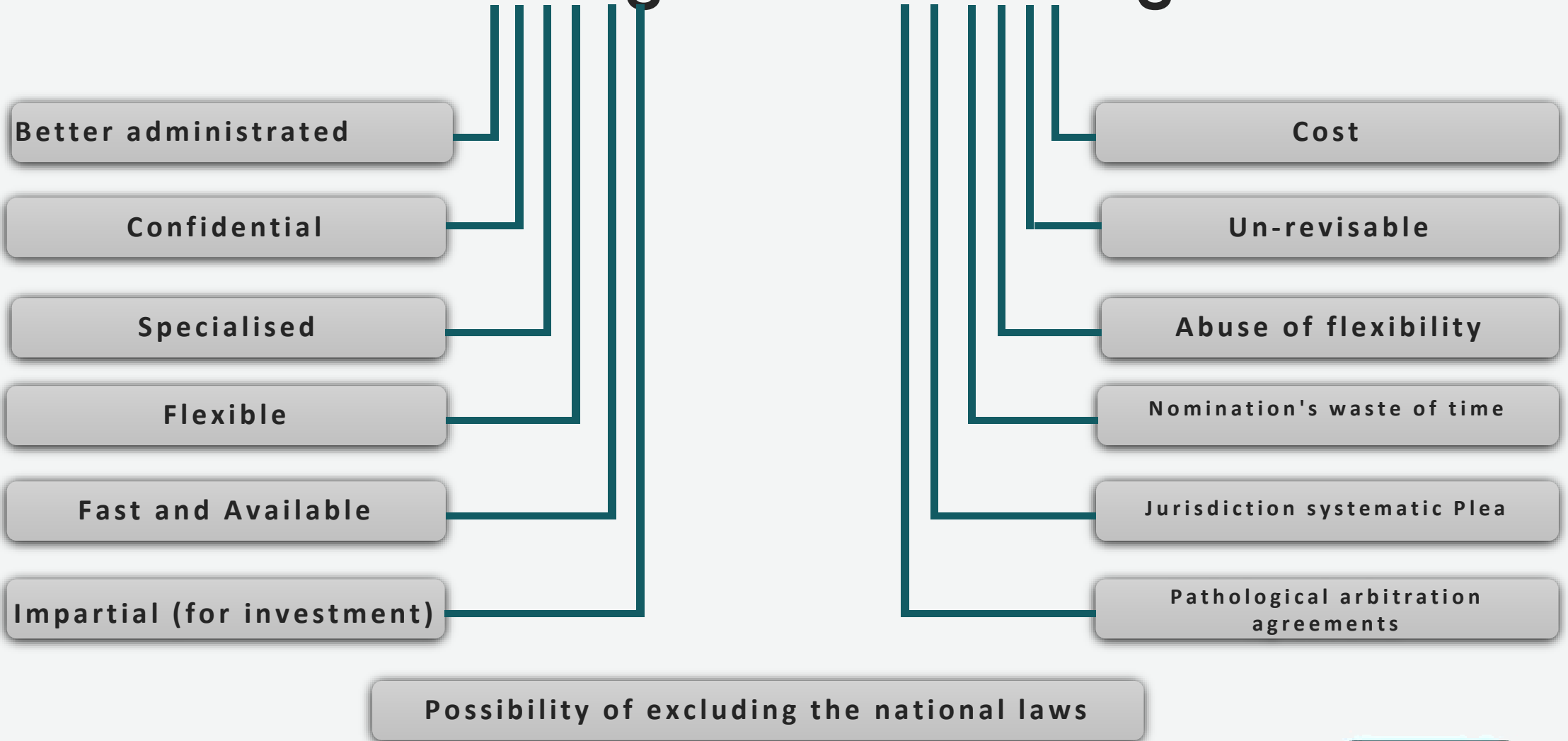
Ad hoc

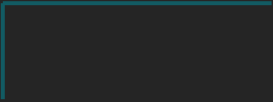
01

02

03

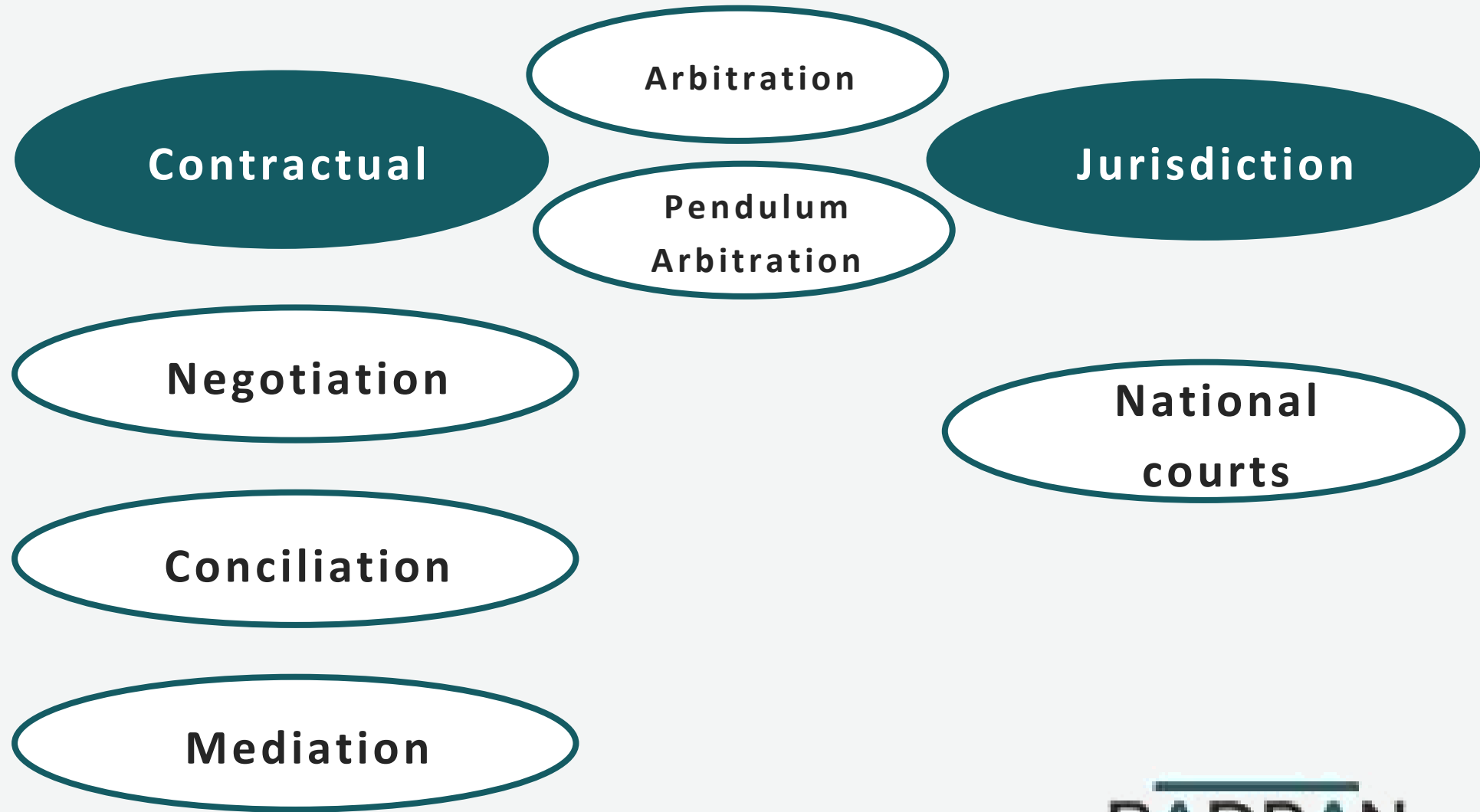
5- Advantages & Disadvantages





ARBITRATION AND ADRs

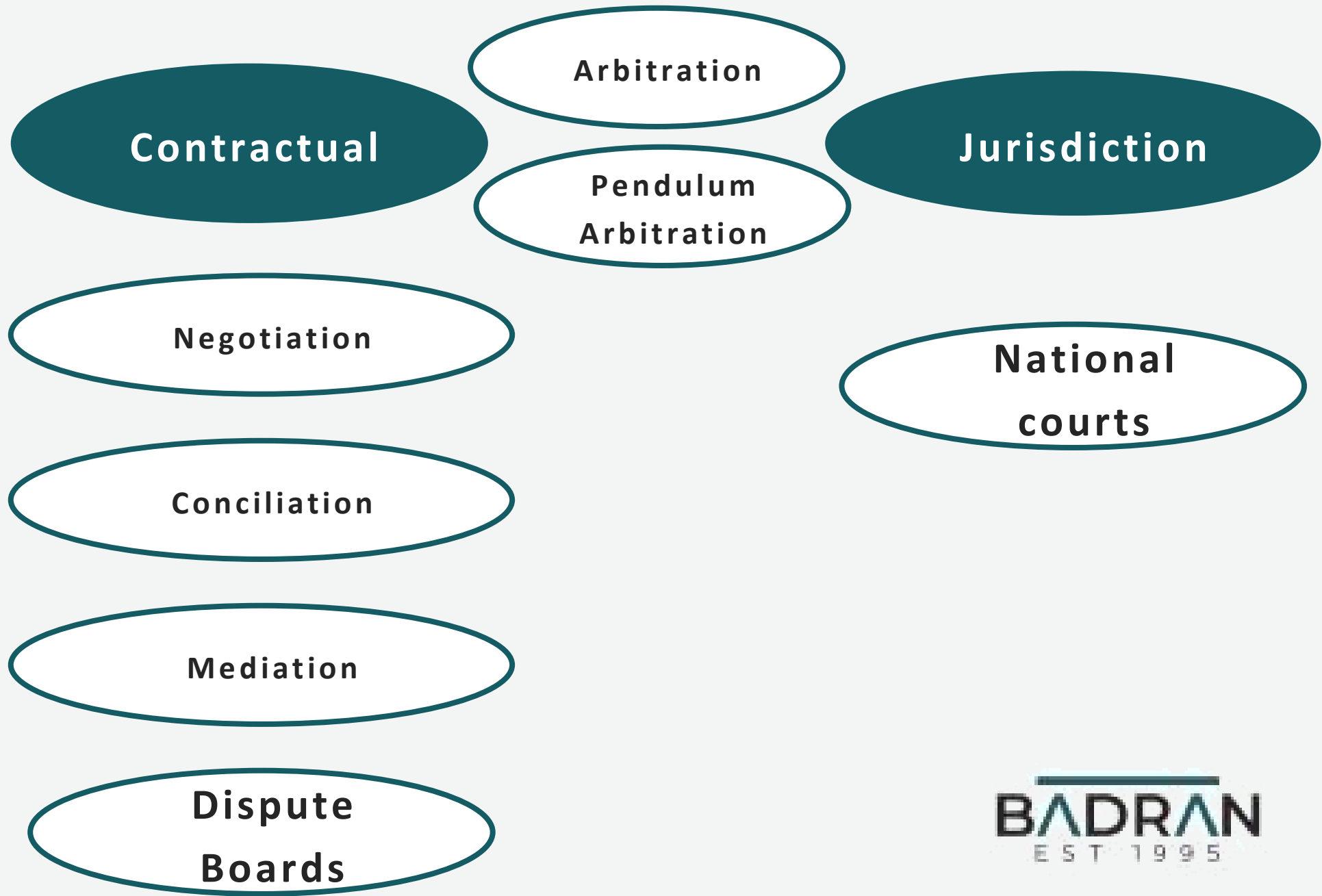
Arbitration and ADRs



Mediation

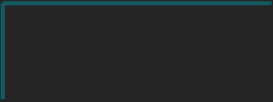
- **Definition of Mediation**
- **Characteristics of Mediation**
- **Types of Mediation**
 - Facilitative Mediation
 - Evaluative Mediation
 - Transformative Mediation
- **Selection of the Mediator**
- **Functioning of the Mediation**
- **Term of the Mediation**
- **Mediation usual obstacles**
- **Singapore Convention**

Arbitration and ADRs



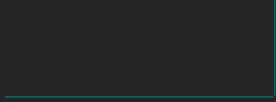
Dispute Boards

- **Definition of Dispute Boards**
 - **Role of the Dispute Boards**
 - **Characteristics of the Dispute Boards**
 - **There are three types of Dispute Boards**
 - Dispute Review Board or «DRB»
 - Dispute Adjudication Board or «DAB»
 - Combined Dispute Board «CDB»
 - **Composition of the Dispute Board**
 - Three Member
 - One Members
 - Two Members
- **Selection of the Dispute Board Members**
 - Qualifications and Experience
 - Independence
 - Impartiality
 - Availability
 - Confidentiality
 - **Functioning of the Dispute Board**
 - Site visits
 - Reports
 - Remuneration
 - **Term of the Dispute Board**



ARBITRATION AGREEMENT

**BADRAN**
EST 1995



Arbitration Agreement

| A. Notion

| B. Types of the arbitration agreement

1. Arbitration Clause
2. Submission Arbitration
3. Incorporation By Reference

| C. Conditions of Validity of the Arbitration agreement

1. Formal conditions
2. Substantive conditions

| D. Arbitrability

1. Subjective Arbitrability
2. Objective Arbitrability

| E. Drafting of arbitration agreement

| F. Effects of the arbitration agreement

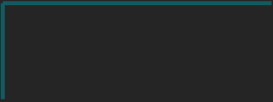
EFFECTS OF THE ARBITRATION AGREEMENT

A. Passive effect: the exclusion of the courts' Jurisdiction

“In international arbitration ... the principal characteristic ... is the fact that the dispute is removed from the jurisdiction of the courts ” DUTOIT – KNOEPFLER – LALIVE – MERCIER

B. Active effect: the Jurisdiction of the Arbitral Tribunal

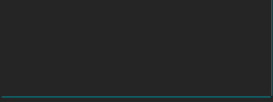
The Arbitration’s “main characteristic is that it involves submitting the dispute to individuals chosen, directly or indirectly, by the Parties.” DUTOIT – KNOEPFLER – LALIVE – MERCIER



MULTI-PARTY ARBITRATION

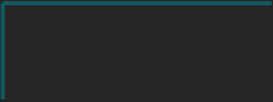


BADRAN
EST 1995



Multi-party arbitration

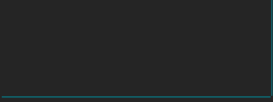
- I. Notion**
- II. Usual issues arising out of multi-party arbitration**
- III. Multi-party arbitration arising out of a series of contracts**
- IV. Joinder – Consolidation – Group action – Class action**
- V. Multi-party arbitration arising out of a single contract and the extension of arbitration agreement to non-signatories**



PRACTICE TIME



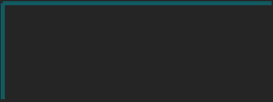
BADRAN
EST 1995



Practice Time

Each attendee shall draft two arbitration agreements (arbitration clause and a submission agreement) while following these steps:

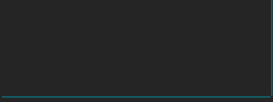
- **List of questions to be send to the client**
- **Determine the most important ingredients**
- **Draft the arbitration agreement**



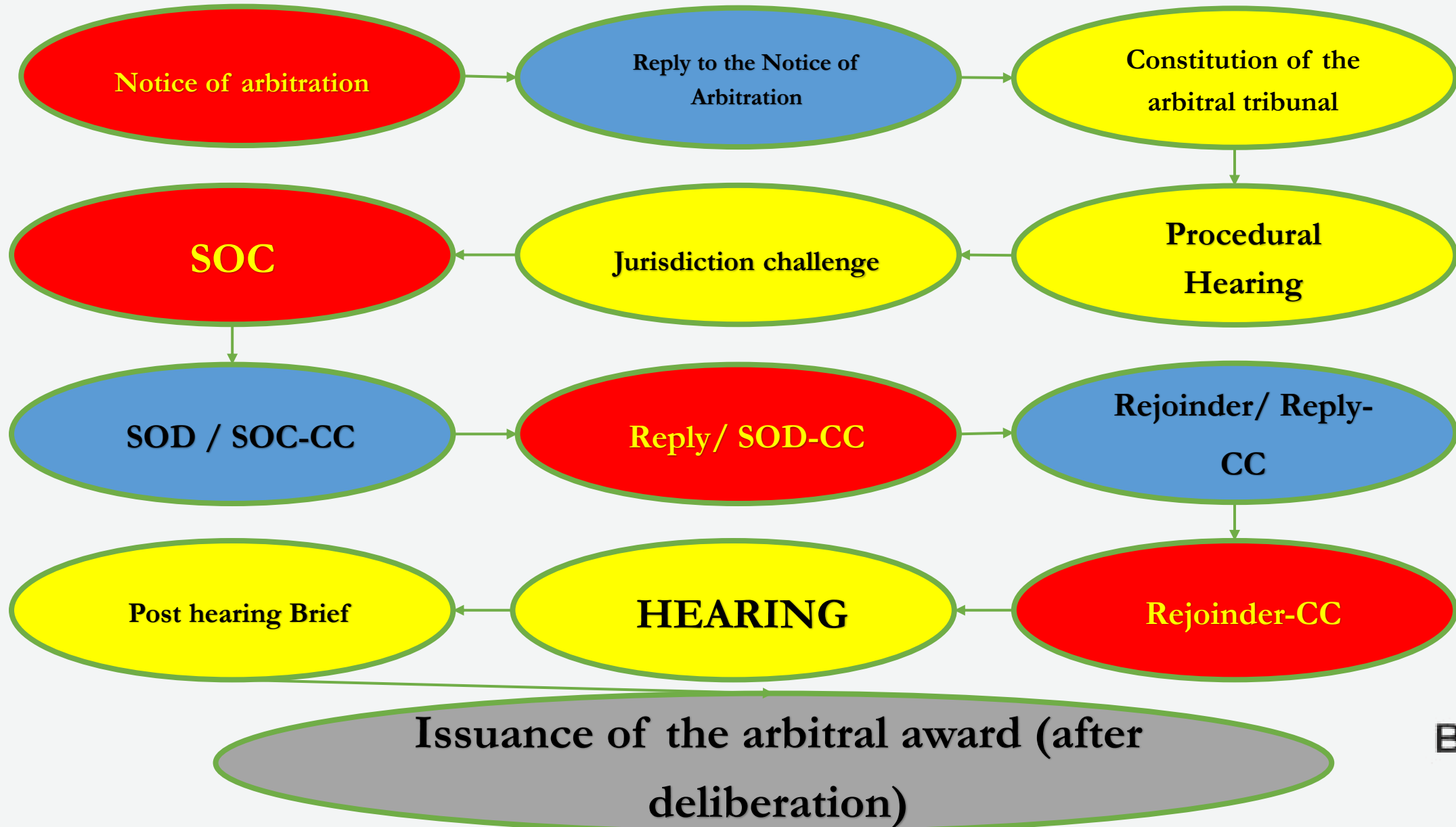
ARBITRATION PROCEEDINGS



BADRAN
EST 1995



ARBITRATION PROCEEDINGS



ARBITRATION PROCEEDINGS

Notice of arbitration

1.The party(s) initiating recourse to arbitration (hereinafter called the “claimant”) shall file with the Centre a notice of arbitration and the Centre shall communicate it to the other party(s) (hereinafter called the “respondent”) once the Centre has sufficient copies of the notice of arbitration in accordance with article 2, paragraph 6 of the Rules and has collected the registration fee required by article 43 of the Rules.

2.Unless the parties have agreed otherwise, the arbitral proceedings shall be deemed to commence on the date on which the notice of arbitration is received by the Centre.

Notice of Arbitration

3.The notice of arbitration shall include the following:

a. A demand that the dispute be referred to arbitration;

b. The names in full, addresses and other contact details of each of the parties;

c. The name(s) in full, address(es), contact details and proof of authority of any person(s) representing the claimant in the arbitration (if any);

d. Identification of the arbitration agreement(s) that is invoked;

e. Identification of any contract(s) or other legal instrument(s) out of or in relation to which the dispute arises or, in the absence of such contract or instrument, a brief description of the relevant relationship;

Notice of Arbitration

f. A brief description of the claim, the relief or remedy sought, as well as the amounts of any quantified claims and, to the extent possible, an estimate of the value of any other claims (including unquantified claims), if any;

g. A proposal as to the number of arbitrators, applicable rules of law, language and place of arbitration, if the parties have not previously agreed thereon;

h. A copy of the arbitration agreement and a copy of any contract or other legal instrument out of which the dispute arises. Also, where claims are made under more than one arbitration agreement, an indication of the arbitration agreement under which each claim is made; and

i. A reference to the existence of any funding agreement and the identity of any third party funder pursuant to article 53 of the Rules.

Notice of Arbitration

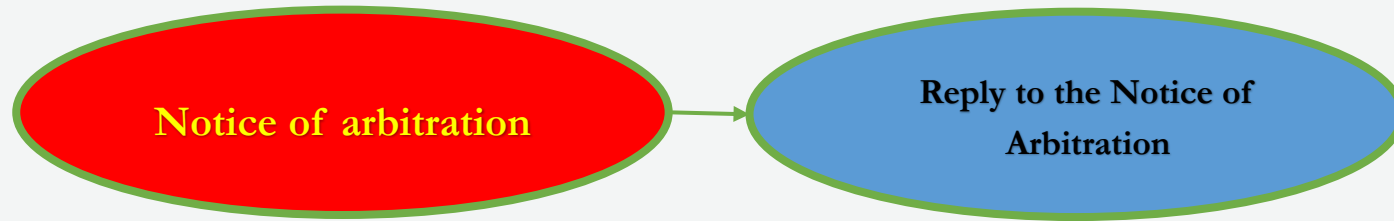
4. The notice of arbitration may also include:

a. The proposal of a sole arbitrator to be appointed in accordance with article 9, paragraph 1 of the Rules;

b. Notification of the appointment of an arbitrator referred to in article 10 or article 11 of the Rules.

Notice of Arbitration

ARBITRATION PROCEEDINGS



1. Within 30 days of the receipt of the notice of arbitration, the respondent shall file with the Centre for communication to the other party(s) a response to the notice of arbitration once the Centre has sufficient copies of the response to the notice of arbitration in accordance with article 2, paragraph 6 of the Rules and has collected the registration fee of the counterclaim (if any) required by article 43 of the Rules. The response to the notice of arbitration shall include:

Response to the Notice of Arbitration

a. The name(s) in full, addresses and other contact details of the respondent;

b. The name(s) in full, description, address(es), contact details and proof of authority of any person(s) representing the respondent in the arbitration (if any);

c. A response to the information set forth in the notice of arbitration, pursuant to article 3, paragraph 3(d) to (h) of the Rules; and

d. A reference to the existence of any funding agreement and the identity of any third party funder pursuant to article 53 of the Rules.

Response to the Notice of Arbitration

The response to the notice of arbitration may also include:

- a. Any plea that an arbitral tribunal to be constituted under these Rules lacks jurisdiction;
- b. A response to claimant's proposal of a sole arbitrator or respondent's proposal to that effect in the absence of a proposal by claimant, all in accordance with article 9, paragraph 1 of the Rules;
- c. Notification of the appointment of an arbitrator referred to in article 10 or article 11 of the Rules;

- d. A brief statement describing the nature and circumstances of counterclaims including claims for the purpose of a set-off, if any. Such claims shall be submitted pursuant to article 3, paragraph 3 (d) to (h). Where counterclaims are made under more than one arbitration agreement, there shall be an indication of the arbitration agreement under which each counterclaim is made; and
- e. A notice of arbitration in accordance with article 3 of the Rules in case the respondent formulates a claim against a party to the arbitration agreement other than the claimant.

Response to the Notice of Arbitration

3. In case the respondent fails to comply with any of the requirements under paragraph 1 of this article, the Centre may request the respondent to comply with such requirements.

4. The response to the notice of arbitration may be submitted to the Centre using the Centre's form according to the conditions for filing a response to the notice of arbitration online available at CRCICA's website.

5. The constitution of the arbitral tribunal shall not be hindered by any controversy with respect to the respondent's failure to communicate a response to the notice of arbitration, or an incomplete or late response to the notice of arbitration, which shall be finally resolved by the arbitral tribunal.

Response to the Notice of Arbitration

BADRAN
EST 1995

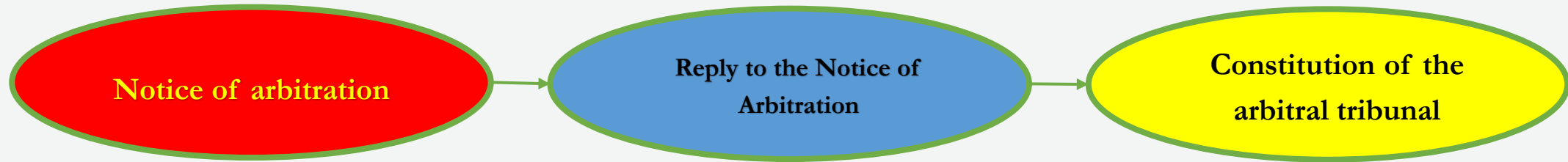
Importance

Strategy

**How to
prepare it ?**

Counterclaim?

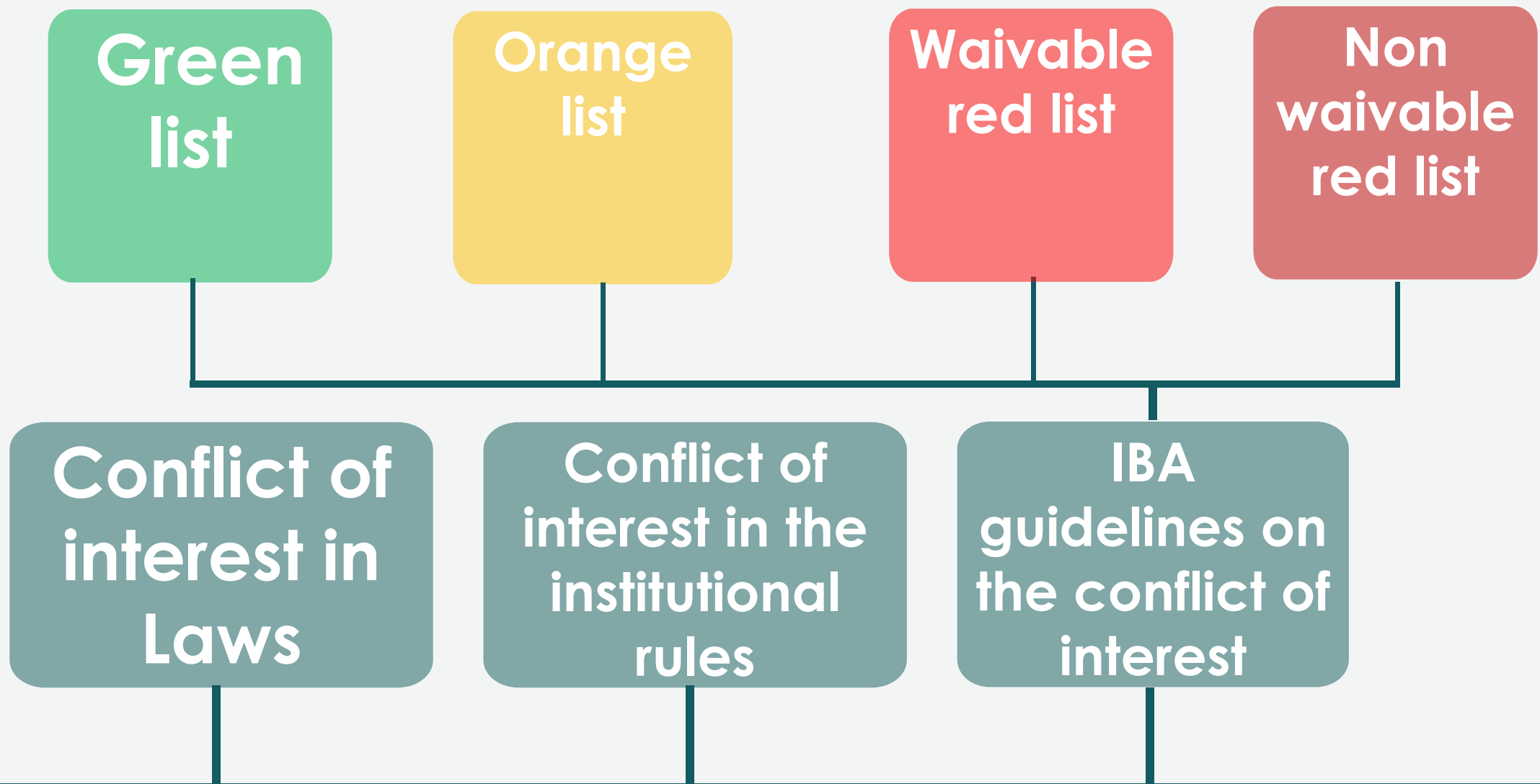
ARBITRATION PROCEEDINGS



**If Determined in
The Arbitration
agreement**

**If not Determined in
The Arbitration
agreement**

N u m b e r s o f A r b i t r a t o r s



Conflict of Interest

The Centre shall appoint the sole arbitrator as promptly as possible. In making the appointment, the Centre shall use the following procedure, unless the parties agree that such procedure should not be used or unless the Centre determines in its discretion that the use of such procedure is not appropriate for the case:

a. The Centre shall communicate to each of the parties an identical list containing at least three names;

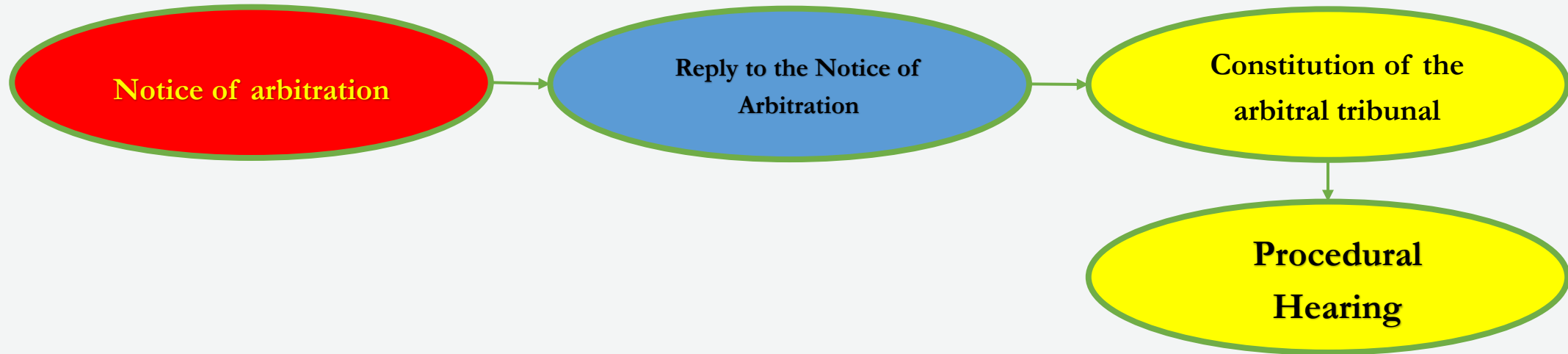
b. Within 15 days after the receipt of this list, each party shall return the list to the Centre after having deleted the name or names to which it objects and numbered the remaining names on the list in the order of its preference;

c. After the expiration of the above period of time, the Centre shall appoint the sole arbitrator from among the names approved **on the lists returned to it and in accordance with the order of preference indicated by the parties**; and

d. If for any reason the appointment cannot be made according to this procedure, the Centre may exercise its discretion in appointing the sole arbitrator.

Arbitrator's appointment

ARBITRATION PROCEEDINGS



The way of
its
conduction

Importance

How to
prepare for
it ?

Procedural Hearing

ARBITRATION PROCEEDINGS



**Jurisdiction
and/or
Admissibility**

Liability

Quantification

Bifurcation

ARBITRATION PROCEEDINGS



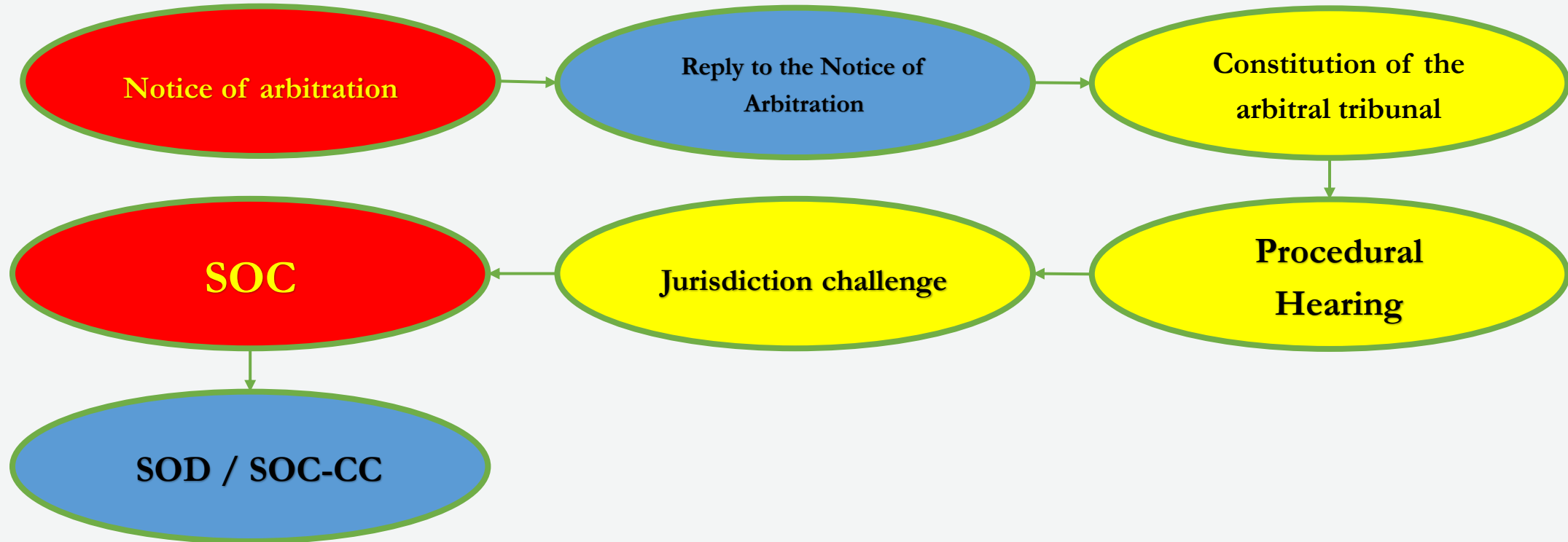
Importance

Strategy

**How to
prepare it ?**

Statement of Claim

ARBITRATION PROCEEDINGS



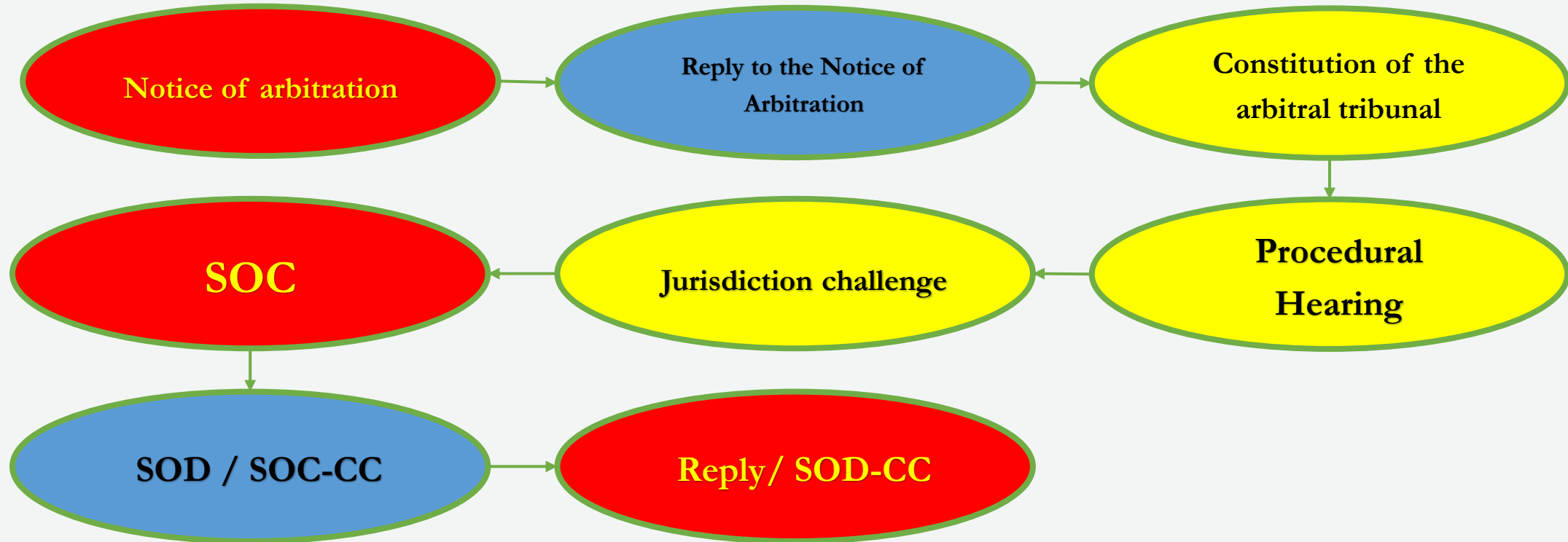
Importance

Strategy

**How to
prepare it ?**

Statement of Defense

ARBITRATION PROCEEDINGS



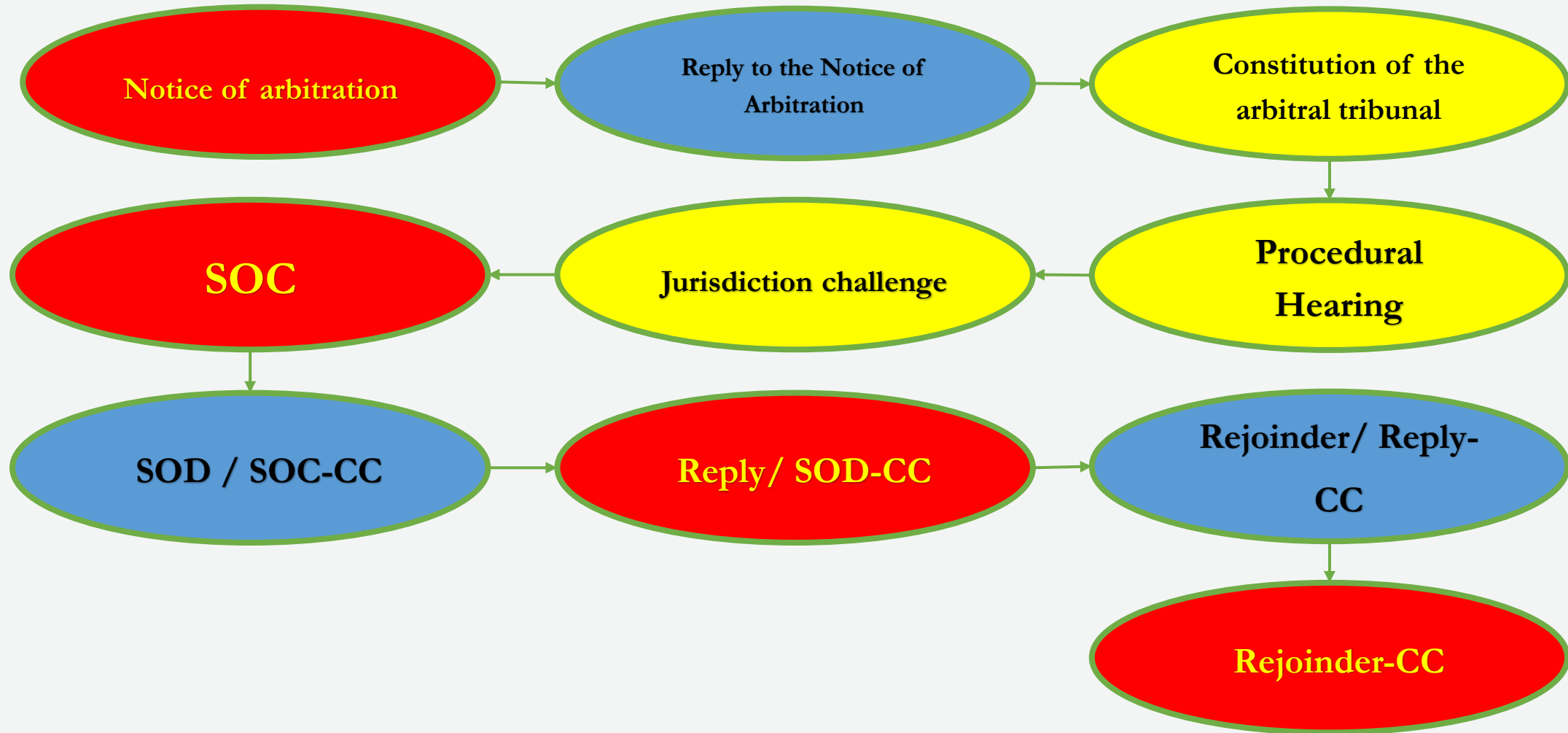
Importance

Strategy

**How to
prepare it ?**

Statement of Reply

ARBITRATION PROCEEDINGS



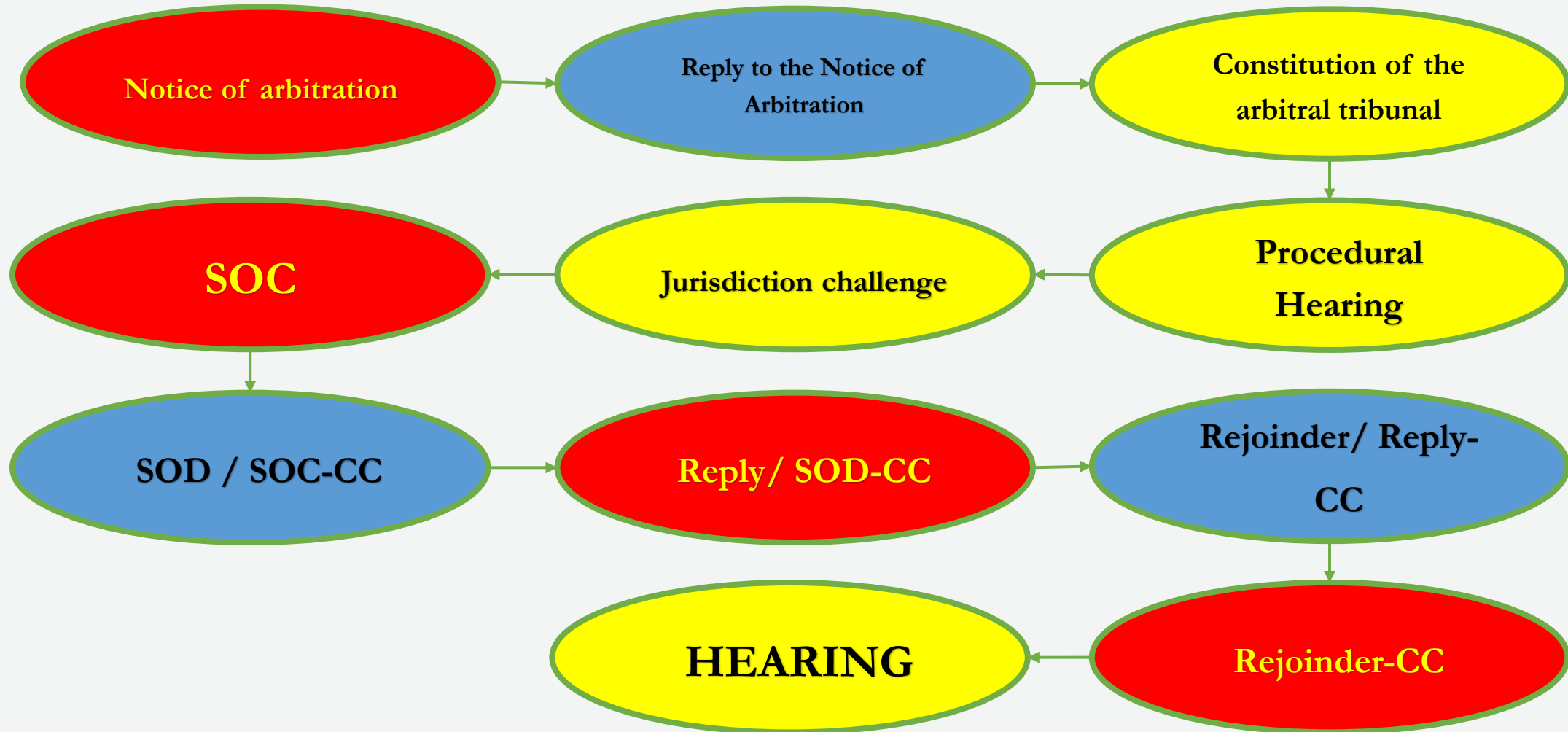
Importance

Strategy

**How to
prepare it ?**

Statement of Rejoinder

ARBITRATION PROCEEDINGS



Importance

Strategy

**How to
prepare it ?**

Hearing – Oral statement

The role of the
party having
the witness

The role of the
opponent of the
party having the
witness

Written
Only

Written with
cross-
examination

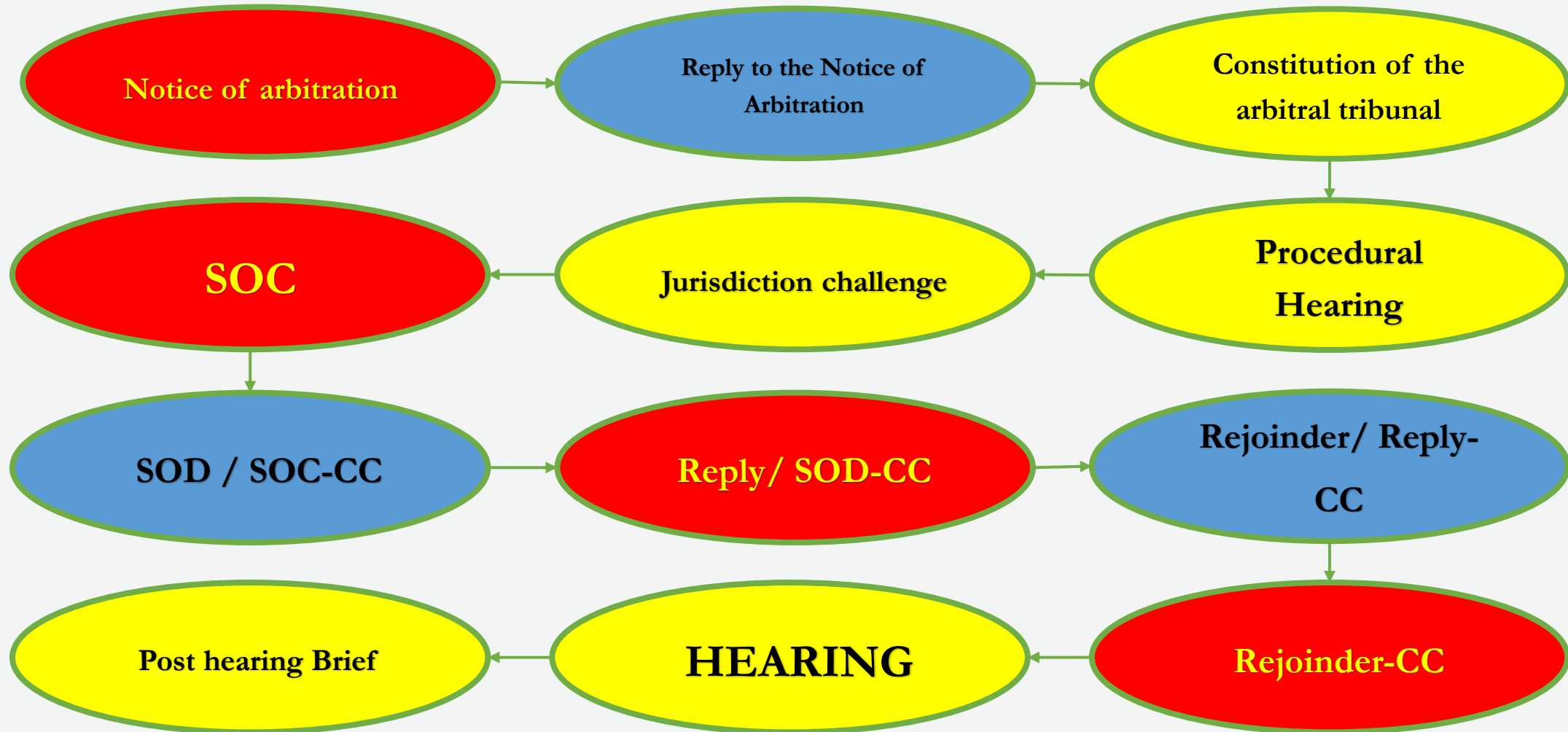
WITNESS

Legal or
factual

By the parties
or by the
arbitral
tribunal

EXPERT

ARBITRATION PROCEEDINGS



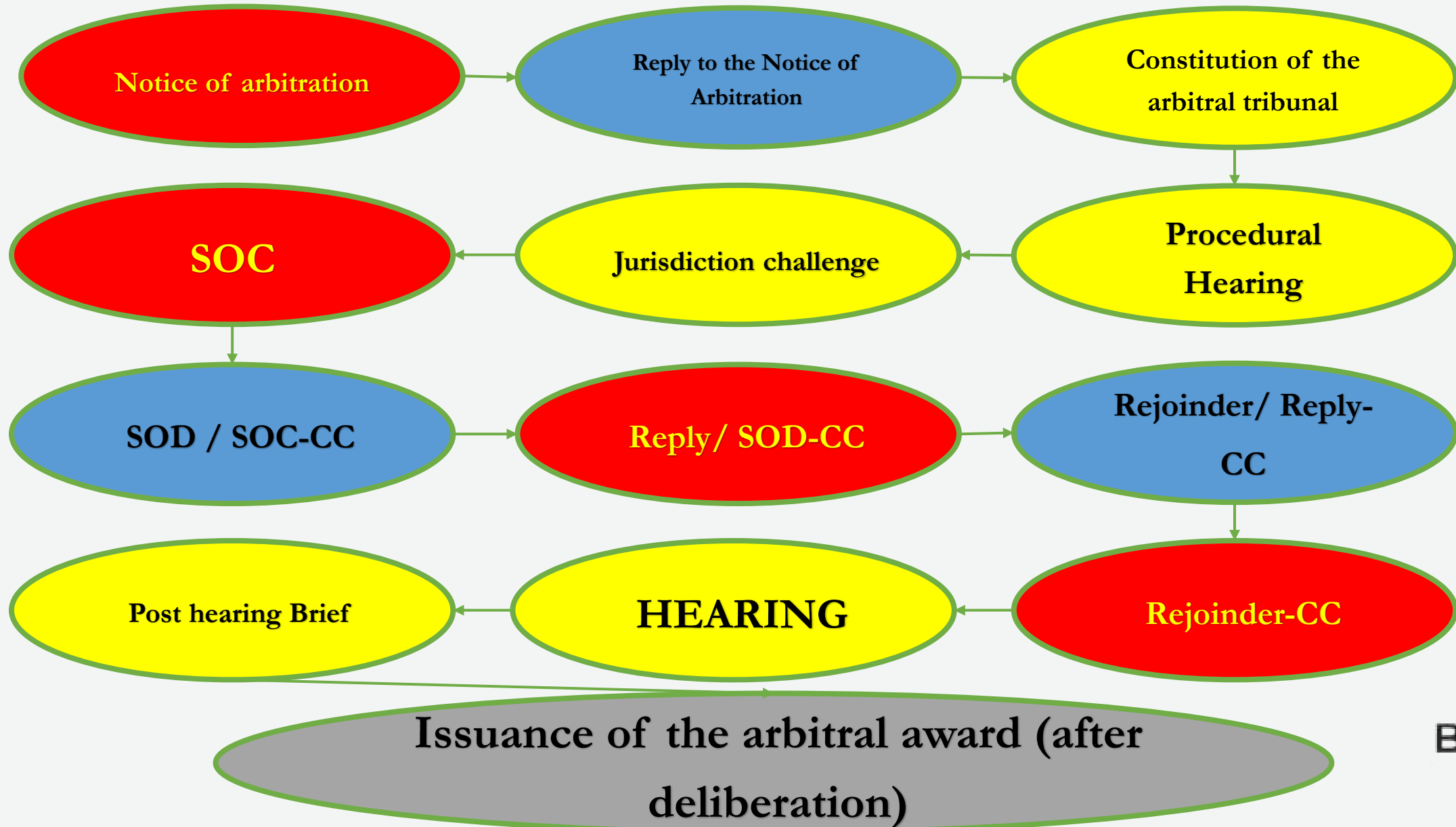
Importance

Strategy

**How to
prepare it ?**

Post-hearing brief

ARBITRATION PROCEEDINGS



Article 40 of the Egyptian Arbitration Law:

Awards of an arbitral tribunal composed of more than one arbitrator shall be issued by a majority of views, following deliberations conducted in the manner determined by the arbitral tribunal, unless the parties to the arbitration have agreed otherwise.

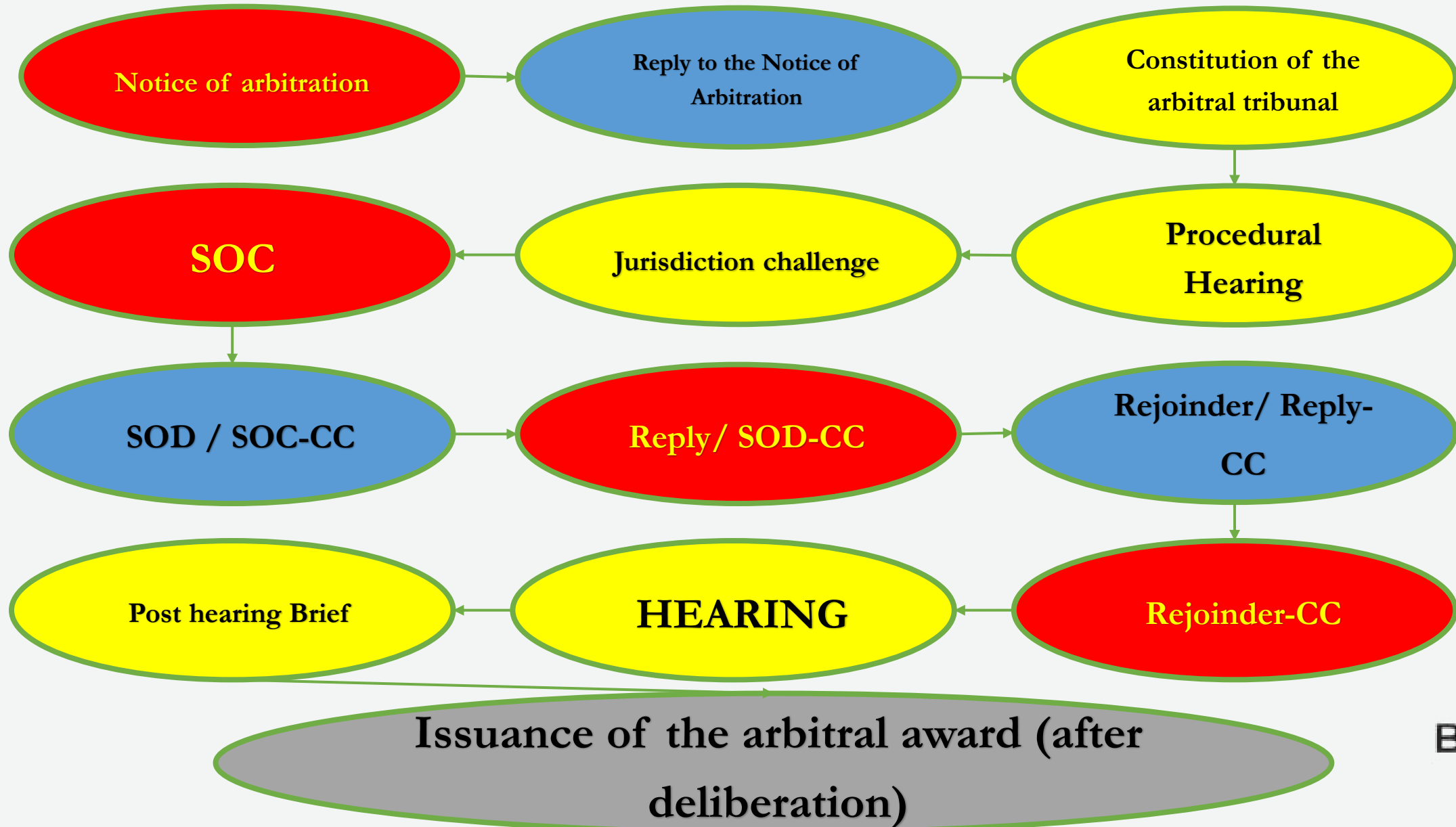
Importance of Deliberation

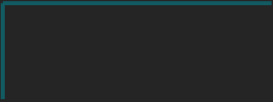
- Issued in writing.
- Signature of the arbitral tribunal members.
In the case of an arbitral tribunal composed of more than one arbitrator, the signatures of the majority of arbitrators shall suffice, provided that the reasons for the absence of the minority's signatures are stated in the award.
- Reasons of the award.

- Names and addresses of the parties.
- Names, addresses, nationalities, and capacities of the arbitrators.
- Arbitration agreement.
- Summary of the parties' requests, statements, and documents.
- The operative part of the award.
- The date and place of its issuance.

Components of the arbitral award

ARBITRATION PROCEEDINGS

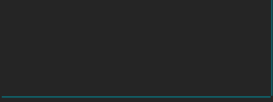




PRACTICE TIME



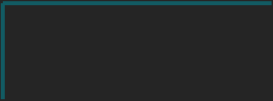
BADRAN
EST 1995



Practice Time

A dispute arose between a Canadian importer and an Egyptian exporter. Make your choice of the arbitrator & present your opposition to the appointment of the others depending on each situation.

- A- Canadian, technical expert of the importer.
- B- Egyptian, only Arabic speaker.
- C- Canadian, without experience in arbitration.
- D- Egyptian, pictured with the exporter's counsel in a conference.
- E- French, knowledge of Canadian law, exp. in arb
- Sole arbitrator, you are the institution
- 3 arb., choice of presiding, you are co-arb.
- Sole arb., you are the importer's counsel
- Sole arb. you are the exporter's counsel



SETTING ASIDE PROCEDURES

The rule: arbitral
award cannot be
subject to appeal

It is, however,
possible to raise
setting aside
procedures

Setting aside procedures

**NY
Convention**

Jurisdiction

**Setting aside
grounds**

Setting aside procedures

Article V

1. Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that: [...]

(e) The award has not yet become binding on the parties, or **has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.**

NY Convention

**Domestic
Arbitration**

**International
Commercial
Arbitration**

Jurisdiction

Related to the
arbitration
agreement

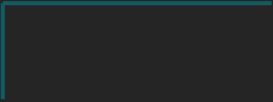
Related to
the
procedures

Related to
the law's
application

Related to
the arbitral
award

Related to
public
policy

Ground for annulment

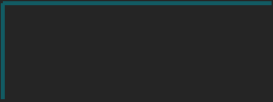


ENFORCEMENT PROCEDURES

How to Enforce ?

How to stop the
Enforcement?

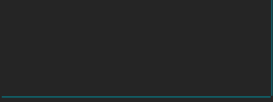
Enforcement procedures



PRACTICE TIME



BADRAN
EST 1995



Practice Time

Discuss the Cairo court of appeal's decision

No. 61/141JY,

issued on 3 June 2026.



info@badranlegal.com

(202) 33366549

(202) 33370525

76, Jaami'aat al- Duwal al-Arabiyyah-Muhandissin-Giza, Egypt.

Attorneys at Law · Est. 1995