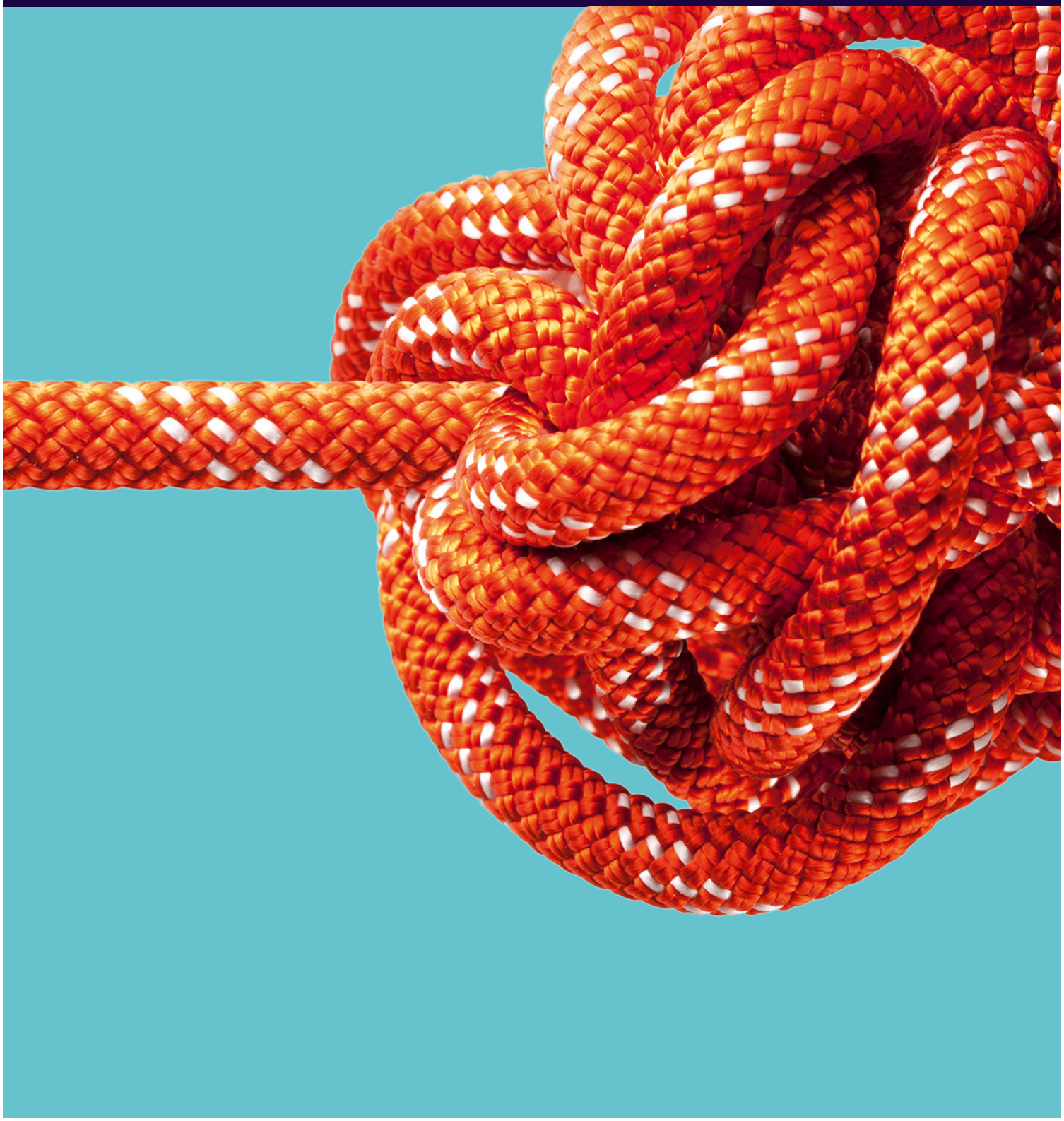
TaylorWessing

Tool Box on Arbitral Institutions

As at May 2024



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DIS Deutsche Institution für Schiedsgerichtbarkeit e.V. *German Institution of Arbitration*

ICC INTERNATIONAL CHAMBER OF COMMERCE The world business organization

LCIA Arbitration and ADR worldwide

SIAC Singapore International Arbitration Centre

Swiss Arbitration Centre

VIAC Vienna International Arbitral Centre

SCC ARBITRATION INSTITUTE OF THE STOCKHOLM CHAMBER OF COMMERCE

CIETAC 中国国际经济贸易仲裁委员会 香港仲裁中心 China International Economic and Trade Arbitration Commission Hong Kong Arbitration Center

HKIAC 香港國際仲裁中心 Hong Kong International Arbitration Centre

elarb EUROPEAN-LATINAMERICAN ARBITRATION ASSOCIATION

American Arbitration Association *Dispute Resolution Services Worldwide*

United Nations UNCITRAL

Introduction

Arbitration – the increasing tool of dispute resolution

In the past few decades, arbitration has become a mainstay in resolving legal disputes. Arbitration is a consensual, binding method of dispute resolution and is becoming increasingly popular, particularly in relation to international contracts. The support of arbitration by courts in most states is increasing correspondingly.

There are many reasons for choosing arbitration. Arbitration awards are easier to enforce internationally than judgments handed down by national courts, the proceedings are generally confidential, the forum is neutral and the parties have a considerable choice in the way their disputes are conducted – to name just a few of the key advantages of arbitration.

Variety of Arbitral institutions

New arbitral institutions are being regularly created on each continent, in a reflection of an increasingly globalised world requiring neutral, but effective, dispute resolution mechanisms. But which one is the right institution for your client`s concrete business relationship? What are the advantages and disadvantages of the respective institutions? Given the myriad of arbitration rules worldwide, such a question by no means has an easy answer.

The Tool Box

This Tool Box on Arbitral Institutions shall provide you with a first overview of the key features of the most popular arbitral institutions that should be considered before drafting an arbitration clause. The benefit of arbitration is that it can be tailored to the needs of the parties. It is therefore important, before agreeing on an arbitration clause, to consider issues such as costs, the location of the parties, whether the local courts can rely on them to recognise and enforce an arbitral award of the respective institution, if the arbitral tribunal is able to grant interim relief, etc. The toolbox does not claim to be exhaustive; there are simply too many aspects that need to be taken into consideration when choosing the most appropriate arbitration institution. Your Taylor Wessing Arbitration Team is happy to assist you in all matters from the drafting of the arbitration clause to the conduct of the arbitration proceeding up to the enforcement of the award.

DIS – Deutsche Institution für Schiedsgerichtsbarkeit

DIS | Deutsche Institution für Schiedsgerichtbarkeit e.V.
German Institution of Arbitration

The DIS at a Glance

Advantages:

Internationally accepted institution, which administers both national and international arbitral proceedings. The costs are moderate and the proceedings are in general handled quite quickly. The revision of the rules conducted in 2018 provide for many mechanism that enhance the efficient conduct of the proceedings.

Moreover, the arbitral tribunal is required to promote settlements at any stage of the proceedings.

Disadvantages:

Still not very popular in international cases.

Specific Features:

The involvement of the DIS is relatively reluctant, e.g. the DIS Secretariat does not review the award.

The rules adopted in 2018 focus on fast and efficient procedural management. Settlements are also encouraged.

Recommended for:

Commercial disputes with either two German parties or at least a European context.

Date the rules came into force:

2018

I. Model Clause

"All disputes arising in connection with this contract or its validity shall be finally settled in accordance with the Arbitration Rules of the German Institution of Arbitration (DIS) without recourse to the ordinary courts of law.

[Recommended:]

- The arbitral tribunal shall be comprised of [•].
- The seat of the arbitration shall be [•].
- The arbitration language shall be [•].
- The law applicable to the merits shall be [•]."

II. Arbitrators

2.1 Number of Arbitrators

Three arbitrators unless otherwise agreed by the parties (Art. 10).

2.2 Nomination process

Three arbitrators:

Each party nominates one co-arbitrator; the co-arbitrators jointly nominate the president of the arbitral tribunal.

- The Claimant shall nominate the co-arbitrator with the Request for Arbitration (Art. 5.2 (vii)).
- The Respondent shall nominate an arbitrator within 21 days after the date of transmission of the Request.
- In case of no nomination, the co-arbitrator shall be selected by the Appointing Committee (Art. 12.1).
- The co-arbitrators nominate the president (of the arbitral tribunal) within 21 days taking into account concurring proposals by the parties. After expiry of the 21 days, the president shall be selected and appointed by the DIS Appointing Committee. In this case, the president shall be of another nationality from that of any party, unless the parties are of the same nationality or have agreed otherwise (Art. 12.3).

Sole arbitrator:

- The parties may jointly nominate the sole arbitrator within a time limit fixed by the DIS (Art. 11).
- If the parties do not agree upon a sole arbitrator within that time limit, the Appointing Committee of the DIS (the "Appointing Committee") shall select and appoint the sole arbitrator. The sole arbitrator shall be of another nationality from that of any party, unless the parties are of the same nationality or have agreed otherwise (Art. 11).

2.3 Further Specialities

- Upon request, the DIS will make suggestions for the selection of arbitrators (Art. 9.2).

III. Place or seat of arbitration

In the absence of an agreement, the place of arbitration shall be determined by the arbitral tribunal (Sec. 22.1). The rules do not provide for an approach the tribunal shall take in doing so.

The arbitral tribunal may, unless otherwise agreed by the parties, decide to undertake any or all acts in the proceedings at a location other than the seat of the arbitration (Art. 22.2).

IV. Arbitration language

In the absence of an agreement, the arbitral tribunal shall determine the language or languages to be used in the proceedings (Sec. 23). The rules do not provide for any approach the tribunal shall apply in doing so.

V. Applicable Law

In the absence of an agreement, the arbitral tribunal shall apply the rules of law that it deems to be appropriate (Art 24.2).

The arbitral tribunal shall decide ex aequo et bono or as amiable compositeur only if the parties have expressly agreed thereto (Art. 24.4).

In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract and shall consider any relevant trade usages (Sec. 24.3).

VI. Establishing the facts

The arbitral tribunal shall establish the facts underlying the dispute (Art. 28.1). It has the discretion to give directions and, in particular, to hear witnesses and experts and order the production of documents or electronically stored data. The arbitral tribunal is not bound by the parties' applications for the admission of evidence (Sec. 28.2).

The arbitral tribunal has to consult with the parties before appointing an expert (Art. 28.3).

VII. Interim measures

The arbitral tribunal may, at the request of a party, order interim or conservatory measures and may amend, suspend or revoke any such measure. It shall transmit the request to the other party for comments (Art. 25.1).

Exceptionally, the arbitral tribunal may rule on a request without giving prior notice to or receiving comments from the other party, if otherwise it would risk frustrating the purpose of the measure (Art. 25.2).

The parties may request interim or conservatory measures from any competent court at any time. (Art. 25.3)

VIII. Are expedited proceedings possible?

Yes. Regulated in the DIS-Supplementary Rules for Expedited Proceedings 08 (SREP). Needs to be opted in.

"All disputes arising in connection with the contract (... description of the contract ...) or its validity shall be finally settled according to the Arbitration Rules and the Supplementary Rules for Expedited Proceedings of the German Institution of Arbitration e.V. (DIS) without recourse to the ordinary courts of law."

IX. Are proceedings confidential?

Yes. In the absence of a deviating agreement, the parties and their outside counsel, the arbitrators, the DIS employees, and other persons associated with the DIS who are involved in the arbitration shall not disclose to anyone any information concerning the arbitration, including in particular the existence of the arbitration, the names of the parties, the nature of the claims, the names of any witnesses or experts, any procedural orders or awards, and any evidence that is not publicly available (Art. 44.1).

The DIS may publish information on arbitral proceedings in compilations of statistical data, provided such information excludes identification of the persons involved. The DIS may publish an arbitral award only with the prior written consent of all of the parties (Art. 44.3).

X. Costs

Quite reasonable compared to other institutions.

The DIS has released a fee calculator which can be used to calculate the expected costs of a DIS arbitration (applicable to arbitrations from 1 July 2021) **here**.

10.1 Fees of Arbitrators

Arbitrators are entitled to reimbursement of their expenses and to fees (Art. 34.1). The arbitrators' fees and expenses shall be calculated pursuant to the schedule of costs (which forms part of the present Arbitration Rules) on the date of the commencement of the arbitration (except as provided in Art. 34.4), Art. 34.2; Annex 2.

Amount in dispute	One arbitrator - medium	Three arbitrators - medium
EUR 100,000	EUR 5,000	EUR 12,600
EUR 1 million	EUR 25,285	EUR 64,185
EUR 10 million	EUR 77,285	EUR 196,185

10.2 Fees of Institution

The Claimant shall pay to the DIS (within a time limit set by DIS) an administrative fee (Art. 5.3). The fee is calculated on basis of the amount in dispute in accordance with the schedule which forms part of the present Arbitration Rules (Annex 2).

Amount in dispute	Fees of Institution
EUR 100,000	EUR 1,500
EUR 1 million	EUR 10,500
EUR 10 million	EUR 50,000

10.3 Decision on Costs

Decided by the arbitral tribunal (Art. 33).

The arbitral tribunal shall decide on the allocation of the costs of the arbitration between the parties (Art. 33.2).

It shall make decisions concerning the costs of the arbitration in discretion on a case-by-case basis (Art. 33.3).

XI. The institution's involvement

The involvement of the DIS is relatively reluctant. However, as part of the update of the DIS Arbitration Rules in 2018, a number of administrative decisions previously reserved for the arbitral tribunal itself were transferred to the DIS Arbitration Council. In addition to the administrative tasks (e.g. reviewing and delivering the statement of claim (Art. 5.2; Art. 5.4.), the DIS Arbitration Council also takes the following decisions:

- Request for a decision by a sole arbitrator (Art. 10.2).
- Rejection and removal from office of an arbitrator (Art. 15.4; 16.4).
- Determination of fees in the event of premature termination of proceedings and decision on fee increase due to complexity (Art. 34.4) as well as reduction of the fee in the event of a delayed arbitral award (Art. 37).
- Review of decisions of the arbitral tribunal on the amount in dispute (Art. 36.3).

The DIS Secretariat does not review the award. The DIS may make observations with regard to form and may suggest other non-mandatory modifications to the arbitral tribunal (which shall remain exclusively responsible for the content of the award) (Art. 39.3).

In principle, the final award shall be sent to DIS within three months after the last hearing or the last authorized submission, whichever is later (Art. 37).

ICC – International Chamber of Commerce

The ICC at a Glance

Advantages:

The ICC is perhaps the most well-known and used of the international arbitration institutions.

It is well-recognised, and its decisions are considered to be high quality, particularly because each is reviewed by the ICC Court before publication; this can be helpful in enforcement.

Disadvantages:

The ICC procedure can be more costly than that of some of the ICC's peers.

The requirement that each ICC decision be reviewed by the ICC means that it can take longer for a decision to be rendered.

Specific Features:

One notable feature of ICC arbitration is its use of Terms of Reference. At the outset of the arbitration, the Tribunal draws up a document – with input from the parties in writing, or at a case management meeting – which identifies the claims and reliefs sought, the positions of the parties and a list of issues to be determined by the Tribunal. The Terms of Reference may also record the agreements between the parties as to the place of arbitration, governing law and language to be used and procedural timetable for the arbitration. The Terms are signed by the parties and form a useful reference point for the scope and procedure of the arbitration.

The ICC Rules also offer an optional expedited procedure for streamlined arbitration with a simplified process and reduced fees. This streamlined procedure has no Terms of Reference, and the case may be decided on documents only (with limited written submissions and written witness evidence only).

The degree of supervision of the ICC Court is also noteworthy; it has advantages in terms of the quality and regularity of ICC decisions, but comes with an associated cost, both in financial terms and in terms of timing. The costs of the ICC should be balanced against its reputation as a leading institution, its very broad membership (it has members in over 120 countries), and the extent of its 92 national committees.

Recommended for:

- International commercial disputes
- High-value claims

Date the rules came into force:

2021

I. Model Clause

"All disputes arising out of or in connection with the present contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules.

Parties are free to amend this clause as they see fit, avoiding ambiguity. In particular, the parties may wish to agree expressly:

- the number of arbitrators
- the seat of the arbitration
- the arbitration language
- the governing laws, and
- confidentiality obligations."

II. Arbitrators

2.1 Number of Arbitrators

Art. 12.1 envisages that ICC arbitrations will be decided by either a sole arbitrator or by a three-member Tribunal. However, this is not compulsory, and the parties are free to agree to a different number if they wish. Where the parties cannot agree, the ICC Court decides (usually by a committee of the court) how many arbitrators are to hear the dispute (Art. 12.2). In these circumstances, the ICC Court appoints a sole arbitrator unless it appears to the court that the nature of the dispute warrants the appointment of three arbitrators. In making this judgment, the court considers the value of the claim and the complexity of the dispute.

2.2 Nomination process

Three arbitrators:
Each party shall nominate one arbitrator in the Request and the Answer, respectively. If a party fails to nominate an arbitrator, that appointment shall be made by the ICC Court. (Art. 12.4).

The third arbitrator, who will act as president of the arbitral tribunal, shall be appointed by the ICC Court, unless the parties have agreed upon another procedure for such appointment. In that case the nomination will be subject to the ICC Court's confirmation. Should such procedure not result in a nomination within 30 days from the confirmation or appointment of the co-arbitrators or any other time limit agreed by the parties or fixed by the Court, the third arbitrator shall be appointed by the Court (Art. 12.5).

Sole arbitrator:
Where the parties have agreed that the dispute shall be resolved by a sole arbitrator,

they may jointly nominate the sole arbitrator by agreement, for confirmation by the ICC Court. If the parties fail to nominate a sole arbitrator within 30 days from the date when the claimant's Request for Arbitration has been received by the other party or parties, or within additional time as may be allowed by the Secretariat, the arbitrator is appointed by the ICC Court (Art. 12.3).

2.3 Further provisions relating to appointment

The parties are free to nominate the arbitrators of their choice, provided the arbitrators are and remain impartial and independent (Art. 11.1). All potential arbitrators must sign a declaration of acceptance, availability, impartiality and independence and must disclose any circumstances which might call into question their independence (Art. 11.2).

In exceptional circumstances, and despite any agreement of the parties about the method of constitution of the arbitral tribunal, the Court may appoint each member of the arbitral tribunal. This will be done if the Court decides that there is a significant risk of unequal treatment and unfairness that may affect the validity of the award (Art. 12.9).

2.4 Disclosure of funding arrangements

To assist the prospective and actual arbitrators in complying with their duties of impartiality and independence, each party must promptly inform the Secretariat, the arbitral tribunal and the other parties, of the existence and identity of any non-party which has entered into an arrangement for the funding of claims or defences and under which it has an economic interest in the outcome of the arbitration (Art. 11.7).

III. Place or seat of arbitration

In the absence of an agreement between the parties, the place of arbitration will be fixed by the ICC Court. The arbitral tribunal may, after consultation with the parties, conduct hearings and meetings at any location it considers appropriate, unless otherwise agreed by the parties (Art. 18).

IV. Arbitration language

In the absence of an agreement between the parties, the arbitral tribunal shall determine the language or languages of the arbitration; all relevant circumstances will be considered, including the language of the contract (Art. 20).

V. Applicable law

In the absence of an agreement between the parties as to the applicable law of the arbitration regarding the merits of the case, the Tribunal will apply the laws which it deems to be appropriate. In so doing, the Tribunal will take account of the contractual provisions in the agreements in issue (Art. 21).

Any claim arising out of or in connection with the administration of the arbitration proceedings will be governed by French law and settled by the Paris Judicial Tribunal (Tribunal Judiciaire de Paris) in France, which has exclusive jurisdiction (Art. 43).

VI. Establishing the facts

6.1 Witnesses and experts

Art. 25.2 gives the Tribunal the right to hear witnesses and experts, but it has no obligation to do so (subject to its other obligations, such as a party's right to have a reasonable opportunity to present its case). Witnesses typically provide the Tribunal with a witness statement and may then be required to attend a hearing for cross-examination by the other party and to answer questions from the Tribunal.

6.2 Document production

The ICC has a wide discretion in choosing the appropriate approach, bearing in mind the circumstances of the case and the governing laws of the arbitration. The ICC Rules authorise the Tribunal to establish the facts of the case by appropriate means (Art. 25.1). This includes the ability to determine the appropriate scope of document disclosure.

VII. Interim measures

Provided that the parties have not agreed among themselves to exclude Interim measures, the ICC Tribunal can order any interim or conservatory measure that it deems appropriate after the file has been transmitted to it. The Tribunal may establish conditions to be fulfilled by the parties, such as the payment of an appropriate security, when it grants such relief.

Before the file is transmitted to the arbitral tribunal, and in appropriate circumstances thereafter, the parties are free to apply to any competent judicial authority (such as the relevant local courts) for interim or conservatory measures. Any such, application and any measures taken by the judicial authority must be notified without delay to the Secretariat (Art. 28).

VIII. Are expedited proceedings possible?

Yes. Save in the circumstances set out in Art. 29.6, urgent measures are available prior to the appointment of the Tribunal via the Emergency Arbitrator procedure (Art. 29). A party that needs urgent interim or conservatory measures that cannot await the constitution of an arbitral tribunal may make an application for such measures underthe Emergency Arbitrator Rules. The ICC Rules also provide for an Expedited Procedure (Art. 30). The Expedited Procedure offers parties a streamlined procedure for the resolution of relatively low-value disputes.

8.1 Emergency arbitrator

A party seeking the appointment of an Emergency Arbitrator must send its application to the Secretariat prior to the transmission of the file to the ICC Tribunal. The application can be filed even before the submission of a Request for Arbitration. Orders made by the emergency arbitrator do not bind the Tribunal, once constituted, and the Tribunal may amend the emergency orders (Art. 29.3).

The President of the ICC Court is required to appoint an Emergency Arbitrator within a short a time as possible, usually within two days of receiving the application (Art. 2, Appendix V), and an order shall be made no later than 15 days from the date on which the file was transmitted to that arbitrator (Art. 6, Appendix V). The provisions concerning the Emergency Arbitrator are default provisions under the 2021 ICC Rules. These provisions do not apply if:

- the ICC arbitration agreement was concluded before 1 January 2012
- the parties have opted out of them by agreement, or
- the ICC arbitration agreement upon which the application was based arises from a treaty (Art. 29.6).

8.2 Expedited procedure

For claims up to:

- $2,000,000 arising from ICC agreements made on or after 1 March 2017 and before 1 January 2021, or
- $3,000,000 arising from ICC agreements made on or after 1 January 2021 (Art 1, Appendix XI).

The ICC's Expedited Procedure rules apply automatically (unless the parties have opted out).

Parties can also adopt these expedited procedural rules for claims of a higher value by agreement (Art. 30.2). Where these rules apply, the dispute is referred to a sole arbitrator, even if the arbitration agreement provides for three arbitrators (Art. 2, Appendix XI). No Terms of Reference are required, and after the Tribunal is formed, the parties cannot add new claims to the arbitration unless they are expressly authorised to do so (Art 3, Appendix XI).

IX. Are proceedings confidential?

No. There is no specific confidentiality provision in the ICC Rules. The Tribunal has the power to make orders concerning the confidentiality of the proceedings or any other matters relating to the arbitration (Art. 22.3). If confidentiality is required, parties should agree the scope of confidentiality obligations in advance. Different jurisdictions around the world

have different approaches to confidentiality in arbitration where the arbitration agreement (and the associated rules) are silent on the issue.

X. Are virtual hearings permitted?

Yes, vhearings will be held if any party requests them, or if the tribunal on its own motion decides to hear the parties. These hearings can be held in-person or by video conference, telephone or other appropriate means (Art. 26).

XI. Costs

The ICC is among the more expensive of the leading arbitral institutions.

11.1 Arbitrators' fees

ICC arbitrators' fees are fixed by the ICC Court using prescribed cost scales. The scales in Appendix III apply to arbitrations in which the Request for Arbitration is received by the Secretariat on or after 1 January 2017. The ICC has released **a costs calculator** which you can use to calculate the approximate fees associated with an ICC arbitration.

Amount in dispute	One arbitrator - ordinary procedure	Three arbitrators - ordinary procedure
EUR 100,000	USD 10,504 (average)	USD 31,512 (average)
EUR 1 million	USD 41,470 (average)	USD 124,410 (average)
EUR 10 million	USD 114,770 (average)	USD 344,310 (average)

11.2 The institution's fees

The ICC charges fees in accordance with published scales for both the arbitrators' fees and the ICC's administrative expenses. The institutional fees are calculated with reference to the value in dispute and may, exceptionally, be adjusted over other factors including the speed of proceedings and the complexity of the dispute.

Institutional fees for various claim values are set out below.

Amount in dispute	Institution's fees
EUR 100,000	USD 6,030
EUR 1 million	USD 24,103
EUR 10 million	USD 58,489

11.3 Decision on Costs

The Tribunal fixes the costs of the arbitration (including the arbitrators' fees and expenses, the institution's fees, and the parties' respective legal fees) in the award and decides in what proportion they shall be covered by the parties (Art. 37.4). In general, the "loser pays" principle tends to apply; however, this is not specifically addressed in the rules.

XII. The institution's involvement

The ICC Court reviews every decision rendered by an ICC Tribunal, to ensure that it's consistent with the issues which have been put before the tribunal, and to check that there are no obvious errors of law or procedure (Art. 1.2).

The ICC Secretariat will also be involved in various appointments and decisions if no agreement is reached between the parties, including:

- the number and identity of the arbitrators
- the governing laws
- the seat and places of the arbitrations, and
- the appointment of experts.

Parties are permitted to request that the ICC Court provides reasons for its decisions in a limited number of circumstances, including any decision about:

- whether and what extent an arbitration shall proceed
- the consolidation of arbitrations
- the appointment of the arbitral tribunal in exceptional circumstances
- the replacement of an arbitrator, and
- any decision rendered following a challenge of an arbitrator (Art. 4, Appendix II).

LCIA – London Court of International Arbitration

The LCIA at a Glance

Advantages:

Well-known arbitration institution.
High flexibility for parties and arbitrators to agree on procedural matters.

Disadvantages:

Costs computed without regard to the amounts in dispute/hourly rates for arbitrators' fees.

Specific Features:

The Request for arbitration as well as the Response shall be submitted in electronic form, either by email or other electronic means including via any electronic filing system operated by the LCIA (Art..1.3, 2.34, 24.3 LCIA AR).

Parties' authorised representatives must agree to comply with general guidelines in the Annex to the LCIA rules (Art. 18.5.). A change or addition by a party to its authorised representatives must be approved by the Arbitral Tribunal (Art. 18.3).

The arbitrator(s) is (are) appointed by the LCIA court.

The LCIA rules provide for an explicit provision on Data Protection to stress the need for compliance of all participants (parties, arbitrators, counsel, the LCIA itself or others) with any applicable data protection legislation.

Recommended for:

Any kind of dispute especially involving common-law countries.

Date the rules came into force:

2020

I. Model Clause

Future Disputes

"Any dispute arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the LCIA Rules, which Rules are deemed to be incorporated by reference into this clause."

Existing Disputes

"A dispute having arisen between the parties concerning [...], the parties hereby agree that the dispute shall be referred to and finally resolved by arbitration under the LCIA Rules."

[Recommended:]

- "The number of arbitrators shall be [one/three].
- The seat, or legal place, of arbitration shall be [City and/or Country].
- The language to be used in the arbitral proceedings shall be [•].
- The governing law of the contract (is/shall be) the substantive law of [•]."

II. Arbitrators

2.1 Number of Arbitrators

Art. 5.8 envisages that a sole arbitrator decides LCIA arbitrations unless the parties have agreed otherwise in writing or if the LCIA court has determined that a three-member tribunal is appropriate. Only in exceptional cases more than three arbitrators will decide.

2.2 Nomination process

The arbitrator(s) is (are) appointed by the LCIA court (Art. 5.7) taking into consideration any particular method or criteria of selection agreed in writing by the parties (Art. 5.9). For the decision of the LCIA Court the transaction at issue, the nature and circumstances of the dispute, its monetary amount or value, the location, language and number of the parties and all other factors considered relevant shall be taken into consideration (Art. 5.9).

The parties may agree on an arbitrator being appointed by one or more of the parties (Art. 7.1). The arbitrators must fulfil certain requirements (Art. 7.1, e.g. impartiality).

2.3 Further Specialities

If the parties are of different nationalities, the sole arbitrator or the presiding arbitrator shall be of a different nationality than the parties, unless the parties who are not of the samenationality have agreed otherwise in writing (Art. 6.1).

III. Place or seat of arbitration

The parties are free to agree the seat of the arbitration in writing (Art. 16.1). If no seat is agreed upon, London shall be the seat of the arbitration until the Arbitral Tribunal orders, that a different seat is more appropriate (Art. 16.2). Hearings that are held in person may be held at any convenient place (Art. 16.3).

A hearing may take place in person, or virtually by conferenc call, videoconference or using other communications technology with participants in one or more geographical places (or in a combined form) (Art. 19.2).

IV. Arbitration language

Unless the parties have agreed otherwise in writing, the **initial arbitration language** is the (prevailing) arbitration language Agreement (Art. 17.1). If the arbitration agreement uses more than one language of equal standing, the LCIA Court may determine which of those languages shall be the initial arbitration language, unless the arbitration agreement provides that the arbitration proceedings shall be conducted from the outset in more than one language (Art. 17.2).

Unless the parties have agreed otherwise in writing, the arbitration language **after formation of the Arbitral Tribunal** is determined by the Arbitral Tribunal (Art. 17.4). Comments of the parties, the initial language and any other matter considered appropriate are taken into consideration (Art. 17.4).

V. Applicable Law

The law applicable at the seat of the arbitration is applicable to the arbitration agreement and to the arbitration. The parties may decide otherwise in writing, if this is not prohibited by the law applicable at the arbitral seat (Art. 16.4).

The parties' dispute shall be decided in accordance with the law(s) or rules of law chosen by the parties. If the parties have not made such choice, the Arbitral Tribunal shall apply the laws which it considers appropriate (Art. 22.3). Notwithstanding the applicable law, the LCIA Rules shall be interpreted in accordance with the law of England (Art.16.5).

VI. Establishing the facts

The Arbitral Tribunal has a duty to act fairly and impartially (Art. 14 1 (i)), has to adopt procedures suitable to the circumstances of the arbitration (Art. 14.1 (ii)) and may provide additional or alternative directions (Art. 15.7) to rules outlined below:

The Claimant shall deliver relevant facts and legal submissions within 28 days of receipt of the written notification of the Arbitral Tribunal's formation (Art. 15.2). The Respondent shall deliver relevant facts and legal submissions and (if applicable) a counterclaim within

28 days of receipt of the Claimant's Statement (Art. 15.3). Claimants can elect to have the Request treated as the Statement of the Case and Respondents can elect to have the Response treated as the Statement of Defence (Art. 15.2, 15.3). This can speed up the arbitration especially in smaller cases. The Claimant shall deliver a Statement of Reply and (if applicable) of Defence within 28 days of receipt of the Statement of Defence (Art. 15.4). In case of a cross claim by the Respondent, the Respondent shall deliver a Statement of Reply within 28 days of receipt of the Statement of Defence (Art. 15.5).

Any party has the right to a hearing prior to any ruling of the Arbitral Tribual on its jurisdiction and authority or any award of merit. As decided by Arbitral Tribunal, hearings may be conducted at any appropriate stage of the arbitration, unless the parties have agreed on a documents-only-arbitration (Art. 19.1). Before any hearing: written notice of the identity of witnesses, the subject-matter of testimony, its content and relevance (Art. 20.2). The testimony may be presented in written form (Art. 20.3, oral questioning may be requested (Art. 20.5).

The Arbitral Tribunal may appoint one or more experts after consultation with the parties (Art. 21.1). The power of the Arbitral Tribunal to appoint its own experts cannot be excluded. The Arbitral Tribunal may require any party at any time to give experts any relevant information or provide access to any relevant documents, goods, etc. (Art. 21.3).

The Arbitral Tribunal may order any party (i) to make any documents, goods, etc. available for inspection by the Tribunal, any other party, any expert to such party and any expert to the Tribunal (Art. 22.1(iv)); (ii) produce documents or copies of documents to the Tribunal and to other parties (Art. 22.1(v)); and (iii) decide whether or not to apply any strict rules of evidence (Art. 22.1(vi)).

VII. Interim measures

The Arbitral Tribunal according to Art. 25.1, 25.2 shall have the power:

- to order any respondent party to a claim counterclaim or cross-claim to provide security for all or part of the amount in dispute, by way of deposit or bank guarantee or in any other manner; to order the preservation, storage, sale or other disposal of any monies, documents, goods, samples, property, site or thing under control of any party and relating to the arbitration.
- to order on a provisional basis, subject to a final decision in an award, any relief which the Arbitral Tribunal would have power to grant in an award, including the payment of money or the disposition of property as between any parties. The parties can apply to state courts for interim or conservatory measures before the formation of the tribunal and in exceptional cases after the formation (Art. 25.3). The parties may not apply for any order for security for legal or arbitration costs.

VIII. Are expedited proceedings possible?

Yes, but only according to Art. 9A (expedited formation of Arbitral Tribunal) and Art. 9C (expedited Appointment of Replacement Arbitrator).

Prior to the expedited formation of an Arbitral Tribunal, an Emergency Arbitrator may be appointed (Art. 9B).

IX. Are proceedings confidential?

Yes. Awards, all materials and all other documents are confidential. Disclosure allowed if required by a legal duty (Art. 30).

Data Protection

The LCIA has a duty to protect personal data.

X. Costs

The LCIA AR differentiate between the costs of the arbitration ("costs of the arbitration other than the legal or other expenses incurred by the parties themselves") and the legal costs (legal or other expenses incurred by a party) (Art. 28). The costs of the arbitration shall be determined by the LCIA Court in accordance with the Schedule of Costs and the Tribunal then decides the proportions. The legal costs are also apportioned by the Tribunal.

10.1 Fees of Arbitrators

Hourly rates. The Tribunal's fees will be calculated by reference to the work done by its members in connection with the arbitration and will be charged at rates appropriate to the particular circumstances of the case, including its complexity and the special qualifications of the arbitrators (Art. 2 (i) Schedule of LCIA Arbitration Costs). Hourly rates shall not exceed £650. However, in exceptional cases, the rate may be higher, provided that, in such cases, (i) the fees of the Arbitral Tribunal shall be fixed by the LCIA Court on the recommendation of the Registrar, following consultations with the arbitrator(s), and (ii) the fees shall be agreed expressly by all parties.

10.2 Fees of Institution

Art. 1 Schedule of LCIA Arbitration Costs:

Registration Fee	£1,950
Registrar / Deputy Registrar	£300 per hour
Counsel	£285 per hour
Case administrators	£220 per hour
Casework accounting functions	£190 per hour
LCIA's general overheads	5% of tribunal fees

Expenses incurred by the secretariat and members of court

10.3 Decision on Costs

The tribunal shall generally reflect in its decision the parties' relative success and failure, unless this appears inappropriate (Art. 28.4) or the parties have agreed otherwise (Art. 28.5). The Tribunal shall decide the amount of legal costs at its own discretion on a reasonable basis.

XI. The institution's involvement

The LCIA is composed of the LCIA Court and a Registrar of the LCIA Court (Art. 3.1, 3.2).

Request for Arbitration and Response shall be submitted to the Registrar (Art. 1.1, 2.1). The LCIA Court may determine time periods deviating from the LCIA AR (Art. 2.1, 22.5).

Requests for expedited formation or an emergency arbitrator shall be made to the Registrar.

The LCIA Court appoints (Art. 5.7) and revokes (Art. 10.1) the arbitrators and (under certain circumstances, cf. nr. 4) determines the language. It approves the consolidation of arbitrations (Art.22.7 I,ii,i) and determines the cost of the arbitration other than legal or other expenses occurred by the parties (Art. 28.1).

All communication shall take place directly between the Tribunal and the parties, unless the Tribunal decides that communications should continue to be made through the Registrar (Art. 13.1). Nevertheless, a copy of any communication shall be sent to the Registrar.

The Registrar authenticates the award as an LCIA award and the LCIA Court transmits the award to the parties. The award is final and binding (Art. 26.8). Requests for correction of awards or additional awards shall be sent to the Registrar (Art. 27).

SIAC – Singapore International Arbitration Centre

The SIAC at a Glance

Advantages:

The SIAC is very well recognised (especially all over Asia). Singapore has a good geographic location, being situated in the heart of South-East Asia. Singapore court decisions generally try to uphold arbitration agreements, enforce foreign awards, and express a public policy that the decision of contracting parties to arbitrate their disputes should be upheld and given effect except in the most extreme situations.

The SIAC is known to be time efficient.

Disadvantages:

May be costly (depending on the number of claims).

Specific Features:

Singapore has emerged as one of the world's leading centers for international commercial arbitration. Singapore is seen as a neutral venue for the holding of international commercial arbitration as it is situated in a geographically convenient location and is supported by a physical, legal and political infrastructure that is sophisticated, skilled and of high integrity.

Recommended for:

Disputes in Asia and the South-east Asia region. Neutral venue for the holding of international commercial arbitration.

SIAC generally administers commercial, construction/engineering, corporate, shipping/maritime, trade and insurance arbitrations. However, as SIAC's competence and jurisdiction to administer arbitrations is derived from the arbitration clause found in a contract, the types of disputes SIAC can administer are not necessarily limited to the above sectors but can potentially be any type of contractual dispute (subject to certain limitations).

Date the rules came into force:

2016

SIAC Model Clause – revised as of 12 January 2023

I. Model Clause

"Any dispute arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration administered by the Singapore International Arbitration Centre ("SIAC") in accordance with the Arbitration Rules of the Singapore International Arbitration Centre ("SIAC Rules") for the time being in force, which rules are deemed to be incorporated by reference in this clause.

- The seat of the arbitration shall be [City, Country].
- The Tribunal shall consist of [state one, or state three] arbitrator(s).
- The language of the arbitration shall be [•].

The inclusion of this sentence is recommended if the arbitration commenced to resolve the dispute will be/is an international commercial arbitration, and Singapore is chosen as the seat of arbitration:

In respect of any court proceedings in Singapore commenced under the International Arbitration Act 1994 in relation to the arbitration, the parties agree (a) to commence such proceedings before the Singapore International Commercial Court ("the SICC"); and (b) in any event, that such proceedings shall be heard and adjudicated by the SICC.]

Applicable Law - Parties should also include an applicable law clause. The following is recommended:

This contract is governed by the laws of [state the country or jurisdiction]."

II. Arbitrators

2.1 Number of Arbitrators

One or three (Art. 9).

2.2 Nomination process

Three arbitrators:
Each party shall nominate one arbitrator, the third arbitrator shall in general be appointed by the President (Art.11).

- Each party shall nominate one arbitrator (Art. 11.1).
- If a party fails to make a nomination within 14 days after receipt of a party's nomination of an arbitrator, or in the manner otherwise agreed by the parties, the President shall proceed to appoint the arbitrator on its behalf (Art. 11.2).
- Unless the parties have agreed upon another procedure for appointing the third arbitrator, or if the agreed procedure does not result in a nomination within the period agreed by the parties or set by the Registrar, the President shall appoint the third arbitrator, who shall be the presiding arbitrator (Art. 11.3).

Multi-party Appointment of Arbitrator(s):

- Where there are more than two parties to the arbitration, and a sole arbitrator is to be appointed, the parties may agree to jointly nominate the sole arbitrator. In the absence of such joint nomination having been made within 28 days of the date of commencement of the arbitration or within the period otherwise agreed by the parties or set by the Registrar, the President shall appoint the sole arbitrator (Art. 12.1).
- Where there are more than two parties to the arbitration, and three arbitrators are to be appointed, the Claimant(s) shall jointly nominate one arbitrator and the Respondent(s) shall jointly nominate one arbitrator. The third arbitrator, who shall be the presiding arbitrator, shall be appointed in accordance with Rule 11.3. In the absence of both such joint nominations having been made within 28 days of the date of commencement of the arbitration or within the period otherwise agreed by the parties or set by the Registrar, the President shall appoint all three arbitrators and shall designate one of them to be the presiding arbitrator (Art. 12.2).

Sole Arbitrator:

- If a sole arbitrator is to be appointed, either party may propose to the other party the names of one or more persons to serve as the sole arbitrator, Rule 9.3 shall apply (Art. 10.1).
- If within 21 days after the date of commencement of the arbitration, or within the period otherwise agreed by the parties or set by the Registrar, the parties have not reached an agreement on the nomination of a sole arbitrator, or if at any time either party so requests, the President shall appoint the sole arbitrator (Art. 10.2).

2.3 Further Specialities

SIAC maintains its own Panel of Arbitrators who are drawn from approximately 39 different jurisdictions. However, the parties to a dispute are free to nominate arbitrators of their choice, whether from the SIAC Panel of Arbitrators or not.

Further requirements regarding the qualification of the arbitrators are regulated in Art. 13.

III. Place or seat of arbitration

In the absence of an agreement, the seat of arbitration shall be Singapore, unless the Tribunal determines, having regard to all the circumstances of the case (Art. 21.1).

The Tribunal may hold hearings and meetings by any means it considers expedient or appropriate and at any location it considers convenient or appropriate (Art. 21.2).

IV. Arbitration language

Typically English. In the absence of an agreement of the parties, the Tribunal shall determine the language to be used in the proceedings (Art. 22.1).

If a document is written in a language other than the language(s) of the arbitration, the Tribunal, or if the Tribunal has not been established, the Registrar, may order that party to submit a translation in a form to be determined by the Tribunal or the Registrar Art. 22.2).

V. Applicable Law

The Tribunal shall apply the rules of law designated by the parties as applicable to the substance of the dispute. In the absence of such designation by the parties, the Tribunal shall apply the law which it determines to be appropriate (Art. 31.1).

In all cases, the Tribunal shall decide in accordance with the terms of the contract, if any, and shall consider any applicable usage of trade (Art. 31.3).

VI. Establishing the facts

The Tribunal is not required to apply the rules of evidence of any applicable law in making such determination (Art. 19.2).

As soon as practicable after the appointment of all arbitrators, the Tribunal shall conduct a preliminary meeting with the parties, in person or by any other means, to discuss the procedures that will be most appropriate and efficient for the case (Art. 19.3).

The Tribunal may in its discretion direct the order of proceedings, bifurcate proceedings, exclude cumulative or irrelevant testimony or other evidence and direct the parties to focus their presentations on issues the decision of which could dispose of all or part of the case (Art. 19.4).

A presiding arbitrator may make procedural rulings alone, subject to revision by the Tribunal (Art. 19.5).

All statements, documents or other information supplied to the Tribunal and the Registrar by one party shall simultaneously be communicated to the other party (Art. 19.6).

The President may, at any stage of the proceedings, request the parties and the Tribunal to convene a meeting to discuss the procedures that will be most appropriate and efficient for the case (Art. 19.7).

The Tribunal may allow, refuse or limit the appearance of witnesses to give oral evidence at any hearing (Art. 25.2).

VII. Interim measures

The Tribunal may, at the request of a party, issue an order or an Award granting an injunction or any other interim relief it deems appropriate. The Tribunal may order the party requesting interim relief to provide appropriate security in connection with the relief sought (Art. 30.1).

A party in need of emergency interim relief prior to the constitution of the Tribunal may

apply for such relief under the procedures outlined in Schedule 1 (Art. 30.2).

A request for interim relief made by a party to a judicial authority prior to the constitution of the Tribunal, or in subsequent exceptional circumstances is not incompatible with these Rules (Art. 30.3).

VIII. Are expedited proceedings possible?

Yes. Prior to the full constitution of the Tribunal, a party may apply to the Registrar in writing for the arbitral proceedings to be conducted in accordance with the Expedited Procedure under this Rule where any of the following criteria is satisfied:

- the amount in dispute does not exceed the equivalent amount of SGD $6,000,000, representing the aggregate of the claim, counterclaim and any set-off defence;
- the parties so agree; or
- in cases of exceptional urgency (Art. 5.1).

When a party has applied to the Registrar under Rule 5.1, and when the President determines, after considering the views of the parties, that the arbitral proceedings shall be conducted in accordance with the Expedited Procedure, the following procedure shall apply:

- The Registrar may shorten any time limits under these Rules;
- The case shall be referred to a sole arbitrator, unless the President determines otherwise;
- Unless the parties agree that the dispute shall be decided based on documentary evidence only, the Tribunal shall hold a hearing for the examination of all witnesses and expert witnesses as well as for any argument;
- The award shall be made within six months from the date when the Tribunal is constituted unless, in exceptional circumstances, the Registrar extends the time; and
- The Tribunal shall state the reasons upon which the award is based in summary form, unless the parties have agreed that no reasons are to be given (Art. 5.2).

IX. Are proceedings confidential?

Yes. Unless otherwise agreed by the parties, a party and any arbitrator, including any Emergency Arbitrator, and any person appointed by the Tribunal, including any administrative secretary and any expert, shall at all times treat all matters relating to the proceedings and the Award as confidential. The discussions and deliberations of the Tribunal shall be confidential (Art. 39.1).

Unless otherwise agreed by the parties, a party or any arbitrator, including any Emergency Arbitrator, and any person appointed by the Tribunal, including any administrative secretary and any expert, shall not, without the prior written consent of the parties, disclose to a third party any such matter except:

- for the purpose of making an application to any competent court of any State to enforce or challenge the Award;
- under the order of or a subpoena issued by a court of competent jurisdiction;
- for the purpose of pursuing or enforcing a legal right or claim;
- in compliance with the provisions of the laws of any State which are binding on the party making the disclosure or the request or requirement of any regulatory body or other authority;
- under an order by the Tribunal on application by a party with proper notice to the other parties; or
- for the purpose of any application under Rule 7 or Rule 8 of these Rules (Art. 39.2).

In Rule 39.1, "matters relating to the proceedings" includes the existence of the proceedings, and the pleadings, evidence and other materials in the arbitral proceedings and all other documents produced by another party in the proceedings or the Award arising from the proceedings, but excludes any matter that is otherwise in the public domain (Art. 39.3).

The Tribunal has the power to take appropriate measures; including issuing an order or Award for sanctions or costs, if a party breaches the provisions of this Rule (Art. 39.4).

X. Costs

10.1 Fees of Arbitrators

- Relatively expensive
- Please see http://www.siac.org.sg/estimate-your-fees/siac-schedule-of-fees
- Extracts from http://www.siac.org.sg/estimate-your-fees/siac-schedule-of-fees below

For arbitrations conducted and administered under the Arbitration Rules of SIAC, this is the schedule of fees payable unless the parties have agreed to an alternative method of determining the Tribunal's fees pursuant to Rule 34.1.

The fee calculated in accordance with the Schedule below is the maximum amount payable to each arbitrator.

Amount in dispute	Fee per arbitrator - medium
SGD 100,000	SGD 6,250 + 13,80% excess over 50,000
SGD 1million	SGD 39,150 + 4,85% excess over 500,000
SGD 10 million	SGD 126,900 + 0,70% excess over 5,000,000

10.2 Fees of Institution

Please **visit the SIAC's website** to view its current schedule of fees.

10.3 Decision on Costs

Unless otherwise agreed by the parties, the Tribunal shall specify in the Award the total amount of the costs of the arbitration. Unless otherwise agreed by the parties, the Tribunal shall determine in the Award the apportionment of the costs of the arbitration among the parties (Art. 35.1).

The term "costs of the arbitration" includes:

- the Tribunal's fees and expenses;
- the SIAC's administrative fees and expenses; and
- the costs of any expert appointed by the Tribunal and of any other assistance reasonably required by the Tribunal (Art. 35.2).

In general, the loser pays principle applies; however, this is not regulated in the rules.

XI. The institution's involvement

Average involvement.

Swiss Arbitration Centre

The Swiss Rules at a Glance

Advantages:

Swiss arbitration is frequently used if a "neutral" territory must be found for establishing the dispute resolution. The Swiss Rules of International Arbitration (Swiss Rules) are harmonised and apply to most of the Swiss Cantons. Swiss State Courts rule generally in support of the tribunals.

Support by the Secretariat/Court (e.g. Art.3 initiation of the proceedings, Art.8 confirmation of arbitrators, Art. 10, 11 appointment of arbitrators, Art. 9.3 recommendation to only appoint one arbitrator).

Disadvantages:

No supervision of the award (but with the exception of ICC this is not a generally offered feature of institutions).

Relatively cost-intensive. Wide range of arbitrator's fees to be determined at the discretion of the arbitrators (with the capacity of the court to approve or adjust) and therefore quite unpredictable.

Specific Features:

After consulting with the parties the tribunal may appoint a secretary to support the tribunal (Art. 16.3).

With the agreement of the parties, the arbitral tribunal may take steps to facilitate a settlement of the dispute.

Such an agreement by a party shall constitute a waiver of its right to challenge an arbitrator's impartiality based on the arbitrator's participation and knowledge acquired in taking the agreed steps. (Art. 19.5).

Paperless proceedings (inter alia Art. 3.1 for the Notice of Arbitration and for the Answer to the Notice of Arbitration) and Remote hearings (Art. 27.2).

Cross-Claim, Joinder and Interventions (Art. 6) as well as consolidation of proceedings (Art. 7) are possible.

Recommended for:

International commercial disputes with no specific roots in a certain jurisdiction (like e.g. local patents only in one jurisdiction), especially between parties from a different cultural environment like Europe/Asia, East/West etc.

Date the rules came into force:

2021

I. Model Clause

"Any dispute, controversy or claim arising out of, or in relation to, this contract, including regarding the validity, invalidity, breach, or termination thereof, shall be resolved by arbitration in accordance with the Swiss Rules of International Arbitration of the Swiss Arbitration Centre in force on the date on which the Notice of Arbitration is submitted in accordance with those Rules.

The number of arbitrators shall be _____ ("one", "three", "one or three");

The seat of the arbitration shall be _____ (name of city in Switzerland, unless the parties agree on a city in another country);

The arbitral proceedings shall be conducted in _____ (insert desired language)."

II. Arbitrators

2.1 Number of Arbitrators

If the parties have not agreed upon the number of arbitrators, the Court shall decide whether the case shall be referred to a sole arbitrator or to a three-member arbitral tribunal, taking into account all relevant circumstances;

As a rule, the Court shall refer the case to a sole arbitrator, unless the complexity of the subject matter and/or the amount in dispute justify the referral of the case to a three-member arbitral tribunal (Art. 9.2).

The Court may invite parties to agree on a sole arbitrator if the agreement provides for an arbitral tribunal and this appears inappropriate in view of the circumstances (Art. 9.3).

In Expedited Procedure (the amount in dispute does not exceed CHF 1,000,000) the case shall be referred to a sole arbitratior (unless the Arbitration Agreement provides for more than one arbitrator), Art. 42.2 (a).

2.2 Nomination process

Three arbitrators:
Two-party dispute: Each party shall appoint one, the Chairperson shall be appointed by the two designated arbitrators (Art. 11.1, 11.2).

- Claimant's appointed arbitrator (one or three no difference) to be designated in the Notice of Arbitration.
- Respondent to answer and name own appointment within thirty days (Art. 4.1 (f)).
- The two arbitrators so appointed shall designate, within thirty days from the confirmation of the second arbitrator, a third arbitrator who shall act as the presiding arbitrator of the arbitral tribunal (Art. 11.2).

Multi-party proceeding: the arbitral tribunal shall be constituted in accordance with the parties' agreement or – if the parties have not agreed upon a procedure – the Court shall set a time limit for the Claimant and for the Respondent (or group of parties) to each designate an arbitrator (Art. 11.3, 11.4, 11.5).

Sole arbitrator:
Where the parties have agreed that the dispute shall be referred to a sole arbitrator, the Parties shall jointly designate the sole arbitrator within thirty days from the date on which the Notice of Arbitration was received by the Respondent(s), unless the parties' agreement provides otherwise. (Art. 10.1).

Three arbitrators / Sole arbitrator:
The Court must confirm the arbitrators' designation (Art. 8.1). Where a designation is not confirmed, the Court may either invite the parties or the arbitrators to make a new designation or, in exceptional circumstances, proceed directly with the appointment.

2.3 Further Specialities

Nothing to be mentioned.

III. Place or seat of arbitration

In the absence of an agreement or if the designation of the seat is unclear or incomplete, the Court shall decide taking into account all relevant circumstances (Art. 17.1). Any form of conduct of the proceedings, including oral proceedings, may take place at any place which the arbitral tribunal considers appropriate (Art. 17.2, and 17.3).

IV. Arbitration language

In the absence of an agreement, the arbitration language is to be determined by the tribunal (Art.18).

V. Applicable Law

In the absence of an agreement, the arbitral tribunal shall decide the case by applying the rules of law with which the dispute has the closest connection (Art. 35.1).

VI. Establishing the facts

The arbitral tribunal shall determine the admissibility, relevance, materiality, and weight of the evidence, as well as the burden of proof and may require the parties to produce documents, exhibits, or other evidence (Art. 26). There is no reference to the IBA rules on the taking of evidence or other public law approaches. But, of course, such proceedings may be agreed upon by the parties.

VII. Interim measures

The arbitral tribunal may adopt interim measures similar to those laid down in the German Code of Civil Procedure ("ZPO"), including measures to compensate for damage resulting from unjustified interim measures. By submitting their dispute to arbitration, the parties do not waive any right that they may have under the applicable laws to submit a request for interim measures to a judicial authority (Art. 29).

VIII. Are expedited proceedings possible?

Yes. Art. 42 provides for expedited proceedings. The award shall be made within six months from the date on which the Secretariat transmitted the file to the arbitral tribunal. Only one single hearing shall be conducted (Art. 42). According to Art. 42.1 all cases in which the amount in dispute does not exceed CHF 1,000,000, the arbitral proceedings shall be conducted in accordance with the Expedited Procedure unless the Court decides otherwise.

IX. Are proceedings confidential?

Yes. Strict confidentiality of all issues and for all participants to the proceedings unless the parties agree e.g. to use a secretary of the tribunal etc. (Art. 44.1 and 44.2).

Publication of the award possible according to the conditions of Art. 44.3.

X. Costs

The fee and cost schedule displays amounts in Swiss Francs. The amount due to the Institution must be paid in that currency.

10.1 Fees of Arbitrators

Wide range of arbitrator's fees according to the schedule of fees Appendix B 6. Maximum amounts are 3 x or somewhat higher than the minimum amounts. Medium comparable to ICC.

Amount in dispute	One arbitrator - medium	Three arbitrators - medium
CHF 100,000	CHF 9,500	CHF 23,750
CHF 1 million	CHF 48,000	CHF 120,000
CHF 10 million	CHF 128,400	CHF 321,000

10.2 Fees of Institution

In any case a registration fee is due in three steps.

Amount in dispute	Registration Fee
Up to CHF 2 million	CHF 4,500
Up to CHF 10 million	CHF 6,000
> CHF 10 million	CHF 8,000

The administrative costs shall be calculated in addition to the registration fee according to the amount in dispute, as set out in Annex B.6.The maximum amount of administrative costs is CHF 75,000.00 if the amount in dispute exceeds CHF 250,000.00.

10.3 Decision on Costs

The Decision on costs is made by the arbitrators according to Art. 38. The Court has the capacity to approve or adjust the costs (Art. 40). The arbitral tribunal shall decide on the allocation of its fees among its members. As a rule, the presiding arbitrator shall receive between 40% and 50% and each co-arbitrator between 25% and 30% of the total fees, in view of the time and efforts spent by each arbitrator (Art. 39.4). The total amount determined by the tribunal within the limits of the schedule shall consider the amount in dispute, the complexity of the matter, the time spent, and any other specific relevant circumstances (Art. 39.1).

The costs of the arbitration shall in principle be borne by the unsuccessful party (Art. 40).

XI. The institution's involvement

Little involvement, e.g. review of deadlines and answering questions as to the procedural rules; no handling the financial dealings. The tribunal must administer the advance payments by itself. The Court approves on the determination of the costs (Art. 39.5).

No review of the award, one copy to be sent to the Secretariat.

VIAC – Vienna International Arbitral Centre

VIAC || Vienna International Arbitral Centre

The VIAC at a Glance

Advantages:

Well recognised in Eastern European Countries for historical reasons (established as neutral venue for dispute resolution between companies located in former communist countries on one side and western companies on the other side).

Recent cooperation with Chinese arbitration organisation make VIAC look further east.

Flexible and lean Rules.

Disadvantages:

Not very well recognised outside of Europe.

Specific Features:

After the recent revision of the Vienna Rules they now express to also apply for Investment Treaty Arbitration and for VIAC as appointing authoriry.

Recommended for:

Disputes in Eastern European Countries.

Date the rules came into force:

2021

I. Model Clause

"All disputes or claims arising out of or in connection with this contract, including disputes relating to its validity, breach, termination or nullity, shall be finally settled under the Rules of Arbitration (Vienna Rules) of the Vienna International Arbitral Centre (VIAC) of the Austrian Federal Economic Chamber by one or three arbitrators appointed in accordance with the said Rules."

Parties may wish to stipulate the following in the arbitration clause:

- (1) the number of arbitrators (one or three) (Article 17 Vienna Rules);
- (2) the language(s) to be used in the arbitral proceedings (Article 26 Vienna Rules);
- (3) the substantive law applicable to the contractual relationship, the substantive law applicable to the arbitration agreement (Article 27 Vienna Rules), and the rules applicable to the proceedings (Article 28 Vienna Rules);
- (4) the applicability of the provisions on expedited proceedings (Article 45 Vienna Rules);
- (5) the scope of the arbitrators' confidentiality (Article 16 paragraph 2 Vienna Rules) and its extension regarding parties, representatives and experts.
- (6) If the parties wish to conduct Arb-Med-Arb proceedings, the following addition to the model arbitration clause should be included:
  "Furthermore, the parties agree to jointly consider, after due initiation of the arbitration, to conduct proceedings in accordance with the Mediation Rules of the Vienna International Arbitral Centre (VIAC) of the Austrian Federal Economic Chamber (Vienna Mediation Rules). Settlements that are generated in such proceedings shall be referred to the arbitral tribunal appointed in the arbitration. The arbitral tribunal may render an award on agreed terms reflecting the content of the settlement (Article 37 paragraph 1 Vienna Rules)."

II. Arbitrators

2.1 Number of Arbitrators

Parties are free to choose between sole arbitrator or tribunal consisting of three arbitrators, Art. 17 (1). If the parties do not agree on the number of arbitrators, the Board of VIAC shall determine whether the dispute will be decided by a sole arbitrator or by a panel of three arbitrators taking into account the complexity of the case, the amount in dispute, and the parties' interest in an expeditious and cost-efficient decision, Art. 17 (2).

2.2 Process of Nomination

Three arbitrators:

Each party shall nominate a co-arbitrator (submit the name, address and other contact

details of its nominee) within 30 days after receiving the Secretary General's request. The Board shall appoint an arbitrator if the party does not nominate an arbitrator within this time period Art. 17 (4). The co-arbitrators shall jointly nominate a chairperson and indicate his name, address and other contact details within 30 days after receiving the Secretary General's request. If such nomination is not made within this time period, the chairman shall be appointed by the Board, Art. 17 (5).

Sole arbitrator:
The parties shall jointly nominate a sole arbitrator and indicate the arbitrator's name, address and other contact details within 30 days after receiving the Secretary General's request. If such nomination is not made within this time period, the sole arbitrator shall be appointed by the Board, Art. 17.3.

2.3 Further Specialities

The Parties shall be free to designate the persons they wish to nominate as arbitrators. Any person with full legal capacity may act as arbitrator, provided the parties have not agreed upon any particular additional qualification requirements, Art. 16 (1) Vienna Rules.

III. Place or seat of arbitration

Unless the parties agree or have agreed otherwise the place of arbitration shall be Vienna and the arbitral tribunal may conduct procedural acts at any location it deems appropriate, Art. 25 Vienna Rules.

IV. Arbitration language

In the absence of an agreement by the parties, immediately after transmission of the file, the arbitral tribunal shall determine the language or languages of the arbitration, having due regard to all circumstances, including the language of the contract (Art. 26).

V. Applicable Law

Art. 27 states that the arbitral tribunal shall decide the dispute in accordance with the statutory provisions or rules of law agreed upon by the parties. Unless the parties have expressly agreed otherwise, any agreement as to the law or the legal system of a given state shall be construed as a direct reference to the substantive law of that state and not to its conflict-of-laws rules. If the parties have not determined the applicable statutory provisions or rules of law, the arbitral tribunal shall apply the applicable statutory provisions or rules of law which it considers appropriate. The arbitral tribunal shall decide *ex aequo et bono* or as *amiable compositeur* only in cases where the parties have expressly authorized it to do so.

VI. Establishing the facts

If the arbitral tribunal considers it necessary, it may on its own initiative collect evidence,

question parties or witnesses, request the parties to submit evidence, and call experts, Art. 29.1.

Hearings can be done in person or any other means, such as a remote hearing by video-conferencing, Zoom, MS Teams etc.

The award has to be rendered at the latest 3 weeks after the last hearing.

VII. Interim measures

Unless the parties have agreed otherwise, the arbitral tribunal may at the request of a party grant interim or conservatory measures against another party as well as amend, suspend or revoke any such measures, Art. 33.1.

The parties are still free to apply to State authorities for interim or conservatory measures. Art. 33.5 states that request to a State authority to order such measures or to enforce such measures already ordered by the arbitral tribunal shall not constitute an infringement or waiver of the arbitration agreement and shall not affect the powers of the arbitral tribunal.

VIII. Are expedited proceedings possible?

Yes, governed by Art. 45, which applies if the parties have included it in their arbitration agreement or if the parties subsequently agree on its application. The parties' agreement on the conduct of expedited proceedings must be filed no later than the submission of the Answer to the Statement of Claim.

The general provisions of the Vienna Rules apply with some deviations:

- The time limit for payment of the advance on costs pursuant to Article 42 shall be reduced to 15 days.
- Counterclaims or set-off-claims are admissible only until the expiry of the time limit for submission of the Answer to the Statement of Claim. Expedited proceedings shall be conducted by a sole arbitrator, unless the parties have agreed on a panel of arbitrators. The parties shall nominate a sole arbitrator/ co-arbitrator within 15 days of receiving such a request from the Secretary General.The final award should be rendered within six months of transmission of the file. If he deems it necessary, the Secretary General may extend the time limit.
- Unless the arbitral tribunal determines otherwise, the following shall apply: (i) after the submission of the Statement of Claim and the Answer to the Statement of Claim, the parties will exchange only one further written submission; (ii) the parties shall make all factual arguments in their written submissions and all written evidence shall be attached to the written submissions; (iii) to the extent requested by a party or deemed necessary by the arbitral tribunal, the arbitral tribunal shall hold a single oral hearing, in which all evidence will be taken and all legal issues addressed; (iv) no written submissions shall be filed after the oral hearing.

IX. Are proceedings confidential? Confidentiality.

Yes, Board, General Secretary and arbitrators "have the duty to keep confidential all information acquired in the course of their duties", Art. 2.4, 4.4, 16.2.

X. Arb-Med-Arb procedure

If parties wish to mediate but also have the benefit of a potential agreement in the mediation to be enforceable, the VIAC Ruels offer an Arb-Med-Arb solution. In this case one of the partie files for arbitration, the proceedings are then stayed after the answer to the RfA for the duration of a mediation process, at the end of which the arbitration is resumed and the arbitrator(s) issue an award by agreement based on the outcome of the mediation.

For this purpose, VIAC has also issue the very flexible and lean Vienna Midiation Rules.

XI. Costs

Less expensive compared to other institutions. The VIAC has provided a cost calculator on their website. It is applicable to all arbitral proceedings according to the Vienna Rules 2021 and the Vienna Investment Arbitration Rules 2021, in which the Statement of Claim was filed after 30 June 2021 **here**.

10.1 Fees of Arbitrators

Arbitrators' Fees for an amount in dispute of (no multiple parties);

Amount in dispute	One arbitrator - medium	Three arbitrators - medium
EUR 100.000,00	EUR 6,000 – 8,400	EUR 16,500 – 23,100
EUR 1 million	EUR 29,800 – 41,720	EUR 74,500 – 104,300
EUR 10 million	EUR 83,100 – 116,340	EUR 207,750 – 290,850

The Secretary General has certain flexibility to adjust the fees to the complexity of the matter. This can go both ways, i.e. he/she may increase or decrease the arbitrators' fees from the above schedule.

10.2 Fees of Institution

Fixed Registration Fee of EUR 1.500 plus administrative Fees for an amount in dispute of.

Amount in dispute	Registration Fee
EUR 100.000	EUR 1,500
EUR 1 million	EUR 13,000
EUR 10 million	EUR 24,900

10.3 Advance on costs

The Secretary General will order both parties to pay equal shares of advance on costs (set on the basis of the above schedule). If one party refuses to pay, the other party has to step in. However, the Tribunal can order the non paying party to refund the other party the share of advance on costs that the non-paying party should have paid. This takes the form of an interim award and is enforceable.

10.4 Decision on Costs

Administrative and arbitrators' fees are calculated by The Secretary General on the basis of the schedule of fees (Annex 3) according to the amount in dispute and determine these fees together with the expenses at the end of the proceedings, Art. 44.2. In particularly complex cases, the Secretary General may increase the arbitrators' fees from minimum up to the maximum fee, Art. 44.7.

In general, the loser pays principle, however, not regulated in the rules.

XI. The institution's involvement

Little involvement, e.g. nomination of arbitrators in case parties do not nominate in time; calculation of costs.

SCC – Arbitration Institute of the Stockholm Chamber of Commerce

The SCC at a Glance

Advantages:

Relatively moderate costs in comparison to other institutions (e.g. ICC, LCIA); well recognised. However, costs are continuously being raised with every revision of the rules.

Disadvantages:

The determination of the arbitrators' fees is at the discretion of the Board to a certain extent.

Specific Features:

The SCC 2017 Rules have introduced the possibility to decide one or more issues of fact or law by way of summary procedure at any time during the arbitration. A request for summary procedure may concern issues of jurisdiction, admissibility or the merits. It may include, for example, an assertion (1) that an allegation of fact or law material to the outcome of the case is clearly unsustainable or (2) even if the facts alleged by the other party are assumed to be true, no award could be rendered under the applicable law (Art. 39).

Appendix III of the Arbitration Rules contains special provisions for investment arbitrations (investor state arbitration).

Recommended for:

International business relationships.

In particular for business relationships with parties from Eastern states (Russia, states from the ex-Soviet Union, China). The SCC was recognised in the 1970's by the United States and the Soviet Union as a neutral center for the resolution of East West trade disputes. China recognised the SCC as a forum for resolving international disputes around the same time.

Date the rules came into force:

2023

I. Model Clause

"Any dispute, controversy or claim arising out of or in connection with this contract, or the breach, termination or invalidity thereof, shall be finally settled by arbitration in accordance with the Arbitration Rules of the SCC Arbitration Institute.

Recommended additions:

- The seat of arbitration shall be [...].
- The language of the arbitration shall be [...].
- This contract shall be governed by the substantive law of [...]."

II. Arbitrators

2.1 Number of Arbitrators

Unless otherwise agreed by the parties, the Board decides whether the Tribunal consists of a sole arbitrator or three arbitrators (Art. 16.2).

2.2 Nomination process

Three arbitrators:

Each party shall appoint one co-arbitrator, the Chairperson shall be appointed by the Board of directors (Art. 17.4).

- Claimant with the Statement of Claim (Art. 6 (vi).
- The Secretariat shall set a time period within which the Respondent shall submit an Answer to the SCC including the appointed arbitrator (Art. 9).
- Where a party fails to appoint arbitrator(s) within the stipulated time period, the Board shall make the appointment (Art. 17.4).

Sole arbitrator:

- The parties shall be given 10 days to jointly appoint the arbitrator (Art. 17.3).
- If the parties fail to make the appointment within this time period, the arbitrator shall be appointed by the Board (Art. 17.3).

2.3 Further Specialities

If the parties are of different nationalities, the sole arbitrator or the Chairperson of the Arbitral Tribunal shall be of a different nationality than the parties, unless the parties have agreed otherwise or unless otherwise deemed appropriate by the Board (Art. 17.6).

III. Place or seat of arbitration

Unless agreed upon by the parties, the Board shall decide the seat of arbitration (Art. 25.1).

The Arbitral Tribunal may, after consultation with the parties, conduct hearings at any place it considers appropriate. The Arbitral Tribunal may meet and deliberate at any place it considers appropriate. If any hearing, meeting, or deliberation is held elsewhere than at the seat of arbitration, the arbitration shall be deemed to have taken place at the seat of arbitration (Art. 25.2).

IV. Arbitration language

Unless agreed upon by the parties, the arbitral tribunal shall determine the language(s) of the arbitration. In so determining, the arbitral tribunal shall consider all relevant circumstances and shall give the parties an opportunity to submit comments (Art. 26.1).

The Arbitral Tribunal may request that any documents submitted in languages other than the language(s) of the arbitration be accompanied by a translation into the language(s) of the arbitration (Art. 26.2).

V. Applicable Law

The Arbitral Tribunal shall decide the merits of the dispute based on the law(s) or rules of law agreed upon by the parties. In the absence of such an agreement, the Arbitral Tribunal shall apply the law or rules of law which it considers to be most appropriate (Art. 27.1).

Any designation made by the parties of the law of a given state shall be deemed to refer to the substantive law of that state and not to its conflict of laws rules (Art. 27.2).

The Arbitral Tribunal shall decide the dispute *ex aequo et bono* or as *amiable compositeur* only if the parties have expressly authorised it to do so (Art. 27.3).

VI. Establishing the facts

The admissibility, relevance, materiality and weight of evidence shall be for the Arbitral Tribunal to determine (Art. 31.1). At the request of a party, or exceptionally on its own motion, the Arbitral Tribunal may order a party to produce any documents or other evidence which may be relevant to the outcome of the case (Art. 31.3).

Documents on which a party relies shall be submitted in the statement of claim / the statement of defence (Art. 29.1, 2).

A hearing shall be held if requested by a party, or if deemed appropriate by the Arbitral Tribunal (Art. 32.1). After consulting with the parties and having regard to the circumstances, the Arbitral Tribunal shall decide: (i) the date and time of any hearing; and (ii) whether any hearing shall be conducted (a) in person, at a specified location, or (b) remotely, in whole or in part, by videoconference or other appropriate means of communication (Art. 32.2). Unless otherwise agreed by the parties, hearings will be held in private (Art. 32.3).

In advance of any hearing, the Arbitral Tribunal may order the parties to identify each witness or expert they intend to call and specify the circumstances intended to be proved

by each testimony (Art. 33.1). The testimony of witnesses or party-appointed experts may be submitted in the form of signed statements (Art. 33.2).

VII. Interim measures

The Arbitral Tribunal may, at the request of a party, grant any interim measures it deems appropriate (Art. 37.1).

A request for interim measures made by a party to a judicial authority is not incompatible with the arbitration agreement or with these Rules (Art. 37.5).

VIII. Are expedited proceedings possible?

Yes. Regulated in the Rules for Expedited Arbitration of the SCC Arbitration Institute (2023). Needs to be opted in.

"Any dispute, controversy or claim arising out of or in connection with this contract, or the breach, termination or invalidity thereof, shall be finally settled by arbitration in accordance with the Rules for Expedited Arbitrations of the Arbitration Institute of the SCC Arbitration Institute."

IX. Are proceedings confidential?

Yes. Unless otherwise agreed by the parties, the SCC and the Arbitral Tribunal shall maintain the confidentiality of the arbitration and the award (Art. 3).

X. Costs

Compared to other institutions, the costs are relatively moderate (e.g. more expensive than DIS, but less expensive than ICC or LCIA). The SCC has released a cost calculatior on their website **here**.

10.1 Fees of Arbitrators

The Board determines the fees of the arbitrators based on the amount in dispute in accordance with the Schedule of Costs in Appendix IV (Art. 49.2; Art. 2 of Appendix IV). According to the table of fees in Appendix IV the board has discretion to determine the arbitrators' fees within a certain scope of fees. The Board also fixes an amount to cover any reasonable expenses incurred by the arbitrator(s) and the SCC (Art. 4 of Appendix IV). Co-arbitrators shall each receive 60 per cent of the fee of the Chairperson (Art. 2.2 of Appendix IV).

Amount in dispute	One arbitrator	Three arbitrators - medium
EUR 100,000	EUR 7,000 - 18,775	EUR 15,400 - 41,305
EUR 1 million	EUR 21,800 - 51,720	EUR 47,960 - 113,784
EUR 10 million	EUR 54,800 - 152,680	EUR 120,560 - 335,896

10.2 Fees of Institution

Upon filing the Request for Arbitration, the Claimant shall pay a Registration Fee (Art. 7.1). The Registration Fee amounts to EUR 3,000. The Registration Fee is non-refundable and constitutes a part of the Administrative Fee (Art. 1.2 of Appendix IV).

The Administrative Fee is calculated on basis of the amount in dispute in accordance with the Schedule of Costs (Appendix IV). The amount in dispute shall be the aggregate value of all claims, counterclaims and set-offs (Art. 3.2 of Appendix IV).

Amount in dispute	Fees of Institution
EUR 100,000	EUR 5,775
EUR 1 million	EUR 23,000
EUR 10 million	EUR 51,125

10.3 Decision on Costs

Unless otherwise agreed by the parties, the Arbitral Tribunal shall, at the request of a party, apportion the Costs of the Arbitration between the parties, having regard to the outcome of the case and other relevant circumstances (Art. 49.6).

The Arbitral Tribunal shall include in the final award the Costs of the Arbitration as finally determined by the Board and specify the individual fees and expenses of each member of the Arbitral Tribunal and the SCC (Art. 49.5).

XI. The institution's involvement

The involvement of the SCC is relatively reluctant but more significant than, for example, those of the DIS:

- The SCC is composed of a board of directors (the "Board") and a secretariat (the "Secretariat") (Art. 1 of Appendix I).
- The Secretariat sends a copy of the Request for Arbitration and the documents attached thereto to the Respondent. The Secretariat sets a time period within which the Respondent shall submit an Answer to the SCC. The Secretariat sends a copy of the Answer to the

Claimant (Art. 9). If there is a challenge to an arbitrator the secretariat notifies the parties and the arbitrators of the challenge and gives them an opportunity to submit comments on the challenge (Art. 19.3). The Secretariat may also take decisions delegated to it by the Board (Art. 8 of Appendix I).

- The function of the Board is to take the decisions required of the SCC in administering disputes under the SCC Rules and any other rules or procedures agreed upon by the parties. These decisions include decisions on the jurisdiction of the SCC (Art. 6 of Appendix I).
- The Board determines an amount to be paid as an advance on costs (Art. 51), appoints the sole arbitrator (Art. 17.3) or the Chairman in case of three arbitrators (Art. 17.4), decides finally on the challenge to arbitrators (Art. 19.5), releases arbitrators from appointment (Art. 20) and determines the costs of the arbitration (Art. 49.2).
- The Board may request further details from either party regarding any of their written submissions to the SCC. If the Claimant or the Respondent fails to comply with a request for further details, the Board may dismiss the case, the counterclaim or set-off (Art. 10).

CIETAC – China International Economic and Trade Arbitration Commission

The CIETAC at a Glance

Advantages:

Comparatively inexpensive. The rules provide for short proceedings.

Disadvantages:

Failure to observe a (short) deadline may result in the institution's acting on behalf of the defaulting party. And also in general the institution is heavily involved in almost any step of the procedure. If the parties fail to agree on an issue, the matter is almost invariably decided by the institution. Freedom to choose arbitrators is somewhat restricted (roster).

In the absence of an agreement, the place of oral hearings shall be in Beijing for a case administered by the Arbitration Court.

Specific Features:

Obviously, CIETAC is very China-centred with a strong role of the institution. That said there is room for party-agreement on procedural issues. The CIETAC–rules provide for rather short deadlines; the award is to be rendered six months from the constitution of the tribunal (Art. 48), hence there are short deadlines for the submission of e.g. a counterclaim (45 days from receipt of the RfA); failure to appear in the hearing is deemed withdrawal of the respective application (Art. 39).

Please note, in case of the absence of an agreement, the language of arbitration to be used in the proceedings shall be Chinese. Additionally, please note that in 2024, CIETAC officially released the new edition of the CIETAC arbitration rules that include key developments such as expanded tribunal powers.

Recommended for:

This cannot be answered on the basis of the rules, but requires practical experience. However, Art. 3 says that CIETAC accepts cases involving economic, trade and other disputes of a contractual or non-contractual nature, based on an agreement of the parties.

CIETAC is not recommended for an arbitration procedure without any relation to China. CIETAC is very China-centred with a strong role of the institution.

Date the rules came into force: 2024

I. Model Clause

"Any dispute arising from or in connection with this Contract shall be submitted to China International Economic and Trade Arbitration Commission (CIETAC) for arbitration which shall be conducted in accordance with the CIETAC's arbitration rules in effect at the time of applying for arbitration. The arbitral award is final and binding upon both parties."

II. Arbitrators

2.1 Number of Arbitrators

Three arbitrators unless otherwise agreed by the parties (Art. 25).

2.2 Nomination process

Three arbitrators: Art. 27

- Claimant and the Respondent shall within fifteen (15) days from the date of receipt of the Notice of Arbitration each nominate, or entrust the Chairman of CIETAC to appoint, an arbitrator.
- Fail the parties to do so, the arbitrator shall be appointed by the Chairman of CIETAC.
- Within fifteen (15) days from the date of the Respondent's receipt of the Notice of Arbitration, the parties shall jointly nominate, or entrust the Chairman of CIETAC to appoint, the third arbitrator, who shall act as the presiding arbitrator.
  - The parties may each recommend one to five arbitrators as candidates for the presiding arbitrator and shall each submit a list of recommended candidates within the time period specified in the preceding Paragraph 2. Where there is only one common candidate on the lists, such candidate shall be the presiding arbitrator jointly nominated by the parties. Where there is more than one common candidate on the lists, the Chairman of CIETAC shall choose the presiding arbitrator from among the common candidates having regard to the circumstances of the case, and he/she shall act as the presiding arbitrator jointly nominated by the parties. Where there is no common candidate on the lists, the presiding arbitrator shall be appointed by the Chairman of CIETAC.
- In accordance with the parties' agreement or upon the parties' joint requests, the Chairman of CIETAC may provide a list of three candidates for the parties to nominate the presiding arbitrator within seven (7) days upon receipt of such list. In such case, unless otherwise agreed by the parties, the presiding arbitrator shall be appointed/nominated in the following manner:
  - (1) Each party may exclude one or more candidates to whom it objects and submit the list of remaining candidates to the Arbitration Court.
  - (2) Where there is only one common candidate on the lists of remaining candidates submitted by the parties such candidate shall be the presiding arbitrator

jointly nominated by the parties. Where 27 CIETAC Arbitration Rules there is more than one common candidate on the lists, the Chairman of CIETAC shall choose the presiding arbitrator from among the common candidates having regard to the circumstances of the case and he/she shall act as the presiding arbitrator jointly nominated by the parties. Where there is **no** common candidate on the lists, the presiding arbitrator shall be appointed by the Chairman of CIETAC from outside the lists.

Sole arbitrator: Art. 28

The rules for the nomination of the presiding arbitrator also apply to the sole arbitrator.

2.3 Further Specialities

Nomination or Appointment of Arbitrator

- The parties shall nominate arbitrators from the Panel of Arbitrators provided by CIETAC. Where the parties have agreed to nominate arbitrators from outside CIETAC's Panel of Arbitrators, an arbitrator so nominated by the parties or nominated according to the agreement of the parties may act as arbitrator subject to the confirmation by the Chairman of CIETAC (Art. 26). Nomination in case of multi-party arbitration follows the Dutco-rule (Art. 29).
- The arbitral tribunal shall be formed in accordance with these Rules, unless otherwise agreed by the parties. If the procedure of forming the arbitral tribunal agreed by the parties is manifestly unfair or unjust, or if a party abuses its rights in a way that results in undue delay of the arbitral proceedings, the Chairman of CIETAC may determine the procedure of formation of the arbitral tribunal or appoint any member of the arbitral tribunal.

Decision on Jurisdiction (Article 6)

- Under the constitution of the Tribunal, the Tribunal has the power to determine its own jurisdiction, unlike the previous version of the 2015 CIETAC Rules, which by default vested the right to determine the jurisdiction of the Tribunal in CIETAC and only provided for the Tribunal to determine its jurisdiction if CIETAC deems it necessary.

Early Dismissal (Article 50)

- For the first time, arbitral tribunals are authorized (at the request of a party) to dismiss a claim or counterclaim in whole or in part if it is manifestly unfounded in law or outside the jurisdiction of the arbitral tribunal. Such a decision must be made in the form of a reasoned decision or an award within 60 days of the request for early dismissal.

Interim Award (Article 49)

- The rules now clarify that arbitral tribunals may issue interim awards on any issue prior to the final award, either on the arbitral tribunal's own initiative (if the arbitral tribunal considers a partial award "necessary") or at the request of a party.

CIETAC Guidelines on the Taking of Evidence (Article 41(4))

- The arbitral tribunal now has express authority (unless otherwise agreed by the parties) to apply the CIETAC Guidelines on the Taking of Evidence, which were introduced in 2015 and influenced by the IBA Rules on the Taking of Evidence in International Arbitration and the Principles of the Taking of Evidence in Chinese Civil Justice.

III. Place or seat of arbitration

In the absence of an agreement or where the agreement is ambiguous, the place of arbitration shall be the domicile of CIETAC or its sub-commission/arbitration centre administering the case. CIETAC may also determine the place of arbitration to be another location having regard to the circumstances of the case (Art. 7).

Unless otherwise agreed by the parties, the place of oral hearings shall be in Beijing for a case administered by the Arbitration Court.

IV. Arbitration language

In the absence of an agreement, the language of arbitration to be used in the proceedings shall be Chinese. CIETAC may also designate one or more language(s) as the language(s) of arbitration after taking into proper consideration of all the circumstances of the case including the language(s) of the contract. The arbitral tribunal, after it is formed, may redesignate the language(s) to be used in the proceedings having regard to the circumstances of the case (Art. 84.2).

V. Applicable Law

In the absence of an agreement or where such agreement is in conflict with a mandatory provision of the law, the arbitral tribunal shall determine the applicable substantive law or principles of law (Art. 52.2).

VI. Establishing the facts

The arbitral tribunal may undertake investigations and collect evidence as it considers necessary (Art. 43).

VII. Interim measures

At the request of a party, the arbitral tribunal may decide to order or award any interim measure it deems necessary or proper in accordance with the applicable law or the agreement of the parties and may require the requesting party to provide appropriate security in connection with the measure. Parties may also apply for emergency relief under the CIETAC Emergency Arbitrator Procedures (Appendix III) or for conservatory measures pursuant the laws of the People's Republic of China (Art. 23).

VIII. Are expedited proceedings possible?

In domestic arbitrations, where the amount in dispute does not exceed RMB 5,000,000 a summary procedure applies with abbreviated deadlines (award submitted within three months from the constitution of the tribunal) (Art. 59).

IX. Are proceedings confidential?

Hearings shall be held in camera. Where both parties request an open hearing, the arbitral tribunal shall decide. For cases heard in camera, the parties and their representatives, the arbitrators, the witnesses, the interpreters, the experts consulted by the arbitral tribunal, the appraisers appointed by the arbitral tribunal and other relevant persons shall not disclose to any outsider any substantive or procedural matters relating to the case (Art. 38).

X. Costs

Fees are calculated in function of the amount in dispute (in RMB). There is a scale that is reminiscent of the one used by the ICC, but the percentage figures seem to be inferior to those of the ICC.

10.1 Fees of Arbitrators and institution in foreign cases

Amount in dispute	Cost per arbitrator
EUR 100,000	EUR 3,998.62 (RMB 29,573)
EUR 1 million	EUR 25,135.96 (RMB 185,898)
EUR 10 million	EUR 100,686.21 (RMB 744,645)

10.2 Fees of Institution

Amount in dispute	Fees of Institution
EUR 100,000	EUR 1,352.12 (RMB 10,000)
EUR 1 million	EUR 1,352.12 (RMB 10,000)
EUR 10 million	EUR 1,352.12 (RMB 10,000)

10.3 Decision on Costs

- The arbitral tribunal has the power to determine in the arbitral award the arbitration fees and other expenses to be paid by the parties to CIETAC.
- The arbitral tribunal has the power to decide in the arbitral award, having regard to the circumstances of the case, that the losing party shall compensate the winning party for the expenses reasonably incurred by it in pursuing the case. In deciding

whether or not the winning party's expenses incurred in pursuing the case are reasonable, the arbitral tribunal shall take into consideration various factors such as the outcome and complexity of the case, the workload of the winning party and/or its representative(s), the amount in dispute, etc. (Art. 55).

XI. The institution's involvement

The institution is heavily involved in almost any step of the procedure. If the parties fail to agree on an issue, the matter is almost invariably decided by the institution. This relates to the nomination of the arbitrators and also the draft award is submitted to CIETAC for scrutiny.

HKIAC – Hong Kong International Arbitration Centre Administered Arbitration Rules

The HKIAC at a Glance

Advantages:

A recently modernised set of rules that follows western standards and is quite similar to the ICC rules, but does not copy typical, sometimes criticized features of the ICC rules including the terms of reference and the scrutiny of the award.

Costs are inferior to ICC.

Disadvantages:

The remuneration system for arbitrators is unusual. The parties and the arbitrator may agree on either remuneration at an hourly rate or on the basis of the fee schedule. Moreover, the designating party and the respective co-arbitrator agree on the rate. Hence, the co-arbitrators may be remunerated differently.

Specific Features:

In 2000 the Arbitration (Amendment) Ordinance implemented legislation for an arrangement between China and Hong Kong on the mutual enforcement of arbitral awards. The said amendment also further clarified the procedure for enforcement of arbitral awards, orders, and directions, made either in or outside of Hong Kong. Arbitral awards, including ad hoc awards, issued in Hong Kong are recognised and enforceable in mainland China under a mutual arrangement. However, non-monetary awards, such as injunctions, are not covered by the arrangement. A claimant should therefore consider the desired outcome when choosing between Hong Kong and the PRC as an arbitration seat.

Please note that the place of arbitration is generally Hong Kong if the parties did not agree otherwise.

Recommended for:

International disputes with a focus in East Asia.

Date the rules came into force:

2018

I. Model Clause

"Any dispute, controversy, difference or claim arising out of or relating to this contract, including the existence, validity, interpretation, performance, breach or termination thereof or any dispute regarding non- contractual obligations arising out of or relating to it shall be referred to and finally resolved by arbitration administered by the Hong Kong International Arbitration Centre (HKIAC) under the HKIAC Administered Arbitration Rules in force when the Notice of Arbitration is submitted.

Optional additions:

- The law of this arbitration clause shall be ... (Hong Kong law).
- The seat of arbitration shall be ... (Hong Kong).
- The number of arbitrators shall be ... (one or three). The arbitration proceedings shall be conducted in ... (insert language)."

II. Arbitrators

2.1 Number of Arbitrators

Subject to party agreement; by default one or three as decided by HKIAC (Art. 6.1).

2.2 Nomination process

Three arbitrators:

Each party appoints one arbitrator; these two appoint the third arbitrator (Art. 8).

- The Claimant shall designate an arbitrator within 15 days from the date of that agreement, and the Respondent shall designate an arbitrator within 15 days from receiving notice of the Claimant's designation. If a party fails to do so, the HKIAC Council shall appoint the second arbitrator.
- Where the parties have not agreed upon the number of arbitrators and HKIAC has decided that the dispute shall be referred to three arbitrators, the Claimant shall designate an arbitrator within 15 days from receipt of HKIAC's decision, and the Respondent shall designate an arbitrator within 15 days from receiving notice of the Claimant's designation. If a party fails to designate an arbitrator, HKIAC shall appoint the arbitrator.
- The two arbitrators shall designate a third arbitrator, who shall act as the presiding arbitrator. If this designation is not made within 30 days from the confirmation of the second arbitrator or within the time limit set by the parties' agreement, the HKIAC Council shall appoint the presiding arbitrator.

Sole arbitrator: Art. 7

- where the parties have agreed before the arbitration commences that the dispute shall be referred to a sole arbitrator, they shall jointly designate the sole arbitrator within 30 days from the date the Notice of Arbitration was received by the Respondent where the parties have agreed after the arbitration commences to refer the dispute to a sole arbitrator, they shall jointly designate the sole arbitrator within 15 days from the date of that agreement
- where the parties have not agreed upon the number of arbitrators and HKIAC has decided that the dispute shall be referred to a sole arbitrator, the parties shall jointly designate the sole arbitrator within 15 days from the date HKIAC's decision was received by the last of them
- If the parties fail to designate the sole arbitrator, the HKIAC Council shall appoint the sole arbitrator.
- Where the parties have agreed on a different procedure for designating the sole arbitrator and such procedure does not result in a designation within a time limit agreed by the parties or set by HKIAC, HKIAC shall appoint the sole arbitrator.

2.3 Further Specialities

In multi-party arbitration, the Dutco-rule (Siemens AG and BKMI Industrieanlagen GmbH v Dutco Construction Co (Dubai) – French Cour de Cassation decision of 7 January 1992, Revue de l' arbitrage 470 (1992)) applies. Multiple parties as Claimants or "Respondents" are supposed to nominate their arbitrator jointly if parties agreed on a tribunal composed of three arbitrators. In case parties cannot agree on the arbitrators the Court will make the substitute appointments and may appoint each member of the tribunal.

III. Place or seat of arbitration

In the absence of an agreement of the parties, the seat of arbitration shall be Hong Kong, unless the arbitral tribunal determines, having regard to the circumstances of the case, that another seat is more appropriate (Art. 14).

IV. Arbitration language

The arbitration shall be conducted in the arbitration language. Where the parties have not previously agreed on such language, any party shall communicate in English or Chinese prior to any determination by the arbitral tribunal. Subject to agreement by the parties, the arbitral tribunal shall, promptly after its appointment, determine the language or languages of the arbitration (Art. 15).

V. Applicable Law

The arbitral tribunal shall decide the substance of the dispute in accordance with the rules of law agreed upon by the parties. Any designation of the law or legal system of a given jurisdiction shall be interpreted, unless otherwise expressed, as directly referring to the substantive law of that jurisdiction and not to its conflict of laws rules.

If this is not designated by the parties, the arbitral tribunal shall apply the rules of law which it determines to be appropriate (Art. 36.1.).

VI. Establishing the facts

At any time during the arbitration, the arbitral tribunal may allow or require a party to produce documents, exhibits or other evidence that the arbitral tribunal determines to be relevant to the case and material to its outcome. The arbitral tribunal shall have the power to admit or exclude any documents, exhibits or other evidence (Art. 22.3).

VII. Interim measures

A party may apply for urgent interim or conservatory relief ("Emergency Relief") prior to the constitution of the arbitral tribunal under the procedures set out in Schedule 4 (the "Emergency Arbitrator Procedures"). At the request of either party, the arbitral tribunal may order any interim measures it deems necessary or appropriate (Art. 23).

VIII. Are expedited proceedings possible?

Yes. Prior to the constitution of the arbitral tribunal, a party may apply to HKIAC for the arbitration to be conducted in accordance with Art. 42.2 where:

- the amount in dispute representing the aggregate of any claim and counterclaim (or any set-off defence) does not exceed HKD 25,000,000 (ca. EUR 2,863,625); or
- the parties so agree; or
- in cases of exceptional urgency.

The matter will be decided by a sole arbitrator and time limits will be shortened. The award will be made in six months.

IX. Are proceedings confidential?

Yes. Unless otherwise agreed by the parties, no party may publish, disclose or communicate any information relating to: (a) the arbitration under the arbitration agreement(s); or (b) an award or Emergency Decision made in the arbitration (Art. 45.1).

Hearings shall be held in private unless the parties agree otherwise. The arbitral tribunal may require any witness or expert to leave the hearing room at any time during the hearing (Art. 22.7).

X. Costs

The fees and expenses of the arbitral tribunal shall be determined according to either:

- an hourly rate in accordance with Schedule 2; or
- the schedule of fees based on the sum in dispute referred to in Schedule 3.

The parties shall agree the method for determining the fees and expenses of the arbitral tribunal, and shall inform HKIAC of the applicable method within 30 days of the date on which the Respondent receives the Notice of Arbitration. If the parties fail to agree on the applicable method, the arbitral tribunal's fees and expenses shall be determined in accordance with the terms of Schedule 2 (Art. 10).

10.1 Fees of the institution and of the arbitrators (Schedules 1 to 3)

Amount in dispute	One arbitrator – max (fee per arbitrator)
EUR 100,000	EUR 10,075.01 (HKD 87,809.32)
EUR 1 million	EUR 47,855.85 (HKD 417,191.99)
EUR 10 million	EUR 113,719.63 (HKD 991,498.75)

10.2 In addition to the Administrative Fees

Fixed non-refundable Registration Fee of HKD 8,000 pursuant to Art. 4.4 and Schedule 1 of the HKIAC Rules.

Amount in dispute	Fees of Institution
EUR 100,000	EUR 2,950.19 (HKD 25,718.74)
EUR 1 million	EUR 9,259.10 (HKD 80,698.20)
EUR 10 million	EUR 22,608.83 (HKD 197,083.25)

10.3 Decision on Costs

The arbitral tribunal shall determine the costs of the arbitration in its award. The term "costs of the arbitration" includes only (Art. 34.1):

- the fees of the arbitral tribunal, as determined in accordance with Art. 10;
- the reasonable travel and other expenses incurred by the arbitral tribunal;
- the reasonable costs of expert advice and of other assistance required by the arbitral tribunal, including fees and expenses of any tribunal secretary;
- the reasonable costs for legal representation and other assistance, including fees and expenses of any witnesses and experts, if such costs were claimed during the arbitration and

- the Registration Fee and Administrative Fees payable to HKIAC in accordance with Schedule 1, and any expenses payable to HKIAC.

Art. 34.3: The arbitral tribunal may apportion all or part of the costs of the arbitration referred to in Art. 33.1 between the parties if it determines that apportionment is reasonable, taking into account the circumstances of the case. A large majority of tribunals adopt the "loser pays" approach as a starting point.

XI. The institution's involvement

Little involvement (ICC–style, e.g. in the nomination of arbitrators in case of default).

ELArb – European-Latinamerican Arbitration Association

The ELArb at a Glance

Advantages:

New arbitration center with very modern Arbitration Rules (for further explanations see below), founded by experienced arbitrators and backed by institutions with longstanding arbitral experience (Hamburg Chamber Of Commerce and Verein Rechtsstandort Hamburg) and Latin American business (Lateinamerikaverein); less expensive as compared to ICC and DIS.

Disadvantages:

Recently founded Start-up and therefore not yet very well recognised/known. But this will change: The ELArb is in the process of being heavily promoted, in particular in Europe and Latin America.

Specific Features:

Interesting features are:

- Publication of awards, as specified in Art. 27.4
- The ELArb European Latinamerican Arbitration Association may publish, in anonymized form, the arbitral awards rendered in accordance with the ELArb Arbitration Rules, provided that none of the parties objects within four weeks of receiving of the award (opt-out).
- Mediation option, as specified in Art. 20:
  - (1) Once the arbitral tribunal has been constituted, the parties may at any time, by filing concurrent written declarations, request a stay of the arbitral proceedings for the purpose of a mediation attempt. The requests must include a joint nomination of a mediator, a mediation institution and/or mediation rules. Members of the arbitral tribunal cannot be mediators in the same proceeding.
  - (2) The concurrent declarations extend the existing arbitration agreement between the parties to the mediation. The mediation is, in particular as regards costs, an own procedure separate from the arbitral proceedings.
  - (3) Upon receipt of the concurrent declarations, the arbitral tribunal shall stay the ar-

bitral proceedings. The same applies if the mediation attempt relates to parts of the dispute only. The decision stays all current time limits of the arbitration proceedings for the period of the stay. The arbitral tribunal shall inform the mediator or the mediation institution about the stay decision and shall enclose, at the request of the parties, the case file with a request to acknowledge receipt of the information. For the purposes of the arbitration proceedings, the date of receipt shall be deemed to be the date of commencement of the mediation.

- (4) The decision to stay shall take effect for a period of eight weeks maximum, beginning on the date of commencement of the mediation. During this period, the mediation must be finalized. After the eight weeks, or sooner if the parties, or one of them, report in writing the success or the failure of the mediation to the arbitral tribunal, the arbitral tribunal requests the mediator or mediation institution to return the case files, if applicable.
- (5) The arbitral proceedings shall be continued as a whole or concerning only the part of the dispute for which no agreement could be reached in case that the mediation has failed fully or partially.
- (6) If, as a result of the mediation, the parties have reached agreement regarding the subject matter of the dispute as a whole or regarding a part thereof, the arbitral tribunal shall, upon a concurrent request of the parties, issue an award on agreed terms.

- The penalty for the party which refuses to contribute its share of the advance on costs, as specified in Art. 26.4: Where one party does not, within the fixed time limit, pay its full equal share of the securities for costs as requested from the parties by the arbitral tribunal under Article 10 paragraph (3), that party loses its right to reimbursement of expenses incurred for its legal representation within the meaning of Article 25, paragraph (2) c). The arbitral tribunal shall consider this when rendering its decision on costs under Article 25 paragraph (5). In such a case, the other party may pay the unpaid share of any security on costs within 30 days upon notification from the arbitral tribunal.

Recommended for:

In particular for commercial disputes between parties from Europe and Latin America but open and fit for parties/disputes from all over the world. The Arbitration Rules are drafted in consideration of the world-wide accepted standards of UNCITRAL. They in particular comply with the legal environment in most Latin American and European countries.

Date the rules came into force:

2018

I. Model Clause

"All contractual and extra-contractual disputes, arising out of or in connection with this contract, its alterations, supplements and/or other agreements of the parties to which this contract applies, including its/their validity, invalidity, violation or cancellation, shall be finally resolved, without recourse to the ordinary courts of law, by arbitration according to the ELArb Arbitration Rules in force on the date when the Notice of Arbitration is received.

- According to the ELARB Arbitration Rules the tribunal shall consist of three arbitrators, one of them being nominated by the Claimant, one of them by the Respondent. Deviating from that, it is hereby agreed that the tribunal shall consist of one arbitrator only.
- The place of the arbitration shall be ...
- The language used in the arbitral proceedings shall be ...
- The applicable law for the judgement of the legal dispute shall be ..."

II. Arbitrators

2.1 Number of Arbitrators

Art. 4.1: The arbitral tribunal consists of three arbitrators unless the parties have agreed on a decision by sole arbitrator.

2.2 Nomination process

Three arbitrators:

Each party nominates its arbitrator at the beginning of the proceedings (Art. 2.2 (g) and Art. 3.2 (d)). If the Respondent has not appointed an arbitrator, the Claimant may request the ELArb Arbitration Center to appoint the arbitrator (Art. 4.2). The two nominated arbitrators shall choose the third arbitrator who will act as the presiding arbitrator of the arbitral tribunal. If within 30 calendar days – extendable only upon the arbitrators' concurrent request – after receipt of a corresponding summons from the ELArb Arbitration Center, the arbitrators have not reached agreement on the presiding arbitrator and notified their choice to the ELArb Arbitration Center, the ELArb Arbitration Center shall, at the request of a party, appoint the presiding arbitrator (Art. 4.3).

Sole arbitrator:

Art. 4.4: If the parties have agreed on a decision by sole arbitrator but not reached agreement on the appointment of a sole arbitrator and notified their choice to the ELArb Arbitration Center within 30 calendar days after receipt of a corresponding summons by the ELArb Arbitration Center, the ELArb Arbitration Center shall, at the request of a party, appoint the sole arbitrator. The above- mentioned time limit can only be extended upon concurring request of the parties.

2.3 Further Specialities

None

III. Place or seat of arbitration

Art. 15: (1) If the parties have not agreed on the place of the arbitration, the arbitral tribunal shall determine the place of arbitration. In doing so, the arbitral tribunal shall have regard to the circumstances of the case.

(2) The arbitral tribunal may meet for deliberations at any location it considers appropriate. Unless otherwise agreed by the parties, the arbitral tribunal may also meet for other purposes, in particular oral hearings, at any location it considers appropriate.

IV. Arbitration language

Art. 2.1: The party initiating recourse to arbitration (hereinafter called the "Claimant") shall file to the ELArb Arbitration Center a signed notice of arbitration in a number of copies sufficient to provide one copy for each arbitrator, for each party and for the ELArb Arbitration Center. Unless the parties have agreed in writing on the language to be used in the arbitral proceedings, the Claimant can draft the notice of arbitration at his discretion in German, English, Portuguese or Spanish.

Art. 3-1: Within 30 calendar days of the receipt of the notice of arbitration, the Respondent shall file to the ELArb Arbitration Center a signed response to the notice of arbitration in a number of copies sufficient to provide one copy for each arbitrator, for each party and for the ELArb Arbitration Center. Unless the parties have agreed in writing on the language to be used in the arbitral proceedings, the Respondent can draft its response to the notice of arbitration at his discretion in German, English, Portuguese or Spanish.

Art. 16.1: Unless otherwise agreed by the parties, the arbitral tribunal shall determine the language or the languages to be used in the proceedings. Absent any further instructions by the arbitral tribunal, this determination shall apply to the statement of claim, the statement of defence, any further written statements, oral hearings, and arbitral awards, as well as other decisions and communications of the arbitral tribunal.

Art. 16. 2: The arbitral tribunal may order that any documents annexed to the statement of claim or statement of defence, and any supplementary documents or exhibits submitted in the course of the proceedings shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.

V. Applicable Law

Art. 17.1: The arbitral tribunal shall apply the rules of law designated by the parties as applicable to the substance of the dispute.

(2) Failing any designation by the parties, the arbitral tribunal shall apply the law of the State with which the subject matter of the proceedings is most closely connected.

(3) The arbitral tribunal shall apply ex officio the rules set forth in paragraph (1) and (2).

(4) The arbitral tribunal shall decide as amiable compositeur or ex aequo et bono only if the parties have expressly authorized the arbitral tribunal to do so.

VI. Establishing the facts

Civil law approach.

VII. Interim measures

Art. 19.1: The arbitral tribunal may, upon request of a party, order any interim measure the arbitral tribunal considers necessary regarding subject matter of the dispute, provided that appropriate security for the other party is ensured.

(2) Irrespective of Paragraph (1), a party may file a request for interim measures before a state court in respect of the subject matter in dispute. Such request for interim measures shall not be deemed a waiver of the arbitration agreement.

VIII. Are expedited proceedings possible?

No

IX. Are proceedings confidential?

Art. 27.1: Oral hearings will be held in private. Upon concurrent request of the parties or if required by mandatory provisions concerning one of the parties, the arbitral tribunal may permit the presence of third parties in the oral hearing.

(2) The parties, the arbitrators and the persons at the ELArb Arbitration Center involved in the administration of the arbitral proceedings as well as other persons involved in the arbitral proceedings shall treat the arbitration, in particular the commencement of arbitral proceedings, their content, orders and awards, as well as the parties involved, the witnesses, the experts and other evidentiary materials as strictly confidential This does not include disclosures required of a party by law or disclosures necessary to enforce or to challenge the award, or to enforce other claims resulting from the arbitration.

(3) In court proceedings after termination of the arbitral proceedings, neither the Claimant nor the Respondent shall name any arbitrator or the persons involved by the arbitral tribunal as a witness for circumstances which are confidential under these Rules or are subject to the duty of confidentiality.

(4) The ELArb European Latinamerican Arbitration Association may publish, in anonymized form, the arbitral awards rendered in accordance with the ELArb Arbitration Rules, provided that none of the parties objects within a time-limit of 4 (four) weeks after receipt of the award (opt-out).

X. Costs

Less expensive than most other institutions dealing with international commercial arbitration (ICC, DIS).

10.1 Fees of Arbitrators

There exists a published Schedule of Costs (fixed rates) as well as – more importantly – a Cost Calculator on the website **here**. Art. 25.4 allows for increases and reductions as follows: In the event of a decision without oral hearing, the fees of the Schedule of Costs shall be reasonably reduced. In exceptionally comprehensive or difficult cases the fees of the Schedule of the Costs may be increased appropriately. Decisions regarding a reduction or increase of the fees will be rendered by the ELArb Arbitration Center.

Amount in dispute	One arbitrator – medium	Each co-arbitrator – medium
EUR 100,000	EUR 5,516	EUR 4,062
EUR 1 million	EUR 23,192	EUR 18,194
EUR 10 million	EUR 74,172	EUR 56,454

10.2 Fees of Institution

The ELArb Arbitration Center charges an administration fee amounting between EUR 500 (minimum) and EUR 25,000 (maximum), depending on the amount in dispute. The fee is established in a published schedule and can be calculated with the aforementioned cost calculator it amounts to.

Amount in dispute	Fees of Institution
EUR 100,000	EUR 1,000
EUR 1 million	EUR 8,200
EUR 10 million	EUR 25,000

10.3 Decision on Costs

Art. 25.1: Unless the parties have agreed otherwise, the arbitral tribunal rules on the costs of the proceedings.

(2) The costs of the arbitral proceedings include:

- the ELArb Arbitration Center administrative fee;
- the expenses of the arbitral tribunal, including the fees of the arbitrator(s) plus value added tax if applicable, travel expenses and other expenses;
- the costs and expenses reasonably incurred by the parties

- the expenses for appointed experts, interpreters, court reporters as well as any other expenses relating to the arbitral proceedings.

(3) The administration fee and the fees of the arbitrators shall be calculated in accordance with the Schedule of Costs. The fees shall be fixed with reference to the amount in dispute, which is to be assessed by the arbitral tribunal.

(4) In the event of a decision without oral hearing, the fees of the Schedule of Costs shall be reasonably reduced. In exceptionally comprehensive or difficult cases the fees of the Schedule of the Costs may be increased appropriately. Decisions regarding a reduction or increase of the fees will be rendered by the ELArb Arbitration Center.

(5) The arbitral tribunal shall, at its discretion, rule on the allocation of costs between the parties. It may take all relevant circumstances into account, in particular the extent to which each party has prevailed or lost and the way the parties have conducted the proceedings.

XI. The institution's involvement

The ELArb Arbitration Center is involved at the beginning of the proceedings (before the arbitral tribunal is constituted) and at the end of the proceedings (service of awards) only. There is no award scrutiny. Main areas are nomination and replacement of arbitrators.

AAA – American Arbitration Association

American Arbitration Association
Dispute Resolution Services Worldwide

The AAA at a Glance

Advantages:

In comparison with some other institutions, the AAA offers a more flexible and less bureaucratic procedure. An application for emergency relief prior to the constitution of the arbitral tribunal may be made.

The International Centre for Dispute Resolution (ICDR) maintains a list of more than 400 independent arbitrators and mediators.

Disadvantages:

The list of approved arbitrators mostly includes citizens of the United States.

The costs are very unpredictable, since the Administrator shall designate an appropriate daily or hourly rate of compensation in consultation with the parties and all arbitrators.

Specific Features:

None

Recommended for:

May be considered especially for relationships within the framework of US businesses.

Date the rules came into force:

2021

I. Model Clause

"Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be determined by arbitration administered by the International Centre for Dispute Resolution in accordance with its International Arbitration Rules.

The parties should consider adding:

- The number of arbitrators shall be (one or three);
- The place of arbitration shall be [city, (province or state), country]; and
- The language of the arbitration shall be _____ ."

Speciality

The arbitral tribunal has the ability to rule on its own jurisdiction "without any need to refer such matters first to a court" (Art. 21). Other major arbitral jurisdictions approach the issue of competence-competence by affording the arbitrators the right, in the first instance, to decide questions concerning their jurisdiction.

II. Arbitrators

2.1 Number of Arbitrators

One arbitrator unless Administrator decides three is appropriate (Art. 12).

2.2 Nomination process

Parties may agree upon any procedure for appointing arbitrators (Art. 13.1). In the absence of party agreement as to the method of appointment, the Administrator may use the ICDR list method as provided in Art. 13.6 (Art. 13.1).

Parties reach an agreement within 45 days after the commencement of the arbitration (Art. 13.3). Nomination by the Administrator upon request by either party after expiry of the 45 days (Art. 13.3).

2.3 Further Specialities

According to the ICDR list method, the Administrator shall send out a list of names of persons for consideration as arbitrators to the parties. The parties are encouraged to agree to an arbitrator(s) from the submitted list. In the event of no agreement between the parties, the Administrator has the power to appoint arbitrator(s) without the submission of additional lists (Art. 13.6).

A party, who knows of any non-compliance with any provision or requirement of the Rules or the arbitration agreement, and proceeds with the arbitration without promptly stating an objection in writing, waives any subsequent right to object (Art. 31).

III. Place or seat of arbitration

In the absence of an agreement, the Administrator may initially determine the place of arbitration, subject to the power of the arbitral tribunal to determine finally the place of arbitration within 45 days after its constitution (Art. 17.1). The rules do not provide for an approach the tribunal shall apply in doing so.

The tribunal may meet at any place it deems appropriate for any purpose (e.g. hearings) (Art. 19.2).

IV. Arbitration language

In the absence of an agreement, the language(s) of the arbitration shall be the language(s) of the documents containing the arbitration agreement, subject to the power of the arbitral tribunal to determine otherwise (Art. 20).

The tribunal may order that any documents delivered shall be accompanied by a translation into the language(s) of arbitration (Art. 20).

V. Applicable Law

In the absence of any designation, the arbitral tribunal shall apply such law(s) or rules of law as it determines to be appropriate (Art. 34.1).

The tribunal shall not decide as amiable compositeur or ex aequo et bono unless the parties have expressly authorized it to do so (Art. 34.3).

Unless otherwise agreed, the parties expressly waive and forego any right to punitive, exemplary or similar damages unless any applicable law(s) requires that compensatory damages be increased in a specified manner. This provision shall not apply to an award of arbitration costs to a party to compensate for misconduct in the arbitration (Art. 34.5).

VI. Establishing the facts

At any time during the proceedings, the tribunal may order the parties to produce documents, exhibits, or other evidence it deems necessary or appropriate (Art. 22.5).

The tribunal may, upon application, require a party to make available to another party documents in that party's possession not otherwise available to the party seeking the documents, that are reasonably believed to exist and to be relevant and material to the outcome of the case. Requests for documents shall contain a description of specific documents or classes of documents, along with an explanation of their relevance and materiality to the outcome of the case (Art. 24.4).

The tribunal may condition any exchange of information subject to claims of commercial or technical confidentiality on appropriate measures to protect such confidentiality (Art. 24.5).

The tribunal may, on application, require a party to permit inspection on reasonable notice of relevant premises or objects (Art. 24.7).

The arbitral tribunal, after consultation with the parties, may appoint one or more independent experts to report to it (Art. 28.1).

VII. Interim measures

At the request of any party, the arbitral tribunal may order or award any interim or conservatory measures it deems necessary, including injunctive relief and measures for the protection or conservation of property (Art. 27.1).

A request for interim measures addressed by a party to a judicial authority shall not be deemed incompatible with the agreement to arbitrate or a waiver of the right to arbitrate Art. 27.3).

An application for emergency relief prior to the constitution of the arbitral tribunal may be made as provided for in Art. 6 (Art. 27.5).

VIII. Are expedited proceedings possible?

Yes. Regulated in the International Expedited Procedures (Art. E1- E10). These procedures are for cases where no disclosed claim or counterclaim exceeds USD $500,000 (excluding interest and costs).

The parties may agree to the application of these Expedited Procedures on matters of any claim size. Where parties intend that the Expedited Procedures shall apply regardless of the amount in dispute, they may consider the following clause:

"Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be determined by arbitration administered by the International Centre for Dispute Resolution in accordance with its International Expedited Procedures."

IX. Are proceedings confidential?

Yes. Confidential information disclosed during the arbitration by the parties or by witnesses shall not be divulged by an arbitrator or by the Administrator. Except as provided in Art. 40.3, unless otherwise agreed by the parties or required by applicable law, the members of the arbitral tribunal and the Administrator shall keep confidential all matters relating to the arbitration or the award (Art. 40.1).

Unless the parties agree otherwise, the tribunal may make orders concerning the confidentiality of the arbitration or any matters in connection with the arbitration and may take measures for protecting trade secrets and confidential information (Art. 40.2).

An award may be made public only with the consent of all parties or as required by law, except that the Administrator may publish or otherwise make publicly available selected

awards, orders, decisions, and rulings that have become public in the course of enforcement or otherwise and, unless otherwise agreed by the parties, may publish selected awards, orders, decisions, and rulings that have been edited to conceal the names of the parties and other identifying details (Art. 40.3).

The ICDR may also publish selected awards, orders, decisions, and rulings that have been edited to conceal the names of the parties and other identifying details unless a party has objected in writing to publication within 6 months from the date of the award (Art. 40.4).

X. Costs

Quite reasonable compared to other institutions.

10.1 Fees of Arbitrators

The Administrator shall designate an appropriate daily or hourly rate of compensation in consultation with the parties and all arbitrators, taking into account the arbitrators' stated rate of compensation and the size and complexity of the case (Art. 38.2). Any dispute regarding the fees and expenses of the arbitrators shall be determined by the Administrator (Art. 38.3).

10.2 Fees of Institution

The ICDR offers parties two options for the payment of administrative fees (Standsard Fee Schedule (two-payment schedule that provides for somewhat higher initial filing fees but lower overall administrative fees for cases that proceed to a hearing) and Flexible Fee Schedule (three-payment schedule that provides for lower initial filing fee and then spreads subsequent payments out over the course of the arbitration. Total administrative fees will be somewhat higher for cases that proceed to a hearing) – at the moment "International Dispute Resolution Procedures Administrative Fee Schedules" in force as of June 1, 2018). For both schedules, administrative fees are based on the amount of the claim or counterclaim and are to be paid by the party bringing the claim or counterclaim at the time the demand or claim is filed with the ICDR. Arbitrator compensation is not included in either schedule.

Amount in dispute	**Fees of Institution**	Standard Fee Schedule	Flexible Fee Schedule
USD 75,000	USD 800	USD 2,350 + USD 1,675	only available for claims USD 150,000 and above
USD 1 million	USD 6,825	USD 9,925 + USD 11,900	USD 5,300 + USD 9,250 + USD 11,900
USD 10 million	USD 13,750	USD 9,925 + USD 11,900	USD 7,925 + USD 13,250 + .015 % of the claim amount above USD 10,000,000 up to USD 100,000 + USD 18,500

10.3 Decision on Costs

The arbitral tribunal shall fix the costs of arbitration in its award(s). The tribunal may allocate such costs among the parties if it determines that allocation is reasonable, taking into account the circumstances of the case (Art. 37).

XI. The institution's involvement

The involvement of the ICDR is relatively reluctant being primarily concerned with the appointment of (and challenges to) the tribunal.

- If there are more than two parties to the arbitration, the Administrator may appoint all arbitrators unless the parties have agreed otherwise no later than 45 days after the commencement of the arbitration (Art. 13.5).
- If the parties have not selected an arbitrator(s) and have not agreed upon any other method of appointment, the Administrator, at its discretion, may appoint the arbitrator(s) in the following manner using the ICDR list method (Art. 13.6).
- The Administrator, on its own initiative, may remove an arbitrator for failing to perform his or her duties (Art. 15.4).
- Documents or information submitted to the tribunal by one party shall at the same time be transmitted by that party to all parties and, unless instructed otherwise by the Administrator, to the Administrator (Art. 22.6).
- The award shall be transmitted in draft form by the tribunal to the Administrator. The award shall be communicated to the parties by the Administrator (Art. 33.3). The Administrator does not review the award.

UNCITRAL – United Nations Commission on International Trade Law

United Nations
UNCITRAL

The UNCITRAL at a Glance

Advantages:

The UNCITRAL Rules offer parties considerable flexibility, and the review process and requirement of reasonableness helps to keep costs under control.

Disadvantages:

The fees of the arbitrators are unpredictable since UNCITRAL does not provide for fixed fees but the arbitrators are entitled to charge "*reasonable fees*".

Specific Features:

UNCITRAL is not an arbitral body in its own right, and an arbitration under the UNCITRAL Arbitration Rules must be conducted either with ad hoc elements or with the assistance of an established arbitral body. Its rules provide a framework in which an arbitration can be conducted. The presumption in favour of a three- person Tribunal is unusual and should be considered in advance if possible.

Recommended for:

Disputes in which no arbitration procedure has been agreed between the parties; ad hoc arbitrations.

Date the rules came into force:

2021

I. Model Clause

"Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules.

Parties should consider adding:

- (a) The appointing authority shall be ... (name of institution or person);
- (b) The number of arbitrators shall be ... (one or three);
- (c) The place of arbitration shall be ... (town and country);
- (d) The language to be used in the arbitral proceedings shall be ..."

Posible waiver provision: "The parties hereby waive their right to any form of recourse against an award to any court or other competent authority, insofar as such waiver can validly be made under the applicable law."

II. Arbitrators

2.1 Number of Arbitrators

Unless the parties have agreed on the number of arbitrators, a three member tribunal will be appointed. Any agreement for a sole arbitrator must be made within 30 days after the receipt by the respondent of the notice of arbitration, failing which a three member tribunal is appointed (Art. 7.1).

2.2 Nomination process

Three arbitrators:

Each party appoints one arbitrator; those two arbitrators together appoint a third arbitrator who acts as chairman. If a party fails to make a choice within thirty days of being notified of the other party's appointment, the party which has made an appointment can ask the appointing authority (1) to make the choice; the same applies if the two appointed arbitrators fail to appoint their chairman within thirty days (Art. 9).

(1) The appointing authority would be one of the established arbitral institutions (ICC, DIS, LCIA etc.). In order for it to have authority to choose the arbitrators, the appointing authority would need to have been chosen by the parties in the arbitration agreement. The Model Clause provides for this to be decided between the parties beforehand – see clause (a) of the Model Clause. If the parties have not agreed an appointing authority, they can either choose the arbitrators or an appointing authority by consent, or make an application to the court for a determination on this issue.

Sole arbitrator:

Either party may propose a person to act as sole arbitrator, or an institution or person

to act as appointing authority (such as the ICC or the LCIA). If within 30 days the parties have not agreed on a sole arbitrator, the appointment will be made by the appointing authority using the Rules' "list procedure" unless the parties agree otherwise, or the authority determines that it would not be appropriate. This list procedure describes the process whereby the appointing authority sends each party an identical list of suggested arbitrators. The parties delete any names they object to, and list remaining names in order of preference. The appointing authority then selects an arbitrator in accordance with the order of preference indicated by the parties (Art. 8).

2.3 Further Specialities

Art. 11 of the UNCITRAL Rules require a prospective arbitrator to disclose "any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence".

III. Place or seat of arbitration

The seat of the arbitration is to be determined by the tribunal unless the parties have agreed on a seat (Art. 18.1). Hearings may be held at locations other than the seat and the award is deemed to have been made at the seat (Art. 18.1., 2).

IV. Arbitration language

The parties may agree on the language(s) of the arbitration; should they fail to do so that issue will be decided by the tribunal promptly after its appointment (Art. 19).

V. Applicable Law

The Tribunal applies the law chosen by the parties, by consent, as applicable to the substance of the dispute. Should the parties fail to agree on the applicable law, the Tribunal applies the laws, which it deems to be appropriate. In all cases, the Tribunal applies the law of the contract in dispute, if any (Art. 35).

VI. Establishing the facts

6.1 Document production:

Each party bears the burden of proving its own factual case (Art. 27). Upon reading the various statements in the arbitration, the tribunal is empowered to require the parties to produce documentary evidence and to decide on the admissibility, relevance, materiality and weight of the evidence offered (Art. 27.3-4). The parties are free to apply to the Tribunal to make such orders.

6.2 Witness statements and experts:

Parties may submit written witness statements. Witnesses, including expert witnesses, may be heard under the conditions and examined in the manner set by the arbitral tribunal. (Art. 28). After consultation with the parties, the arbitral tribunal may appoint one or more independent experts to report to it in writing, on specific issues to be determined by the arbitral tribunal, a specific procedure for this is set out in Art. 29.

VII. Interim measures

Once the Tribunal is formally constituted, interim measures are available to the parties. The Tribunal has discretion to grant interim relief, including orders to maintain or restore the status quo pending determination of the dispute; orders to prevent current or imminent harm or prejudice to the arbitration; orders to preserve assets out of which a future award may be satisfied; and orders to preserve evidence. The procedure and requirements for obtaining such measures are set out in detail in Art. 26.

VIII. Are expedited proceedings possible?

Yes. The Expedited Arbitration Rules in the appendix shall apply to the arbitration where the parties so agree (Art. 1.5).

IX. Are proceedings confidential?

No. Confidentiality obligations are to be agreed between the parties.

X. Costs

Costs associated with UNICTRAL arbitrations are required to be reasonable and are subject to a review mechanism. As such, they tend to be comparable with the costs of other arbitral mechanisms.

10.1 Fees of Arbitrators

Arbitrators are entitled to charge reasonable fees on a basis agreed between the parties and the Tribunal, together with reasonable travel and sundry expenses.

10.2 Fees of Institution

The UNCITRAL does not have an institutional involvement in the same way as, say, the LCIA or the ICC. However, an institution such as the LCIA may be involved in the arbitration, for example in the appointment of the Tribunal, and those fees and expenses form part of the final award on costs. The fees and expenses of the Secretary-General of the PCA also form part of this final award.

10.3 Decision on Costs

The costs of the arbitration are usually borne by the unsuccessful party or parties. The Tribunal can apportion the costs between the parties differently if it determines that apportionment is reasonable, taking into account the circumstances of the case, such as the parties' conduct.

XI. The institution's involvement

UNCITRAL is not an arbitral institution in its own right and it does not administer or oversee arbitrations. An actual arbitral institution (such as the DIS or ICC) may be involved in the appointment of the Tribunal, as discussed above, or the administration of the proceedings.

TaylorWessing

Arbitration Group Main Contacts

Donata von Enzberg
Partner, Hamburg
D.Enzberg@taylorwessing.com

Nick Storrs
Partner, London
N.Storrs@taylorwessing.com

Karel Daele
Partner, London
K.Daele@taylorwessing.com

Laure Hue De La Colombe
Partner, Paris
L.HueDeLaColombe@taylorwessing.com

Mark Goorts
Partner, Eindhoven
M.Goorts@taylorwessing.com

Ivo Deskovic
Partner, Vienna
I.Deskovic@taylorwessing.com

As of May 2024