# Canada

July 2015

*Excerpt from the 2015 edition of The International Comparative Legal Guide to: International Arbitration; published by Global Legal Group Ltd, London*

# 1. Arbitration Agreements

## 1.1 What, if any, are the legal requirements of an arbitration agreement under the laws of Canada?

Canada is a federal state with legislation governing international arbitration at both the federal level and within each of the ten provinces (Alberta, British Columbia, Manitoba, Ontario, New Brunswick, Newfoundland and Labrador, Nova Scotia, Prince Edward Island, Québec and Saskatchewan) and three territories (Northwest Territories, Nunavut and Yukon). To have a valid arbitration agreement, the law in each jurisdiction incorporates the Model Law requirement of an agreement in writing "by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not". This agreement may be a provision in a larger contract or it may be a separate written arbitration agreement, which can consist of written exchanges between the parties.

## 1.2 What other elements ought to be incorporated in an arbitration agreement?

At a minimum, an arbitration agreement should set out the applicable law, a place for the arbitration, and a language for the proceedings. While legislation in each province, territory and federally on international arbitration will provide a minimum framework for a dispute through the provisions of the Model Law, it is generally recommended that an arbitration agreement set out the applicable rules for the arbitration, whether the arbitration will be administered by an institution, the number of arbitrators for the tribunal and their selection process.

## 1.3 What has been the approach of the national courts to the enforcement of arbitration agreements?

Canadian courts will generally enforce an arbitration agreement, absent legislation clearly exempting the matter from arbitration or, as set out in the Model Law, where the arbitration agreement is null and void, inoperative or incapable of being performed.

# Your Key Contacts

**Gord (Gordon) L. Tarnowsky, Q.C.**
Partner, Calgary
D +1 403 268 3024
M +1 403 617 3001
gord.tarnowsky@dentons.com

**Rachel A. Howie, FCIArb**
Partner, Calgary
D +1 403 268 6353
rachel.howie@dentons.com