YIGAL ARNON & CO.
LAW FIRM

Opening Remarks by Adv. Barak Tal
International Commercial Arbitration Conference

Distinguished guests, dear friends and hosts of the Bar Ilan University Faculty of Law.

I am honored to welcome you with these words, on behalf of the law firm of Yigal Arnon & Co., to this important conference on International Commercial Arbitration, designated to focus primarily on the UNCITRAL model law.

The law firm of Yigal Arnon & Co. chose to sponsor this venue not only since it relates to some of the firm's core practices, but also and primarily due to the firm's agenda of sponsoring premium academic conferences such as this one, which attract and bring over to Israel the world's leading practitioners and researchers in this field.

We, at Yigal Arnon & Co., deal intensively in representing a vast amount of clients in commercial transactions and commercial litigation. On the 2014 edition of the Chambers and Partners legal guide, our firm was proudly selected as one of the only three law firms in Israel ranked as tier 1 in litigation.

We, as practitioners of both fields brought together by this conference, are well aware – from an entirely practical and non-academic perspective – of the many questions and dilemmas triggered by the proposal to adopt the UN model law for international commercial arbitration. Being so closely familiarized with the field, we reflect on these questions from these two perspectives: the commercial perspective and the litigious perspective.

From the commercial perspective – while engaging in the drafting contracts and handling negotiations – a question often arises whether to incorporate an arbitration provision in an agreement, and if so – what should that provision include: Where will arbitration take place? Under what set of rules will it be conducted? Need we *a-priori* agree on the governing law of such arbitration procedure? – These questions and various others are considered, taking into account the purpose of the agreement at hand, the relevant parties, the complexity of the matter, etc.

However, we are confronted with these questions also from the litigation perspective.

It will not come as a surprise to you if I tell you, that there are considerable differences between these two perspectives.

One of the main differences involves the state of mind or mood of the parties.
This variance stems also from the different chronological stage of each perspective, but not only.

By its nature, the commercial stage precedes the litigation stage. In that commercial stage, the potential conflict is a matter of the future, and not always are we able to assess its nature or scope.
One does not know whether his client would be the defaulting party or otherwise be the injured party to an agreement. One does not know whether his client would be the plaintiff or the defendant. One does not know whether his client's interests would remain same as they are upon signing the agreement or otherwise be entirely different.

Moreover, the commercial stage is the constructive stage. Both parties are essentially interested in the transaction. In essence, they strive for harmony rather than confrontation. Fundamentally and regularly, the parties to the transaction share optimism. They believe in the transaction and believe things "will be okay" and work out for them.

Alternatively, the litigation stage is de-constructive. In many cases the parties have no desire in the transaction. They are facing confrontation rather than harmony. In many cases they have also lost their optimism as to achieving an amicable solution.

These evident differences give rise to many dilemmas. As you can assume, in the eyes of a litigator, one party's advantage is the other's disadvantage.
Thus, for instance, the advantages arbitration might yield one party, very often represent the disadvantages it may bring about the other party.
If one of the advantages attributed to arbitration in comparison to the courts, relates to its relatively short inquiry procedure, then such advantage may in some cases become a disadvantage for the defendant.
If arbitration's ultimate resolution (and difficulties in appealing) is an advantage to the apparently superior party to the conflict, it may well be regarded as a disadvantage to the apparently inferior party, who may be asking to gain time, from tactical or commercial reasons.

The perspectives I mentioned may bring about a result, by which, a commercial attorney would be more favorable towards a comprehensive arbitration provision, detailing the set of rules applicable to the arbitration, its location and governing law, while the litigator would rather leave all of that to the stage upon which dispute has escalated – at which time it may be possible to assess all available options, thereby better serve the interests of the client, taking into account the nature of the dispute and the tactical goals the client had set forth for himself and his lawyer.

These differences and others could maybe also explain the surprising paradox, by which despite the fact that Israel is the world's leader in law suits asserted per capita, the use of arbitration as a tool for conflict resolution remains relatively low here, and in actuality Israel also hosts a very low amount of international arbitrations.

I of course do not attempt to find answers to all these questions. I enjoy the privilege here of being able to raise questions rather than propose answers. Nevertheless we are truly happy that you yourselves, the leading experts in this field, have gathered here today in order to try and also provide some answers to our dilemmas.

I wish all of us enlightening and successful professional panels and welcome all of you on behalf of the law firm of Yigal Arnon & Co.

Thank you very much.