
AFSA ADVANCED PROGRAMME IN ALTERNATIVE DISPUTE RESOLUTION

ISSUED IN COLLABORATION WITH THE UNIVERSITY OF PRETORIA

INTERNATIONAL COMMERCIAL ARBITRATION

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SECTION 1

AFSA 2021 REVISED INTERNATIONAL ARBITRATION RULES FLOWCHART



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AFSA
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Flowchart of the 2021 AFSA International Arbitration Rules: Revised Edition

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Flowchart of the 2021 AFSA International Arbitration Rules

Revised Edition

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Flowchart of the 2021 AFSA International Arbitration Rules

Revised Edition

Agenda

-  Preliminary Steps & Commencing the Arbitration
-  Prior to the Constitution of the Arbitral Tribunal
-  Formation of the Tribunal
-  Arbitral Procedure
-  Award and Post-Award

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Flowchart AFSA 2021 International Arbitration Rules - Revised Edition

AFSA is the body responsible for the administration of disputes in accordance with the rules and is comprised of the **AFSA International Board**, **AFSA International Court** ("AFSA Court") and **AFSA International Secretariat** ("the Secretariat"), led by its Secretary-General.

Where the parties have agreed for arbitration to take place under AFSA Rules, they should be taken to have agreed that any arbitration between them will be conducted in accordance with the AFSA International Arbitration Rules.

AFSA Court does not decide the merits of the disputes. However, it supervises the administration of the resolution of disputes by the Arbitral Tribunals. Specifically, the AFSA Court is empowered to appoint and sanction the appointment of arbitrators and to deal with challenges to appointments and issues of jurisdiction.

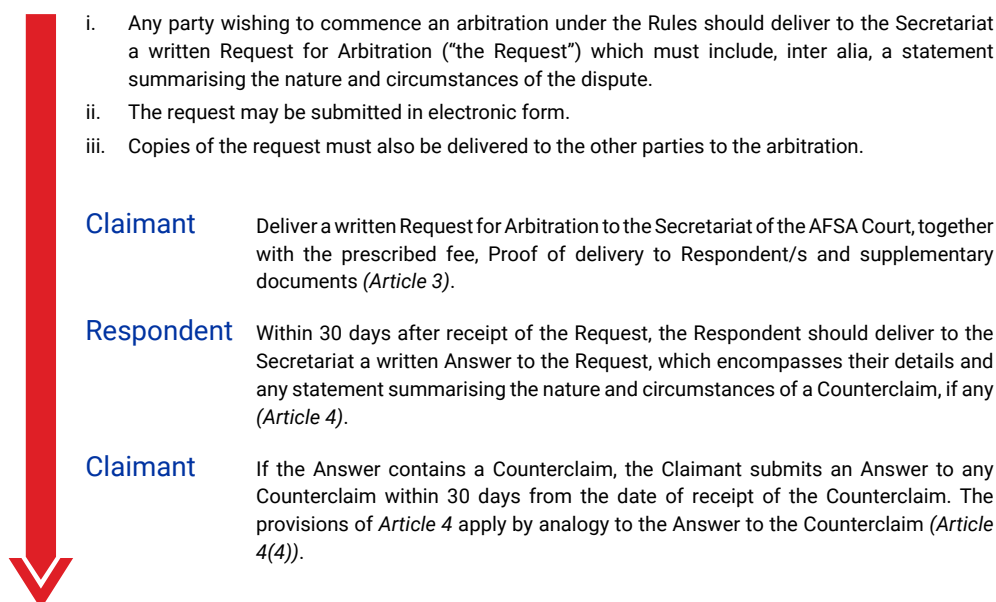
The decisions of the AFSA Court should be final and binding unless otherwise directed by the AFSA Court. To the extent permitted by any applicable law, the parties should be taken to have waived any right of appeal or review in respect of any decision of the AFSA Court to any state court or other legal authority. If such appeal or review takes place due to mandatory provisions of any applicable law or otherwise, the AFSA Court may determine whether or not the arbitration should continue, notwithstanding such appeal or review (*Article 2(5)*).

I. Preliminary Steps

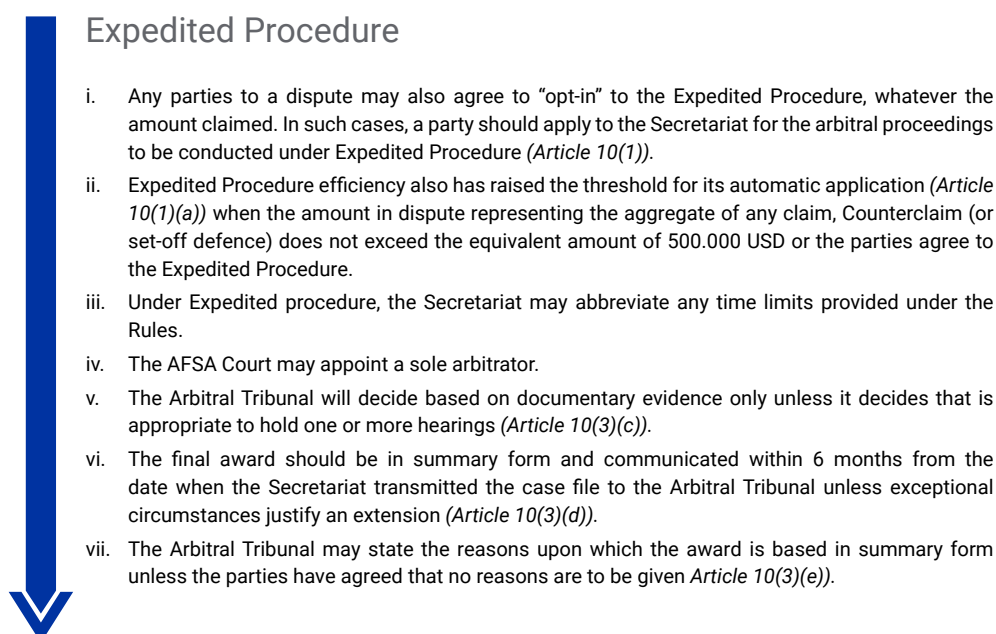
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- i. Have you checked the **arbitration clause** to see if the dispute falls within its scope? Are there any time bars to bring the claim?
 - ii. Do you need to apply for any interim measures? Consider Applying for the Expedited Procedure or the appointment of an Emergency Arbitrator (*Articles 10, 11 and 24*).
 - iii. Start to prepare the factual aspects of your matter. Consider document preservation.
 - iv. Familiarise yourself with the AFSA International Rules on communications and calculation of time limits (*Article 5*).
 - v. Identify your preferred arbitrator and check that they have no conflict of interest.
 - vi. Ensure legal representatives have agreed to comply with *Article 26 and Annex 2: General Guidelines for Party Representatives*.¹
 - vii. Check the permitted mode of services.

¹ **Specific Qualification for Appearing in South Africa:** In terms of Section 25 of the Legal Practice Act 28 of 2014 (the "Legal Practice Act"), a legal practitioner who is enrolled and practising as an advocate or an attorney has the right to appear on behalf of any person before any board, Arbitral Tribunal or similar institution. In order to be enrolled and admitted as a legal practitioner, the person must either be a South African citizen or a permanent resident in South Africa (see Section 24 of the Legal Practice Act). **Position under the International Arbitration Act:** The International Arbitration Act is silent on the qualifications or requirements needed for legal representatives appearing in international arbitrations seated in South Africa. In the event of a challenge to the ability of a legal representative to represent a party in international arbitration, the Arbitral Tribunal can make a ruling on that issue. **AFSA's International Rules** appear to permit legal representation by a person who is not admitted as a legal practitioner under the Legal Practice Act. However, legal representatives would need to comply with the provisions of the Legal Practice Act in order to appear before the South African courts (e.g., to obtain court-ordered interim measures).

II. Commencing the Arbitration



III. Prior to the Constitution of the Arbitral Tribunal



Appointment of Emergency Arbitrator

- i. If needed, urgent interim or conservatory relief that cannot await the constitution of an Arbitral Tribunal ("Emergency Measures"), the party may make an application to the Secretariat for Emergency Arbitrator before, concurrent with, or following the filing of a Request for Arbitration to the Secretariat but prior to the constitution of the Arbitral Tribunal.
- ii. The application should include, among other things, the specific grounds for requiring the appointment of an Emergency Arbitrator, including reference to the particular claim, with reasons, for Emergency Measures (*Article 11(1)*).
- iii. If the Secretary-General accepts the application for an Emergency Arbitrator, the AFSA Court will seek the appointment of an Emergency Arbitrator within 48 hours of receipt by the Secretariat of such an application and payment of the administration fee and deposit (*Article 11(7)*).
- iv. The Emergency Arbitrator has the discretion to conduct the emergency proceedings in a manner of their choosing (*Article 11(11)*), but any decision of the Emergency Arbitrator may be confirmed, varied, discharged or revoked by the Arbitral Tribunal once it has been constituted.
- v. The Emergency Arbitrator may not act as an arbitrator in any future arbitration relating to the dispute unless the parties agree to it (*Article 11(8)*).
- vi. The Emergency Arbitrator must decide on the emergency relief claim as soon as possible but no later than 14 days after its appointment (*Article 11(11)*).
- vii. If the parties have agreed on a seat of arbitration, such a seat will be the seat of the emergency proceedings. Failing such an agreement, the seat of the emergency proceedings before the Emergency Arbitrator will be Johannesburg (South Africa) (*Article 11(5)*).

Joinder of Additional Parties

Prior to the constitution of the Arbitral Tribunal, *Article 29* allows for a joinder, provided that all parties, including the party to be joined, have consented to the joinder; or the additional party to be joined is *prima facie* bound by the arbitration agreement upon which the pending arbitration is made.

Consolidation

- i. Prior to the constitution of any Arbitral Tribunal in the arbitrations sought to be consolidated, a party may apply with the Secretariat to consolidate two or more arbitrations pending under the Rules into a single arbitration, provided that any of the following criteria is satisfied in respect of the arbitrations to be consolidated: (a) all parties have agreed to the consolidation, or (b) all the claims in the arbitrations are made under the same arbitration agreement *Article 30 (1-5)*.
- ii. Where the AFSA Court decides to consolidate two or more arbitrations under *Article 30(3)*, the arbitrations should be consolidated into the arbitration deemed to have commenced first unless otherwise agreed by all parties or the AFSA Court.

IV. Formation of the Tribunal

Formation of the Tribunal

- i. A sole arbitrator will be appointed unless the parties have otherwise agreed in writing or it appears to the AFSA Court that the dispute is such as to warrant the appointment of more than one arbitrator (*Article 6(1)*).
- ii. Where the arbitrators are nominated by the parties or any third person, such appointment will be subject to confirmation by the Secretary-General (*Article 6(2)*).
- iii. The parties may, by agreement, nominate a sole arbitrator for confirmation pursuant to *Article 6(2)* (*Article 7*).
- iv. If the parties fail to nominate a sole arbitrator within 30 days from the Commencement Date (being the date of the Request for Arbitration or any time limit agreed between the parties affected by the Secretariat) or any other time limit agreed upon by the parties or fixed by the Secretariat, the sole arbitrator will be appointed by the AFSA Court (*Article 7*).
- v. Where the parties have agreed to a three-member Arbitral Tribunal, each party should nominate in the Request and the Answer, respectively, one arbitrator for confirmation pursuant to *Article 6(2)* (*Article 8(1)*).
- vi. If a party fails to nominate an arbitrator, the AFSA Court will make the appointment (*Article 8(1)*).
- vii. Where there are multiple Claimants or Respondents, the Claimants, jointly, and the Respondents, jointly, should nominate an arbitrator following the procedure in *Article 9*.
- viii. Where the parties are of different nationalities, a sole arbitrator or chair of the Arbitral Tribunal should not be of the same nationality as either of the parties unless the parties agree otherwise (*Article 6(8)*).
- ix. The Secretariat will notify the parties of the formation of the Arbitral Tribunal.
- x. If a sole arbitrator is to be appointed and has not been appointed within 30 days from the Commencement Date of the arbitration, the sole arbitrator should be appointed by the AFSA Court.

Challenge and Removal of Arbitrators

Grounds for the Challenge of Arbitrators

- i. The grounds for challenging arbitrators are set out in *Article 13(1)*. These include:
 - any grounds giving rise to *justifiable doubts* as to their independence or impartiality; and
 - if they do not possess the requisite qualifications agreed to by the parties.
- ii. These grounds may only be raised based on reasons of which either party became aware after the appointment of the arbitrator.
- iii. The test for “*justifiable doubts*” requires that substantial grounds contending reasonable apprehension of bias by a reasonable person must be set out.

Procedure for the Challenge of Arbitrators

- i. The procedure for challenging arbitrators is set out in Article 13 and allows for parties to agree to the procedure to be followed.
- ii. Timing for the challenge of arbitrators is within 15 days from the date that the challenging party became aware of the grounds for the challenge and sent written reasons to the Arbitral Tribunal.
- iii. Unless the arbitrator being challenged withdraws from office or the other party agrees to the challenge within 15 days of receiving the written statement, the AFSA Court should decide on the challenge (*Article 13(3)*).
- iv. While such a challenge is pending, the Arbitral Tribunal may continue the arbitral proceedings, including the challenged arbitrator (*Article 13(4)*).
- v. If the challenge is upheld, the AFSA Court will remove the arbitrator by revoking their appointment (*Article 13(6)*).
- vi. If the challenge is unsuccessful, the party challenging the arbitrator and if the seat of arbitration is in South Africa may approach the High Court to pronounce on the determination. That determination will be final and is not subject to any appeal.
- vii. The AFSA Court may, at its own initiative and in its discretion, remove an arbitrator who refuses or fails to act or to perform their functions following the Rules or if the arbitrator becomes *de jure* or *de facto* unable to perform their functions or for other reasons fails to act without undue delay. The AFSA Court, after consultation with the parties and the Arbitral Tribunal, including the arbitrator, to be removed prior to the removal of the arbitrator under *Article 13*.

Powers and Duties of Arbitrators

If the seat of arbitration is in South Africa, the *International Arbitration Act 2017*² ("The Act") empowers the Arbitral Tribunal to:

- i. Rule on its own jurisdiction;
- ii. Grant interim measures;
- iii. Conduct the arbitration in a manner that it considers appropriate if the parties fail to agree on a procedure;
- iv. Determine the judicial seat of the arbitration if the parties fail to agree on the judicial seat, and
- v. Decide whether it is necessary to hold oral hearings for the presentation of oral arguments.

² International Arbitration Act 15 of 2017 (International Arbitration Act), which became effective on 20 December 2017.

V. Arbitral Procedure³

Preliminary Points

- i. As soon as practicable after the file has been transmitted to the Arbitral Tribunal, the parties and the Arbitral Tribunal will hold a **case management conference** to establish any additional procedural rules and a procedural timetable (*Article 15(3)*).
- ii. Unless otherwise agreed by the parties, the presiding arbitrator may make procedural rulings alone (*Article 15(4)*).
- iii. The parties are free to agree upon the **rules of law** to be applied by the Arbitral Tribunal to the merits of the dispute. In the absence of any such agreement, the Arbitral Tribunal will apply the rules of law that it determines to be appropriate (*Article 19*).
- iv. The Arbitral Tribunal may conduct the arbitral proceedings in such manner as it considers appropriate (*Article 15(1)*).
- v. Arbitral Tribunal has express powers designated to facilitate expeditious and cost-effective procedures where appropriate (*Article 15(2)(b)*).
- vi. Any party may apply to the Arbitral Tribunal for the **early dismissal** of a claim or a defence on the basis that a claim or defence is manifestly without legal merit or is manifestly outside the jurisdiction of the Arbitral Tribunal (*Article 12*). Applications for early dismissal must be made within 30 days of the constitution of the Arbitral Tribunal.
- vii. Parties may apply to the Arbitral Tribunal or a competent state court⁴ for **interim measures** (*Article 24*). After the formation of the Arbitral Tribunal, interim measures should not be sought from the state court except in exceptional circumstances and with the Arbitral Tribunal's authorisation.⁵
- viii. A party seeking interim relief should first satisfy the Arbitral Tribunal that (a) it will suffer harm that cannot be repaired by an award of damages and that is substantially greater than the harm that the party against whom the interim measure is claimed will suffer, and (b) there is a reasonable possibility that the party will succeed on the merits of the claim. An interim measure will be binding and, upon application to a competent state court, enforceable against the other party.
- ix. *Article 17H of Schedule 1 to the Act* obliges the state court to recognise an interim measure issued by the tribunal, regardless of whether the measure was issued in South Africa.

³ **Governing Rules:** The procedural rules in international arbitrations are subject to agreement between the parties. This is guaranteed by Article 19 of the UNCITRAL Model Law. In the absence of agreement, the International Arbitration Act empowers Arbitral Tribunals to make rulings on procedural issues, taking the UNCITRAL Model Law into consideration.

⁴ There are no specific courts within South Africa that are designated to hear disputes related to international or domestic arbitrations. Disputes relating to international or domestic arbitrations will be heard by the High Court, which has jurisdiction over the dispute. This will generally be determined by the domicile of the Defendant/ Respondent and/or the area where the cause of action arose.

⁵ *Article 17(1) of the UNCITRAL Model Law* empowers Arbitral Tribunals to grant interim measures, unless otherwise agreed by the parties, for temporary measures, including in respect of procedural issues, such as separating issues or compelling the filing of submissions.

Article 17J of the UNCITRAL Model Law empowers state courts to grant interim measures. The state courts, however, are only allowed to grant interim measures where (i) an Arbitral Tribunal has not yet been appointed, and the matter is urgent; (ii) the Arbitral Tribunal is not competent to grant the order; or (iii) the urgency of the matter makes it impractical to seek the relief from the Arbitral Tribunal. *Article 17J* also applies to arbitration proceedings which have their seat outside of South Africa.

Under *Article 17J of the UNCITRAL Model Law*, the state courts can grant the following interim relief:

- orders for the preservation, interim custody or sale of any goods which are the subject matter of the dispute;
- orders securing the amount in dispute but not an order for security for costs;
- orders appointing liquidators;
- other orders to ensure that any award which may be made in the arbitral proceedings is not rendered ineffectual by the dissipation of assets by the other party; or
- interim interdicts (injunctions) or other interim orders.

- 
- x. *Article 17J of Schedule 1 to the Act* grants the state court the same powers in relation to arbitration proceedings, regardless of whether the seat is in South Africa for:
 - a. preservation orders;
 - b. interim custody of goods;
 - c. an order securing the amount in dispute (but not an order for security for costs);
 - d. an order appointing a liquidator;
 - e. any other order to ensure that an award of the Arbitral Tribunal is not rendered ineffectual by the dissipation of assets; and
 - f. any interim interdict or other interim order.

Other Procedural Matters

- 
- i. The parties may agree in writing on the **seat** of their arbitration. In default of any such agreement, the seat of the arbitration will be determined by the AFSA Court, having regard to all the circumstances of the case (*Article 18 (1) and (2)*).
 - ii. Unless the parties agree otherwise, English should be the **language** of the arbitration (*Article 20*).
 - iii. Under *Article 28*, where there are disputes arising out of or in connection with **Multiple Contracts**, the Claimant may: (a) file a Request in respect of each arbitration agreement invoked and concurrently submit an application to consolidate the arbitrations pursuant to *Article 30(1)*; or (b) file a single Request in respect of all the arbitration agreements invoked, which should include a statement identifying each Article and arbitration agreement invoked and a description of how the applicable criteria under *Article 30(1)* are satisfied, and such Request will be deemed to be an application to consolidate all such arbitrations according to *Article 30(1)*.
 - iv. If an application for **joinder** is necessary after the constitution of the Arbitral Tribunal, a party or non-party may apply to the Arbitral Tribunal for one or more additional parties to be joined, provided that all parties, including the additional party to be joined, have consented to the joinder. The Arbitral Tribunal, after giving all parties the opportunity to be heard, will then decide whether to grant the joinder or not (*Article 29(8)*).
 - v. After the constitution of any Arbitral Tribunal in the arbitrations sought to be **consolidated**, a party may apply to the Arbitral Tribunal to consolidate two or more arbitrations pending under the Rules into a single arbitration, provided that any of the following criteria is satisfied in respect of the arbitrations to be consolidated: (a) all parties have agreed to the consolidation, or (b) all the claims in the arbitrations are made under the same arbitration agreement, and the same Arbitral Tribunal has been constituted in each of the arbitrations or no Arbitral Tribunal has been constituted in the other arbitration(s); or (c) the arbitration agreements are compatible, the same Arbitral Tribunal has been constituted in each of the arbitrations to be consolidated, or no Arbitral Tribunal has been constituted in the other arbitration(s), and: (i) the disputes arising out of the same legal relationship(s); or (ii) the disputes arise out of contracts consisting of a principal contract, and its ancillary contract(s); or (iii) the disputes arise out of the same transaction or series of transactions *Article 30 (6-8)*.
 - vi. To challenge the Arbitral Tribunal's jurisdiction, a Respondent may raise a **jurisdictional objection** as soon as possible but not later than the time for its Statement of Defence (*Article 31(3)*).
 - vii. An objection that the Arbitral Tribunal is **exceeding the scope of its authority** should be raised promptly after the Arbitral Tribunal has indicated its intention to act upon the matter alleged to lie beyond its authority (*Article 31(3)*).
 - viii. To the extent permitted by any applicable law, the parties waive their right to apply to any state court or other legal authority for any relief regarding the Arbitral Tribunal's jurisdiction or authority until the Arbitral Tribunal has made its decision on the objection to its jurisdiction or authority pursuant to *Article 31(4)* (*Article 31(5)*).

Written Procedure

- i. Any party wishing to commence an arbitration must deliver electronically to the Secretariat a written Request for Arbitration, accompanied by a Statement summarising the nature and circumstances of the dispute giving rise to the arbitration, its estimated monetary value, the transaction(s) at issue and the reliefs sought by the Claimant against any other party to the arbitration as well as any procedural matters for the arbitration (such as the seat of arbitration, the language(s) of the arbitration, the number of arbitrators, their qualifications and identities) upon which the parties have already agreed in writing or in respect of which the Claimant makes any proposal under the arbitration agreement (*Article 3(1)(c) and (d)*).
- ii. Each Statement of the Case (claim, defence and reply) should be accompanied by a copy of any documentation to which the Claimant's claim relates (*Article 3(1)(b)*).
- iii. The Claimant also must submit proof of payment of the registration fee (*Article 3(3)*).
- iv. The Claimant must deliver a copy of the Request to the other parties to the arbitration and notify the Secretariat that it has been or is being delivered to the other parties to the arbitration by one or more means justified specifically in the such notification (*Article 3(4)*).
- v. The Arbitral Tribunal may provide additional or alternative directions as to any part of the written stage of the arbitration (*Article 17(5)*).
- vi. Unless the Arbitral Tribunal determines otherwise, the written submissions of the arbitration and its procedural timetable should be as set out in *Article 17*. However, in complex cases, it is common for parties to be allowed time extensions for the service of their written statements.

Claimant

Within a time limit determined by the Arbitral Tribunal, the Claimant should serve a Statement of Case (*Article 17(2)*).

Respondent

Within a time limit determined by the Arbitral Tribunal, the Respondent should serve a Statement of Defence and, if applicable, a Statement of Counterclaim (*Article 17(3)*). This is the last chance to raise jurisdictional objections, but the Arbitral Tribunal may admit an untimely objection to its jurisdiction or authority if it considers the delay justified in the circumstances (*Article 31 (3)*).

Claimant

Within a time limit determined by the Arbitral Tribunal, the Claimant should serve a Statement of Reply and, where there are Counterclaims, include a Statement of Defence to Counterclaim in the same manner required for a Statement of Defence and all supporting documents on which it relies. This is the last chance to raise jurisdictional objections to a Counterclaim.

Respondent

The Respondent should serve a Rejoinder within a time limit determined by the Arbitral Tribunal.

Issues

- i. Consider how many subsequent rounds of written submissions are appropriate in a particular arbitration? The parties may agree upfront on the number of rounds of their written submissions and the time limits for them. (The written submission procedure usually consists of two rounds).
- ii. The Rules also deal with circumstances where a party indicates an intention to **not participate**, or to no longer participate, in the arbitration. In terms of *Article 17*, where a Respondent fails to submit a Statement of Defence or a Claimant a Statement of Defence to a Counterclaim, or if any party fails to avail itself of the opportunity to present its written case, then the Arbitral Tribunal may proceed with the arbitration and make one or more awards (*Article 17(7)*).
- iii. Where a Claimant fails to submit its Statement of Case, the Arbitral Tribunal may terminate the arbitral proceedings or give any other directions as appropriate (*Article 17(8)*).

Evidence

- i. Unless decided otherwise by the Arbitral Tribunal, a party may present evidence by fact and/or expert witnesses (*Article 22(1)*).
- ii. **Documentary Evidence:** Each party may request its opponent to disclose further documents and to seek an order from the Arbitral Tribunal compelling production. Arbitral Tribunal also can order any party to produce to the Arbitral Tribunal and to other parties documents or copies of documents in their possession, custody or power which the Arbitral Tribunal decides to be relevant (*Article 15(5)(e)*).
- iii. **Witness Evidence:** This usually takes the form of a signed statement (for fact witness) or signed report (for expert witness) (*Article 22(3)*). The Arbitral Tribunal retains broad discretion to decide the time, manner or form for the exchange of witness evidence (*Article 22(4)*). The Arbitral Tribunal and any party may request that a witness, on whose written testimony another party relies on, should attend for oral questioning at a hearing before the Arbitral Tribunal. If a witness fails to attend, the Arbitral Tribunal may place such weight on the written testimony or exclude all or any part thereof altogether as it considers appropriate in the circumstances (*Article 22(5)*).
- iv. **Expert Evidence:** After consultation with the parties, the Arbitral Tribunal may appoint one or more experts to report to the Arbitral Tribunal on specific issues in arbitration (*Article 23(1)*). Such experts must sign a written declaration of their impartiality and independence and submit a copy of their qualifications to the Arbitral Tribunal (*Article 23(2)*).
- v. *Article 27 of Schedule 1 of the Act* empowers a state court to assist with the taking of evidence by issuing subpoenas to compel the attendance of witnesses and the provision of documents. The state court should also have the same power to make an order for the issue of a commission or a request for the taking of evidence outside of its jurisdiction as it would ordinarily have in civil matters before it.

Hearings

- i. The Arbitral Tribunal should hold a hearing if any of the parties so requests or, failing such a request, it may decide to schedule a hearing of its own motion (*Article 21(2)*).
- ii. Tribunal will organise the conduct of any hearing in advance after consulting the parties (*Article 21(3)*).
- iii. Hearings of the Arbitral Tribunal may take place in person or virtually/remotely by any other means (including video or telephone conference) that the Arbitral Tribunal deems appropriate,



including video, telephone conference, or a combination thereof with participants in one or more geographical place (or in a combined form) taking all relevant circumstances into account (*Article 21(6)*).

- iv. After consultation with the parties, the Arbitral Tribunal may hold any hearing and its deliberations at any geographical location of its own choice; and if such place(s) should be elsewhere than the seat of the arbitration, the arbitration should be treated for all purposes as an arbitration conducted at the arbitral seat and any order or award as having been made at the seat (*Article 18(3)*).
- v. Hearing will be private unless the parties agree otherwise in writing (*Article 21(7)*).
- vi. The theme of transparency is repeated in *Article 27*, which deals with **third-party funding**, providing that if a third-party funding agreement is entered into, the party being funded should, among other things, notify all other parties, the Arbitral Tribunal and the Secretariat of the existence of the agreement for funding and the identity of the funder.

VI. Award and Post-Award

Awards



- i. Arbitral Tribunal should make its final award as soon as reasonably possible following the last submission.
- ii. Arbitral Tribunal may make separate awards on different issues at different times of the proceedings.
- iii. The award should be in writing, stating the reasons for the Arbitral Tribunal decision unless the parties agree otherwise (*Article 33(2)*).
- iv. For arbitration seated in South Africa based on *Article 31(5) of Schedule 1 of the Act* Arbitral Tribunal may award interest on such basis and terms as considered appropriate and fair in the circumstances, also having regard to the currency in which the award was made, commencing not earlier than the date on which the cause of action arose and ending not later than the date of payment.
- v. The parties undertake, as a general principle, to keep **confidential** all awards and materials created for the purpose of the arbitration and all other documents produced by a party in the proceedings, as well as the deliberations of the Arbitral Tribunal (*Article 36*).
- vi. An exception to the above principle is contained in *Article 36(3)*, providing that unless a party objects in writing within 30 days after notification of the award, AFSA is permitted, in principle, to publish all arbitral awards in an anonymised and pseudonymised form.
- vii. Where the dispute settles before the final award is made, the Arbitral Tribunal should either issue an order for the termination of the arbitral proceedings or record the settlement in an award on agreed terms if requested by the parties and not objected to by the Arbitral Tribunal. Such an award need not be reasoned (*Article 33(5)*).
- viii. Where there is more than one arbitrator, a majority award is binding. If there is no majority, an award should be made by the presiding arbitrator alone (*Article 33(1)*).
- ix. An award should be signed by the Arbitral Tribunal. If there is more than one arbitrator and any arbitrator does not sign the award, the award should state the reason the arbitrator did not sign it (*Article 33(4)*).
- x. The Arbitral Tribunal will deliver the award to the Secretariat, which should notify the parties provided that all Arbitration Costs have been paid in full to AFSA (*Article 33(7)*).
- xi. The award may be sent electronically to the parties.

Cost and Fees

- i. The cost of the arbitration (Arbitration Costs) include the fees and expenses of the arbitrators, any disbursements of the Administrative Secretary, AFSA's administrative expenses fixed following the *Schedule of Costs (Annex 3 of the Rules)*, the fees and expenses of any experts appointed by the Arbitral Tribunal, and the costs of any other assistance reasonably required by the Arbitral Tribunal (Article 35(1)) as well as all or part of the legal or other expenses incurred by a party in relation to the arbitration (the "Legal Costs") paid by another party. The Arbitral Tribunal should decide the amount of Legal Costs on such a reasonable basis as it thinks appropriate (Article 35(4)).
- ii. The Arbitral Tribunal will specify by award the amount of the Arbitration Costs determined by the AFSA Court in accordance with the AFSA Schedule of Costs (Article 35(3)).
- iii. The parties are jointly and severally liable to the Arbitral Tribunal and the AFSA for the Arbitration Costs (Article 35(2)).
- iv. The Arbitral Tribunal will specify in the award the amount of the Arbitration Costs and the proportions that each party should bear (Article 35(3)).
- v. The Arbitral Tribunal can also order that all or part of the Arbitration Costs incurred by a party should be borne by a party other than a party which has already covered such costs by way of payment to AFSA under Article 32, the latter party will have the right to recover the appropriate amount of Arbitration Costs from the former party (Article 35(3)).
- vi. The Arbitral Tribunal will make its decisions on both Arbitration and Legal Costs on the general principle that costs should reflect the parties' relative success and failure in the award or arbitration or under different issues, except where it appears to the Arbitral Tribunal that in the circumstances the application of such a general principle would be inappropriate under the arbitration agreement or otherwise (Article 35(5)).

Post-Award

- i. The time limits for seeking correction of the award or an additional award starts to run on receipt. Within 30 days of the receipt of an award, a party may request the Arbitral Tribunal or the Arbitral Tribunal, on its own initiative, may correct any clerical, computational or typographical error, ambiguity or any errors of a similar nature contained in an award, or make an additional award on a claim in the arbitration not decided in the award or to give an interpretation of an award (Article 34(2), (3) and (4)).
- ii. If the Arbitral Tribunal considers the request justified, after consulting the parties, it will make the correction, interpretation or make the additional award (as applicable) within 30 days of receipt of the request (Article 34(2), (3) and (4)).
- iii. Every award should be final and binding on the parties (Article 33(9)), although AFSA Rules do allow for appeals where agreed between the parties. In the absence of an agreement between the parties, an award is not subject to appeal or challenge before either the Arbitral Tribunal or a state court.
- iv. By agreeing to arbitration under AFSA Rules, the parties undertake to carry out an award without delay and should be deemed to have waived their right to any form of recourse insofar as such waiver can validly be made under any applicable law (Article 33(9)).
- v. Where the seat is in South Africa, the *International Arbitration Act 2017* applies as applicable substantive law, and awards can be challenged, appealed or otherwise set aside on the following grounds:

- a. *Article 34 (2)(a) of Schedule 1 to the Act* provides that an award may be **set aside** only if a party furnishes proof that:
 - a party to the arbitration agreement lacked the capacity to contract under the applicable law, or the arbitration agreement is invalid under the applicable law;
 - a party did not receive the required notice of the appointment of the arbitrator or the proceedings or was otherwise unable to present its case;
 - the award addresses issues falling outside the reference to arbitration (however, if capable of being separated, those matters falling within the scope of the agreement will not be set aside); or
 - the tribunal was constituted in contravention of the agreement between the parties.
- b. *Article 34 (2)(b) of Schedule 1 to the Act* provides that a state court may **set aside** an award (on its own volition) if:
 - it finds that the subject matter of the dispute is not capable of settlement by arbitration under the laws of South Africa; or
 - the award conflicts with the public policy of South Africa.
- c. **Time limits** and/or other requirements to bring a challenge:
 - *Article 34(3) of Schedule 1 to the Act* provides that an application to **set aside** an award must be made within 3 months of receipt of the award.
- d. Are parties permitted to exclude any rights of challenge or appeal?
 - Other than regarding matters addressed in *Article 34 of Schedule 1 to the Act*, parties are free to exclude other rights of challenge or appeal.

SECTION 2

AFSA REMOTE HEARING PROTOCOL



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REMOTE HEARING PROTOCOL



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REMOTE HEARING PROTOCOL

EXPLANATORY STATEMENT

This Remote Hearing Protocol ("**the Protocol**") is recommended for the use in all remote hearings and hybrid-remote hearings ("**Remote Hearings**") conducted by parties in accordance with the various Rules (as amended for time to time) of the Arbitration Foundation of Southern Africa NPC ("AFSA") including the AFSA International Rules for the Conduct of an administered Arbitration, the AFSA Commercial Rules and the AFSA Expedited Rules. This Protocol is not part of the various Rules of AFSA, but constitutes a guideline which parties to AFSA arbitrations may adopt.

The purpose of the Protocol is to provide guidance to parties on the efficient conduct of Remote Hearings in respect of arbitrations administered by AFSA to ensure fairness amongst the participating parties. The Covid19 pandemic has resulted in several AFSA arbitration hearings being conducted remotely since March 2020 to ensure compliance with the various government measures in South African and other jurisdictions. AFSA recognises that remote hearings or hybrid-remote hearings have become the norm and thus found it prudent to develop this Protocol for the conduct of remote hearing arbitrations.

The Remote Hearing Protocol is further directed for use in conjunction with any domestic and international legislation applicable to arbitrable disputes and with parties' agreement where it is intended to serve as a best practice guide for Remote Hearings to ensure that one party does not enjoy an unfair advantage over the other. The Remote Hearing Protocol is further recommended for use in institutional proceedings, ad hoc proceedings (where AFSA is the appointing authority), mediation proceedings and any other proceedings conducted under the auspices of AFSA.

REMOTE HEARING PROTOCOL

DRAFTING COMMITTEE

Adv H Louw

Advocate and Member of the Johannesburg Society of Advocates, Advocate and Member of the Law Society of the Kingdom of Lesotho, Commercial Panel Member – Arbitration Foundation of Southern Africa NPC, Fellow – Association of Arbitrators (Southern Africa) NPC, Fellow – Chartered Institute of Arbitrators (UK).

Mr J Feris

Director at Cliffe Dekker Hofmeyr Inc: Dispute Resolution Practice. Member of the Arbitration Committee of the Lagos Court of Arbitration (2020). Member of the IBA Africa Arbitration Committee (2020). Young ICCA Member. Recognized as Africa's 50 Most Promising Young Arbitration Practitioner by Association of Young Arbitrators (2020). Guest Lecturer in international arbitration (commercial and investment arbitration) in the LLM: Extractive Industry in Africa at the University of Pretoria. Co-Course Leader of a unique short course on African investment law styled "Promotion and Protection of Investment" with the University of Pretoria. Guest lecture/presenter at University of Cape Town on international arbitration.

Judge F Brand

Judge of the High Court of South Africa, Acting Justice of the Constitutional Court of South Africa, Judge of the Supreme Court of Appeal of South Africa, Judge of the International Court of Qatar, Judge of the Appeal Court of Botswana, Judge of the Supreme Court of Fiji, Honorary Professor of Stellenbosch University.

Professor D Butler

Emeritus Professor in Mercantile Law, Stellenbosch University.

REMOTE HEARING PROTOCOL

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REMOTE HEARING PROTOCOL

DEFINITIONS

Bundle of documents	shall mean the agreed bundle of documents of the parties for use during the remote hearing arbitration
Participants	shall mean the Tribunal, parties, party representatives and other persons attending a remote hearing or part thereof with the permission of the Tribunal
Participant schedule	shall mean a schedule referred to in paragraph 1.1.3
Party/Parties	shall mean the parties to the arbitration
Remote hearing	shall mean hearings conducted using communication technology including simultaneous two-way audio-visual transmission technology or various cloud-based audio-visual hearing platforms for hearing by the participants in a remote hearing from various venues, or a hybrid-remote hearing conducted at a designated venue with some participants or witnesses attending from remote venues
Remote hearing platform	shall mean communication technology including simultaneous two-way audio-visual transmission technology or various cloud-based audio-visual hearing platforms chosen and agreed to in writing by the parties to facilitate the remote hearing conducted from various venues. The remote hearing platform to be used and to be agreed to by the parties may include MS Teams, Skype, Zoom Meeting, Cisco Webex Meeting or any other electronic cloud-based audio-visual platform agreed to between the parties
Tribunal	shall mean a single arbitrator or a three member panel of arbitrators comprising the Tribunal
Venue	shall mean and include an audio-visual remote conferencing location including the remote hearing venue, party, witness and participant venue/s, remote breakaway rooms for Tribunal deliberations and caucusing by parties and party representatives facilitated, on and by the remote hearing platform from which the participants will participate in the remote hearing
Witness	shall mean the individual who presents evidence and is the subject of examination by way of the remote hearing platform and includes an expert witness

1. Preliminary Considerations

- 1.1. In the event that the Tribunal directs that the arbitral proceedings are to be conducted by way of a remote hearing, or the parties agree to a remote hearing, then the Tribunal and parties to the arbitral dispute must agree, which agreement may be made a procedural directive by the Tribunal in advance of the remote hearing on:
 - 1.1.1. The use of a remote hearing and the remote hearing platform to resolve their dispute/s.
 - 1.1.2. The remote hearing platform to be used in the conduct of the remote hearing.
 - 1.1.3. The identification of the participants to the remote hearing on a participant schedule identifying and referencing the designation, title, name and surname, email address and telephonic contact details of the participants and the remote hearing location or venue from which they will participate.
 - 1.1.4. The remote venues from which witnesses will participate, the associated security and integrity requirements in relation to the remote witness venue, or the physical presence of an independent person to observe the production of oral evidence by witnesses at the remote witness venues.
 - 1.1.5. The host of, and/or person or party to manage and control the remote hearing platform, either continuously or intermittently, on demand.
 - 1.1.6. The identity, use and participation of at least one on-call, or on-site individual with adequate technical knowledge to assist in the planning, testing and the conducting of the remote hearing by way of the agreed remote hearing platform.
 - 1.1.7. The software, hardware equipment, the cyber/internet security and system security requirements appropriate for the remote hearing, remote hearing platform and remote hearing venues.
 - 1.1.8. The manner and methodology of connecting to the internet and remote hearing platform, preferably connecting by way of fixed cable networks, alternatively Wifi networks, and/or the use of high-speed and quality fibre internet to ensure the best possible use of the remote hearing platform to prevent interruptions, delays and connectivity lagging.
 - 1.1.9. Whether or not some, or all the parties and/or party representatives will appear at the same physical hearing venue as the Tribunal. In the event that one of the party representatives cannot attend at the same venue as the Tribunal, then it is advisable that none of the parties and party representatives attend at the hearing venue with the Tribunal.
 - 1.1.10. The various locations of the physical venues from which the participants will participate in the remote hearing.
 - 1.1.11. All participants in the remote hearing must attend the remote hearing proceedings properly identified with their designation, title and name and surname appearing on the remote hearing platform.

2. Due Process - Fairness, Equal Treatment and Impartiality

- 2.1. Separate from the arbitration agreement, parties intending to conduct remote hearings are encouraged to enter into an agreement dealing with essential aspects of the remote hearing as set out at in paragraph 1 above.
- 2.2. The Tribunal may in its discretion direct that a remote hearing be held on the application of the parties, some of them or in the exercise of its own discretion.
- 2.3. In the event of a dispute on the conduct of a remote hearing the Tribunal shall, after due consideration of the party views direct that a remote hearing be held, or not.
- 2.4. The participants in the remote hearing must be in a position to effectively and equally participate in the remote hearing with the minimum basic requirements including a stable internet connection, appropriate remote hearing venues and suitable devices.
- 2.5. The Tribunal must ensure that the hearing platform provides for the fair, equal and reasonable right of access to all parties in the conduct of the remote hearing proceedings without any party enjoying an unfair advantage over the other.
- 2.6. Should the Tribunal in a procedural directive order the conduct of remote hearings, the Tribunal must confirm the essential elements for such remote hearings with the parties as set out in paragraph 1 in order to prevent unfairness or an improper advantage to any of the disputing parties to the arbitration.
- 2.7. The Tribunal may adjourn a remote hearing at any stage due to technical difficulties which it regards as rendering the proceedings as no longer fair.

3. Venue

- 3.1. Insofar as it is possible, and insofar as agreed to between the parties or ordered by the Tribunal, the remote hearing conducted on the remote hearing platform shall be implemented and occur from various remote hearing venues complying with the minimum required technical, technological and security requirements.
- 3.2. Various remote venue rooms could be created on the remote hearing platform to include a remote waiting room from which participants are allowed access to the remote hearing room, various remote hearing breakaway rooms (if required) for use by the Tribunal, parties and participants.
- 3.3. General access and audio-visual access should be provided to all the participants to the remote hearing, remote hearing venues and remote venue rooms and restricted access must be provided to the Tribunal, parties, party representatives and participants allocated to the various remote hearing venues and remote hearing breakaway rooms.
- 3.4. Audio-visual access to the various remote hearing venues including remote hearing breakaway rooms should be restricted to only the participants agreed to and allowed access to those specific remote hearing venues and remote hearing breakaway rooms. In the event necessary, remote hearing venues should be created for neutrals to caucus with parties, or neutrals should be granted access to remote hearing party venues.
- 3.5. The remote hearing host must be provided with list of the parties and participants that should have audio-visual access and restricted access to the remote hearing rooms, various remote hearing breakaway rooms and the remote hearing venues.

4. Remote Hearing Proceedings

- 4.1. Remote hearings and hybrid-remote hearings are to be conducted by way of a remote hearing room, remote witness rooms and remote party breakaway rooms on the remote hearing platform.
- 4.2. By way of the remote hearing platform a face-to-face proceeding is to be created and conducted with all parties participating audio-visually on the remote hearing platform.
- 4.3. The parties and the party representatives should have audio-visual access to the remote hearing waiting room and the remote hearing room. Tribunal and member restricted access is to be provided to the various remote breakaway rooms to be used for tribunal deliberations and inter-party consultation and caucus proceedings during the remote hearing proceedings.
- 4.4. The remote hearing breakaway rooms should not be accessible in any manner to any of the participants not granted access thereto, to ensure the integrity of tribunal deliberations, inter-party consultations and caucus proceedings.
- 4.5. By way of the remote hearing platform all participants to the remote hearing must have simultaneous access to the shared documentation, bundle of documents, exhibits and any additions thereto produced during the remote hearing, by means of screen sharing on the remote hearing platform.
- 4.6. The witnesses and expert witnesses shall give evidence from remote hearing witness rooms, seated at a desk with access to a computer, keyboard, mouse, microphone and speakers or headphones with a microphone and two or more large monitors or large display screens, the witness being clearly visible from both a camera near and immediately in front of the witness, and an overhead wide-angle camera viewing the witness, the desk, the room and the entrance leading into the remote hearing witness room.
 - 4.6.1. The device or computer and monitors or display screens used by the witness will not be available for any other purpose but for the conduct of the remote hearing.
 - 4.6.2. The participants in the remote hearing are to be viewed on one monitor or display screen and the other monitor or display screen is to be used for the presentation of documents, bundles of documents, exhibits and screen sharing.
- 4.7. In the event of the abovementioned technology and hardware not being available:
 - 4.7.1. The only persons allowed in the remote hearing witness room shall be the witness giving evidence with an interpreter, individuals required to assist with both the technology and bundle of documents and party representatives on a watching brief basis.
- 4.8. The identity and identification details of each individual and party representative present in the remote hearing witness room shall be recorded, be made available to all parties and such individual and party representatives must record their attendance audio-visually on the remote hearing platform, also certifying after the completion of the witness evidence that the evidence presented by the witness was in accordance with justice and without interference.
- 4.9. The Tribunal may ask a witness to orientate his or her camera to provide a 360-degree view of the remote venue in order to confirm that no unauthorised person/s are present.
- 4.10. The witness and expert witness shall present evidence during the hearing under the direction of the Tribunal, which shall include the administering of an oath or affirmation with the witness and

expert witness providing consent to be recorded, both audibly and visually with confirmation that the witness is alone in the remote hearing witness room, or identify any individuals in the remote hearing witness room and their role and function in the remote hearing witness room.

5. Documentation and Exhibits

- 5.1. The parties to the remote hearing must make available the bundle of documents in electronic format and if so required by the Tribunal in hardcopy format, an index or indices of all documentation to be used during the remote hearing proceedings including, but not limited to witness statements, statements and memorials, the agreed to bundle of documents and evidence and additional documents handed in during the remote hearing proceedings ("documents" or "documentation" used interchangeably) to be used in the remote hearing proceedings, to the Tribunal, participants and witnesses in the remote witness rooms.
- 5.2. The documentation referred to in the index or indices must be available in electronic format to all participants in the remote hearing which is to be shared and accessed by all participants on the remote hearing platform.
- 5.3. The Tribunal may ask a witness to display the documents and/or witness statements made available to and used by the witness in hardcopy format to ensure that there are no annotations thereon.
- 5.4. The parties should agree, identify and list documents that may be shared with either all, or some of the participants in the remote hearing proceedings and they should ensure that documents are neither incorrectly, nor improperly shared with participants that should not have access thereto.
- 5.5. The parties to the remote hearing must agree to a procedure for the transmission, storage and accessing of documentation to be used by the parties both prior to and during the remote hearing and the use of any specific document sharing platform.
- 5.6. All documentation contained in the bundle of documents, exhibits and other documents to be used during the remote hearing must be in .PDF format, clearly identified, paginated, indexed and made available to all participants to the remote hearing.
- 5.7. All documentation must be in an OCR (optical character recognised) format allowing it to be text readable, text-searchable and allowing text to be highlighted, marked-up and electronically annotated.
- 5.8. All documentation must be presented in .PDF upright portrait mode and format. In the event that the original documents are in landscape format, such documents must be made available in a 90 or 180 degree rotated document upright .PDF format, and also in the original landscape format, if so required.
- 5.9. The default view setting for all pages contained in the document must be at 100%.
- 5.10. The documentation to be used during the remote hearing proceedings must be contained in as few electronic bundles as possible, preferably in one date chronological and numerically numbered bundle.
 - 5.10.1. Generally speaking, the documents contained in the bundles must be in date chronological format, numbered and indexed. The document numbering appearing on the individual page numbers must be a computer-generated number and not numbered by hand.

- 5.10.2. The document numbering appearing on the individual page should preferably be preceded by an alphabetical letter to assist in quick searching of documents, it being easier and quicker to search for document "A198" rather than "198".
- 5.10.3. Documents should not be OCR scanned greater than 300 dpi in order to avoid slow scrolling and rendering.
- 5.10.4. In the event that it is possible, indexes or tables of contents should be hyperlinked to the indexed documents.
- 5.10.5. The allocated page numbers captured on the pages contained in the electronic bundle must be the same number as the electronic .PDF page number appearing on the program used to view the .PDF documents.
- 5.10.6. In the event of additional documentation being made available during the remote hearing such documents should be allocated a separate bundle, document and exhibit number.
- 5.11. Insofar as it is possible, the participants to the remote hearing with the exception of witnesses should make use of two, preferably three large monitors or large display screens, the first to view the participants in the remote hearing, the second to view the documents used during the remote hearing and the third to be used for any other purposes including inter-party communications on whichever other party platform the parties may use.

6. Interpreters, Interpretation, Independent Legal Representatives, Witnesses and Experts

- 6.1. The parties are to agree, failing which the Tribunal will decide whether consecutive or simultaneous interpretation services are to be used during the remote hearing and the location of the interpreter.
- 6.2. The parties are to agree, failing which the Tribunal will decide on the physical presence of an independent legal representative to observe the production of oral evidence via remote hearing by a Witness.
- 6.3. The independent legal representative must be physically present to observe the production of evidence by a witness and file a statement with the Tribunal confirming that the independent legal representative:
 - 6.3.1. Was available, present and observed the production of oral evidence by the witness in the remote hearing room on the hearing date; and
 - 6.3.2. Does not have any have any relationship with the parties, their legal representatives or the witness that would constitute a conflict of interest and/or would impair the ability to objectively and independently observe the production of evidence by the witness.
- 6.4. Expert witnesses should convene remote expert witness meetings prior to the remote hearing to reach consensus on issues admitted and issues in dispute, including agreement on documents to be used during the remote hearing.
- 6.5. Both expert witnesses and witnesses should have access to the agreed bundle of documents electronically on the remote hearing platform and if required in hardcopy format in the remote hearing witness room.

- 6.6. The expert witnesses, witnesses and interpreters should have access to the remote hearing platform by way of a party agreed to computer and electronic hardware which should include, as a minimum requirement, two monitors, a microphone and speakers, a web camera to record the individual in the remote hearing witness room and a wide-angle camera to record the environment of the remote hearing witness room to ensure the integrity and reliability of the evidence presented.
- 6.7. Witnesses shall not be allowed to be aided by any notes, unless permitted by the Tribunal on good cause shown.
- 6.8. Witnesses shall attend in the witness room without any personal electronic equipment, cellular telephones or communication devices.

7. Online Etiquette

- 7.1. Participants in the remote hearing must log-on to the remote hearing platform at least 15 minutes before the commencement of the remote hearing, in the remote hearing entrance room.
- 7.2. Witnesses, expert witnesses and all non-party representatives not required to attend the remote hearing will attend in the waiting room until given access to the remote hearing platform.
- 7.3. Participants to the remote hearing must register and identify themselves by way of their designation, title, full name and surname which is to appear on the remote hearing platform to identify such participant.
- 7.4. Participants on the remote hearing platform must consider and ensure appropriate camera positioning reflecting the face, torso and desk where the participant is positioned.
- 7.5. The Tribunal, participants and party representative must endeavour not to speak at the same time except in circumstances of either an objection, or to alert participants of technical difficulties. In the event of participants wanting to attract attention, it should be done by way of the hand raising function on the remote hearing platform, if unsuccessful then visually by the participant raising a hand in front of the camera and lastly by way of voice audible intervention.
- 7.6. In the event of a party representative not speaking during, or participating directly in the proceedings, such participant must mute his or her microphone.
- 7.7. A person not participating in the proceedings must turn his or her audio and video function off.
- 7.8. Audio quality can be affected and interfered with through a variety of factors, including ambient noise and interference through physical contact with the microphone. These interferences must be avoided and in the event of multiple participants in the same location, all but one microphone must be muted to prevent audio interference and audio echo.
- 7.9. All participants must eliminate background noise and use rooms with minimal disturbance.
- 7.10. Witnesses and expert witnesses must not use the remote hearing platform "virtual backgrounds" and the remote hearing venue or room environment from which they participate must be visible.
- 7.11. Witnesses, expert witnesses and participants not required to attend shall sign-off from the remote hearing platform at the conclusion of their evidence or required participation.
- 7.12. All participants participating in the remote hearing by way of the use of their video function must ensure adequate lighting, prevent backlight or over-exposed light interference to ensure that facial expressions are discernible.

- 7.13. The Tribunal and participants must agree on the dress code to be observed during the remote hearing.

8. Confidentiality, Privacy and Security

- 8.1. The remote hearing platform should have a unique and automatically generated meeting ID for each remote hearing, it not being a personal meeting ID that may be utilised on various occasions.
- 8.2. In the event of the remote hearing being password-protected, such unique password must be shared between the participants thereto, on a platform other than the remote hearing platform.
- 8.3. The various participants to the remote hearing must connect to the remote hearing platform by way of secure Internet connections and not from public locations.
- 8.4. The identity of all the participants to the remote hearing must be recorded and circulated between the parties. Any other additional participants must be specifically identified to and be invited by the Tribunal.
- 8.5. The exact physical location from where the various participants to the remote hearing are to participate must be identified and witnesses and expert witnesses must preferably participate in the remote hearing proceedings from a dedicated remote hearing witness room to ensure the integrity of the evidence presented.
- 8.6. The remote hearing witness room should only be used and accessed by the individual presenting evidence from that remote hearing witness room and should be recorded by way of two cameras, the one a web-camera and the other an overhead wide-angle camera.
- 8.7. The tribunal may request the witness and/or expert witness whilst administering the oath or affirmation to state under oath as part of the oath or to affirm as part of the affirmation that there is no-one other than the witness and/or expert witness in the remote hearing witness room, or from whichever facility the evidence is presented.
- 8.8. The designation, title, full names and surnames of the participants to the remote hearing and their role therein, their respective email addresses and telephonic contact numbers must be made available to the tribunal members and the various party representatives.
- 8.9. In the event that the remote hearing platform has a "private" chat feature, the settings of such chat feature must be disabled in respect of the witness testifying from a remote venue and set to allow chat with "everyone".
- 8.10. The remote hearing access should be restricted to the participants only.
- 8.11. Access to the remote hearing room and breakaway remote hearing rooms must be limited to the parties and participants specifically identified and designated to have access thereto.

9. Technical Requirements

- 9.1. All parties including interpreters should have access to quality high-speed internet networks and connect, preferably by way of a data cable to the Internet and the remote hearing platform.
- 9.2. The connection and link of the parties from their respective venues to the remote hearing platform must be of sufficient quality and speed to allow for proper, clear and continuous audio-visual transmission.

- 9.3. The Tribunal and parties may agree on the technical requirements for the audio-videoconference and remote hearing in circumstances where the minimum bandwidth (up/down) requirements should be not less than 1.5 mbps, 30 frames/second with minimum peer-to-peer video quality, preferably high quality video, the recommended bandwidth being 2.5 mbps upload and 3 mbps download with HD video.
- 9.4. The parties should, if possible have access to computers and two, if not more large display screens or large monitors, appropriate microphones and speakers or headphones with a microphone and cameras to allow all parties and participants to adequately hear, see and participate in the hearing.
- 9.5. The various participating parties should test the remote hearing platform and the associated audio-visual connectivity thereto and the venues in advance of the remote hearing
- 9.6. Screen sharing and any screen writing functionality on the remote hearing platform must be available to all participants in the remote hearing and have been tested by all participants prior to the remote hearing.
- 9.7. The party representatives should ensure the availability and participation of a relevant individual with the appropriate technical expertise to assist in the participation of the various parties in, and with the remote hearing platform prior to and during the remote hearing.
- 9.8. The party representatives must agree to the audio-visual recording of the remote hearing proceedings and the transcribing thereof and all participants must be informed that the proceedings are recorded both audio-visually, and must consent thereto which consent must be confirmed either in writing or at the commencement of their participation in the remote hearing.

10. Recording

- 10.1. The settings on the remote hearing platform must be set to allow only the host to the remote hearing to receive and distribute the remote hearing recording.
- 10.2. The participants in the remote hearing must reach agreement on the use of the platform recording features, failing which the Tribunal will decide thereon and in the event of the proceedings being recorded, such recordings must be made available to the parties within 24 hours of the platform recording being made available to the Tribunal, subject to confidentiality and the recording not being distributed to witnesses which are yet to testify.
- 10.3. In the event of the platform recording features being used, the recording link made available to the Tribunal and parties should be password protected which password must be sent to the Tribunal and parties separately from the communication containing the recording link or the Tribunal should send the recording link directly to the various party representatives.
- 10.4. No recording other than the platform recording of the remote hearing proceedings shall be made without the leave of the Tribunal.

SECTION 3

AFSA ARBITRATORS' APPOINTMENT CHECKLIST



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Acknowledgement / Source Note:

These training materials were originally developed for presentation at the 39 Essex Arb Workshop held on 22 March 2023, Johannesburg, by Edwin Glasgow CBE KC. They have been adapted and updated for use in this training programme.

AFSA

CHECKLIST FOR ARBITRATORS' APPOINTMENT

1. Does it appear that AFSA will have jurisdiction to accept the arbitration?
2. Are there any potential conflicts that would prevent you from accepting the appointment and/or that would need to be disclosed?
3. What are the sensible and practical ways in which you should conduct conflict checks?
4. Have you considered whether you have the experience and capacity to undertake the amount of work that is likely to be involved in the arbitration?
5. What are the criteria that you should take into account when nominating a President or recommending a nomination to AFSA?
6. What is it necessary and appropriate to disclose to the parties about nominations or recommendations that you are considering?
7. Is the amount of money that is involved likely to justify the appointment of a Secretary to the arbitral tribunal, and if so, what are the relevant criteria in recommending that appointment?

SECTION 4

DRAFT PROCEDURAL TIMETABLE FOLLOWING CMC



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IN THE MATTER OF AN ARBITRATION IN ACCORDANCE WITH ...

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Claimant

-v-

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Respondent

Acknowledgement / Source Note:

These training materials were originally developed for presentation at the 39 Essex Arb Workshop held on 22 March 2023, Johannesburg. They have been adapted and updated for use in this training programme.

[PROPOSED] PROCEDURAL TIMETABLE (Note: does not include timetable for preliminary issues/ hearing)

Step	Date	Description	Time to Complete
1		Case Management Conference (remote hearing)	-
2		Parties to exchange disciplines of experts, and the area of expertise each will cover	
3		Parties to exchange names and details of experts, including any responsive experts, to those notified above.	
4		Experts in each area/discipline to meet to begin discussion of issues (and if necessary, delay experts to be used, including methodology to be adopted and baseline programme). Delay experts (if used) to provide the first joint report within x months of step 2 above as to the method of delay analysis, including agreed intervals and durations of windows, and baseline programme(s) to be used, identifying any differences between the experts.	

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5		Statement of Claim, together with exhibits and factual witness statements	
6		Statement of Defence and Counterclaim, together with exhibits and factual witness statements	
7		Parties to exchange requests in a schedule form attached for the production of documents.	
8		Parties to exchange responses to schedules setting out documents they have agreed to produce and those they object to, with reasons. Parties to produce documents they have agreed to produce	
9		Tribunal to rule on objections to document requests.	
10		Parties to exchange documents as directed by the Tribunal.	
11		Claimant's Statement of Reply and Defence to Counterclaims, together with exhibits and reply witness statements	
12		Respondent's Reply to Defence to Counterclaims, together with exhibits and reply witness statements	
13		Case Management Conference provisional(?)	
14		FOR DISCUSSION- timing of experts' reports	
15		Meetings of experts	
16		Simultaneous exchange of Reply Expert Reports	

Acknowledgement / Source Note:

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17		Joint Expert Report / agreed list of expert issues?	
18		Draft Hearing Bundle Index proposed by the Parties for the Hearing	
19		Tribunal's Directions on the Hearing Bundle	
20		Pre-Hearing Conference (remote)	
21		Deadline for distribution of Agreed Hearing Bundle	
22		Deadline for indicating witnesses and experts to be cross-examined	(Same day)
23		Simultaneous exchange of written opening submissions and draft timetable for hearing	
24		Hearing (5 days estimated and x days in reserve) – dates to be finalised by ...	
25		Written Closing Submissions, including any cost submissions [no later than x weeks following the hearing]	

SECTION 5

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IN THE MATTER OF AN ARBITRATION UNDER THE ARBITRATION RULES OF THE
..... INTERNATIONAL ARBITRATION CENTRE

BETWEEN

XYZ CONSTRUCTION LTD

Claimant

- and -

AABC DEVELOPER LTD

Respondent

PROCEDURAL ORDER NUMBER 1 (“PO1”)

DATED [Date]

Tribunal

**D
E
F**

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INTRODUCTION

1. This PO1 is made ... having taken account of the Parties' proposals and respective submissions made prior to or at the Preliminary Meeting held on

GOVERNING LAW, LANGUAGE, SEAT, AND ARBITRATION RULES

2. This Arbitration relates to ... and such other claims, disputes, and controversies as may be included in the Arbitration in accordance with the Arbitration Rules of the Singapore International Arbitration Centre (6th Edition, 1 August 2016) ("**the Rules**") (such disputes are collectively referred to as "**the Disputes**").
3. The Arbitration shall proceed under the Rules and subject to mandatory provisions of any applicable law, including the International Arbitration Act 1994 of the Republic of Singapore ("**the International Arbitration Act**").
4. The seat of the arbitration is Singapore.
5. The laws of the Republic of Singapore govern the Disputes.
6. The language of the arbitration is English.
7. This arbitration is brought pursuant to the Arbitration Agreement set out in clause 20 of the **Contract** ("**the Arbitration Agreement**"), which provides:

20. SETTLEMENT OF DISPUTES

LEGAL REPRESENTATIVES OF THE PARTIES

8. The Claimant is represented in this arbitration by:

.....

Address:

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Tel:
Fax:
Email:

9. The Respondent is represented in this arbitration by:

Tel:
Fax:
Email

10. Pursuant to Rule 23.2 of the Rules, any intended change or addition by a party to its legal representatives shall be notified promptly in writing to the other party, the Tribunal, and the Registrar of SIAC.

11. Any such change or addition shall be subject to the approval of the Tribunal.

12. Such approval may be refused if the Tribunal is of the opinion that such change or addition could cause any doubt as to the independence and impartiality of any member of the Tribunal or in any other manner compromise the composition of the Tribunal or the finality of any award (on the grounds of possible conflict or other like impediment) or otherwise cause material disruption to the progress of the arbitration.

13. In deciding whether to grant or withhold such approval, the Tribunal shall have regard to all the circumstances, including the general principle that a party may be represented by a legal representative chosen by that party; the stage which the arbitration has reached, and any likely wasted costs or loss of time resulting from such change or addition.

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THE TRIBUNAL

14. The Tribunal in this Arbitration is constituted as follows:

..... (Co-Arbitrator)

Address:

Tel:

Email:

..... (Co-Arbitrator)

Address:

Tel:

Email:

..... (Presiding Arbitrator)

Address:

Tel:

Email:

15. The Parties confirm that the Tribunal has been validly appointed in accordance with the Arbitration Agreement, the Parties' agreement, and the SIAC Arbitration Rules.
16. The Parties confirm that they know of no basis or reason to challenge the appointment of any member of the Tribunal.
17. The Parties and the members of the Tribunal agree that no member of the Tribunal (nor the Administrative Secretary, should one be appointed) shall be required to be a party or witness in any judicial or other proceedings arising out of this arbitration or in connection with the subject matter of this arbitration.
18. The members of the Tribunal, and any person appointed as Administrative Secretary by the Tribunal, shall not be liable to any person for any act or omission in connection with the arbitration save for any act or omission proved to have been

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in bad faith, except to the extent such limitation of liability is prohibited by applicable law.

19. Save in relation to the consequences of any act or omission proved to have been in bad faith, the Parties agree jointly and severally to indemnify each member of the Tribunal and to hold such members harmless from and against all claims, actions, suits, proceedings, disputes, differences, demands, costs, expenses and damages of any kind arising out of or in any way referable to any act or omission in connection with this arbitration.

PROCEDURAL TIMETABLE

20. Each Party agrees that it shall comply with the Procedural Timetable at Annexure A and by the dates stated therein, unless otherwise ordered by the Tribunal. Extensions of time and adjustments to the dates in the Procedural Timetable may be agreed between the Parties (subject to the approval of the Tribunal) or granted by the Tribunal in the exercise of its discretion. Applications to the Tribunal shall be made promptly after a Party becomes aware of the circumstances giving rise to the need for such extensions of time or adjustments, and in any event before the relevant date in the Procedural Timetable. Where in PO1 a step is required to be carried out by a date in the Provisional Timetable, such date shall be the date specified therein or as amended by direction of the Tribunal.

PLEADINGS/MEMORIALS

21. All pleadings and other written submissions shall be .. [for Discussion-Pleadings /Memorial or Hybrid

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22. Any documents which either of the Parties is required to submit under this Procedural Order shall be submitted (except as otherwise ordered) by email to the Tribunal and the legal representatives of the other Party, either attaching the document(s) or if such documents are too large for transmission by email, they shall be provided in word searchable electronic format via secure electronic server and/ or by USB memory device if so required by the Tribunal.
23. Upon request, ... hard copy
24.Details Re layout of submissions; numbering of exhibits etc

DISCLOSURE OF DOCUMENTS

25. Article 3 of the International Bar Association Rules on the Taking of Evidence in International Arbitration, 2020 (“the IBA Rules”) will be used as guidelines in respect of documentary evidence. Where possible and cost-effective, all documents shall be disclosed in electronic format.
26. For the avoidance of doubt, Article 9 of the IBA Rules will be followed in relation to the admissibility and assessment of documentary evidence. Doubt will be resolved in favour of not ordering disclosure.
27. The Parties shall confer and seek to reach an agreement as to the documents required to be produced by each other.
28. Either Party may request the other to produce documents relevant to this Arbitration, subject to compliance with the procedure and timetable set out below.

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29. When making a request for document production, the requesting Party shall send the other Party a six-column schedule in the form at Annexure B hereto (**the “Schedule”**) containing, in particular, the following details:

- (1) Column 1 shall contain the number of the request.
- (2) Column 2 shall contain a brief description of each requested document or of a narrow and specific category of documents, in both cases reasonably believed to exist, so that the documents requested are clearly identified, together with a reference to the relevant part of the Parties’ written Statements of Case; and
- (3) Column 3 shall describe specifically why each document or category of documents is believed to be in the possession or control of the other Party and a description of how each is both relevant and potentially material to the outcome of the arbitration.

30.

31. Documents provided in disclosure may not be relied on in these proceedings unless they are exhibited to a witness’s statement, expert’s report, or Party’s submissions, or permission is given by the Tribunal.

...

FACTUAL WITNESS EVIDENCE

32. Any person may present evidence through a factual witness, including a Party’s officer, employee, or other representative.

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33. By the date in the Procedural Timetable, the Parties shall file and simultaneously exchange between themselves:

- (1) their factual witness statements. **[To be Changed if Memorials]**
- (2) their responsive factual witness statements (if any). **[TBC if Memorials]**

34. Each witness statement shall:

- (1) Have attached a photograph of the witness, set out the name and address of the witness, his or her relationship with any of the Parties, if any, and a description of his or her qualifications, including his or her competence to give evidence;
- (2) Contain numbered paragraphs and page numbers;
- (3) Adopt 1.5 line spacing and size 12 font;
- (4) Start with a summary of the matters intended to be established and contain, in respect of each paragraph, a cross-reference to the parties' written Statements of Case;
- (5) Be signed and dated by the witness;
- (6) Contain an affirmation by the witness of the truth of the statement; and
- (7) Contain a GDPR declaration in the form set out below.

FOR DISCUSSION

The witness statement should be as concise as possible without omitting anything of significance, refer to documents only where necessary, and should not:

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- (i) quote at any length from any document to which reference is made, seek to argue the case, either generally or on particular points,
 - (ii) take the Tribunal through the documents in the case or set out a narrative derived from the documents (of which the witness has no direct knowledge), those being matters for argument; or include commentary on other evidence in the case (either documents or the evidence of other witnesses) (of which the witness has no direct knowledge).
- 35. No witness shall be called at a hearing unless a witness statement has been served on behalf of that witness or the Tribunal has ordered otherwise.
- 36. The witness statement of each witness shall, as a matter of principle, stand in lieu of the examination by the Party producing the witness (“direct examination” or “examination-in-chief”) subject to the identification of each witness and confirmation of the accuracy of, and any corrections to, that witness’s witness statement(s).
- 37. The admissibility, relevance, weight, and materiality of the evidence offered by a witness shall be determined by the Tribunal.
- 38. Each Party shall be responsible for ensuring the presence of its witnesses if they are required by the other Party, or the Tribunal, to appear for cross-examination at the hearing. The costs of a witness’s appearance shall be borne by the Party summoning him or her, without prejudice to the Tribunal’s decision as to how costs shall ultimately be borne between the Parties.

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39. The other Party shall have the opportunity to cross-examine the witness under the reasonable control of the Tribunal, subject to the ability of the Tribunal to direct questions to the witnesses at any time in its discretion.
40. The first Party may then re-examine the witness if it so wishes. Such re-examination shall be limited to matters that have arisen in the cross-examination or in the Tribunal's questions.
41. Under the Tribunal's authority and at its discretion, a Party may be allowed to recall a witness if the circumstances so justify.
42. Witness statements from witnesses not required for cross-examination shall be admitted as documentary evidence; however, the Tribunal will be entitled to attach such weight to such evidence as it considers appropriate.
43. In the event that a Party does not make a witness available when required, the requesting Party may apply for any additional ruling from the Tribunal, including a ruling that the Tribunal disregards the content of that witness's statement(s), or draws an adverse inference.
44. A Party's decision not to call a witness for cross-examination will not be taken to mean that the Party does not contest the witness/expert's evidence.

EXPERT EVIDENCE

45. Article 5 of the IBA Rules will be adopted in respect of party-appointed experts, and the Chartered Institute of Arbitrators' Protocol on the Use of Party Appointed Experts in International Arbitration ("the CI Arb Protocol") may be used as guidelines, subject to any applicable law.

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46. Expert evidence shall be submitted in the form of a written expert report, and any reply expert evidence shall be restricted in scope to matters raised in the other party's expert evidence.
47. All expert reports shall contain a description of the expert's qualifications and competence to give expert evidence, and record the instructions given to the expert. ...
48. Experts of like discipline shall meet as often as necessary so as to comply with the dates in the Procedural Timetable:
 - (1) to agree the approaches and methodologies they intend to adopt in preparing their expert reports, including in respect of delay experts the baseline programme and the relevant computer software, if any, and shall issue a First Joint Report recording the approaches and methodologies on which they are agreed and any on which they are not agreed explaining briefly why they have been unable to agree; and
 - (2) thereafter to agree on the principles and facts, and narrow issues, and shall record the outcome of such discussions in a Second Joint Statement identifying the issues on which those experts agree and on which they disagree to be finalised.
49. Details re joint reports.
50.
51. The Tribunal may, upon notice to the Parties, hold meetings, which Counsel and Parties may attend, with any of the Parties' respective experts at any reasonable time.

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52. Meetings between the Parties' experts, and any draft reports prepared by those experts, shall be without prejudice to the Parties' respective positions in this Arbitration and shall be privileged from production to the Tribunal.
53. Although the Parties shall arrange for the meetings referred to in this section and in the Procedural Timetable to be scheduled, it is expected that experts of like disciplines are to be otherwise unaccompanied at the experts' meetings referred to above.
54. Any expert who has filed an expert report shall make himself or herself available to be cross-examined at the Main Evidential Hearing....
55.
56. Subject to the provisions below as to demonstrative aids, an expert may make a brief (no more than 30 minutes) presentation at the start of his evidence.
57. The admissibility, relevance, weight, and materiality of the evidence offered by an expert shall be at the discretion of the Tribunal.

PREPARATION FOR THE MAIN EVIDENTIAL HEARING

58. If required, there will be a Pre-Hearing Conference regarding the conduct of the Main Evidential Hearing on a date to be fixed by the Tribunal after consultation with the Parties. No later than 7 days prior to this Conference, the Parties shall submit to the Tribunal a draft Main Evidential Hearing Protocol confirming, subject to the Tribunal's approval, the logistical details and procedures for such Hearing.
59. The Parties shall submit as annexes to the draft Main Evidential Hearing Protocol an agreed chronology, an agreed dramatis personae, and an agreed list of issues

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requiring determination by the Tribunal in respect of the matters which are the subject of the Main Evidential Hearing. If the Parties are unable to agree on the terms of either document and/or the draft Main Evidential Hearing Protocol, they shall so notify the Tribunal when submitting the Main Evidential Hearing Protocol, summarising the matters in relation to each document on which they agree, and those on which they disagree.

60. If there are no points of disagreement, and the Tribunal is content with the draft Main Evidential Hearing Protocol and the annexes thereto, the Tribunal may direct that the Pre-Hearing Conference shall be vacated.

61. The use of demonstrative aides, such as charts, and in the case of expert witnesses power point or equivalent demonstrations, will be allowed at the Hearing, provided that no new evidence is contained therein and provided that the party relying upon such demonstrative aid has provided a copy thereof to the other party and the Tribunal at least two hearing days before the demonstrative aid is to be used before the Tribunal. For discussion- limit on size and content of demonstratives

COMMUNICATIONS

62.

63. ...

GENERAL

64. ...

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HEARING BUNDLE

(1) ...

MAIN EVIDENTIAL HEARING(much of this may be included in the Main Evidential Hearing Protocol

..
65. ...

..

SUPPLEMENTARY

..
..

Dated: [date]

.....
.....

Presiding Arbitrator

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ANNEXURE A – PROCEDURAL TIMETABLE

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ANNEXURE B – DISCLOSURE OF DOCUMENT REQUESTS

1. Doc Request No.	2. Identification of the documents or categories of documents that have been requested and reference to the relevant part of the pleadings.	3. Reasons for the request, including a short description of how the documents requested are relevant and material to the outcome of the case	4. Short description of the objections, if any, by the other Party to the production of the documents or categories of documents requested	5. Short description of the reply to the objections by the other Party	6. Decision of the Tribunal

SECTION 6

ICCA CHECKLIST FIRST PROCEDURAL ORDER (KIGALI SPECIAL EDITION 2025)



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ICCA' CHECKLIST FIRST PROCEDURAL ORDER (KIGALI SPECIAL EDITION 2025) for teaching purposes and for the promotion of arbitration. Accordingly, it is permitted to reproduce or copy this Checklist, provided that the Checklist is reproduced accurately, without alteration and in a non-misleading context, and provided that ICCA's authorship and copyright are clearly acknowledged.

ICCA

INTERNATIONAL COUNCIL FOR COMMERCIAL ARBITRATION



ICCA CHECKLIST FIRST PROCEDURAL ORDER KIGALI SPECIAL EDITION 2025

This is a checklist of issues to consider including in a first procedural order in arbitral proceedings. In your case, it may not be appropriate to include all the issues below: some may be better dealt with later, or not at all.

We encourage you to also check the companion publication to the ICCA Checklist, the ICCA Drafting Sourcebook for Logistical Matters in Procedural Orders, a collection of draft clauses for you to consider, copy or adapt for use in proceedings.

1. **STRUCTURAL ISSUES:** jurisdiction; interim/provisional measures; counterclaims; bifurcation; fast-track; multiple parties; joinder of parties; consolidation or coordination of parallel proceedings
2. **CASE MANAGEMENT CONFERENCE:** video/telephone/in-person conference; whether party representatives required; attempt agreement on terms of first procedural order; planning for remainder of arbitration
3. **COUNSEL/PARTY REPRESENTATIVES:** authority to act; changes to counsel/representatives (how to notify; when effective)
4. **SEAT OF ARBITRATION:** confirm per parties' agreement or determine
5. **GOVERNING LAW:** for arbitration agreement; for procedure; for merits
6. **ARBITRATOR ETHICS:** which rules apply; obligation to disclose conflicts
7. **COUNSEL/PARTY REPRESENTATIVE ETHICS:** which rules apply; obligation to disclose conflicts
8. **ADMINISTRATIVE SECRETARY:** whether to use; under what conditions
9. **CONFIDENTIALITY:** what regime applies; does it cover existence of proceedings, submissions, evidence, orders/awards; exceptions (e.g. legal duty, enforcement proceedings)

STRUCTURAL AND GENERAL ISSUES

STRUCTURAL AND GENERAL ISSUES	10. PRIVILEGE: which rules apply 11. COMMUNICATIONS: protocols for communication between participants: e.g. when effective, when to copy tribunal, restrictions on <i>ex parte</i> communication 12. CASE MANAGEMENT PLATFORM: whether to use; institutional or third-party platform; end-to-end or limited use; conditions; costs 13. CYBERSECURITY: whether to agree minimum security protocols 14. DATA PROTECTION AND PRIVACY: what law applies to which participants; whether to agree protocol addressing relevant obligations 15. ARTIFICIAL INTELLIGENCE: whether AI may be used; by which participants; under what conditions 16. DISABILITY ACCOMMODATION: how to notify request; maintaining privacy 17. SUSTAINABILITY: whether to agree sustainability protocol 18. SANCTIONS: whether sanctions apply to any participants; impact on arbitration 19. MEDIATION/SETTLEMENT: whether to provide designated period for mediation; whether tribunal authorized to propose and/or facilitate settlement discussions 20. COSTS: deposits; budgets and other cost limitation techniques; costs to be dealt with in award on merits or otherwise; format of costs submissions; timing of costs submissions (before or after evidentiary hearing, or after partial award on merits); security for costs; whether disclosure of funding sources required	25. IBA RULES ON THE TAKING OF EVIDENCE: whether to apply/use as guidance 26. DOCUMENTARY EVIDENCE: filed with submissions or later; how to submit (e.g., platform, file sharing, email or paper); paper size; exhibit naming/numbering; indices (e.g. hyperlinked, joint chronological); procedure for admission of late evidence 27. DOCUMENTS NOT IN LANGUAGE OF THE ARBITRATION: who presents and pays for translation of which documents; translation of witness statements and expert reports; conformity of “look” with originals; where to place; whether certification required; translate all or only relevant parts; procedure for resolving disputes 28. PHYSICAL EVIDENCE (NON-DOCUMENTARY): whether site inspections required 29. WITNESS STATEMENTS/EXPERT REPORTS: permissible contact with witnesses; statements and reports filed with submissions or later; whether oath/affirmation required; how many rounds; how to submit (e.g., platform, file sharing, email or paper); paper size; replace direct testimony or outline only; numbering; exhibit naming/numbering; tribunal-appointed expert reports 30. REQUESTS FOR OPPOSING PARTY DOCUMENTS: timing; applicable rules; specificity; limits on number of requests; format of requests (schedule); tribunal requests; procedure for resolving disputes 31. PRODUCTION OF REQUESTED DOCUMENTS: to whom; how to produce (e.g., platform, file sharing, email, paper); in what format (e.g., PDF, accessible native format); numbering; identification of relevant requests; documents not in language of the arbitration; who pays; whether produced documents automatically in the record; production logs (privilege, confidentiality); consequences of failure to produce; procedure for resolving disputes	EVIDENCE
TIMETABLE	21. TIMETABLE: all events up to jurisdictional or evidentiary hearing, or beyond evidentiary hearing to end of arbitration; time zone(s) for deadlines 22. EXTENSIONS OF TIME: applicable standard; short extensions by agreement	32. WHETHER JURISDICTIONAL HEARING REQUIRED: if so, in-person, remote or hybrid	HEARING(S)
WRITTEN SUBMISSIONS	23. SUBMISSIONS: simultaneous/consecutive; how many rounds; how to submit (e.g., platform, file sharing, email or paper); paper size; numbering; specificity of references; page limits; accompanied by documentary/witness evidence or not; scope of responsive submissions 24. UNSCHEDULED APPLICATIONS: whether leave required; procedure for notifying tribunal and other party	33. WHETHER EVIDENTIARY HEARING REQUIRED: if so, in-person, remote or hybrid 34. PRE-HEARING CONFERENCE: time and location; video/telephone/in-person; whether party representatives required 35. TRIBUNAL MEETING PRE-HEARING: whether to schedule; video/telephone/in-person; whether tribunal to produce list of issues/questions for parties	HEARING(S)

HEARING(S)	36. EVIDENTIARY HEARING – GENERAL: scope of hearing; pre-hearing submissions (e.g. skeletons); joint lists of issues/chronologies/statements of facts; whether hearing bundles required; presentations and demonstratives; who will attend and subject to what restrictions (party representatives, fact witnesses, experts, third-party service providers; live or by video); procedures/deadline for calling other party witnesses; calling own witnesses; tribunal call of witnesses/others; consequences of failure to appear; format/scope of witness/expert examination; sequestration of witnesses/experts; whether oath/affirmation required; whether cross-examination bundles required; ensuring integrity of any remote testimony; simultaneous/consecutive interpretation; hearing schedule; time allocation and recording; oral closing and/or post-hearing briefs 36A. EVIDENTIARY HEARING – IN-PERSON: location; visas; who books/pays for hearing and breakout rooms; catering; arrangements for testing technical equipment 36B. EVIDENTIARY HEARING – REMOTE: whether compliant with applicable laws; selection of hearing platform (electronic case management platform with hearing functionality or videoconferencing platform); who pays for hearing platform; cybersecurity; data protection and privacy; tech support and back-up arrangements; testing connections, camera use, microphone muting; breakout rooms; protocols for remote cross-examination; scheduling hearing day considering time zone differences 36C. EVIDENTIARY HEARING – HYBRID: in addition to 36, 36A and 36B (as relevant), which participants will attend in person/which will attend remotely 37. RECORD OF HEARINGS/OTHER MEETINGS: real-time or other transcript; who engages court reporter; language(s) for transcript; audio or video recording; recording of one or more language versions; transcript corrections and finalization
POST-HEARING PHASE	38. CLOSURE OF PROCEEDINGS: whether tribunal to declare; circumstances in which proceedings can be reopened 39. AWARD: timing; whether electronic signatures allowed under relevant laws; whether hard copies, registration or other formalities required; if in multiple language versions, which version governs 40. TRANSPARENCY/PUBLICATION: whether orders/awards/other documents may be published (in full or redacted); procedure for finalizing redactions 41. ARCHIVING/DOCUMENT DESTRUCTION: what agreements, rules or laws apply to treatment of documents and other data at end of proceeding

SECTION 7

INSTITUTIONAL ARBITRATION - IMPORTANT FORM ISSUES (AWARD DRAFTING)



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Institutional Arbitration – Important Form Issues

(Award Drafting)

General:

- Page numbering
- Paragraph numbering
- Table of Contents

Identification of the parties, representatives, and arbitrator(s):

- Addresses and full contact details

Arbitration and Choice-of-Law Agreements:

- Quote the entire agreement
- Record any amendments to the agreement
- Quote a relevant choice-of-law clause

History of the Arbitral Procedure:

- Summary of all procedural steps up to hearings
- Date of closing of proceedings
- Reference to any previous awards

Jurisdiction:

- Even if not contested, make a statement on jurisdiction.

Costs:

- State in the body of the Award, as well as the dispositive section
- Reference to your (Arbitrator) power to fix and allocate costs

Dispositive Section, Place/Seat of Arbitration, Date, Signature

- Consolidate all orders in the body of the award (including decision on jurisdiction if applicable)
- State clearly if certain claims are reserved for one or more future awards
- State in the final award that all other requests and claims are rejected (unless the nature of the award makes this unnecessary).

SECTION 8

AWARD CHECKLIST - ADAPTED FROM ARBITRATION AWARDS BY RAY TURNER



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Award Checklist **(from Arbitration Awards by Ray Turner)**

A Heading

- (a) The Applicable Arbitration Act
- (b) Any other relevant statute or scheme of arbitration, or rules
- (c) Identification of the parties.

B Background

B1 Identification and Jurisdiction

- (a) Identification of the parties;
- (b) Identification of the contract, or other relationship between the parties;
- (c) The law governing the contract or other relationship; the essential provisions of the arbitration agreement/arbitration clause;
- (d) The essential provisions of the arbitration agreement/arbitration clause;
- (e) The provisions for appointment of an (the) arbitrators(s) (including any special qualifications of, or requirements relating to, appointees – and any incorporated agreement on powers and procedures);
- (f) Any rules incorporated from the outset;
- (g) The fact of a dispute having arisen; any known counterclaim;
- (h) The *general* nature of the disputes and the matters in issue;
- (i) The resultant appointment – and any necessary details and terms;
- (j) Any challenges to jurisdiction and how dealt with
- (k) Basis for deciding the dispute;
- (l) Other matters to the extent they are relevant to this sub-section.

B2 Interlocutory and Procedural Matters

- (a) Any interlocutory agreements regarding adoption of rules or on powers or procedures including procedures on evidential matters. Appointment of experts etc.
- (b) Meetings held – preliminary, further, pre-hearing review
- (c) Consequent and subsequent applications and orders

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B3 Hearing

- (a) date and place of hearing
- (b) attendance - names and designations
- (c) whether evidence was taken on oath or affirmation
- (d) any other matters relevant to this section

C Submissions and evidence/result of any inspection(s)

- (a) the contentions of the parties
- (b) summary of relevant evidence
- (c) any inspections held
- (d) any other matters relevant to this section

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D Analysis/findings/reasons/decisions, issue by issue

- (a) A numbered list of issues
- (b) Undisputed facts or common ground
- (c) Analysis of submissions and evidence
 - a. Findings of fact
 - b. What is held as matters of law
 - c. Application of the law to the facts
 - d. Consideration of any interest claimed or damages
 - e. Decision on the substantive issue(s)
 - f. Consideration of whether a counter-claim is a set-off
- (d) Summary of the decisions
- (e) Where money is awarded, effect of any amounts claimed but paid during the arbitration

E VAT implications

- (a) Check whether there are VAT implications
- (b) Seek party agreement on manner of treatment

F Interest

- (a) Consideration of allowable interest pre-award and post award
- (b) Compute and summarise

G Costs

- (a) Consideration of recoverable costs – what they are
- (b) Principle of liability for costs adopted and reasons
- (c) Decision on costs
- (d) Determination of amount (if not reserved)

H Operative section

- (a) The fact of having considered submissions
- (b) The amount awarded (if monetary)
- (c) Any conditions or terms
- (d) Time for performance
- (e) Provisions relating to interest
- (f) VAT implications if appropriate
- (g) Who is to pay what costs

I Reserved Matters

- (a) Matters left over to a subsequent award if any

J Signature and Formalities

- (a) Date when award is made and seat

Acknowledgement / Source Note:

These training materials were originally developed for presentation at the IX Annual SOAS Arbitration in Africa Conference, held on 11 October 2023, Cape Town. They have been adapted and updated for use in this training programme.

- (b) Signature
- (c) Witnessed

SECTION 9

TEN TIPS ON HOW TO MAKE AN ARBITRATION AWARD WORK - LESSONS FROM THE ICC SCRUTINY PROCESS



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SESSION V: TEN TIPS ON HOW TO MAKE AN ARBITRATION AWARD WORK: LESSONS FROM THE ICC SCRUTINY PROCESS

During the 2021 New York Arbitration Week, members of the ICC provided the following practical tips on how to improve the quality and enforceability of arbitral awards:

1. Consult the ICC Award Checklist;
2. Support findings on jurisdiction and the merits by reference to specific contract provisions, provisions of law or case law; provide specific reasons for conclusions pertaining to the persuasiveness of evidence and credibility;
3. Treat carefully with the non-participating party;
4. Carefully approach *jura novit arbiter/curia*;
5. Treacherous waters of dissenting opinions – moderate your tone and address the points raised by the other side;
6. Fraud/illegality allegations – do not avoid red flags;
7. Beware of awards by consent and check whether they align with the applicable mandatory requirements;
8. Write an enforceable dispositive section and do not rule *infra petita* or *ultra petita*;
9. Costs – be rigorous;
10. Interest – seek clarifications from the parties when appropriate.

ICC Dispute Resolution Bulletin 2022 No 2.

SECTION 10

ICC EFFICIENCY CHECKLIST & TECHNIQUES FOR CONTROLLING TIME AND COSTS IN ARBITRATION



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Efficiency Checklist

You could approach efficiency systematically using a modular checklist inspired by the ICC Techniques for Controlling Time and Costs in Arbitration tools below:

Procedural Structuring

- Select arbitrators (or counsel) based on availability, efficiency, and track record
- Use sole arbitrators when appropriate for speed and simplicity
- Consider fast-track clauses or shortened deadlines
- Schedule case management conference (CMC) promptly
- Use electronic or virtual hearings to reduce delays and travel

Early Planning

- Submit well-structured and clear Requests/Answers with additional context
- Use detailed procedure proposals ahead of CMC
- Define a procedural timetable immediately post-CMC
- Empower the tribunal (especially the chair) to issue procedural decisions swiftly

Managing Documents and Submissions

- Limit the number and length of submission rounds
- Avoid duplication; use Redfern-style document schedules
- Agree on translations only where necessary
- Produce documents electronically and focus on core materials only

Witness & Expert Evidence

- Limit witnesses to essential ones only
- Minimize rounds of witness statements
- Use a single tribunal-appointed expert where appropriate
- Encourage expert discussions/agreement on key issues beforehand

Hearings and Communication

- Fix hearing dates early
- Use pre-hearing conferences to set agendas/logistics
- Consider remote testimonies or virtual hearings to reduce costs
- Develop cyber-protocols for virtual hearings' operations

Communication & Cost Incentives

- Avoid unnecessary correspondence—reserve tribunal intervention for genuine issues
- Inform parties that inefficient conduct may influence cost allocations
- Encourage settlement discussions at all stages

Summary Table

Stage	Efficiency Measures
Appointment	Choose efficient counsel/arbitrators; prefer a sole tribunal if possible
Early Organization	Fast-track options; early procedural timetable; virtual CMC
Submissions Management	Reduce rounds/length; prioritize core documents; electronic format
Evidence Handling	Limit witnesses; prefer a single expert; minimize hearings; pre-agree on expert scope
Hearings & Technology	Early scheduling; use video, protocols for virtual hearings
Behavior & Settlement	Avoid excessive correspondence; allow cost penalties for inefficiency; promote ADR



Commission on Arbitration and ADR
Leading Dispute Resolution Worldwide

Controlling Time and Costs in Arbitration

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Techniques for Controlling Time and Costs in Arbitration

Second Edition

Report of the ICC Commission on Arbitration and ADR
Task Force on Reducing Time and Costs in Arbitration

PREFACE TO THE SECOND EDITION

Arbitration is a valuable tool for the resolution of disputes. However, if it is to serve the needs of its users, it must be time and cost effective. The first edition of this Report, published in August 2007, provided a range of techniques that could be used to increase the time and cost efficiency of arbitration. The final paragraph of the preface to that edition expressed the hope that the Report would be of use in the crafting of efficient arbitration procedures. That hope has become a reality. Since its publication, the Report has been positively received by the users of arbitration, as well as by arbitrators and counsel, and the techniques set out in the Report have been widely applied in institutional and ad hoc arbitrations all over the world. The need to focus on the time and cost efficiency of arbitration has become generally recognized, and the ideas in the Report have inspired much discussion as well as a large number of other publications.

In 2009, the ICC Commission on Arbitration (as it was then known) began its revision of the 1998 ICC Rules of Arbitration. A drafting subcommittee (the “DSC”) was established to propose modifications to the Rules, taking into account suggestions received from national committees, the ICC International Court of Arbitration and its Secretariat, and the arbitration community at large. The DSC included two in-house counsel who consulted with the user community worldwide. The users proposed that the approach to time and cost efficiency taken in the Report should be incorporated into the Rules. This was accomplished in Articles 22–24 and Appendix IV of the 2012 ICC Rules of Arbitration. Article 22(1) places an explicit obligation on both the arbitral tribunal and the parties to make every effort to conduct the arbitration in an expeditious and cost-effective manner, having regard to the complexity and value of the dispute. Article 22(2) empowers the arbitral tribunal, in the absence of an agreement of the parties, to adopt appropriate procedural measures to ensure effective case management. Article 24(1) requires the arbitral tribunal to convene

a case management conference to consult the parties on appropriate procedural measures to be adopted pursuant to Article 22(2). It is expressly stated that those measures may include one or more of the techniques described in Appendix IV. Those techniques are taken directly from the Report.

In sum, the tailor-making of the arbitral procedure referred to in the preface to the first edition of the Report has become a formal requirement in the 2012 Rules, accomplished through the case management conference. Ideally, party representatives will be present so that they can participate in the choice of appropriate procedures for the case. To make an arbitration faster and cheaper, it may be necessary to forego certain steps, such as additional rounds of briefs, excessive document production, longer hearings, more experts, and the like. The goal at the case management conference is to arrive at procedures that are genuinely useful and necessary for the effective presentation of the case. Any additional procedures are likely to result in time and cost inefficiencies.

What, then, is the nature and function of this second edition of the Report? First, the Report has been updated to reflect the various modifications made in the 2012 Rules. Second, and more importantly, this edition of the Report should be seen as an adjunct to the Rules. It can be used to enhance the tailor-making process required by the Rules. In this edition the techniques set out in Appendix IV to the Rules are further discussed and explained. Additional techniques beyond those in Appendix IV are also presented.

The hope that may be expressed for this edition of the Report is that it will help ensure the success of the tailor-making process under the Rules and thereby contribute to the increased effectiveness and attractiveness of international arbitration.

Peter M. Wolrich
Chairman, ICC Commission on Arbitration and ADR

PREFACE TO THE FIRST EDITION

One of the salient characteristics of arbitration as a dispute resolution mechanism is that the rules of arbitration themselves present a framework for arbitral proceedings but rarely set out detailed procedures for the conduct of the arbitration. For example, rules of arbitration do not generally specify whether there should be one, two or more exchanges of briefs. They do not contain any detailed provisions concerning document production. They do not specify how hearings should be conducted and how witnesses, if any, should be heard.

This important characteristic entails that the specific procedures can be tailor-made as appropriate for each dispute and adapted to the legal cultures of the parties and the arbitrators. In order to establish the appropriate procedures for a given arbitration, it is useful and efficient for the parties and the tribunal to make conscious decisions as early as possible on the procedures best suited to the dispute at hand. In making those decisions, it is possible to shape the arbitral proceedings so that the duration and cost of the arbitration are commensurate with what is at stake in the case and appropriate in light of the claims and issues presented.

With the above in mind, the Task Force on Reducing Time and Costs in Arbitration, set up by the ICC Commission on Arbitration and excellently co-chaired by Yves Derains and Christopher Newmark, has prepared the following document setting out a large number of techniques which can be used for organizing the arbitral proceedings and controlling their duration and cost. This document can provide valuable assistance to the parties and the tribunal in developing appropriate procedures for their arbitration. It is intended to encourage them to create a new dynamic at the outset of an arbitration, whereby the parties can review the suggested techniques and agree upon appropriate procedures and, if they fail to agree, the tribunal can decide upon such procedures. For example, an arbitral tribunal can send this document to the parties at the start of the proceedings, indicating that early in the proceedings they might seek to agree upon appropriate procedures in consultation with the tribunal. In that process, all may agree upon the use of certain techniques. If one party wishes to use a particular technique and the other party does not, the tribunal, after obtaining the views of each party on the matter, can decide whether or not to adopt that procedure. The use of this approach, coupled with the proactive involvement of the tribunal in the management of the proceedings, can result in meaningful savings of time and cost in the arbitration.

The techniques suggested in the document are not intended to be exhaustive. On the contrary, they are open-ended, and the parties and the tribunal are encouraged to think of this document as a basis from which to develop the procedures to be used. Indeed, it is the intention of the ICC Commission on Arbitration to revise and republish this document in the future, taking into account further suggestions which will emerge from the use of the document. As a corollary, it should

be clear that parties and arbitrators are in no way obligated to follow any of the techniques. Moreover, the document is a product of the ICC Commission on Arbitration and not of the ICC International Court of Arbitration and thus it is not part of or interpretative of the ICC Rules of Arbitration or in any way binding upon the Court. Rather, it is a practical tool designed to stimulate the conscious choice of arbitral procedures with a view to organizing an arbitration which is efficient and appropriately tailor-made. Finally, while this document was conceived with the ICC Rules of Arbitration in mind, the vast majority of the techniques as well as the dynamics generated by the document can be used in all arbitrations.

It is the sincere hope of the Task Force that this document will be used and be of use in the crafting of efficient arbitration procedures in which time and cost will be proportionate to the needs of the dispute.

Peter M. Wolrich
Chairman, ICC Commission on Arbitration

INTRODUCTION

Costs incurred by the parties constitute the largest part of the total cost of international arbitration proceedings. It follows that if the overall cost of the arbitral proceedings is to be reduced, special emphasis needs to be placed on steps aimed at lowering the costs connected with the parties' presentation of their cases. Such costs are often caused by unnecessarily long and complicated proceedings with unfocused requests for disclosure of documents and unnecessary witness and expert evidence. Costs can also be unnecessarily increased when counsel from different legal backgrounds use procedures familiar to them in a manner that leads to needless duplication.

The increasing and, on occasion, unnecessary complication of the proceedings seems to be the main explanation for the long duration and high cost of many international arbitrations. The longer the proceedings, the more expensive they will be. The 2012 ICC Rules of Arbitration (the "Rules") have expressly addressed these concerns.¹

These Techniques for Controlling Time and Costs in Arbitration (the "Techniques") are designed to assist arbitral tribunals, parties and their counsel in devising tailor-made procedures for individual arbitrations pursuant to Articles 22–24 of the Rules.

In particular, the Techniques may be of benefit to the parties and the tribunal when preparing the case management conference and seeking agreement on procedures suitable for their case. If the parties cannot reach agreement, the Techniques may also assist the arbitral tribunal in adopting procedures that it considers appropriate, taking into account its obligation to conduct the arbitration in an expeditious and cost-effective manner. The Techniques are freely accessible online on the ICC's website (www.iccwbo.org) and in the ICC Digital Library (<http://library.iccwbo.org/>). They are in no way prescriptive. Rather, they provide suggestions that may assist in arriving at procedures that are efficient and will reduce both cost and time. Certain procedures will be appropriate for one arbitration, but inappropriate for another. There may be other procedures not mentioned here that are well suited to a particular case. In all instances, it is for the parties and the arbitral tribunal to select the procedures that are best suited for the case. The table of contents to this document can serve as a checklist of points to consider.

While the main focus of the Techniques is to provide guidance on the procedure during the arbitration, the first two sections give suggestions on the drafting of arbitration agreements and the initiation of arbitral proceedings.

¹ Those Rules have since been further revised to include, among other things, an expedited procedure for lower-value cases. Effective as of 1 March 2017, the newly revised Rules can be downloaded from the ICC website (www.iccwbo.org). In this Report, references to the Rules have been updated, where necessary.

ARBITRATION AGREEMENT

1 *Keeping clauses simple*

Simple, clearly drafted arbitration clauses will avoid uncertainty and disputes over their meaning and effect. They will minimize the risk of time and costs being spent on disputes regarding, for example, the jurisdiction of the arbitral tribunal or the process of appointing arbitrators. In all cases, ensure that the arbitration clause conforms with any relevant applicable laws.

2 *Use of the ICC model clause*

Use of the standard ICC arbitration clause is recommended. It provides as follows:

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.

Modifications to the standard clause can result in unintended and undesirable consequences and therefore should be made only with great care and for specific purposes. In addition to the standard clause, the parties may wish to specify in separate sentences the place of the arbitration, the language of the arbitration and the rules of law governing the contract. Be cautious about adding to this clause further provisions relating to the procedure for the arbitration.

The Rules permit any party in need of urgent or conservatory measures that cannot await the constitution of an arbitral tribunal to make an application to the ICC International Court of Arbitration (the "Court") for the appointment of an emergency arbitrator to decide upon the request for such measures. The parties should consider whether the Emergency Arbitrator Provisions as set out in Article 29 and Appendix V of the Rules are desirable in their particular situation. If the parties do not want the Emergency Arbitrator Provisions to apply, they must agree to opt out of those provisions and may do so by using the following 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. The Emergency Arbitrator Provisions shall not apply.

3 *Selection and appointment of arbitrators*

High-value and complex contracts can give rise to small disputes for which a three-member tribunal may be too expensive. Although parties may desire the certainty of appointing either a one- or a three-member tribunal in their arbitration agreement, consideration should be given to staying with the standard ICC arbitration clause and providing for one or more arbitrators. This will enable the ICC to appoint, or the parties to agree on, a sole arbitrator where the specific nature of any subsequent dispute does not warrant a three-member tribunal (Rules, Article 12(2)).

If the parties wish the ICC to select and appoint all members of the arbitral tribunal (see paragraph 11 below), then the following wording can be used: "All arbitrators shall be selected and appointed by the ICC International Court of Arbitration."

Adding special requirements regarding the expertise and qualifications of arbitrators to be appointed will reduce the pool of available arbitrators and may increase the time taken to select a tribunal.

4 *Fast-track procedures*

Consideration may be given to setting out fast-track procedures in the arbitration clause. Indeed, Article 39(1) of the Rules enables the parties to shorten time limits provided for in the Rules, while Article 39(2) enables the Court to extend those shortened time limits when necessary. Fast-track procedures are designed to enable an arbitration to proceed quickly, given the specific nature of the contract and the disputes that are likely to arise. However, experience shows that in practice it is difficult at the time of drafting the clause to predict with a reasonable degree of certainty the nature of disputes and the procedures that will be suitable for those disputes. Also, disagreements can arise later over the interpretation or application of fast-track clauses. Careful thought should therefore be given before such provisions are included in an arbitration agreement. Once a dispute has arisen, the parties could at that time agree upon a fast-track procedure, if appropriate.

5 *Time limits for rendering the final award*

One commonly used provision that can give rise to significant difficulties is the requirement that a final award be produced within a certain number of weeks or months from the commencement of the arbitration. Such specific time limits can create jurisdictional and enforcement problems if it turns out that the time limit specified is unrealistic or not clearly defined.

6 *More detailed arbitration agreement after the dispute has arisen*

If the parties agree to submit a dispute to ICC arbitration after the dispute has arisen, they can consider specifying in some detail the procedure for the arbitration, taking into account the nature of the dispute in question. This procedure may include some of the suggestions set out below to control time and costs.

INITIATION OF PROCEEDINGS

Selection of counsel

7 *Counsel with experience*

Consider appointing counsel with the skills necessary for handling the arbitration at hand and who are sensitive to the need for appropriate time and cost efficiency. Such counsel are more likely to be able to work with the arbitral tribunal and the other party's counsel to devise an efficient procedure for the case.

8 *Counsel with time*

Ensure that the counsel you have selected has sufficient time to devote to the case.

Selection of arbitrators

9 *Use of a sole arbitrator*

After a dispute has arisen, consider agreeing upon having a sole arbitrator, when appropriate. Generally speaking, a one-member tribunal will be able to act more quickly than a three-member tribunal, since discussions between tribunal members are not needed and diary clashes for hearings will be minimized. A one-member tribunal will obviously also be cheaper.

10 *Arbitrators with time*

Whether selecting a sole arbitrator or a three-member tribunal, it is advisable to make sufficient enquiries to ensure that the individuals selected have sufficient time to devote to the case in question. If there is a particular need for speed, this must be made clear to the ICC so that it can be taken into consideration when making any appointments.

11 *Selection and appointment by the ICC*

Consider allowing the ICC to select and appoint the arbitral tribunal, whether it be a sole arbitrator or a three-person tribunal. This will generally be the quickest way to constitute the arbitral tribunal if there is no agreement between the parties on the identity of all arbitrators. It will also reduce the risk of challenges, facilitate the constitution of a tribunal having a variety of specialist skills and create a different dynamic within the arbitral tribunal. If the parties wish to have input into the selection of the tribunal by the ICC, they can request that the ICC provide a list of possible arbitrators to be selected in accordance with a procedure to be agreed upon by the parties in consultation with the ICC.

12 *Avoiding objections*

Any objection to the appointment of an arbitrator will delay the constitution of the arbitral tribunal. When selecting an arbitrator, give careful thought to whether or not the appointment of that arbitrator might give rise to an objection.

13 Selecting arbitrators with strong case management skills

A tribunal that is proactive and skilled in case management will be able to play its role in managing the arbitration so as to make it as cost and time effective as possible, given the issues in dispute and the number and nature of the parties. Careful consideration should therefore be given to selecting tribunal members, especially the sole arbitrator or chair.

Request for Arbitration and Answer

14 Complying with the Rules

The claimant should ensure that the Request for Arbitration includes all of the elements required by Article 4(3), subparagraphs (a)–(h), of the Rules. Failure to do so may make it necessary for the Secretariat to revert to the Claimant before the Request can be forwarded to the Respondent in accordance with Article 4(5). This causes delay. Similarly, when filing its Answer, the Respondent should include all elements required by Article 5(1), subparagraphs (a)–(f), of the Rules.

15 Setting out a detailed statement of case

The Rules do not require a Request for Arbitration or an Answer to set out a full statement of case for either the claim or the defence (or, where applicable, a counterclaim). Whether or not a full statement is made in the Request can have an impact on the efficient management of the arbitration. Where the Request does contain detailed particulars of the claim, and a similar approach is taken by the respondent in the Answer, the parties and the arbitral tribunal will be in a position to make informed decisions at a very early stage in the proceedings regarding the procedural measures and case management techniques that are appropriate for the case. This will help to optimize the first case management conference held pursuant to Article 24(1).

16 Submitting additional information

The Rules expressly allow the parties to submit with a Request or an Answer any further documents or information that may contribute to the efficient resolution of the dispute (see Articles 4(3) and 5(1)). Those provisions allow for the submission of a full statement of case but also allow the parties simply to submit additional useful information. Consideration should be given to exercising this option, whether or not a full statement of case is provided.

Language of the arbitration

17 Determination of the language by the arbitral tribunal

If the parties have not agreed on the language of the arbitration, the arbitral tribunal, when determining the language, should consider doing so by means of a procedural order pursuant to Article 20 of the Rules, prior to drawing up the Terms of Reference and after ascertaining the positions of the parties.

18 Proceedings involving two or more languages

Having two or more languages of the arbitration will normally increase time and cost. Consideration should be given to whether the use of two or more languages truly justifies the additional time and cost. On the other hand, where there is a single language of the arbitration, the use of an additional language should be considered if it would reduce time and cost. For example, where appropriate, the parties can agree that documents, legal materials and witness testimony in a particular language need not be translated into the language of the arbitration.

If the parties have agreed, or the arbitral tribunal has decided, that the arbitration will be conducted in two or more languages, the parties and the arbitral tribunal should consider agreeing upon practical means to avoid duplication. In cases where the members of the arbitral tribunal are fluent in all applicable languages, it may not be necessary for documents to be translated. Consideration should also be given to avoiding having the Terms of Reference, procedural orders and awards in more than one language. If this cannot be avoided, the parties would be well advised to agree upon the language that will prevail.

ESTABLISHING THE FRAMEWORK OF THE ARBITRAL PROCEEDINGS

The Rules call for the framework of the arbitral proceedings to be established in three steps: the Terms of Reference; the case management conference; and the procedural timetable. The paragraphs that follow provide suggestions on how to use each of these steps to optimize time and cost efficiency.

Terms of Reference

19 *Summaries of claims and relief sought*

The arbitral tribunal should consider whether it is appropriate for it to draft the summary of claims and/or the relief sought itself, or whether it would assist if each party were to provide a draft summary for inclusion in the Terms of Reference in accordance with Article 23(1), subparagraph (c), of the Rules. In the latter case, the arbitral tribunal should consider requesting the parties to limit their summaries to an appropriate fixed number of pages. Further guidance on preparing Terms of Reference can be found in the article of Serge Lazareff, "Terms of Reference", ICC International Court of Arbitration Bulletin, Vol. 17/No. 1 (2006).²

20 *Empowering the president of the arbitral tribunal on procedural issues*

Where there is a three-member tribunal, it may not be necessary for all procedural issues to be decided upon by all three arbitrators. The parties should consider empowering the president of the arbitral tribunal to decide on certain procedural issues alone. In all events, consider authorizing the president to sign procedural orders alone.

21 *Administrative secretary to the arbitral tribunal*

Consider whether or not an administrative secretary to the arbitral tribunal would assist in reducing time and cost. If it is decided to use such a secretary, the parties and the arbitral tribunal should take into account the relevant section of the Note to Parties and Arbitral Tribunals on the Conduct of the Arbitration under the ICC Rules of Arbitration.³

2. The Bulletin is available from the ICC Store (www.storeiccwbo.org) and online in the ICC Digital Library (<http://library.iccwbo.org>).

3. Available at <https://iccwbo.org/publication/note-parties-arbitral-tribunals-conduct-arbitration> and at <http://library.iccwbo.org>.

22 *Need for a physical meeting*

Consider whether it is appropriate to agree upon and sign the Terms of Reference without a physical meeting (e.g. by way of a telephone or video conference). In making that decision, the advantages of having a physical meeting at the start of the proceedings should be weighed against the time and cost involved. The holding of the case management conference should also be taken into account when deciding whether or not to hold a physical meeting (see paragraph 31 below).

23 *Counterparts*

If there is no physical meeting for signing the Terms of Reference, the arbitral tribunal should consider having the Terms of Reference signed in counterparts.

24 *Compliance with Article 23(3)*

If a party refuses to take part in drawing up the Terms of Reference or refuses to sign them, the arbitral tribunal should make certain that the Terms of Reference to be submitted to the Court for approval pursuant to Article 23(3) of the Rules do not contain any provisions that require the parties' agreement or a decision by the arbitral tribunal.

Case management conferences

25 *Timing*

Article 24(1) requires the arbitral tribunal to convene a case management conference when drawing up the Terms of Reference or as soon as possible thereafter. Consider whether it is most convenient and efficient to hold the case management conference immediately after the signing of the Terms of Reference and at the same meeting.

26 *Preparation*

For the case management conference to be most effective, the tribunal should consider asking the parties well in advance of the conference to submit joint or separate case management proposals. This will encourage them actively to consider and exchange views on the procedures and case management techniques that may be appropriate for the case. Any joint or separate proposals from the parties, any agreements between the parties, and any suggestions from the tribunal should be discussed at the case management conference. It should be noted that, in accordance with Article 22(2) of the Rules, the arbitral tribunal may not adopt procedural measures that are contrary to an agreement of the parties.

27 *Use of the Techniques*

Appendix IV of the Rules sets out examples of available case management techniques. These and additional examples are also contained in this Report. They can be used by the arbitral tribunal and the parties at the case management conference to assist in arriving at the most appropriate procedures for the case (see the section entitled "Subsequent procedure for the arbitration" below).

28 *Providing information in advance of the conference*

The more information the arbitral tribunal has about the issues in the case prior to the conference, the better placed it will be to assist the parties in devising a procedure that will deal with the dispute as efficiently as possible. For example, a tribunal that has made itself familiar with the details of the case from the outset can be proactive and give appropriate, tailor-made suggestions on the issues to be addressed in documentary and witness evidence, the areas in which it will be assisted by expert evidence, and the extent to which disclosure of documents by the parties is needed to address the issues in dispute.

29 *Scope*

Whenever possible, the procedure for the entire arbitration should be determined at the first case management conference and reflected in the procedural timetable to be established pursuant to Article 24(2) of the Rules. However, it may not always be possible to do so, for example in very complex cases or in cases where insufficient detail has been provided prior to the first case management conference. In such situations, the procedural timetable would lay out the procedure as far as can be done (e.g. through a first round of briefs) and a second case management conference would be held promptly to determine the remainder of the procedure for the arbitration.

30 *Client attendance*

Article 24(4) of the Rules expressly allows the arbitral tribunal to request the attendance at the case management conference of the parties in person or through an internal representative. The tribunal should consider requiring such attendance. When clients are present at the case management conference, they can play an active role in the decision-making process. They should be empowered to make case management decisions. Such decisions call for a cost-benefit analysis. For example, is an additional round of briefs worth the time and expense? Is a degree of discovery-style document production likely to produce benefits justifying the time and cost?

31 *Need for a physical meeting*

As with the drawing up of the Terms of Reference (see paragraph 22 above) and as permitted by Article 24(4), consider whether it is appropriate to hold the case management conference by way of telephone, video conference or similar means of communication that do not involve a physical meeting. If the case management conference is to be held at the same time as the Terms of Reference are signed, consider whether that would justify a physical meeting for both purposes.

32 *Use of discretion in apportionment of costs*

Pursuant to Article 38(5) of the Rules, the extent to which each party has conducted the arbitration in an expeditious and cost-effective manner may be taken into account by the arbitral tribunal in determining who shall bear what portion of the costs of the arbitration.

The arbitral tribunal should consider informing the parties at the case management conference that in exercising its discretion to allocate costs pursuant to the Rules, it will take into consideration any unreasonable failure to comply with procedures agreed upon or ordered in the arbitration or any other unreasonable conduct (see paragraph 82 below).

33 *Further case management conferences*

Consider holding further case management conferences during the course of the arbitration, as appropriate. Such conferences may be held prior to significant phases in the procedure (e.g. the exchange of witness statements) so as to ensure that the procedure provided for that phase remains appropriate. Short telephone conferences may also be held at regular intervals (e.g. once a month) to enable the arbitral tribunal to check on progress and discuss with the parties any unforeseen procedural issues that have arisen or may shortly arise.

Procedural timetable

34 *Compliance with the procedural timetable*

Consistent with their obligation under Article 22(1) of the Rules to make every effort to conduct the arbitration in an expeditious and cost-effective manner, the arbitrators and the parties should make all reasonable efforts to comply with the procedural timetable. Extensions and revisions of the timetable should be made only when justified. Any revisions should be promptly communicated to the Court and the parties in accordance with Article 24(2) of the Rules.

35 *Need for a hearing*

Consider whether or not it is necessary for there to be a hearing in order for the arbitral tribunal to decide the case. If it is possible for the arbitral tribunal to decide the case on documents alone, this will significantly reduce costs and time.

36 *Fixing the hearing date*

If a hearing is necessary, then early in the proceedings (ideally at the first case management conference) consider fixing the date for this hearing. This will reduce the likelihood that the arbitral proceedings become drawn out and will enable the procedure leading up to the hearing to be adapted to the time available.

37 *Pre-hearing conference*

Consider organizing a conference with the arbitral tribunal, which may be by telephone, to discuss the arrangements for any hearing. At such a pre-hearing conference, held a suitable time before the hearing itself, the parties and the arbitral tribunal can discuss matters such as time allocation, use of transcripts, translation issues, order of witnesses and other practical arrangements that will facilitate the smooth conduct of the hearing. The arbitral tribunal may consider using the occasion of the

pre-hearing conference to indicate to the parties the issues on which it would like them to focus at the forthcoming hearing.

38 *Short and realistic time periods*

When deciding upon the length of the final hearing and the amount of time required for all procedural steps leading up to that hearing, choose the shortest times that are realistic. Unrealistically short periods of time are likely to result in longer rather than shorter proceedings, should they need to be rescheduled.

39 *Bifurcation and partial awards*

The arbitral tribunal should consider, or the parties could agree on, bifurcating the proceedings or rendering a partial award when doing so may genuinely be expected to result in a more efficient resolution of the case.

40 *Briefing everyone involved in the case*

As soon as the proceedings start, parties should give thought to the input that will be needed for each step in the anticipated timetable. Once the timetable is set, the parties should consider precisely what is required of them to comply with the timetable. It will be useful for all relevant personnel to be briefed accordingly (e.g. management within the client organization, witnesses, internal and external lawyers, experts). This will greatly assist in enabling everyone to reserve the time needed to provide input at the relevant point in the procedure and will assist in enabling each party to adhere to deadlines set in the timetable.

Settlement

41 *Arbitral tribunal's role in promoting settlement*

The arbitral tribunal should consider informing the parties that they are free to settle all or part of the dispute at any time during the ongoing arbitration, either through direct negotiations or through any form of ADR proceedings. For example, mediation proceedings can be conducted under the ICC Mediation Rules, further information on which can be found in the ICC International Court of Arbitration Bulletin, Vol. 24/No. 2 (2013).

42 *Settlement initiatives taken with the parties' agreement*

The parties may request the arbitral tribunal to suspend the arbitration proceedings for a specific period of time while settlement discussions take place. The parties may also agree that the arbitral tribunal should take other steps to facilitate settlement of their dispute, provided that such steps are not inconsistent with the tribunal's duty under Article 41 of the Rules to make every effort to make sure that its award is enforceable at law.

SUBSEQUENT PROCEDURE FOR THE ARBITRATION

The paragraphs that follow give guidance on the points to be discussed by the parties and the arbitral tribunal at the case management conference. They provide suggestions that may assist in reducing the cost and duration of the proceedings.

Written submissions

Written submissions come in different forms and are given different names. They include the Request for Arbitration and the Answer, statements of case and defence, memorials and other written arguments, and opening and closing written submissions. These comments apply to written submissions generally.

43 *Setting out the case in full early in the proceedings*

If the parties set out their cases in full early in the proceedings, the parties and the arbitral tribunal will be better able to understand the key issues at an early stage. Doing so will help ensure that the procedure defined at the case management conference is efficient and that time and money are not wasted on matters that turn out to be of no direct relevance to the issues to be determined.

44 *Avoiding repetition*

Avoid unnecessary repetition of arguments. Once a party has set out its position in full, it should not be necessary to repeat the arguments at later stages (e.g. in pre-hearing memorials, oral submissions or post-hearing memorials), and the arbitral tribunal may direct that there be no such repetition.

45 *Sequential or simultaneous delivery*

Consider whether it is more effective for written submissions to be sequential or simultaneous. Whilst simultaneous submissions enable both parties to inform each other of their cases at the same time (and this may make things quicker), it can also result in inefficiency if the parties raise different issues in their submissions and extensive submissions are required in response.

46 *Specifying form and content*

Consider specifying the form and content of written submissions. For example, clarify whether the first round of written submissions should or should not be accompanied by witness statements and/or expert reports.

47 *Limiting the length of submissions*

Consider agreeing on limiting the length of specific submissions. This can help focus attention on the key issues to be addressed and is likely to save time and cost.

48 *Limiting the number of submissions*

Consider limiting the number of rounds of submissions. This may help to avoid repetition and encourage the parties to present all key issues in their first submissions.

Documentary evidence

49 *Organization of documents*

From the outset of the case the parties should consider using a coherent system for numbering or otherwise identifying documents produced in the case. This process can start with the Request for Arbitration and the Answer, and a system for the remainder of the arbitration can be established with the arbitral tribunal at the time of the first case management conference.

50 *Producing documents on which the parties rely*

The parties will normally each produce the documents upon which they intend to rely. Each party should consider avoiding requests for production of documents from another party unless such production is relevant and material to the outcome of the case. When the parties have agreed upon non-controversial facts, no documentary evidence should be needed to prove those facts.

51 *Establishing procedure for requests for production*

Consider whether requests for production of documents are genuinely necessary. If they are, the parties and the arbitral tribunal should consider establishing a clear and efficient procedure for the submission and exchange of documents. In that regard, they could consider referring to Article 3 of the IBA Rules on the Taking of Evidence in International Arbitration for guidance. In addition, the parties and the arbitral tribunal should consider establishing an appropriate time frame for the production of documents. In most situations, this is likely to be after the parties have set out their cases in full for the first time. If issues concerning the production of electronic documents arise, consider referring to the ICC Commission Report *Managing E-Document Production*⁴ for information and guidance on how to manage such production in an efficient and cost-effective manner.

52 *Managing requests for production efficiently*

Time and costs associated with requests for production of documents, if any, can further be reduced by agreeing upon one or more of the following:

- Limiting the number of requests;
- Limiting requests to the production of documents (whether in paper or electronic form) that are relevant and material to the outcome of the case;

- Establishing reasonable time limits for the production of documents;
- Using the Schedule of Document Production devised by Alan Redfern (often referred to as the Redfern Schedule) in the form of a chart containing the following four columns:

First Column: identification of the document(s) or categories of documents that have been requested;

Second Column: short description of the reasons for each request;

Third Column: summary of the objections by the other party to the production of the document(s) or categories of documents requested; and

Fourth Column: left blank for the decision of the arbitral tribunal on each request.

53 *Avoiding duplication*

It is common for each of the parties to produce copies of the same documents, appended to their statements of case, witness statements or other written submissions. Avoiding duplication where possible will reduce costs.

54 *Selection of documents to be provided to the arbitral tribunal*

It is wasteful to provide the arbitrators with documents that are not material to their determination of the case. In particular, it will usually not be appropriate to send to the arbitral tribunal all documents produced pursuant to production requests. This not only generates unnecessary costs, but also makes it harder for the arbitral tribunal to prepare efficiently.

55 *Keeping hard copies to a minimum*

Consider minimizing the volume of paper documents that need to be produced. Exchanging documents in electronic form can reduce costs (see the ICC Commission Report *Managing E-Document Production* and the 2004 Special Supplement of the ICC International Court of Arbitration Bulletin, *Using Technology to Resolve Business Disputes*).

56 *Translations*

Try to agree how translations of any documents are to be dealt with. Reducing the need for certified translations will help to lower costs. Certified translations may be required only where translation issues emerge from unofficial translations.

57 *Authenticity of documents*

Consider providing that documents produced by the parties are deemed to be authentic unless and until such authenticity is challenged by another party.

3. Available online at <https://iccwbo.org/publication/icc-arbitration-commission-report-on-managing-e-document-production/> and at <http://library.iccwbo.org>.

Correspondence

58 *Correspondence between counsel*

Avoid unnecessary correspondence between counsel. The arbitral tribunal may consider informing the parties that the persistent use of such correspondence may be viewed as unreasonable conduct and be taken into consideration by the arbitral tribunal when exercising its discretion in allocating costs pursuant to the Rules (see paragraph 82 below).

59 *Sending correspondence to the arbitral tribunal*

Avoid sending correspondence between counsel to the arbitral tribunal unless a decision of the arbitral tribunal is required. Any such correspondence that is addressed to the arbitral tribunal should be copied to the Secretariat in accordance with Article 3(1) of the Rules.

Witness statements

60 *Limiting the number of witnesses*

Every witness adds to the costs, both when a witness statement is prepared and considered and when the witness attends to give oral evidence. Costs can be saved by limiting the number of witnesses to those whose evidence is required on key issues. The arbitral tribunal may assist in identifying those issues on which witness evidence is required and focusing the evidence from witnesses on those issues. This whole process will be facilitated if the parties can reach agreement on non-controversial facts that do not need to be addressed by witness evidence.

61 *Minimizing the number of rounds of witness statements*

If there are to be witness statements, consider the timing for the exchange of such statements so as to minimize the number of rounds of statements that are required. For example, consider whether it is preferable for witness statements to be exchanged after all documents on which the parties wish to rely have been produced, so that the witnesses can comment on those documents in a single statement.

Expert evidence

62 *Presumption that expert evidence not required*

It is helpful to start with a presumption that expert evidence will not be required. Depart from this presumption only if expert evidence is needed in order to inform the arbitral tribunal on key issues in dispute.

63 *ICC expert services*

If either the parties or the arbitral tribunal require assistance in identifying an expert witness, recourse can be had to the ICC International Centre for ADR pursuant to the ICC Rules for the Proposal of Experts and Neutrals or the ICC Rules for the Appointment of

Experts and Neutrals. Where an ICC arbitral tribunal seeks a proposal from the Centre for a tribunal-appointed expert, the services of the Centre are available at no cost. Further information regarding the operation of the ICC's rules and services relating to experts can be found on the ICC website at www.iccwbo.org/products-and-services/arbitration-and-adr/experts/.

64 *Clarity regarding the subject matter and scope of reports*

It is essential for there to be clarity at an early stage (by agreement, if possible) over the subject matter and scope of any expert evidence to be produced. This will help to ensure that the experts appointed by the parties have similar expertise and address the same issues.

65 *Number of experts*

Other than in exceptional circumstances, it should not be necessary for there to be more than one expert per party for any particular area of expertise.

66 *Number of reports*

Consider agreeing on a limit to the number of rounds of expert reports and consider whether simultaneous or sequential exchange will be more efficient.

67 *Meetings of experts*

Experts will often be able to narrow the issues in dispute if they can meet and discuss their views after they have exchanged reports. Consideration should therefore be given to providing that experts shall take steps to agree on issues in advance of any hearing at which their evidence is to be presented. Time and cost can be saved if the experts draw up a list recording the issues on which they have agreed and those on which they disagree.

68 *Use of single expert*

Consider whether a single expert appointed either by the arbitral tribunal or jointly by the parties might be more efficient than experts appointed by each party. A single, tribunal-appointed expert may be more efficient in some circumstances. An expert appointed by the arbitral tribunal or jointly by the parties should be given a clear brief and the expert's report should be required by a specified date consistent with the timetable for the arbitration.

Hearings

69 *Minimizing the length and number of hearings*

Hearings are expensive and time-consuming. If the length and number of hearings requiring the physical attendance of the arbitral tribunal and the parties are minimized, this will significantly reduce the time and cost of the proceedings.

70 Choosing the best location for hearings

Pursuant to Article 18(2) of the Rules, hearings do not need to be held at the place of the arbitration. The arbitral tribunal and the parties can select the most efficient place to hold hearings. In some cases, it may be more cost-effective to hold hearings at a location that, for example, is convenient to the majority of the witnesses due to give evidence at that hearing.

71 Telephone and video conferencing

For procedural hearings in particular, consider the use of telephone and video conferencing, where appropriate. Also, consider whether certain witnesses can give evidence by video link, so as to avoid the need to travel to an evidentiary hearing.

72 Providing submissions in good time

The arbitral tribunal should be provided with all necessary submissions (e.g. pre-hearing briefs, if any) sufficiently in advance of any hearing to be able to read them, prepare and become fully informed of the issues to be addressed.

73 Cut-off date for evidence

In advance of any evidentiary hearing, consider setting a cut-off date after which no new documentary evidence will be admitted unless a compelling reason is shown.

74 Identifying core documents

Consider providing the arbitral tribunal, in advance of any hearing, with a list of the documents it needs to read in preparation for the hearing. Where appropriate, this can be done by preparing and delivering to the arbitral tribunal a bundle of core documents on which the parties rely.

75 Agenda and timetable

Consider agreeing on an agenda and timetable for all hearings, with an equitable division of time between each of the parties. Consider the use of a chess clock to monitor the fair allocation of time.

76 Avoiding repetition

Consideration should be given to whether it is necessary to repeat pre-hearing written submissions in opening oral statements. This is sometimes done because of concern that the arbitral tribunal will not have read or digested the written submissions. If the arbitral tribunal has been provided with the documents it needs to read in advance of the hearing and has prepared properly, no such repetition will be necessary.

77 Need for witnesses to appear

Prior to any hearing, consider whether all witnesses need to give oral evidence. This is a matter on which the parties' counsel can confer and seek to reach agreement.

78 Use of written statements as direct evidence

Cost and time can be saved by limiting or avoiding direct examination of witnesses. When appropriate, witness statements can substitute for direct examination at a hearing.

79 Witness conferencing

Witness conferencing is a technique in which two or more fact or expert witnesses presented by one or more of the parties are questioned together on particular topics by the arbitral tribunal and possibly by counsel. Consider whether this technique is appropriate for the arbitration at hand.

80 Limiting cross-examination

If there is to be cross-examination of witnesses, the arbitral tribunal, after hearing the parties, should consider limiting the time available to each party for such cross-examination.

81 Closing submissions

Consider whether post-hearing submissions can be avoided in order to save time and cost. However, if post-hearing submissions are required, consider providing for either oral or written closing submissions. The use of both will result in additional time and cost. In order to give focus, the arbitral tribunal should consider providing counsel with a list of questions or issues to be addressed by the parties in the closing submissions. Any written closing submissions should be provided by an agreed date as soon as reasonable following the hearing.

Costs

82 *Using allocation of costs to encourage efficient conduct of the proceedings*

The allocation of costs can be a useful tool to encourage efficient behaviour and discourage unreasonable behaviour. Pursuant to Article 38(5) of the Rules, the arbitral tribunal has discretion to award costs in such a manner as it considers appropriate. It is expressly stated that, in making its decisions on costs, the tribunal may take into consideration the extent to which each party has conducted the arbitration in an expeditious and cost-effective manner. The tribunal should consider informing the parties at the outset of the arbitration (e.g. at the case management conference) that it intends to take into account the manner in which each party has conducted the proceedings and to sanction any unreasonable behaviour by a party when deciding on costs. Unreasonable behaviour could include: excessive document requests, excessive legal argument, excessive cross-examination, dilatory tactics, exaggerated claims, failure to comply with procedural orders, unjustified applications for interim relief, and unjustified failure to comply with the procedural timetable.

Deliberations and awards

83 *Anticipating the time required*

Before closing the proceedings, the arbitral tribunal should ensure that time has been reserved in each of the arbitrators' diaries for deliberation promptly thereafter. The arbitral tribunal should promptly comply with Article 27 of the Rules and indicate to the Secretariat and the parties the date by which it expects to submit its draft award to the Court.

84 *Prompt completion of the award*

The arbitral tribunal must use its best efforts to submit the draft award as quickly as possible and should follow the guidance on drafting awards in the ICC Award Checklist sent to all arbitrators when the case file is transmitted to them. Further guidance can be found in the article "Drafting Awards in ICC Arbitrations" by Humphrey LLoyd, Marco Darmon, Jean-Pierre Ancel, Lord Dervaird, Christoph Liebscher and Herman Verbist, published in the ICC International Court of Arbitration Bulletin, Vol. 16/No. 2 (2005).

SPECIAL CONSIDERATIONS

Multiparty and multicontract arbitrations

85 *Conditions imposed by Articles 7–9 of the Rules*

Subject to certain conditions set forth in the Rules, Article 7 expressly permits the joinder of additional parties; Article 8 expressly permits claims between multiple parties; and Article 9 expressly permits claims arising out of more than one contract to be brought in a single arbitration, even if the claims are made under more than one arbitration agreement. Clearly, time and cost will be wasted if a party seeks to apply those provisions when the conditions set forth in the Rules are not met. For example, a Request for Joinder pursuant to Article 7 will be successful only if the joined party is bound by the arbitration agreement under which the claims in the arbitration are made; in addition, no additional party may be joined after the confirmation or appointment of any arbitrator, unless otherwise agreed. While Article 9 allows claims to be made in a single arbitration under more than one arbitration agreement, those claims will be sustained only if the different arbitration agreements are compatible. The conditions imposed by Articles 7, 8 and 9 should be carefully studied so as to avoid wasting time and money by making claims that will be rejected or by claiming against parties over whom the tribunal will have no jurisdiction.

86 *Adapting procedures to multiparty and multicontract cases*

The presence of one or more additional parties, the existence of one or more claims between claimants or between respondents, and the existence of claims under more than one contract are likely to complicate the proceedings. Care should be taken at the case management conference to devise tailor-made procedures, appropriate to the specifics of the case at hand, for dealing with the presence of additional parties, cross-claims and multicontract claims.

Consolidation

87 *Consider consolidating related cases*

Article 10 of the Rules provides for the consolidation of two or more separate arbitrations brought under the Rules when all of the parties to those arbitrations consent to the consolidation. Consider whether giving such consent would result in a more efficient resolution of the disputes.

Emergency arbitrator proceedings

88 *Issues to consider before initiating emergency arbitrator proceedings*

Subject to the conditions set forth in the Rules, the Emergency Arbitrator Provisions allow a party to seek urgent interim or conservatory measures from an emergency arbitrator acting under the Rules. The emergency arbitrator offers an alternative forum to state courts for seeking such relief. In deciding whether to file an Application for Emergency Measures, a party should consider a number of issues: first, whether it is genuinely useful and necessary to spend time and money on seeking to obtain interim or conservatory measures; second, whether an application for Emergency Measures under the Rules is preferable to seeking interim measures in a state court. Furthermore, the party should make sure that the conditions for bringing emergency arbitrator proceedings under the Rules are met. For example, the party making the application must be able to demonstrate that it needs urgent interim or conservatory measures that cannot await the constitution of the arbitral tribunal. Also, emergency arbitrator proceedings may only be brought against a signatory of the arbitration agreement or the signatory's successor. An attempt to bring emergency arbitrator proceedings that do not meet all of the conditions will result in needless expenditure and loss of time. Further information on ICC emergency arbitrator proceedings can be found in Jason Fry, Simon Greenberg, Francesca Mazza, *The Secretariat's Guide to ICC Arbitration* (ICC Publication 729)⁴ and in Andrea Carlevaris and José Ricardo Feris, "Running in the ICC Emergency Arbitrator Rules: The First Ten Cases", published in the ICC International Court of Arbitration Bulletin, Vol. 25/No. 1 (2014).⁵

4. Available from www.storeiccwbo.org and online at <http://library.iccwbo.org>.

5. The article is available as an e-chapter from www.storeiccwbo.org.

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The ICC Commission on Arbitration and ADR is the ICC's rule-making and research body for dispute resolution services and constitutes a unique think tank on international dispute resolution. The Commission drafts and revises the various ICC rules for dispute resolution, including arbitration, mediation, dispute boards, and the proposal and appointment of experts and neutrals and administration of expert proceedings. It also produces reports and guidelines on legal, procedural and practical aspects of dispute resolution. In its research capacity, it proposes new policies aimed at ensuring efficient and cost-effective dispute resolution, and provides useful resources for the conduct of dispute resolution. The Commission's products are published regularly in print and online.

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- Create a link among arbitrators, counsel and users to enable ICC dispute resolution to respond effectively to users' needs.

ICC Commission on Arbitration and ADR

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SECTION 11

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THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
JUDGMENT

Reportable

Case No: 065/2021

In the matter between:

TEE QUE TRADING SERVICES (PTY) LTD

APPELLANT

and

**ORACLE CORPORATION SOUTH
AFRICA (PTY) LTD**

FIRST RESPONDENT

SOUTH AFRICAN POST OFFICE

SECOND RESPONDENT

Neutral citation: *Tee Que Trading Services (Pty) Ltd v Oracle Corporation South Africa (Pty) Ltd and Another* (case no 065/2021) [2022] ZASCA 68 (17 May 2022)

Coram: DAMBUZA, MOCUMIE and DLODLO JJA, MEYER and SMITH AJJA

Heard: 28 February 2022

Delivered: 17 May 2022

Summary: Contract law – arbitration and governing law clauses in licence agreements – whether subsequent contracts replaced or rendered clauses inoperative – no variation of the licence agreements – subsequent contracts regulating different aspects of business – arbitration clause and governing law clause not invalid.

ORDER

On appeal from: Gauteng Division of the High Court, Pretoria (Verster AJ sitting as court of first instance):

- 1 The appeal is dismissed with costs including the costs of two counsel.

JUDGMENT

Dambuza JA (Mocumie and Dlodlo JJA, Meyer and Smith AJJA concurring)

Introduction

[1] The issue in this appeal is whether an arbitration clause and a governing law clause in a licence agreement concluded between the appellant, Tee Que Trading Services (Pty) Ltd (TQ), and the first respondent, Oracle Corporation South Africa (Pty) Ltd (Oracle), were rendered inoperative by three agreements which were later concluded by the same parties. Allied to that is the question whether similar clauses in a related sub-licence agreement between TQ and the South African Post Office (SAPO) were replaced by the dispute resolution clauses in the three agreements concluded between TQ and Oracle. The Gauteng Division of the High Court, Pretoria (high court), per Verster AJ, held that the clauses in the earlier licence and sub-licence agreements remained valid and ordered a stay of the action proceedings instituted by TQ against Oracle and SAPO, pending referral of the dispute between these parties to arbitration. This appeal, with the leave of this Court, is against that order of the high court.

Background

[2] During 2004 I-Flex Solutions Limited (I-Flex), a company based in India, concluded a written licence agreement with TQ in terms of which it granted to TQ a non-exclusive, personal, non-transferable, royalty free and intangible right to sub-licence a specific software system to the second respondent, SAPO. A related sub-licence agreement concluded between TQ and SAPO authorised TQ to ‘. . . grant to the Bank [SAPO] and the Bank [to] accept the non-exclusive, personal, non-transferable, royalty-free and intangible right [the Sub-licence] to [u]se the Software System’ for its own business purposes.

[3] Both the licence and sub-licence agreements (collectively referred to as the licence agreements) contained arbitration and governing laws clauses in terms of which disputes between the parties thereto would be referred to arbitration. The licence agreement stipulated that any dispute between I-Flex and TQ would be referred to international arbitration in London, England to be determined in terms of the laws of England. The sub-licence agreement provided that any dispute between TQ and SAPO would be determined in South Africa, according to South African laws, and the rules of arbitration of the International Chamber of Commerce (ICC)¹ would be applicable.²

¹ The International Chamber of Commerce is an international arbitration institution. Its rules are used around the world to resolve disputes.

² Clauses 25 and 26 of the licence agreement provided:

‘25. ARBITRATION

All disputes, controversies and differences of opinion arising out of or in connection with this contract or for the breach hereof which cannot be settled amicably by the parties hereto, shall be settled by arbitration according to the then applicable rules of arbitration of the International Chamber of Commerce (ICC). The place of arbitration shall be London, England.

26. GOVERNING LAWS

This agreement shall be construed and enforced in accordance with the laws of England without regard to its principles of conflict of laws. The parties agree that the jurisdiction and venue of any action with respect to this agreement shall be in a court of competent subject matter jurisdiction located in London, England and each of the parties hereby agrees to submit itself to the exclusive jurisdiction and venue of such court for the purpose of any such action.’

Clauses 25 and 26 of the sub-licence agreement were in identical terms, save for stipulating that the rules applicable to the arbitration would be the rules of arbitration of the International Chamber of Commerce (ICC), that the place of arbitration would be South Africa and that the governing laws would be South African laws.

[4] Both agreements had a non-variation clause in terms of which each written agreement constituted the entire agreement. No variation thereof would be binding unless it was incorporated in a revised schedule to the agreement and signed by the respective parties.

[5] In 2005 Oracle acquired the I-Flex business and became the latter's successor in title in respect of the licence agreement. In addition to the existing licence agreement, TQ was required by Oracle to assume membership of the Oracle Partner Network so that the relationship that it (TQ) had with I-Flex could be extended to Oracle and also that TQ could distribute Oracle's other programs, services and equipment. The membership was renewable annually. For that purpose TQ and Oracle concluded an agreement termed the 'Oracle Partner Network Agreement' (OPNA or OPN agreement).

[6] TQ first became a member of the Oracle network in 2008. Over time, and in line with the Oracle network membership requirement, two more agreements were concluded between TQ and Oracle. These were: the Oracle Licence and Services Agreement (OLSA) and the Oracle Partner Network Full Use Distribution Agreement (FUDA). Each of these additional agreements (the OPNA, OLSA and FUDA) stipulated that disputes relating thereto would be determined by South African courts, in accordance with South African laws.

The dispute

[7] In March 2018 TQ instituted a civil claim against Oracle and SAPO in the high court for damages in the amount of R61 603 515.00 for breach of the licence agreements. It alleged that contrary to the terms of the licence agreements, Oracle and SAPO had negotiated and contracted directly with each other, that they had 'purported' to transfer licences from TQ to SAPO, that Oracle issued additional licences and sold additional modules of the I-Flex software system to SAPO, and

that Oracle and SAPO had concluded a software maintenance agreement to the exclusion of TQ.

[8] In response to the summons, Oracle brought an application for a stay of the action pending referral of the dispute to arbitration. It invoked the provisions of clauses 25 and 26 of the licence agreements and pleaded that the dispute had to be referred to international arbitration under the auspices of the ICC. Oracle also pleaded that the South African Arbitration Act 42 of 1965 was not applicable to the licence agreements.

[9] An alternative contention by Oracle was that even if the high court were to find that domestic arbitration was envisaged, it was entitled to a stay of the pending action, pending referral of the dispute in accordance with s 6 of the domestic Arbitration Act.³ And even if the court were to determine that the licence agreements provided for a choice of arbitration court, the parties thereto had chosen the courts of London, England, so it was contended.

[10] Notwithstanding its concession that the dispute related to the licence agreements, TQ insisted that the dispute resolution mechanism specified in the Oracle network membership agreements was the applicable dispute resolution mechanism. It contended that the business relationship between the parties was governed by the network membership agreements. Without those agreements the licence agreements were impracticable, because execution of the software maintenance obligations were dependant on its membership in the Oracle

³ Section 6 provides the following: ‘(1) If any party to an arbitration agreement commences any legal proceedings in any court (including any inferior court) against any other party to the agreement in respect of any matter agreed to be referred to arbitration, any party to such legal proceedings may at any time after entering appearance but before delivering any pleadings or taking any other steps in the proceedings, apply to that court for a stay of such proceedings.

(2) If on any such application the court is satisfied that there is no sufficient reason why the dispute should not be referred to arbitration in accordance with the agreement, the court may make an order staying such proceedings subject to such terms and conditions as it may consider just.’

network. The gist of this argument was that the network membership agreements and the dispute resolution clauses therein superseded clauses 25 and 26 of the licence agreements. It was also asserted that referral of the dispute to international arbitration would not be in the interests of any of the parties as they were all based in South Africa and the cause of action arose within the Republic.

[11] In granting the order of stay of the action, the high court rejected TQ's contentions. The high court found that the provisions of the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration of 1985 (Model Law), which forms part of the International Arbitration Act 15 of 2017 (IAA), applied to the licence agreements. Further, in terms of Article 8 of the Model Law⁴, on a proper interpretation of the licence agreements, the court was compelled to order a stay of the action proceedings pending referral of the dispute to arbitration. The court held that unlike with the provisions of the domestic Arbitration Act, under the IAA the court had no discretion.

On appeal

[12] In this Court both TQ and Oracle repeated more or less the same submissions they had made in the high court. At the heart of the submissions made on behalf of TQ was that the dispute was not an international commercial dispute because I-Flex was no longer party to the licence agreements and the entities involved were based in South Africa.

⁴ Article 8 of the Model Law provides that:

'(1) A court before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so requests not later than when submitting his or her first statement on the substance of the dispute, stay those proceedings and refer the parties to arbitration unless it finds that the agreement is null and void, inoperative or incapable of being performed.

(2) Where an action referred to in paragraph (1) of this article has been brought, arbitral proceedings may nevertheless be commenced or continued, and an award may be made, while the issue is pending before the court.'

[13] The submission on behalf Oracle was that the issues raised in TQ's cause of action were governed exclusively by the licence agreements. The network membership agreements which governed other aspects of the parties' relationship could not supersede the arbitration dispute resolution mechanism stipulated in the licence agreements.

The agreements

[14] Five contracts require close consideration in this appeal – the two licence agreements and the three Oracle network membership agreements. Each of these regulates a specific aspect of the parties' business relationship. The licence agreement laid the ground for TQ to acquire the specified rights to the I-Flex software in anticipation of the sub-licence agreement between TQ and SAPO. Clause 2.1 of the licence agreement provided that:

'2.1 The Company [I-Flex] grants to the Licencee [TQ] and the Licencee hereby accepts the non-exclusive, personal, non-transferable, royalty-free and intangible right (the Licence') as further described in this section to sub-licence the Software System to the Bank [SAPO] as follows:

- a. To directly sub-licence the Software System to the Bank for its own internal business purposes.
- b. The payment of the full licence fees and all other charges, as stated herein below, to the Company shall entitle the Licencee to grant the sub-licence permitting the installation and use of the Software System to the Bank in South Africa to the extent stated in Schedule 1.
- c. Prior to the delivery of the Software System to the Bank, the licensee shall enter into a binding Sub-Licence Agreement in the form in Schedule 4, in the event that there is any change, modification or alteration in the form of the Sub-Licence Agreement which imposes on the Licencee any obligation or liability which is additional to those stated or envisaged under this Agreement then such additional obligations or liability shall not be binding on the Company.
- d. The use of the Software System by the Bank shall be solely on and in conjunction with the Equipment and software tools as described in Schedule (1) and (2) hereto for the

processing of its own data, for its own internal business purposes at the Support and Production Location during the Term of this Agreement subject to the terms and conditions herein contained.’

[15] In terms of Clause 2.1 of the sub-licence agreement TQ granted to SAPO the rights of use of the Software System together with certain specified equipment.

[16] The complementary relationship between the licence agreements is illustrated in Clause 5 of the sub-licence agreement in terms of which TQ, I-Flex and SAPO agreed on a project plan for installation of the software system onto SAPO’s work premises. SAPO had to pay to TQ the sub-lease fee, customisation fee and on-site charges as specified in Schedule 1 to the sub-licence agreement.

[17] The period of the licence agreements was ‘perpetual’, subject to termination by either party as provided in the agreements. Any variation of the agreements had to be incorporated in a revised schedule thereto. A party could terminate the licence agreement on 30 days written notice to the other party.

[18] The arbitration clause specified in Clause 25 of the licence agreements was repeated in Clause 11 of both licence agreements as follows:

‘In the event of any disputes between the parties, the matter will be resolved through arbitration identified in clause 25 and 26.’

[19] The OPN agreement(s) were concluded between TQ and Oracle only. SAPO was not party thereto. In terms thereof TQ had to apply for membership of the OPN. On acceptance of its application for membership of the Oracle Partnership Network, TQ would be allocated and enrolled to one of country specific partner levels - silver, gold, platinum or diamond. On payment of membership fees, TQ would be able to access ‘partner level benefits’, subject to

maintenance of certain criteria applicable to the particular membership level it was admitted to. The partner level benefits entailed use of technology and application programs which could be downloaded electronically, together with access to technical support, and use of Oracle consulting methodologies and engagement material for the programs, and other additional Oracle resources.

[20] The OLSA regulated TQ's limited right(s) to use the programs made available to it on acceptance to the network. For example, removal, modification, and reverse engineering of the programs was prohibited. Warranties and disclaimers by Oracle, and 'exclusive remedies' available to members were set out in this agreement.

[21] TQ's rights to distribute programs, hardware learning credits and other services to end users were regulated by the FUDA. In terms thereof members were authorised to use Oracle's trademarks and copyrights in terms of guidelines set out in Oracle's Third Party Usage Guidelines.

The law

[22] An arbitration agreement is interpreted according to the established principles governing the interpretation of legal documents.⁵ It is a self-contained agreement collateral to the main agreement to which it relates.⁶ It may only be terminated with the consent of all parties, unless it provides otherwise.⁷

⁵ In *KPMG Chartered Accountants (SA) v Securefin Limited and Another* (644/07) [2009] ZASCA 7; 2009 (4) SA 399 (SCA); [2009] 2 All SA 523 (SCA); *Natal Joint Municipal Pension Fund v Endumeni Municipality* ZASCA 13; [2012] 2 All SA 262 (SCA); 2012 (4) SA 593 (SCA).

⁶ 2 Lawsa 3 ed para 90.

⁷ 2 Lawsa 3 ed para 93. This position in this country is entrenched by the provisions of s 4 of the Arbitration Act 42 of 1965.

Discussion

Were the arbitration and governing law clauses superseded by the dispute resolution clauses in the network membership agreements?

[23] At first TQ pleaded that the dispute resolution clauses provided for in the network membership agreements had superseded clauses 25 and 26 of the licence agreements. This meant that the dispute resolution clauses in the network membership agreements had to be imported onto the licence agreements. There was no explanation as to how or why some clauses of the licence agreements remained valid and others not. Nevertheless, this contention later changed to the effect that the arbitration and governing law clauses became inoperative on conclusion of the network membership agreements.

[24] Whatever the ultimate contention by TQ in this regard was, its express reliance on the licence and sub-licence agreements is pertinent. The absurdity in TQ's arguments was this: on the case pleaded by it, clauses in the network membership agreements, to which SAPO was not party, would be incorporated into the sub-licence agreement without any consent from SAPO. Further, no regard was paid to the intention of the parties as expressed in the agreements.

[25] In terms of the licence agreements, the arbitration and governing law clauses would only terminate if the parties or one of them invoked the provisions of the termination clause. Apart from regulating termination for breach, Clause 15, in both agreements, regulated termination of the licence agreements as follows:

‘The licensee [Bank] may terminate this Agreement after full payment of the Total Licence [Sub-licence] Fees with 30 days written prior notice to the Company [TQ] of the Licensee's [Bank's] intent to terminate. However such termination shall not entitle the Licensee [Bank] to a refund of any part of the Total Licensee [Sub-licence] Fee nor shall such termination prevent the Company [TQ] from recovering any balance outstanding.’

[26] No variation of the licence agreement was ever effected in terms of this clause. And nothing in the wording of the network membership agreements indicates that TQ and Oracle intended to terminate the licence agreements or any clause therein. Instead, as stated, each of the agreements regulated different aspects of the business relationship between TQ and Oracle. It is also relevant that in the summons TQ pleaded that the three network membership agreements were concluded with the intention of granting TQ the right to distribute ‘*other Oracle products in addition to the [TQ’s] rights acquired in terms of the Licence agreement*’. (emphasis supplied)

[27] While the licence agreements granted and regulated specified rights between TQ, Oracle and SAPO in relation to the I-Flex Software, the OPN agreement regulated membership to the business relationship between TQ and Oracle based on TQ’s membership of the Oracle network and as regulated by the three later agreements.

[28] A further relevant consideration is that in the summons TQ pleaded that prior to signing the network membership agreements it was assured by Oracle that its rights under the licence agreements would not be negatively affected by the new contracts because the later agreements would ‘only apply to all new Oracle Technology Licence’. The parties were therefore alive to the real or perceived impact of the network membership agreement on the licence agreements and they agreed that the licence agreements remained in place. Their alleged discussions are consistent with the terms of all the contracts between them. The contention by TQ that the later agreements rendered clauses 25 and 26 in the licence agreements inoperative is therefore contrived.

Did the IAA and Model Law apply to the dispute?

[29] The IAA was enacted in South Africa with the specific objective, amongst others, to domesticate the Model law as adopted by the UNICTRAL in 1985.⁸ The Model Law reflects worldwide consensus on key aspects of international arbitration practice. Section 3 of the IAA sets out the objectives of that Act as to: ‘(a) facilitate the use of arbitration as a method of resolving international commercial disputes; (b) adopt the Model Law for use in international commercial disputes; (c) facilitate the recognition and enforcement of certain arbitration agreements and arbitral awards; and (d) give effect to the obligations of the Republic under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958), the text of which is set out in Schedule 3 to this Act, subject to the provisions of the Constitution.’

[30] The Model Law appears in Schedule 1 to the IAA. In terms of Article 1(1) thereof its provisions apply to international commercial arbitration, subject to any agreement in force between the Republic and any other State or States. Article 1(2) however provides that the provisions of the Model Law apply only if the juridical seat of arbitration is in the Republic, except in relation to Articles 8, 9, 17H, 17I, 17J, 35 and 36 thereof. In terms of Article 1(3) an arbitration is international if:

- ‘(a) the parties to the arbitration have, at the time of the conclusion of that [arbitration] agreement, their places of business in different States; or
- (b) one of the following places is situated outside the State in which the parties have their places of business;
 - (i) the place of arbitration if determined in, or pursuant to, the arbitration agreement;
 - (ii) any place where a substantial part of the obligations of the commercial relationship is to be performed or the place with which the subject-matter of the dispute is most closely connected; or
- (c) the parties have expressly agreed that the subject matter of the arbitration agreement relates to more than one country.’

⁸ PAA Ramsden *The Law of Arbitration – South African and International Arbitration* 2nd ed (2018) at 21.

[31] It was submitted on behalf of TQ that on a proper interpretation of Article 1 of the Model law, Article 1(3) thereof was inapplicable to the dispute because its application was excluded under Article 1(2). This argument was intended to provide a basis for this Court to ignore the definition of international arbitration set out in Article 1(3). It was also contended that the dispute was not an international dispute because all the parties thereto are South African entities, and the dispute arose in South Africa.

[32] The submission that the Model Law is excluded from application in the dispute between the parties is misguided. It is necessary to highlight that the IAA and the Model Law, as incorporated therein, is South African law. It is in this context that Article 1(2) becomes relevant. The only sensible interpretation of Article 1(2) is that if the juridical seat of the arbitration is in the territory of South Africa, the provisions of the IAA and the Model law apply.

[33] In this case, in the licence agreement, the parties opted to settle their disputes through international commercial arbitration. They specified the juridical seat of their arbitration as London, England. They also specified that the disputes between them would be settled by arbitration ‘according to the then applicable rules of arbitration of the International Chamber of Commerce (ICC)’. Both the specified juridical seat and the applicable rules rendered the arbitration an international arbitration.

[34] In relation to the parties to the dispute being South African entities, there is no bar to parties who conduct business in the Republic choosing a place of arbitration that is situated outside the Republic. Under Article 20 of the Model Law, parties are free to agree on the juridical seat of arbitration.⁹ In *Polysius (Pty)*

⁹ Article 20 states that: ‘(1) The parties are free to agree on the juridical seat of arbitration. Failing such agreement, the juridical seat of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties.’

*Ltd v Transvaal Alloys (Pty) Ltd*¹⁰ where an objection similar to that raised by TQ, Slomowitz J remarked that: ‘When the parties contracted, they were fully alive to the nature of the issues that were likely to arise . . . With this in mind, they stipulated for an arbitration in Switzerland and should be held to it’. Similarly in this case, when TQ and Oracle extended the terms of the original contract between TQ and I-Flex, they were alive to the location of their businesses and opted retain the arbitration and governing law clauses.

[35] This conclusion is consistent with the approach to interpretation of similar international arbitration agreements elsewhere in the world. In *Orbitel Mobile Communications Limited v Novatel Communications (Far East) Limited*¹¹, an agreement between Hong Kong companies that London would be the place of arbitration, the arbitration was held to be international. Similarly, in *Marko Tel & Hes Kablo Albania v ZTE Albania Sh pk Albania*¹² an arbitration clause between Albanian companies that arbitration was to take place in London, was upheld.

Discretion to refuse stay of action proceedings

[36] The Model Law reflects the international approach to international commercial arbitration agreements that, unless an arbitration agreement is null and void, inoperable or incapable of being performed, courts are obliged to stay action proceedings pending referral to arbitration. In this case, the arbitration and governing law agreements between Oracle, TQ and SAPO remain valid and operative.

¹⁰ *Polysius (Pty) Ltd v Transvaal Alloys (Pty) Ltd and Another; Transvaal Alloys (Pty) Ltd v Polysius (Pty) Ltd* 1983 (2) SA 630 (W) at 651G-H.

¹¹ *Orbitel Mobile Communications Limited v Novatel Communications (Far East) Limited* (case number: HCA9014/1995) High Court (Hong Kong) (16 February 1996).

¹² *Marko Tel & Hes Kablo Albania v ZTE Albania Sh pk Albania* Supreme Court 11243-01441-2013 (06 June 2013), CLOUT case 1459.

[37] Furthermore, a consequence of South Africa having ratified the Convention on Recognition and Enforcement of Foreign Arbitral Awards of 1958 (the NYC) is that the provisions of the Convention are included in Schedule 3 of the IAA. In Article II the schedule sets out the text of the NYC as follows:

‘Each Contracting State shall recognize an agreement in writing under which the parties undertake to submit to arbitration all or any differences which have arisen or which may arise between them in respect of a defined relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration.’

No valid basis has been established for interference with the arbitration agreements in this case.

[38] Consequently, the appeal is dismissed with costs including the costs of two counsel.

N DAMBUZA
JUDGE OF APPEAL

Appearances:

For appellant:	RB Mphela with N Ngwenya
Instructed by:	Nicholas Ngwenya Inc, Centurion SMO Seobe Attorneys Inc, Bloemfontein
For 1 st respondent:	HWS Martin with D Bernstein
Instructed by:	Baker McKenzie Attorneys, Sandton McIntyre van der Post, Bloemfontein

SECTION 11.1

SCA TEE QUE V ORACLE NOTES



The Arbitration Foundation of Southern Africa
NPC

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In February 2023, the first-ever case on the interpretation of the [International Arbitration Act](#) (IA Act) in South Africa was heard in the Supreme Court of Appeal (SCA). In *Tee Que Trading Services (Pty) Ltd v Oracle Corporation South Africa (Pty) Ltd and Another*, the SCA was faced with a decision of the High Court to stay proceedings instituted before it, on the basis that the parties were subject to an international arbitration clause in the agreement under dispute. The IA Act, by incorporating the UNCITRAL Model Law, provides that a court faced with a matter subject to an international arbitration agreement “shall,” on request by a party, stay those proceedings and refer them to arbitration in accordance with the agreement. The SCA held that the courts have no discretion in relation to such matters.

The case of *Tee Que Trading Services (Pty) Ltd v Oracle Corporation South Africa (Pty) Ltd and Another* [2022] ZASCA 68 is a significant decision by the Supreme Court of Appeal (SCA) of South Africa, delivered on 17 May 2022. It addresses the enforceability of arbitration clauses in the context of international commercial agreements and clarifies the application of South Africa's International Arbitration Act (IAA).

Summary of the Supreme Court of Appeal Judgment

Tee Que Trading Services (Pty) Ltd v Oracle Corporation South Africa (Pty) Ltd and Another

Overview

This judgment from the Supreme Court of Appeal of South Africa addresses a dispute between Tee Que Trading Services (TQ) and Oracle Corporation South Africa regarding the validity of arbitration and governing law clauses in their license agreements. The court ultimately dismissed TQ's appeal, affirming that the original clauses remained valid despite subsequent agreements.

Key Topics and Core Ideas

1. Background of the Case

- TQ entered into a license agreement with I-Flex Solutions Limited in 2004, allowing it to sublicense software to the South African Post Office (SAPO) .
- Oracle acquired I-Flex and became the successor in title to the license agreement, leading to new agreements that TQ contended altered the arbitration clauses.

2. Legal Issues

- The central question was whether the arbitration and governing law clauses in the original license agreement were rendered inoperative by subsequent agreements between TQ and Oracle.
- TQ argued that the newer agreements governed the parties' relationship and superseded the earlier clauses, while Oracle maintained that the original clauses remained valid and enforceable.

3. Court's Findings

- The court found that the arbitration clauses in the original license agreements were not superseded by the later agreements, as they governed different aspects of the business relationship [23][26].
- The court emphasized that the arbitration agreements were self-contained and could only be terminated with the consent of all parties involved [22][26].

4. Application of Arbitration Law

- The court ruled that the International Arbitration Act and the UNCITRAL Model Law applied to the dispute, affirming that the arbitration was international in nature due to the specified seat of arbitration being in London [29][34].
- The court highlighted that South African law recognizes the validity of international arbitration agreements, and the parties had explicitly chosen arbitration in London, which should be upheld [36][37].

5. Conclusion

- The appeal was dismissed with costs, reinforcing the validity of the arbitration and governing law clauses in the original agreements [38].

Key Points and Highlights

- **Validity of Original Agreements:** The arbitration and governing law clauses in the original license agreements between TQ and Oracle remained valid despite subsequent agreements that regulated other aspects of their relationship.
- **International Arbitration:** The court upheld the international arbitration provisions, stating that the parties had agreed to arbitration in London, thereby making the dispute an international commercial one [34][36].
- **No Supersession:** TQ's claims that the newer agreements rendered the original clauses inoperative were rejected, as there was no evidence of intent to terminate those clauses [23][26].
- **Costs:** The court ordered TQ to pay the costs of the appeal, including the costs of two counsel [38].

This judgment clarifies the importance of clearly defined arbitration clauses and the implications of subsequent agreements on existing contractual obligations.

Background

In 2004, Tee Que Trading Services (TQ) entered into a license agreement with I-Flex Solutions Limited, granting TQ the right to sub-license specific software to the South African Post Office (SAPO). Both the license and sub-license agreements contained arbitration clauses: disputes between I-Flex and TQ were to be resolved through international arbitration in London under English law, while disputes between TQ and SAPO were to be arbitrated in South Africa under South African law.

Subsequently, Oracle Corporation acquired I-Flex and required TQ to enter into additional agreements, including the Oracle Partner Network Agreement (OPNA), the Oracle License and Services Agreement (OLSA), and the Full Use Distribution Agreement (FUDA). These newer agreements stipulated that disputes would be resolved by South African courts under South African law.

Legal Issue

In 2018, TQ initiated legal proceedings against Oracle and SAPO in the High Court, alleging breach of contract and seeking damages. Oracle applied for a stay of the proceedings, invoking the arbitration clauses in the original license agreements. TQ contended that the newer agreements superseded the original arbitration clauses, rendering them inoperative.

SCA Ruling

The SCA dismissed TQ's appeal, affirming the High Court's decision to stay the proceedings in favor of arbitration. The court held that:

- The original arbitration clauses remained valid and enforceable, as there was no evidence that the subsequent agreements explicitly revoked or replaced them.
- Under the International Arbitration Act, which incorporates the UNCITRAL Model Law, South African courts are obligated to refer parties to arbitration when an arbitration agreement exists, unless the agreement is null, void, inoperative, or incapable of being performed.
- The court has no discretion to refuse a stay of proceedings in such circumstances.

This decision underscores the principle that arbitration agreements are to be upheld, reinforcing South Africa's commitment to international arbitration standards. It also highlights the importance of clear contractual drafting, especially when multiple agreements govern different aspects of a business relationship.

For a detailed analysis, you can refer to the full judgment here: [Saflii](#).

Additionally, Baker McKenzie provided commentary on this case, emphasizing its implications for international arbitration in South Africa:

SECTION 11.2

SCA TEE QUE V ORACLE - SA COURT CONSIDERS ARBITRATION DILEMMA (AFRICAN LAW & BUSINESS)



The Arbitration Foundation of Southern Africa
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SA court considers arbitration dilemma



Published by: Darryl Bernstein **on** 05/04/2023

A recent ruling determined that there is no discretion for South African courts to hear disputes subject to international arbitration clauses, write Darryl Bernstein, Deepa Ramjee and Cameron Jeffrey from Baker McKenzie.

In February 2023, the first ever case on the interpretation of the International Arbitration Act (IA Act) in South Africa was heard in the Supreme Court of Appeal (SCA). In *Tee Que Trading Services (Pty) Ltd v Oracle Corporation South Africa (Pty) Ltd and Another*, the SCA was faced with a decision of the High Court to stay proceedings instituted before it, on the basis that the parties were subject to an international arbitration clause in the agreement under dispute. The IA Act, by incorporating the UNCITRAL Model Law, provides that a court faced with a matter subject to an international arbitration agreement “shall,” on request by a party, stay those proceedings and refer them to arbitration in accordance with the agreement. The SCA held that the courts have no discretion in relation to such matters.

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In 2018, Tee Que (the appellant) instituted a civil action in the High Court against **Oracle** for damages arising out of a breach of contract. Oracle responded to the civil action by way of an application for a stay of those proceedings pending referral of the dispute to arbitration. Oracle contended that in circumstances where an international arbitration agreement is at play, a court must stay the proceedings before it when called upon to do so, pending referral of the dispute to arbitration. This was based on the IA Act, which provides that only where a court finds an arbitration agreement to be null and void, inoperative, or incapable of performance, may it hear the matter in dispute. The High Court agreed with that position, finding that the provisions of the UNCITRAL Model Law, which forms part of the IA Act, applied to the dispute, and that in terms of article 8 of the Model Law, on a proper interpretation of the applicable agreements, it was compelled to order a stay of the action proceedings pending referral of the dispute to arbitration. The High Court held that, unlike with the provisions of the Arbitration Act, under the IA Act, it had no discretion.

Tee Que took the decision on appeal to the SCA. By way of a judgment dated 17 May 2022, the SCA dismissed the appeal. In doing so, it considered the question of whether the IA Act and the UNCITRAL Model Law applied to the dispute. The court pointed out that the IA Act was enacted in South Africa with the specific purpose of domesticating the UNCITRAL Model Law, and that the IA Act and the UNCITRAL Model Law, as incorporated into the IA Act, is South African law. It then had to consider whether, in the context of international arbitrations in accordance with the IA Act, the High Court had a discretion to refuse a stay of the civil action proceedings.

On the question of the court's discretion, the SCA highlighted that the, "[UNCITRAL] Model Law reflects the international approach to international commercial arbitration agreements that, unless an arbitration agreement is null and void, inoperable or incapable of being performed, courts are obliged to stay action proceedings pending referral to arbitration". The agreements between the parties being valid and operative, the SCA found that there was no basis for interference with the arbitration agreement underlying the dispute, and accordingly that no discretion exists for a court to refuse a stay application in the circumstances.



The impact of the SCA's judgment cuts two ways. On the one hand, a South African court has no discretion to hear a matter subject to an international arbitration clause where a party to proceedings raises such a clause. In these circumstances the inherent jurisdiction of the South African High Court is effectively ousted by the provisions of the IA Act. On the other, a party to an international arbitration agreement effectively loses its right of access to court in relation to a dispute, and must refer that dispute to arbitration in accordance with the agreement. Failure to do so entitles a counterparty to raise the arbitration agreement and effectively force the matter to arbitration.

While the SCA's judgment is likely to alleviate local court backlogs and expedite the resolution of disputes between parties, it will significantly impact litigants' right of access to courts. This raises a potential constitutional issue which was not dealt with before the SCA, and which may in due course occasion a decision by South Africa's apex court, the Constitutional Court, on the issue. In the case of *Tee Que* however, no appeal to the Constitutional Court has been lodged, and the SCA's decision remains the authority on the issue in South Africa.

Darryl Bernstein is a partner and head of the dispute resolution practice, Deepa Ramjee is a director designate and Cameron Jeffrey is an associate for Baker McKenzie in Johannesburg

Darryl Bernstein

Baker McKenzie

Darryl Bernstein is a partner in the Dispute Resolution Department at Baker & McKenzie in Johannesburg. Darryl assists clients in matters involving international, domestic and multi-jurisdictional litigation and arbitration proceedings. He has acted for a wide range of clients listed both on the Johannesburg Stock Exchange and on various international exchanges in resolving commercial disputes. He has advised clients in the banking, construction, engineering and mining sectors in relation to a wide variety of general corporate disputes. He has also acted on behalf of various state organisations and commercial tenderers in the resolution of tender disputes and administrative reviews. He routinely advises his clients in relation to ancillary labour law enquiries, including disputes



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arising out of empowerment transactions. In addition, Darryl assists with commercial advisory work, focusing particularly on technology and telecommunications. His practice includes advising clients on data protection issues, internet and e-business services, and digital commercial and regulatory requirements.

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SECTION 11.3

**SCA TEE QUE V ORACLE -
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OVERVIEW

- In 2023, the High Court in Johannesburg delivered a contentious judgment in which it held that a conveyancer/ attorney owes a duty of care to warn a third-party depositor of, and take reasonable steps to guard against, the interception of electronic payments by cyber criminals.
- With regard to public policy considerations, the High Court found that the omission was wrongful and effectively opened the floodgates to litigation, and exposed attorneys to indeterminate liability by third parties for similar loss.
- The decision was taken on appeal and, in a ruling handed down on 10 June, Dawood AJ overturned the High Court's decision, reiterating that the general position in South African law is that wrongfulness for the causation of pure economic loss must be proved based on public policy considerations. The High Court should have appreciated the real danger of indeterminate liability and dismissed the claim.

Last year, the Johannesburg High Court in *Hawarden v Edward Nathan Sonnenberg Inc 2023 (4) SA 152 (GJ)* awarded a ZAR 5.5 million claim against Edward Nathan Sonnenberg Inc (**ENS**) for pure economic loss suffered by a third party, Ms Hawarden.

Ms Hawarden was a purchaser in a sale of land agreement and had no contractual relationship with ENS, the conveyancer acting for the seller in the sale. Email correspondence between Ms Hawarden and ENS was intercepted by cyber criminals in a business email compromise (**BEC**) scam. As a result, ENS' bank account details were altered, and Ms Hawarden unknowingly transferred the balance of the purchase price into the fraudster's bank account.

The legal issue for determination was whether ENS, as the conveyancer and attorney for the seller, was delictually liable for the financial loss suffered by Ms Hawarden. In particular, whether ENS owed a legal duty to reasonably prevent the loss suffered by Ms Hawarden and whether its failure to do so was wrongful.

In 2023, the High Court in Johannesburg delivered a contentious judgment in which it held that a conveyancer/ attorney owes a duty of care to warn a third-party depositor of, and take reasonable steps to guard against, BEC by cyber criminals. With regard to public policy considerations, the High Court found that the omission was wrongful and held ENS responsible. This effectively opened the floodgates to litigation, and exposed attorneys to indeterminate liability by third parties for similar loss.

ENS took the High Court's decision on appeal and, on 10 June, the High Court judgment was overturned by the Supreme Court of Appeal (**SCA**), ruling in favour of ENS.

Dawood AJ reiterated that the general position in South African law is that wrongfulness for the causation of pure economic loss must be proved based on public policy considerations. To this end, the risk of indeterminate liability was identified as the main policy consideration against delictual liability for pure economic loss.

The SCA recognised that the finding of the High Court would have profound implications for attorneys as well as all creditors to the extent that they would owe a legal duty to their debtors to protect them against the risk of BEC. As stated by Dawood JA, such a finding is untenable. The High Court should have appreciated the real danger of indeterminate liability and dismissed the claim.

Whilst the plaintiff's vulnerability to risk is an important policy consideration in favour of a finding of wrongfulness, it is settled law that this is not applicable where a plaintiff could have taken reasonable steps to guard against the loss suffered.

As Ms Hawarden had ample means available to her, the SCA ruled that she must take responsibility for her failure to protect herself against known risk.

If the High Court's decision had stood, it would have meant that lawyers and other professionals would have an onerous duty to take steps to safeguard third parties against potentially myriad cyber and other risks. This judgment is good news for professionals and for professional indemnity insurers.



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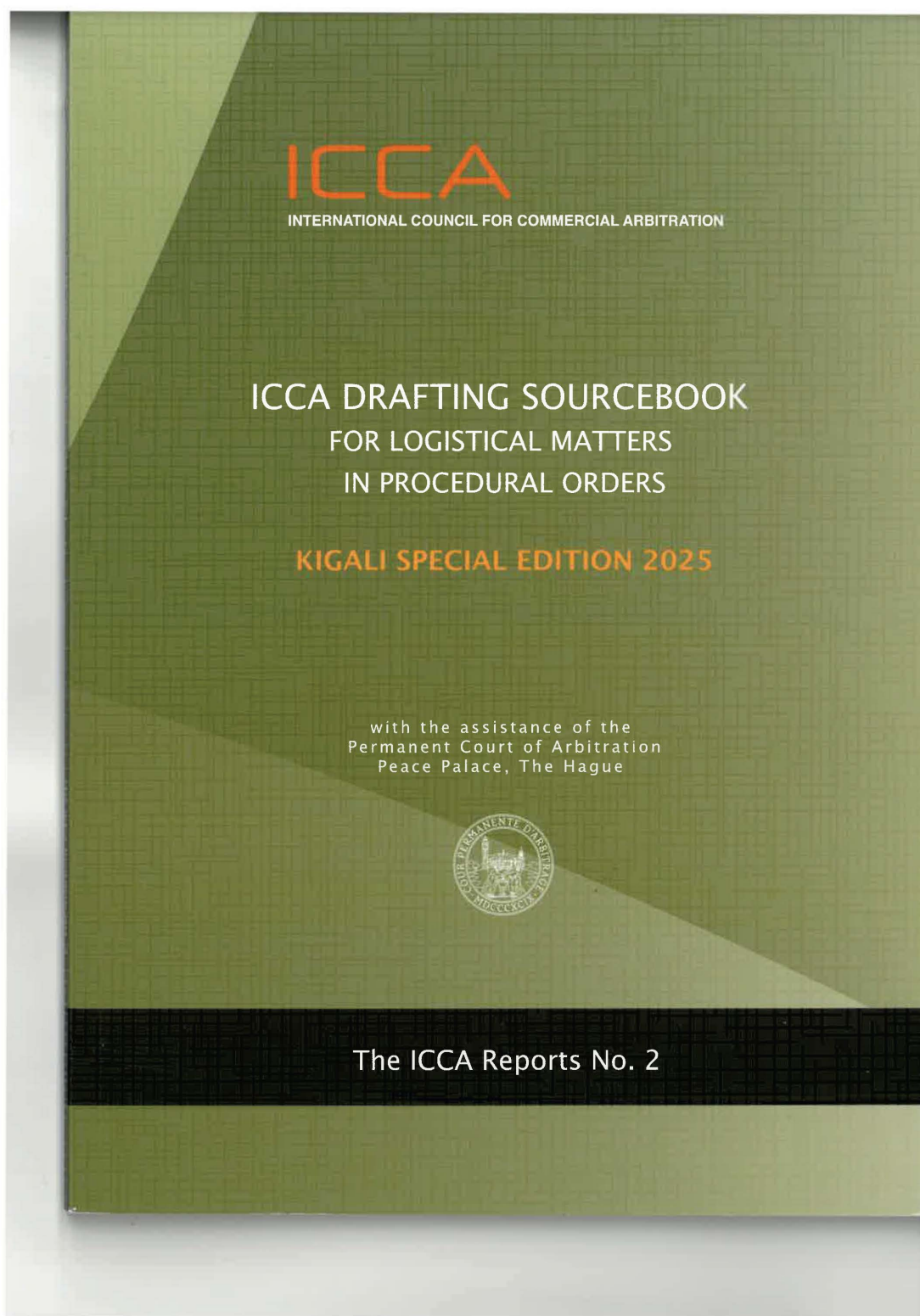


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Guideline 15 Framework Guideline on the Use of Technology in International Arbitration (2021)

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Silberstein-Loeb, Jonathan

“Arbitrators, Decision Making, and Generative AI”, 41 ASA Bulletin (2023, Issue 4), pp. 831-840

Silicon Valley Arbitration and Mediation Center (“SVAMC”)

SVAMC Guidelines on the Use of Artificial Intelligence in Arbitration (2024)

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Stockholm Chamber of Commerce Arbitration Institute ("SCC")
SCC Guide: Guide to the Use of Artificial Intelligence in Cases Administered Under the SCC Rules (2024)

Supreme Court of the Republic of Singapore
Registrar's Circular No. 1 of 2024. Guide on the Use of Generative Artificial Intelligence Tools by Court Users

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AAA-ICDR Best Practices Guide for Maintaining Cybersecurity and Privacy

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Guideline 16 Guidance Note on Remote Dispute Resolution Proceedings (2020)

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Leveraging Technology for Fair, Effective and Efficient International Arbitration Proceedings (2022)

ICCA-IBA Joint Task Force on Data Protection in International Arbitration
ICCA-IBA Joint Task Force Roadmap to Data Protection in International Arbitration (ICCA Reports No. 7) (2022)

Rosenthal, David
"Complying with the General Data Protection Regulation (GDPR) in International Arbitration – Practical Guidance", 37 ASA Bulletin (2019, Issue 4), pp. 822-852

Swiss Arbitration Centre
Swiss Rules of International Arbitration Practice Note (October 2024)

Working Group on LegalTech Adoption in International Arbitration
Protocol for Online Case Management in International Arbitration (2020)

Disability Accommodation

International Chamber of Commerce ("ICC") Commission on Arbitration and ADR
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China International Economic and Trade Arbitration Commission ("CIETAC")
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THE ICCA REPORTS

- Duggal, Kabir and Rangachari, Rekha
"The Common Law Versus Civil Law Divide in International Arbitration: Prague Rules on the Taking of Evidence", 8 ACICA Review (August 2020, No. 2), pp. 17-19
- International Bar Association ("IBA") Arbitration Committee
IBA Rules on the Taking of Evidence in International Arbitration (2020)
- International Chamber of Commerce ("ICC") Commission on Arbitration and ADR
Issues for Arbitrators to Consider Regarding Experts (2021)
- Nordic Offshore and Maritime Arbitration Association ("NOMA")
NOMA Best Practice Guidelines including Rules on the Taking of Evidence (2021)
- Gorjão Henriques, Duarte
"The Prague Rules: Competitor, Alternative or Addition to the IBA Rules on the Taking of Evidence in International Arbitration?", 36 ASA Bulletin (2018, Issue 2), pp. 351-363
- Prague Rules Working Group
Rules on the Efficient Conduct of Proceedings in International Arbitration (Prague Rules) (2018)
- Paperless Proceedings/Use of Platforms**
- Campaign for Greener Arbitrations
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- Model Green Procedural Order
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Guideline 15 Framework Guideline on the Use of Technology in International Arbitration (2021)
- Guideline 16 Guidance Note on Remote Dispute Resolution Proceedings (2020)
- International Chamber of Commerce ("ICC") Commission on Arbitration and ADR
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- Stockholm Chamber of Commerce Arbitration Institute ("SCC")
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- Guidelines for Arbitrators (2024)
- SCC Ad Hoc Platform: Guidelines for Parties and Arbitral Tribunals (18 April 2023)
- Vienna International Arbitration Centre ("VIAC")
VIAC Portal Guidelines for VIAC Proceedings (2021)
- Working Group on LegalTech Adoption in International Arbitration
Protocol for Online Case Management in International Arbitration (2020)
- Procedural Orders – General Logistical Matters**
- Australian Centre for International Commercial Arbitration ("ACICA")
ACICA Practices and Procedures Toolkit
- Checklist for Preliminary Meeting and Procedural Orders
- Chartered Institute of Arbitrators ("Ciarb")
Guideline 6 Managing Arbitrations and Procedural Orders
- Debevoise & Plimpton
Debevoise International Arbitration Clause Handbook (2022 Edition) (includes Debevoise Efficiency Protocol (2018) and Debevoise Protocol to Promote Cybersecurity in International Arbitration)
- German Institute for Arbitration ("DIS")
General Information on DIS Arbitration (2022)
- International Chamber of Commerce ("ICC") Commission on Arbitration and ADR
Facilitating Settlement in International Arbitration (2023)
- Effective Conflict Management (2023)
- Leveraging Technology for Fair, Effective and Efficient International Arbitration Proceedings (2022)
- Effective Management of Arbitration – A Guide for In-House Counsel and Other Party Representatives
- Controlling Time and Costs in Arbitration, 2nd ed. (2018)

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- International Chamber of Commerce ("ICC") International Court of Arbitration
Note to Parties and Arbitral Tribunals on the Conduct of the Arbitration under the ICC Rules of Arbitration (1 January 2021)
- International Chamber of Commerce ("ICC") Institute of World Business Law
Dossier XX, Rethinking the Paradigms of International Arbitration (Bernardo M. Cremades, Patricia Peterson (eds)) (2023)
- JAMS
JAMS Efficiency Guidelines for the Pre-Hearing Phase of International Arbitrations (Effective 1 February 2011)
- Kaplan, Neil CBE QC SBS
"Innovating in Arbitration: Options for Greater Efficiency", *Korean Arbitration Review* (2019, Issue 10), pp. 10-19
- Kim, Kap-You (Kevin)
"Looking Forward: Bringing Renewed Efficiency to the Arbitration Practice", *Korean Arbitration Review* (2022, Issue 13), pp. 4-11
- London Court of International Arbitration ("LCIA")
Guidance Note for Parties and Arbitrators
- Nordic Offshore and Maritime Arbitration Association ("NOMA")
NOMA Best Practice Guidelines including Rules on the Taking of Evidence (2021)
- Prague Rules Working Group
Rules on the Efficient Conduct of Proceedings in International Arbitration (Prague Rules) (2018)
- Queen Mary University of London and Pinsent Masons
Future of International Energy Arbitration Survey Report (2022)
- Queen Mary University of London and White & Case
2021 International Arbitration Survey: Adapting Arbitration to a Changing World
- 2015 International Arbitration Survey: Improvements and Innovations in International Arbitration
- Risse, Joerg
"Ten Drastic Proposals for Saving Time and Costs in Arbitral Proceedings", 29 *Arbitration International* (2013, Issue 3), pp. 453-466

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ANNEX: USEFUL RESOURCES

- Sabater, Anibal
"Optional Provisions for the Terms of Reference and Procedural Order No. 1", *ICC Dispute Resolution Bulletin* (2023, Issue 3), pp. 62-72
- Savola, Hans Mikael (Mika)
"Procedural Order No. 1 – Trends and Practices", 41 *ASA Bulletin* (2023, Issue 4), pp. 783-804
- Swiss Arbitration Association ("ASA")
The Arbitration Toolbox by ASA (including Sample Agenda and Checklist for the Organizational Conference; Agenda for the Pre-Hearing Conference; and Procedural Order No. 1 regarding Specific Procedural Rules)
- Swiss Arbitration Centre
Swiss Rules of International Arbitration Practice Note (October 2024)
- United Nations Commission on International Trade Law ("UNCITRAL")
UNCITRAL Notes on Organizing Arbitral Proceedings adopted in 2016 (with an additional note on early dismissal and preliminary determination adopted in 2023)
- Vancouver International Arbitration Centre ("VanIAC")
Pre-Hearing Meeting Agenda Guideline
- Vienna International Arbitration Centre ("VIAC")
VIAC Explanatory Notes – A Secretariat's Guide (2022)
- Welser, Irene and De Berti, Giovanni
"Best Practices in Arbitration: A Selection of Established and Possible Future Best Practice", in *Austrian Yearbook on International Arbitration 2010* (Klaussegger, Klein, Krenschner, Petsche, Pitkowitz, Power, Welser and Zeiler (eds)), pp. 79-101
- White & Case LLP and Queen Mary University of London School of International Arbitration
2012 International Arbitration Survey – Current and Preferred Practices in the Arbitral Process
- Remote Hearings**
- American Arbitration Association – International Centre for Dispute Resolution ("AAA-ICDR")
Virtual Hearings (online collection including Virtual Hearing Guide for Arbitrators and Parties, Virtual Hearing Guide for Arbitrators and Parties Utilizing ZOOM, Order and Proceedings for a Virtual Hearing via Videoconference)

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- Campaign for Greener Arbitrations
Arbitration Tech and Virtual Hearing Toolkit
- Carducci, Guido
"Remote or Virtual Arbitration Hearings as 'New Normal': Governing Law and Rules, Seat, Annulment, Recognition and Enforcement", 39 ASA Bulletin (2021, Issue 3), pp. 656-664
- China International Economic and Trade Arbitration Commission ("CIETAC")
Guidelines on Proceeding with Arbitration Actively and Properly During the COVID-19 Pandemic (Trial) (28 April 2020)
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CPR's Annotated Model Procedural Order and Guidelines for Remote Video Arbitration Proceedings (revised August 2021)
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- International Bar Association ("IBA") IBA Arb40 Subcommittee
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- International Chamber of Commerce ("ICC") Commission on Arbitration and ADR
Leveraging Technology for Fair, Effective and Efficient International Arbitration Proceedings (2022)
- International Chamber of Commerce ("ICC") Institute of World Business Law
Dossier XX, Rethinking the Paradigms of International Arbitration (2023) (Bernardo M. Cremades, Patricia Peterson (eds))
- International Chamber of Commerce ("ICC") International Court of Arbitration
ICC Checklist for a Protocol on Virtual Hearings and Suggested Clauses for Cyber-Protocols and Procedural Orders Dealing with the Organisation of Virtual Hearings (2020)
- ICCA
Does a Right to a Physical Hearing Exist in International Arbitration? (ICCA Reports No. 10) (2022)
- Korean Commercial Arbitration Board ("KCAB")
Seoul Protocol on Videoconferencing in International Arbitration (2020)

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- Madrid Court of Arbitration
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- Vienna International Arbitration Centre ("VIAC")
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Framework and Green Protocols
Arbitration Tech and Virtual Hearing Toolkit
- Queen Mary University of London and Pinsent Masons
Future of International Energy Arbitration Survey Report (2022)
- Transparency/Publication of Awards**
- Cavalieros, Philippe
"La publication intégrale des sentences: (r)évolution ou régression de la justice arbitrale?", 2020 Revue de l'Arbitrage (2020, Issue 3), pp. 727-758
- Jolley, Ben and Cook, Oliver
"Revised ICC Note to Parties and Tribunals: Will Publication of Awards Become the New Normal?", Kluwer Arbitration Blog, 7 March 2019
- Mourre, Alexis and Vagenheim, Alexandre
"Again on the case for the publication of arbitral awards", 39 Arbitration International (2023, Issue 2), pp. 259-267

45

THE ICCA REPORTS

Towers, Nicholas
"Expanding Horizons in Commercial Arbitration: The Case for the Default Publication of Awards", 81 Arbitration: The International Journal of Arbitration, Mediation and Dispute Management (2015, Issue 2), pp. 131-136

Wimalasena, Philip
"The Publication of Arbitral Awards as a Contribution to Legal Development – A Plea for more Transparency", 37 ASA Bulletin (2019, Issue 2), pp. 279-288

Zlatanska, Elina
"To Publish, or Not to Publish Arbitral Awards: That is the Question...", 81 Arbitration: The International Journal of Arbitration, Mediation and Dispute Management (2015, Issue 1), pp. 25-37

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American Arbitration Association – International Centre for Dispute Resolution ("AAA-ICDR")

Virtual Hearings (online collection including Virtual Hearing Guide for Arbitrators and Parties, Virtual Hearing Guide for Arbitrators and Parties Utilizing ZOOM, Order and Proceedings for a Virtual Hearing via Videoconference)

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- International Chamber of Commerce ("ICC") International Court of Arbitration
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JAMS Efficiency Guidelines for the Pre-Hearing Phase of International Arbitrations (Effective 1 February 2011)
- Jolley, Ben and Cook, Oliver,
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- Kaplan, Neil CBE QC SBS
"Innovating in Arbitration: Options for Greater Efficiency", Korean Arbitration Review (2019, Issue 10), pp. 10-19
- Kim, Kap-You (Kevin)
"Looking Forward: Bringing Renewed Efficiency to the Arbitration Practice", Korean Arbitration Review (2022, Issue 13), pp. 4-11
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- Mourre, Alexis and Vagenheim, Alexandre
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- Prague Rules Working Group
Rules on the Efficient Conduct of Proceedings in International Arbitration (Prague Rules) (2018)
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Future of International Energy Arbitration Survey Report (2022)
- Queen Mary University of London and White & Case
2021 International Arbitration Survey: Adapting Arbitration to a Changing World
- 2015 International Arbitration Survey: Improvements and Innovations in International Arbitration
- Risse, Joerg
"Ten Drastic Proposals for Saving Time and Costs in Arbitral Proceedings", 29 Arbitration International (2013, Issue 3), pp. 453-466
- Rosenthal, David
"Complying with the General Data Protection Regulation (GDPR) in International Arbitration – Practical Guidance", 37 ASA Bulletin (2019, Issue 4), pp. 822-852
- Sabater, Anibal
"Optional Provisions for the Terms of Reference and Procedural Order No. 1", ICC Dispute Resolution Bulletin (2023, Issue 3), pp. 62-72
- Savola, Hans Mikael (Mika)
"Procedural Order No. 1 – Trends and Practices", 41 ASA Bulletin (2023, Issue 4), pp. 783-804

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ANNEX: USEFUL RESOURCES

- Silberstein-Loeb, Jonathan
"Arbitrators, Decision Making, and Generative AI", 41 ASA Bulletin (2023, Issue 4), pp. 831-840
- Silicon Valley Arbitration and Mediation Center ("SVAMC")
SVAMC Guidelines on the Use of Artificial Intelligence in Arbitration (2024)
- Singapore International Arbitration Centre ("SIAC")
SIAC Guides: Taking Your Arbitration Remote (August 2020)
- Stockholm Chamber of Commerce Arbitration Institute ("SCC")
SCC Platform: Guidelines for Parties and Arbitral Tribunals (7 November 2024)
- Guidelines for Arbitrators (2024)
- SCC Guide: Guide to the Use of Artificial Intelligence in Cases Administered Under the SCC Rules (2024)
- SCC Ad Hoc Platform: Guidelines for Parties and Arbitral Tribunals (18 April 2023)
- Swiss Arbitration Association ("ASA")
The Arbitration Toolbox by ASA (including Sample Agenda and Checklist for the Organizational Conference; Agenda for the Pre-Hearing Conference; and Procedural Order No. 1 regarding Specific Procedural Rules)
- Swiss Arbitration Centre
Swiss Rules of International Arbitration Practice Note (October 2024)
- Supreme Court of the Republic of Singapore
Registrar's Circular No. 1 of 2024, Guide on the Use of Generative Artificial Intelligence Tools by Court Users
- Towers, Nicholas
"Expanding Horizons in Commercial Arbitration: The Case for the Default Publication of Awards", 81 Arbitration: The International Journal of Arbitration, Mediation and Dispute Management (2015, Issue 2), pp. 131-136
- United Nations Commission on International Trade Law ("UNCITRAL")
UNCITRAL Notes on Organizing Arbitral Proceedings adopted in 2016 (with an additional note on early dismissal and preliminary determination adopted in 2023)
- Vancouver International Arbitration Centre ("VanIAC")
Pre-Hearing Meeting Agenda Guideline

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THE ICCA REPORTS

Vancouver International Arbitration Centre Virtual Hearing / Meeting Protocol (VHP)

Vienna International Arbitration Centre (“VIAC”)
VIAC Explanatory Notes – A Secretariat’s Guide (2022)

VIAC Portal Guidelines for VIAC Proceedings (2021)

The Vienna Protocol – A Practical Checklist for Remote Hearings (June 2020)

Welser, Irene and De Berti, Giovanni
“Best Practices in Arbitration: A Selection of Established and Possible Future Best Practice”, in *Austrian Yearbook on International Arbitration 2010* (Klaussegger, Klein, Kremslehner, Petsche, Pitkowitz, Power, Welser and Zeiler (eds)), pp. 79-101

White & Case LLP and Queen Mary University of London School of International Arbitration
2012 International Arbitration Survey – Current and Preferred Practices in the Arbitral Process

Wimalasena, Philip
“The Publication of Arbitral Awards as a Contribution to Legal Development – A Plea for more Transparency”, 37 *ASA Bulletin* (2019, Issue 2), pp. 279-288

Working Group on LegalTech Adoption in International Arbitration
Protocol for Online Case Management in International Arbitration (2020)

Zlatanska, Elina
“To Publish, or Not to Publish Arbitral Awards: That is the Question...”, 81 *Arbitration: The International Journal of Arbitration, Mediation and Dispute Management* (2015, Issue 1), pp. 25-37

SECTION 13

AFAA ARBITRATION COMPASS (2024)



AFSA

The Arbitration Foundation of Southern Africa
NPC

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ARBITRATION COMPASS 2024



Svetlana Vasileva

Secretary General,
Arbitration Foundation of
Southern Africa NPC

Contribution:
Chapter on AFSA

SECTION 14

GREENER ARBITRATIONS -REPORT ON THE GREEN SURVEY (2024)



AFSA

The Arbitration Foundation of Southern Africa
NPC

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2024

Report on The Green Survey: Arbitration Institutions in Focus



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Introduction

The Green Survey (Survey) is an initiative launched by the Institutions Task Force of the **Campaign for Greener Arbitrations** (Campaign). It serves as a crucial step towards achieving the goal of identifying the challenges and roadblocks faced by arbitration institutions in their journey towards sustainability. By understanding the specific hurdles these institutions encounter, the Campaign can tailor its support to facilitate their transition towards more sustainable practices.

The research was conducted between May and September of 2024 and involved two phases of data collection. Phase One consisted of an online survey, which took place over six weeks from May to June 2024. The survey included 45 multiple-choice questions and one open-ended question. The questionnaire was divided into seven sections:

- 1 UNDERSTANDING THE DEMOGRAPHICS** - Overview of respondents who participated in this survey.
- 2 FAMILIARITY WITH THE CAMPAIGN** - Examine awareness and engagement with the Campaign for Greener Arbitrations, including the Green Pledge, Green Protocols, and Green Actions for Arbitral Institutions, to determine the level of adoption and identify barriers to implementation.
- 3 CASE MANAGEMENT** - Better understand the existing efforts to incorporate sustainable measures in cases conducted by arbitral institutions and the challenges faced in implementing change.
- 4 INTERNAL OPERATIONS** - Evaluate the institution's operations regarding environmental impact and identify opportunities for improvement.
- 5 PROMOTION AND EVENTS** - Provide insights into current practices, priorities, and perceptions related to business development, event organisation, and sustainability within institutions.
- 6 ARBITRAL HEARING VENUES** - Understand institutional views on arbitral venue sustainability to promote eco-friendly practices, identify support measures to help identify improvements and encourage the adoption of sustainable practices.
- 7 BUILDING FOR THE FUTURE** - Anticipate future trends and areas to support and encourage the adoption of sustainable practices in the arbitration community.

Phase Two was conducted via interviews over email where qualitative data was used to supplement the questionnaire data to further explain the findings on particular issues covered in the survey.

MEMBERS OF THE INSTITUTIONS TASK FORCE – CAMPAIGN FOR GREENER ARBITRATIONS

- Karen Tan, Chief Strategy Officer, Maxwell Chambers (Co-Chair & Survey Lead)
- Kiran Sanghera, Deputy Secretary-General, ACICA (Co-Chair)
- Laura Aguilera, Head of the Office of Studies and International Affairs, CAM Santiago
- Jamie Harrison, Deputy Director General, LCIA
- Funmi Iyayi, Director, LACIAC; Partner, Templars
- Patrícia S. Kobayashi, Executive Director, CAM-CCBC
- Ana Lombardia, Director, ICDR
- Akash Srivastava, Counsel, DIAC
- Madeleine Thörn, Deputy Secretary-General, Head of Operations, SCC Arbitration Institute



Executive Summary

Case management

The overwhelming majority of respondents believe that institutions should incorporate sustainability measures into case management procedures. While most cases are conducted electronically, whether through case management platforms or otherwise, and the percentage of cases where reliance on the exchange of physical documents is small, more could be done to encourage the incorporation of sustainable behaviours into institutional rules, guidance notes, and model clauses. More consideration could be given to whether arbitrator appointments could be made taking into account a prospective arbitrator's approach to adopting sustainability measures in the conduct of an arbitration. The frequently cited challenges to encouraging more sustainable behaviours in case management included a lack of awareness of such measures, limited resources to implement measures, resistance to change from traditional practices, limited funding, sustainability not being a priority, and concerns over the impact on the validity of the arbitral process.

Internal operations

Most respondents demonstrate a strong commitment to reducing their carbon footprint through strategies such as virtual conferencing, energy-efficient lighting, and recycling programs. There is potential to further align with broader sustainable business trends by enhancing internal awareness and establishing sustainable partnerships with external vendors. While many respondents have not yet adopted carbon offset schemes or established formal sustainability reporting to senior management, this gap presents a promising opportunity to expand these efforts. By implementing these measures, organisations can enhance transparency and further accelerate their sustainability initiatives.

Promotion and events

Knowledge sharing through conferences, seminars, and training programs plays a vital role in how institutions connect with the international arbitration community. Sustainability priorities for these events include virtual formats, minimising travel, selecting eco-friendly venues, using digital documents, and reducing plastic waste. Awareness of sustainability in event planning is growing, though its impact on decision-making remains limited. While a minority of respondents consider sustainability crucial and a larger group recognises its importance, it has not yet become a key factor in how they engage with stakeholders. Despite the belief that sustainability efforts could offer a competitive edge, many respondents remain uncertain of this advantage and do not prominently highlight these measures on their websites. This is largely because stakeholders have not yet prioritised sustainability when selecting service providers, making its impact difficult to measure.



Executive Summary

Arbitral hearing venues

Over half of respondents assist parties in selecting hearing venues based on their specific needs, demonstrating a flexible and customised approach. In terms of adopting sustainable measures, the responses are mixed. Under a third of respondents support incorporating sustainability criteria into venue selection while others prioritise factors such as accessibility and cost of venues. The data shows a strong inclination towards digital solutions to minimise environmental impact, with a large majority advocating for electronic hearing bundles and supporting electronic documentation. While there is strong support for virtual procedural conferences, there is less support for virtual merits hearings. Looking ahead, respondents believe sustainability efforts are worthwhile and will ultimately benefit the environment. Some also believe adopting sustainable measures may lead to reputational advantages attracting more users and lead to long-term cost savings.

Building for the future

To enhance effective implementation and compliance with sustainable practices, respondents would strongly prefer increased support from the Campaign in the form of training, expanded access to educational resources, and practical examples illustrating the successful application of the Green Protocols. While knowledge-sharing is essential, respondents indicate that incentives for compliance, along with robust reporting and monitoring mechanisms, further encourage participation. Institutions also face notable challenges, including limited resources, budget constraints, and restricted access to eco-friendly technologies. To overcome these challenges, it is widely agreed that institutions should prioritize showcasing successful sustainability initiatives, engaging with media, and issuing public statements and reports that effectively convey their commitment to sustainability to stakeholders and the broader community.



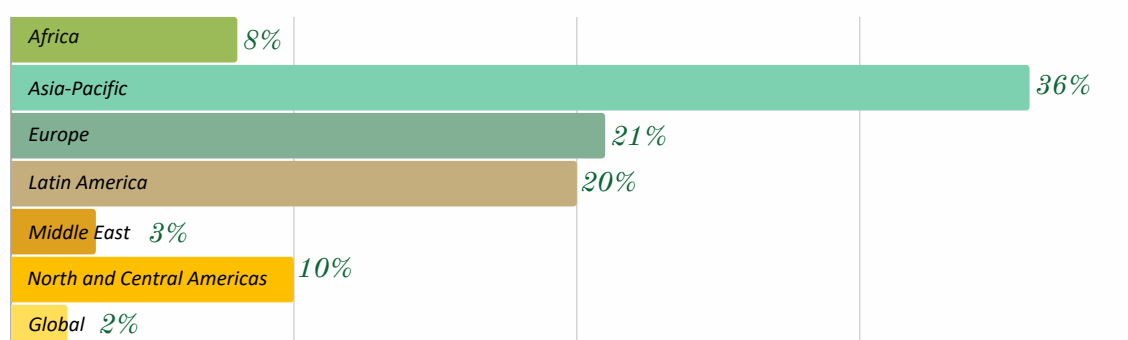
Understanding the Demographics

As of 1 October 2024, **78 institutions** have signed the Green Pledge since the launch of the Campaign in 2019. A total of 120 arbitration institutions were invited to complete the Survey by email. The Survey was also widely promoted via social media platforms and on the Campaign's website.

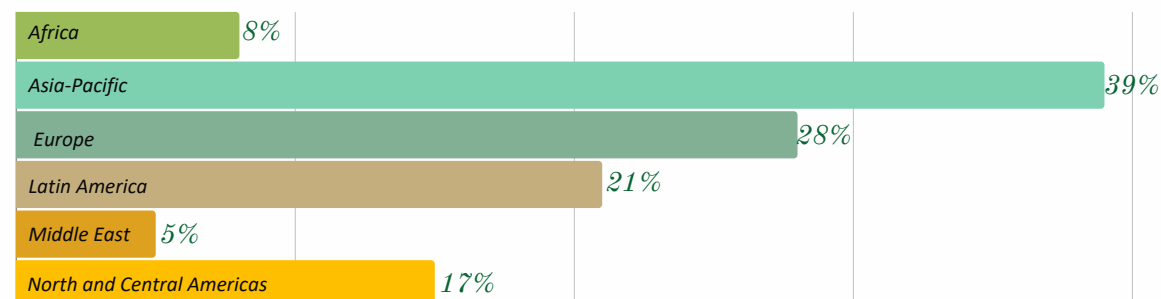
The Survey was not limited to those institutions that have signed the Green Pledge and was open to organisations that offered any of the following services: (i) case management; (ii) hearing facilities; and/or (iii) training and events.

61 institutions completed the Survey. The locations of the institutions that responded are as follows:

GEOGRAPHIC LOCATION OF THE INSTITUTIONS

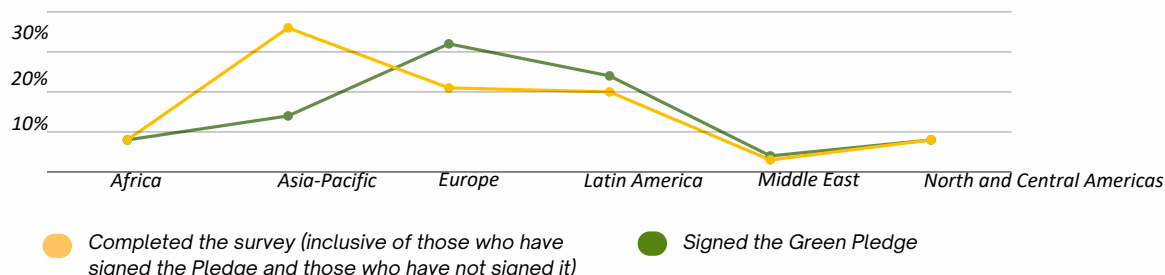


*GEOGRAPHIC LOCATION OF WHERE THE MAJORITY OF USERS OF THE INSTITUTIONS ARE BASED



*Respondents were asked to select the all answers that applied.

INSTITUTIONS WHO HAVE SIGNED THE GREEN PLEDGE BY REGION



Familiarity with the Campaign

85% of the respondents are **aware of the Campaign and the Green Pledge**. 11% have not heard about the Campaign. Whereas 3% have some awareness of the Campaign.

74% of the respondents are **familiar with the Green Protocol for Arbitral Institutions**. 15% are unfamiliar with the protocol, while 11% have some awareness. A majority, 62% have implemented parts of the protocol, with 13% having adopted it in full. The most commonly implemented aspects of the protocol include reducing energy consumption and environmental footprint, minimising printing and paper usage, encouraging recycling and promoting responsible travel. Additionally, 10% are considering implementation, and 10% have not yet implemented the protocol.

“Implementing the Green Protocol for arbitral institutions has proved relatively straightforward. Among other things, the DIS has successfully switched to using only green energy and now ensures that all business travel within Germany is by train. We also began working with Deutsche Bahn to offer discounted tickets for travel to and from our conference venues. At our conferences, we have also eliminated printed materials and replaced them with pdf downloads with QR codes at the conference venue.”

Paulus Suh, German Arbitration Institute [DIS]

67% of the respondents have **signed the Green Pledge**. 25% have not signed it and 8% are currently deliberating. Lack of awareness (47%) is the primary reason for not signing the Pledge, followed by the fact that it is not on their list of priorities (29%).

62% of the respondents are **familiar with the Green Actions for Institutions**, 18% have not heard of the Green Actions. Whereas 20% have some awareness of the Green Actions. 54% have implemented some of the Green Actions, with 11% adopting them in full. Some of the actions implemented include appointing arbitrators who place an emphasis on sustainable behaviours, and offering a case management platform. Additionally, 13% are considering implementation, and 21% have not yet implemented the Green Actions.



“VIAC has incorporated several sustainability measures from the Green Protocol for Arbitral Institutions into its daily operations. We have adopted digital tools for filing and sharing documents, ensuring case files are transmitted electronically except where hard copies are required by the rules (transmission of Statement of Claim and transmission of awards).”

Tribunals are empowered to use technology for the effective management of proceedings, and we assist in providing necessary technical support, including resources for virtual hearings and electronic bundles. Measures such as limiting individual printers and using environmentally friendly printing practices are in place to minimise our carbon footprint.

Our canteen has implemented green initiatives including responsible waste disposal, recycling and reduction of single-use plastic items. All of these initiatives have become integral to VIAC's operation and are aimed at aligning our processes with sustainable and green practices.

Niamh Leinwather, Vienna International Arbitral Centre [VIAC]

Case Management

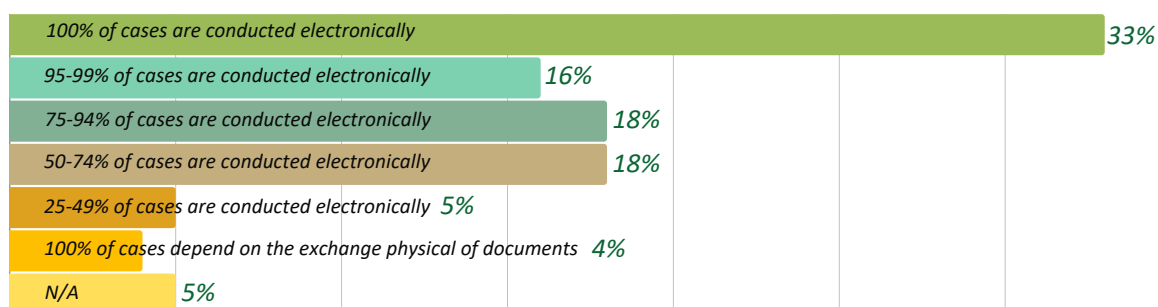
88% of respondents offer case management services.

THE GREEN PROTOCOL FOR ARBITRAL INSTITUTIONS SECTION

The Green Protocol for Arbitral Institutions provides arbitral institutions with clear guidance on minimising their environmental impact. This Protocol relates to all aspects of the work of an institution. Section IV "Go Digital" is particularly relevant for institutions that offer case management.

DEPENDENCY ON PHYSICAL DOCUMENTS

Respondents were asked for an estimate of the number of cases that required the exchange of physical documents. Over 60% of respondents conduct 75% or more of their cases fully electronically without the need to exchange physical documents.



*USE OF INSTITUTIONAL RULES AND GUIDANCE NOTES TO ENCOURAGE MORE SUSTAINABLE BEHAVIOUR

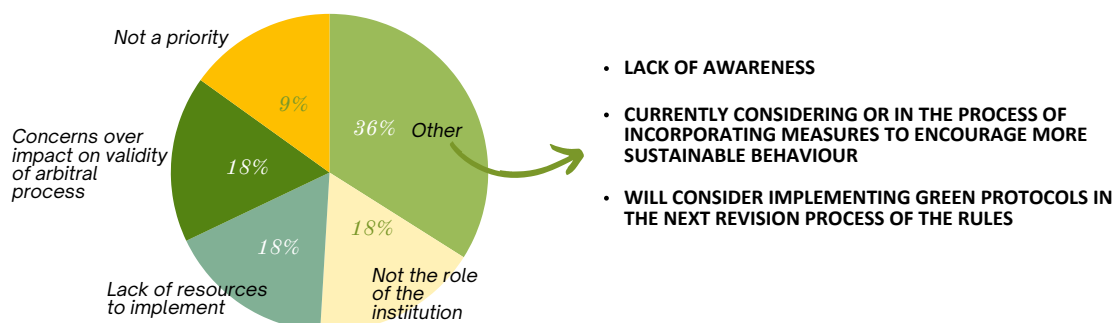
- **43%** have specific default rules promoting sustainable behaviours.
- **33%** impose a mandatory obligation on parties, counsel, representatives, the institution, and the tribunal to consider the environmental impact of arbitration.
- **15%** reference the Campaign's Green Protocols.
- **33%** indicate that other measures were taken. Responses include producing guidelines on conducting online meetings and virtual hearings, and referencing the Green Protocols in draft procedural orders and case correspondence.

*Respondents were asked to select the all answers that applied. Please also refer to the [Tech and Virtual Hearing Toolkit](#) for summary on institutional rules applicable to electronic communication.

“Sustainability is at the core of ACICA's values. Having signed the Green Pledge in 2022, we have taken a number of steps to focus on sustainability, including the launch of our online case management platform ACICA Connect. We have also established a Sustainability Taskforce, which has developed the ACICA Sustainability Protocol, released for public consultation earlier this year. The Protocol seeks to provide concrete measures that all stakeholders in ACICA arbitrations can use to shift towards more environmentally sustainable practices, with the goal of reducing their carbon emissions during the arbitral process.”

Diana Bowman, Australian Centre for International Arbitration (ACICA)

REASONS FOR NOT ENCOURAGING MORE SUSTAINABLE BEHAVIOUR IN RULES AND GUIDANCE



- **LACK OF AWARENESS**
- **CURRENTLY CONSIDERING OR IN THE PROCESS OF INCORPORATING MEASURES TO ENCOURAGE MORE SUSTAINABLE BEHAVIOUR**
- **WILL CONSIDER IMPLEMENTING GREEN PROTOCOLS IN THE NEXT REVISION PROCESS OF THE RULES**

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Case Management

92% of respondents do not include a default commitment to environmentally sustainable behaviours in their model clause

52% of respondents do not endeavour to appoint arbitrators who place an emphasis on sustainable behaviours

While over 50% of respondents do not endeavour to appoint arbitrators who place an emphasis on sustainable behaviors, 26% of the institutions make an effort to do so and 22% of respondents answered that they endeavour to do so some of the time. The latter group explained that appointments are made on the basis of the most suitable arbitrator for that particular case, depending on the facts of the case and the parties' requirements. One respondent noted that sustainability is usually considered where long haul flights are involved for an arbitrator, and another highlighted the need for more information and education on this topic.

ADOPTION OF THE MODEL GREEN PROCEDURAL ORDER



*HOW DO YOU EMPOWER TRIBUNALS TO ENFORCE ENVIRONMENTALLY FRIENDLY MEASURES?

- **46%** explicitly include into their rules and guidance, the importance of tribunals to consider the efficient use of technology.
- **54%** grant tribunals the authority to decide on the manner in which witnesses and experts are examined.
- **54%** give tribunals the authority to determine how files are to be submitted and/or shared.
- **63%** provide tribunals with the essential technical support for conducting virtual hearings.
- **9%** not applicable.

*Respondents were asked to select the all answers that applied.



INSIGHT: Institutions give tribunals broad discretion to conduct arbitrations as they consider best and include options that may allow arbitrations to be run more sustainably. However, it remains unclear whether tribunals are using their powers to conduct arbitrations in a more sustainable way. The majority of respondents do not consider appointing arbitrators who place emphasis on sustainable behaviours. This may be due to a lack of clarity around how to assess whether arbitrators possess the relevant skills and expertise. There may also be a lack of training amongst arbitrators in this area to assist implementation of more sustainable measures. One action item resulting from this survey could be the introduction of training for arbitrators, and measures or standards for arbitrators to meet.

Case Management

*CHALLENGES FACED BY ARBITRAL INSTITUTIONS IN PROMOTING SUSTAINABLE PRACTICES IN CASE MANAGEMENT PROCEDURES



*The total percentage exceeds 100% because respondents could select more than one option.



INSIGHT: The two leading challenges for arbitral institutions are resistance to change from traditional practices and lack of awareness or interest from stakeholders, such as arbitrators and corporations. It was commented on that some arbitrators often face difficulties due to limited knowledge of sustainability, and even when they are informed, their primary focus is on resolving disputes rather than applying sustainability policies. The third issue was that other factors take priority over sustainable practices as well as limited resources and limited funding.

SHOULD ARBITRAL INSTITUTIONS INCORPORATE SUSTAINABILITY MEASURES INTO CASE MANAGEMENT PROCEDURES?

93% of respondents agree that sustainability measures should be incorporated into their case management.

Despite the challenges faced, the overwhelming majority of respondents believe that institutions should be incorporating sustainability measures into case management procedures. Only 2% said they should not and 5% were unsure.

“The SCC Arbitration Institute has been pioneering green operations by introducing digital case management in 2013 and the SCC Platform in 2019. Since then, further progress has been made to improve the digital solutions offered. 100% of the SCC cases are administered on the SCC Platform, which offers environmentally friendly and cyber-secure means of communication and file sharing.”

Madeleine Thörn, SCC Arbitration Institute



The **Green Protocol for Arbitral Proceedings** provide Parties and Arbitrators with tangible measures to implement in specific arbitral proceedings by party agreement or by tribunal order.

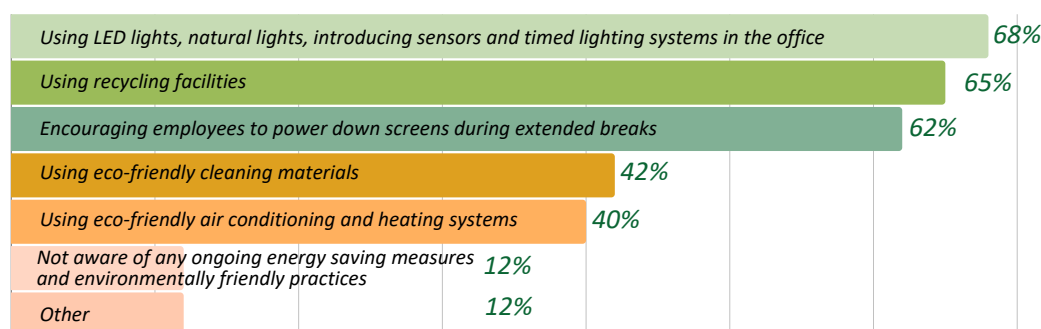
- INITIAL COMMITMENT
- CONDUCT OF PROCEEDINGS
- WRITTEN SUBMISSIONS AND DOCUMENTARY EVIDENCE
- DOCUMENT PRODUCTION
- WITNESS AND EXPERTS PREPARATION
- HEARINGS
- SETTLEMENTS
- RESPONSIBLE TRAVEL
- OFFSETTING CARBON EMISSIONS

“One of the updates for the HKIAC 2024 Administered Arbitration Rules is an express requirement to take into consideration environmental impact when adopting suitable procedures for the conduct of the arbitration (Art.13.1) and in the determination of costs apportionment (Art. 34.4). HKIAC is monitoring the implementation of these new changes with interest.”

Joanne Lau, Hong Kong International Arbitration Centre (HKIAC)

Internal Operations

*ENERGY SAVING MEASURES AND ENVIRONMENTALLY FRIENDLY PRACTICES INSTITUTIONS ARE CURRENTLY IMPLEMENTING



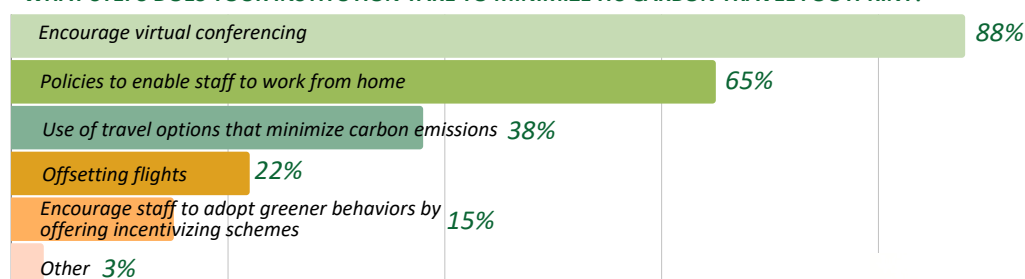
*The total percentage exceeds 100% because respondents could select more than one option.

The data collected shows that respondents' internal operations are generally in line with broader trends in modern office practices. However, only 42% of respondents are using eco-friendly cleaning materials, and just 40% have implemented eco-friendly air conditioning and heating systems. These figures indicate that there is still room for growth to align with broader business trends. The lower adoption rate may be attributed to the fact that such practices are often managed by external parties and may fall outside the direct control of the institutions. Additionally, 12% of respondents are unaware of any ongoing energy-saving measures or environmentally friendly practices, highlighting further opportunities to improve awareness.



INSIGHT: Institutions can consider educating and raising awareness among internal staff about the importance of sustainability. They can also discuss with their external suppliers or choose vendors who are aligned with adopting eco-friendly practices. By having these conversations and encouraging the adoption of green practices, institutions can improve their environmental sustainability efforts and improve adoption rates for eco-friendly initiatives.

*WHAT STEPS DOES YOUR INSTITUTION TAKE TO MINIMIZE ITS CARBON TRAVEL FOOTPRINT?



*The total percentage exceeds 100% because respondents could select more than one option.

Responses from the survey show a strong commitment within the organisations to minimise their carbon travel footprint through various strategies. A significant 88% of respondents indicate that they are encouraging virtual conferencing, which reflects a widespread adoption of remote meeting solutions to reduce the need for travel. In addition, 65% of respondents note that their organisations have policies in place to enable staff to work from home, further supporting efforts to decrease commuting and travel-related emissions.



11

Internal Operations

DOES YOUR INSTITUTION USE SUPPLIERS AND SERVICE PROVIDERS WHO ARE COMMITTED TO REDUCING THEIR ENVIRONMENTAL FOOTPRINT?



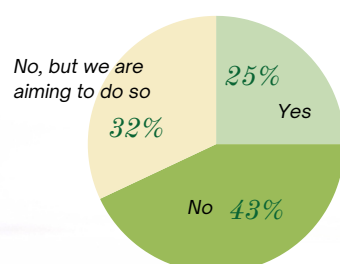
INSIGHT: This again highlights a significant opportunity for growth in fostering sustainable partnerships. Institutions can prioritise integrating sustainability criteria into their procurement processes and engage in dialogue with potential suppliers about the importance of environmental responsibility. Developing strategies to identify and collaborate with suppliers who have strong sustainability practices, offering incentives for greener practices, and setting clear environmental goals for supplier relationships can help drive progress towards a more eco-friendly supply chain.

“ CIAM-CIAR's internal standards place a strong emphasis on reducing emissions at the source, focusing on practical and sustainable changes within the organization. One of the key strategies is the substantial reduction of business travel, particularly through the promotion of virtual hearings, meetings, and events. By shifting towards digital platforms, CIAM-CIAR has minimized the environmental impact associated with travel, which is typically one of the largest contributors to carbon emissions in arbitral institutions. This move not only cuts down on flight and transport emissions but also reduces the carbon footprint linked to venue usage and event logistics.

Additionally, CIAM-CIAR has made significant efforts to optimize office energy consumption. This includes the implementation of energy-efficient practices such as installing timed lighting systems and encouraging staff to work remotely where possible. Remote work policies not only contribute to lowering emissions from daily commutes but also reduce the institution's overall energy usage in maintaining office spaces. By integrating these energy-saving measures, CIAM-CIAR is actively working to reduce its direct carbon output and promote more sustainable office operations. **”**

Marta Lalaguna Holzwarth, The Madrid International Arbitration Center (CIAM-CIAR)

DOES YOUR INSTITUTION HAVE A REPORTING MECHANISM TO APPRAISE SENIOR MANAGEMENT ABOUT THE ADVANCEMENTS ACHIEVED THROUGH THE IMPLEMENTATION OF ENVIRONMENTALLY SUSTAINABLE POLICIES AND PRACTICES?



The data indicates that 43% of respondents do not have a reporting mechanism to appraise senior management about the implementation of environmentally sustainable policies and practices. 32% of respondents acknowledge the absence of such a mechanism but are aiming to establish one, showing a commitment to improving transparency in the future. Only 25% of respondents currently have a reporting mechanism in place, indicating that a minority of institutions are actively monitoring and communicating their sustainability efforts.

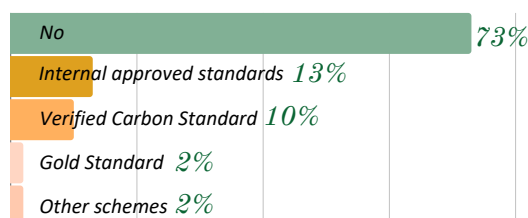


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Internal Operations

DOES YOUR INSTITUTION USE A SCHEME TO OFFSET CARBON EMISSIONS?

The data indicates that 73% of respondents do not use any scheme to offset carbon emissions, revealing a significant gap in formal carbon offsetting practices among institutions. Only 13% have their own internal approved standards, while 10% use the Verified Carbon Standard (VCS), and 2% use the Gold Standard.



INSIGHT: A preference for internal methods and a low adoption of internationally recognised standards is likely due to a lack of awareness. To address this, institutions can increase awareness and education about the benefits of carbon offsetting schemes, evaluate and benchmark internal standards against established ones, encourage the adoption of recognised standards, and integrate carbon offsetting into broader sustainability strategies. Together, these steps can enhance their carbon offsetting efforts and contribute more effectively to global environmental goals.

“

There is a growing awareness of environmental issues and a demand for the development of sustainable business practices across the continent. It is expected that African arbitral institutions and the general arbitration community will adopt more initiatives that promote sustainable business operations and reduce the carbon footprint of arbitration processes in Africa. Additionally, as more arbitral institutions respond to, and embrace sustainable practices, we foresee an increase in education and ongoing advocacy of the practical benefits of these practices, leading to a reduction in resistance by stakeholders within the industry.

”

**Titilope Sinmi-Adetona, Lagos Chamber of Commerce
International Arbitration Centre [LACIAC]**

The **Verified Carbon Standard (VCS)** and **Gold Standard** are certification systems for carbon offset projects. VCS, established by Verra, sets criteria to ensure projects reduce or remove greenhouse gas emissions in a measurable, permanent, and additional manner, with examples including reforestation and renewable energy projects. The Gold Standard, established by WWF and other NGOs, focuses on projects that also deliver social and environmental benefits, contributing to sustainable development goals (SDGs). Examples include renewable energy installations, clean water projects, and community reforestation. Both standards ensure the credibility and effectiveness of carbon offset projects, promoting genuine climate action and sustainable development.

“

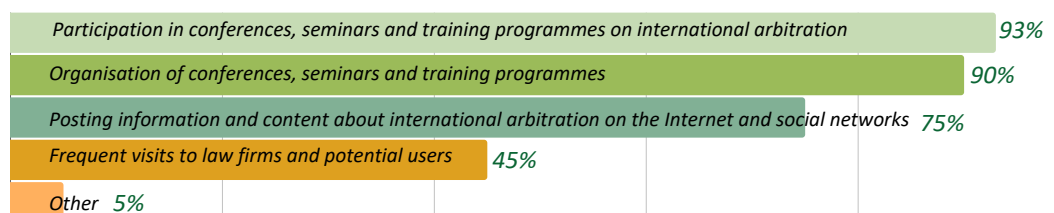
We strive to be sustainable and have a low carbon footprint, and we continuously seek to improve the sustainability of our operations as well those of our suppliers and partners. We are a signatory of the Green Pledge and a supporter of the Campaign for Greener Arbitrations, and we have implemented the Green Protocols. We travel responsibly, we have adopted and encourage the use of technology, we minimise printing and the use of paper, we encourage recycling, and we promote sustainable practices. Our head office is a LEED-certified green building, and we have adopted measures in our branch office to reduce our carbon footprint.

”

Robert Stephen, Dubai International Arbitration Centre [DIAC]

Promotion and Events

*WHAT TYPE OF BUSINESS DEVELOPMENT ACTIVITIES DOES YOUR INSTITUTION FOCUS ON PRIMARILY?



*The total percentage exceeds 100% because respondents could select more than one option.



INSIGHT: The data reflects the significance of knowledge sharing and networking in the arbitration community as an important business development activity. Respondents can consider ways to reduce environmental impact from the organisation of events. Implementing virtual or hybrid events can cut travel-related emissions, while digital content and eco-friendly marketing can reduce reliance on printed materials. Adopting sustainable travel policies and green practices for in-person meetings can further support these efforts.



The **Green Protocol for Arbitration Conferences** contains suggested Sustainability Measures for minimising the impact of arbitration conferences on the environment.

- CHOOSE SUSTAINABLE VENUES
- PLAN REMOTELY
- DIGITALISE CONFERENCE REGISTRATION AND MATERIALS
- DIGITALISE CONFERENCE PROCEDURES
- USE GREEN ENERGY
- REDUCE ENERGY CONSUMPTION AND ENVIRONMENTAL FOOTPRINT
- MINIMISE PRINTING AND USE OF PAPER
- ENCOURAGING RECYCLING
- LIMIT USE OF SINGLE USE ITEMS AND PLASTIC

HOW IMPORTANT IS IT TO YOUR INSTITUTION THAT EVENT ORGANISERS HAVE A COMMITMENT TO SUSTAINABILITY?

- **27%** of respondents believe that a commitment to sustainability by event organisers is important.
- **70%** feel that while sustainability is important, it is not a determining factor in their decision-making process.
- **3%** state that it is not relevant to them.

*HOW DOES YOUR INSTITUTION INTEGRATE ENVIRONMENTAL SUSTAINABILITY INTO SPONSORSHIP AND EXHIBITION OPPORTUNITIES AT EVENTS?

- **40%** of respondents offer virtual exhibition options to reduce the need for physical presence.
- **30%** partner with eco-friendly sponsors and exhibitors that align with green principles.
- **7%** provide incentives for sponsors and exhibitors to implement sustainable practices, such as offering discounts for eco-friendly booth designs.

5% selected all the above | 13% selected none of the above | The question was not applicable to 27% of the respondents

*The total percentage exceeds 100% because respondents could select more than one option.

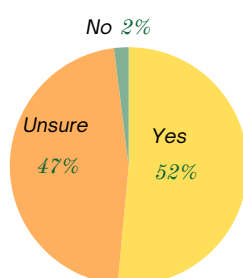
Promotion and Events

SUSTAINABILITY MEASURES FOR CONFERENCES, SEMINARS, AND TRAINING SESSIONS: (RANKED BY PRIORITY - TOP TO BOTTOM)

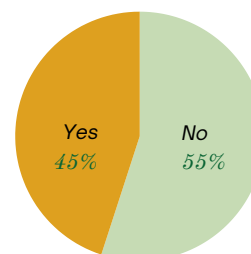
- 1 **Preference for virtual formats:** Strong preference for virtual events over in-person events to minimise environmental impact.
- 2 **Venue selection:** High priority on choosing venues that reduce the need for travel for speakers, exhibitors, and attendees.
- 3 **Sustainable venues:** Selecting venues with sustainability policies and carbon footprint reduction measures is crucial.
- 4 **Digital documents:** Emphasis on presenting documents in digital format only and limiting the use of single-use items.
- 5 **Plastic reduction:** Reducing or eliminating the use of plastic is considered very important.
- 6 **Carbon footprint reduction:** Collaborating with entities and sponsors committed to reducing carbon footprints.
- 7 **Merchandising materials:** Reducing or eliminating the use of promotional or merchandising materials and opting for sustainable alternatives.
- 8 **Speakers:** Choosing speakers who are committed to minimising their carbon footprints.
- 9 **Offsetting the carbon footprint of an event:** Implementing measures to offset the carbon footprint of the event.

This data indicates a clear preference for sustainability measures that reduce travel and promote digital solutions, reflecting a growing awareness and commitment to reducing the environmental impact of events.

DO YOU BELIEVE THAT A REFERENCE TO THE CAMPAIGN OR OTHER SUSTAINABILITY MEASURES REPRESENTS A COMPETITIVE ADVANTAGE OVER OTHER SERVICE PROVIDERS IN YOUR FIELD?



DOES YOUR ORGANISATION INCLUDE ANY REFERENCE ON ITS WEBSITE TO DEMONSTRATE ITS SUPPORT FOR THE CAMPAIGN OR OTHER SUSTAINABILITY MEASURES?



52% of respondents believe that referencing the Campaign or other sustainability measures provides a competitive advantage in international arbitration while a substantial minority (47%) are unsure about this. More than half (55%) of the respondents do not include any reference to the Campaign or other sustainability measures on their websites.



INSIGHT: While a significant portion of respondents acknowledge the competitive advantage of referencing sustainability initiatives, many do not actively promote these measures on their websites. This disconnect suggests a complex scenario where the recognition of benefits doesn't necessarily translate into action.

Promotion and Events



INSIGHT: In one of our earlier questions, respondents were asked about the challenges they face in promoting sustainability practices within the cases they manage. The following may give some insights regarding the barriers to adopting and promoting sustainability measures:

Resistance to Change (61%): The most significant barrier identified is the resistance to change from traditional practices. This suggests a strong adherence to established methods and a reluctance to adopt new approaches. Overcoming this resistance might require demonstrating the tangible benefits of sustainability initiatives, such as cost savings, enhanced reputation, or compliance with emerging regulations.

Stakeholder Awareness and Interest (59%): Almost equally as important is the lack of awareness or interest from stakeholders. This indicates that a substantial portion of the relevant users — whether clients, colleagues, or broader users — may not prioritise or understand the importance of sustainability initiatives. Increasing education and awareness among stakeholders about the benefits and importance of sustainability could be crucial in overcoming this barrier.

Competing Priorities (28%): More than a quarter of respondents indicate that other factors take priority over sustainable practices. This reflects the practical challenges organisations face in balancing multiple priorities and the need for sustainability to be integrated into the broader strategic objectives of the institution, rather than being seen as an add-on.

Limited Resources (26%): A significant portion of respondents cite limited resources as a barrier. Solutions might involve reallocating existing resources, seeking external support, or gradually implementing sustainability initiatives in manageable phases.

Limited Funding (19%): Financial constraints are a concern for nearly a fifth of respondents. This highlights the importance of making a business case for sustainability by demonstrating how sustainable practices can lead to cost savings and exploring alternative funding sources such as grants, partnerships, or investments to support sustainability initiatives.

Addressing this gap could involve increasing awareness of the practical steps institutions can take to integrate sustainability into their business practices and public communications, showcasing successful examples within the industry, and providing resources or incentives to support these initiatives.

“

When organising and delivering a conference, such as the Edinburgh International Arbitration Conference (ArbFest), the Scottish Arbitration Centre follows the Campaign for Greener Arbitration Protocol on Arbitration Conferences and publishes our approach.

To mitigate against carbon emissions of the event, we donate an amount per delegate to the RSPB Forsinard Flows Project. This bird reserve in Sutherland, in the northern Highlands, is doing impactful work in combatting climate change through the restoration of peatlands. Our donation will support this work, which has benefits for biodiversity, water purification, flood prevention and the rural economy.

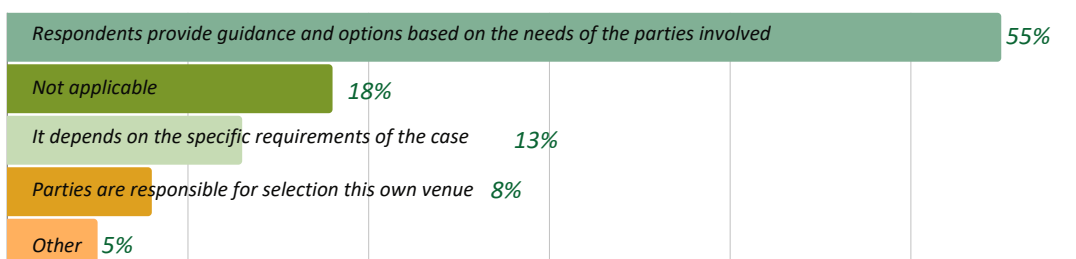
”

Andrew Mackenzie, Scottish Arbitration Centre



Arbitral Hearing Venues

DOES YOUR INSTITUTION ASSIST PARTIES IN SELECTING AN APPROPRIATE VENUE FOR THEIR ARBITRATION HEARINGS?



DO YOU BELIEVE ARBITRATION INSTITUTIONS SHOULD INCORPORATE SUSTAINABILITY CRITERIA INTO THE SELECTION PROCESS FOR ARBITRATION HEARING VENUES?

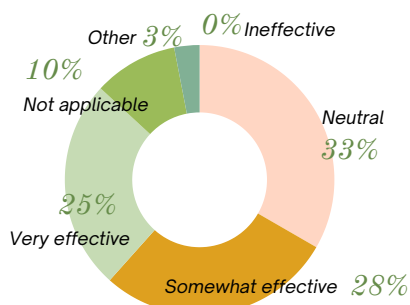
- 30% believe sustainability should be a key factor in selecting hearing venues.
- 25% do not find this question applicable to them as they conduct hearings in their own venues.
- 18% feel that other factors, such as accessibility and cost, should take precedence.
- 17% are unsure about the importance of sustainability criteria.
- 8% find this question not applicable because they do not assist parties in selecting venues for their hearings.
- 2% have other opinions.

The two sets of data above reveal that a majority (55%) of respondents assist parties in selecting an appropriate arbitral venue based on their needs and 13% tailor their assistance depending on the specific requirements of each case. 8% of respondents believe parties should select their own venue. While a portion of respondents support incorporating sustainability criteria, there are significant considerations given to other factors and varying degrees of uncertainty and non-applicability among the respondents.



INSIGHT: This suggests that while there is recognition of the potential benefits of sustainable venues, there is significant variation in how institutions perceive the impact of sustainability in the selection process for arbitration hearing venues. To leverage the proactive guidance provided by most respondents, increasing awareness and education about the importance of sustainability, while balancing it with other critical factors like accessibility and cost, can help integrate sustainability into the standard practice of venue selection in international arbitration.

HOW EFFECTIVE DO YOU THINK THE CURRENT GUIDELINES IN THE GREEN PROTOCOL ARBITRAL HEARING VENUES ARE IN PROMOTING SUSTAINABILITY IN ARBITRATION FOR HEARING VENUES?



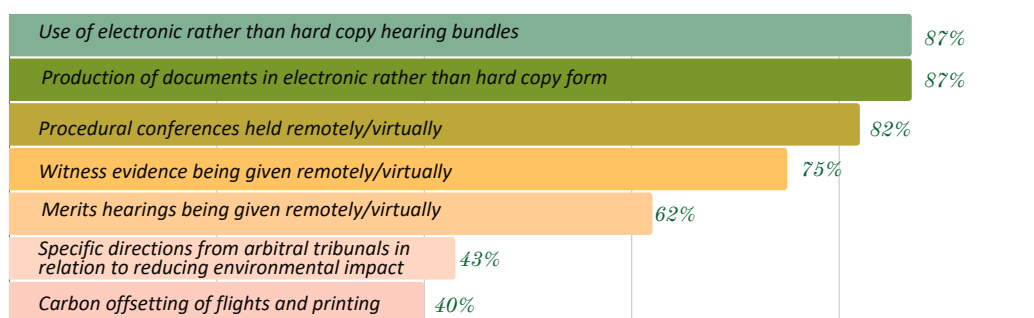
These results show general satisfaction but also highlight an opportunity to review and enhance the guidelines, considering the changes over the past five years.



INSIGHT: To improve the guidelines, increasing stakeholder engagement and providing additional resources, like training programs or case studies, could support better implementation. Regular reviews and updates based on feedback and best practices would ensure the guidelines remain relevant and effective.

Arbitral Hearing Venues

***WHAT MEASURES HAVE YOU EXPERIENCED BEING USED, AND/OR DO YOU THINK SHOULD BE USED IN ARBITRAL VENUES TO HELP REDUCE THE ENVIRONMENTAL IMPACT OF INTERNATIONAL ARBITRATION?**



*The total percentage exceeds 100% because respondents could select more than one option.

The data shows a strong consensus among respondents in favor of measures that reduce the environmental impact of international arbitration. There is significant support for using electronic hearing bundles and producing documents in digital form, indicating a shift towards digitalisation. Most respondents also endorse remote or virtual procedural conferences and witness evidence. However, fewer support conducting merits hearings remotely. Directions to reduce environmental impact and carbon offsetting for flights and printing also have notable backing.



The **Green Protocol for Arbitral Hearing Venues** contains suggested Sustainability Measures for minimising the impact of arbitration facilities and hearing centres on the environment. These Sustainability Measures can be adopted by Hearing Centre Facilitators ("Facilitators") individually or in their entirety, as appropriate.

- CHOOSE SUSTAINABLE VENUES
- PLAN REMOTELY
- DIGITALISE CONFERENCE REGISTRATION AND MATERIALS
- DIGITALISE CONFERENCE PROCEDURES
- USE GREEN ENERGY
- REDUCE ENERGY CONSUMPTION AND ENVIRONMENTAL FOOTPRINT
- MINIMISE PRINTING AND USE OF PAPER
- ENCOURAGING RECYCLING
- LIMIT USE OF SINGLE USE ITEMS AND PLASTIC

“

At Maxwell Chambers, we are committed to reducing our environmental impact and exploring sustainable alternatives in all aspects of our operations—whether it's working with parties during hearing preparations, selecting catering options at events held here, or partnering with vendors and service providers.

Achieving this requires a proactive approach, ensuring that sustainability is not an afterthought but an integral part of every decision. This means adopting eco-conscious practices in energy use, waste management, and limiting the use of single-sided materials and continually striving to reduce our carbon footprint. This commitment must be embraced by all staff, with management's support.

While we don't expect immediate change, we aim to set annual targets to ensure steady progress in minimising our environmental footprint. We are dedicated to meeting the expectations of the global arbitration community and will continually do our best to keep sustainability at the forefront of conversations whenever possible.

”

Karen Tan, Maxwell Chambers

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Arbitral Hearing Venues

***HOW DO YOU ENVISION SUSTAINABILITY IMPACTING THE FUTURE OPERATIONS (OR SELECTION) OF YOUR ARBITRATION VENUES IN THE NEXT THREE YEARS?**

- 63%** **Environmental Contribution:** A majority of respondents believe that incorporating sustainability will allow their institutions to contribute positively to the environment. This indicates strong support for green initiatives and suggests that venues should focus on reducing their environmental footprint through measures such as energy-efficient systems, waste reduction, and sustainable sourcing.
- 42%** **Long-term Cost Savings:** A significant portion of respondents expect sustainability measures to result in long-term cost savings. This points to the financial benefits of sustainable practices, such as lower energy bills, reduced waste disposal costs, and potential tax incentives. Institutions should consider these economic advantages when planning their sustainability strategies.
- 40%** **Reputation and Attraction:** Many respondents agree that sustainability efforts will enhance their reputation and attract more users. This highlights the importance of publicising sustainability initiatives and obtaining relevant certifications to bolster the institution's image and appeal to environmentally conscious clients.
- 3%** **No Significant Impact:** A small percentage see no significant impact, leaving room to observe changes in future surveys.

**The total percentage exceeds 100% because respondents could select more than one option.*

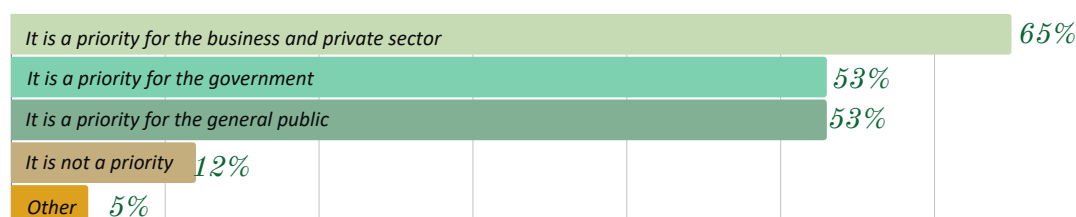


INSIGHT: Overall, these responses emphasise the need for a comprehensive approach to sustainability that includes environmental, reputational, and financial considerations. By implementing such measures, arbitration venues can enhance their operations, appeal to a broader audience, and achieve cost efficiencies over time.



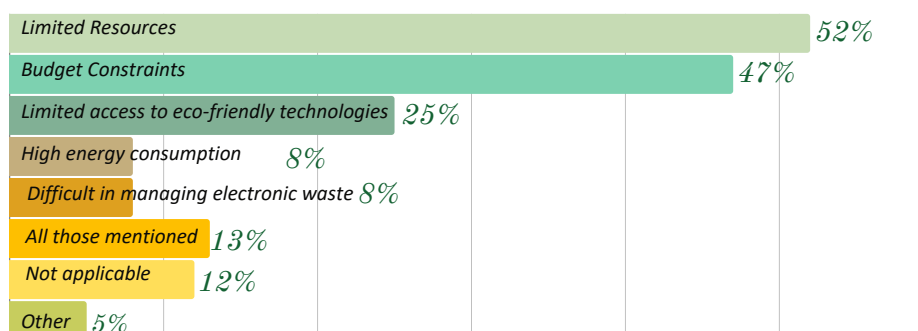
Building for the Future

*TO WHAT EXTENT IS SUSTAINABILITY A PRIORITY IN YOUR JURISDICTION MORE BROADLY?



*The total percentage exceeds 100% because respondents could select more than one option.

*CHALLENGES AN INSTITUTION FACES IN TERMS OF SUSTAINABILITY



*The total percentage exceeds 100% because respondents could select more than one option.



INSIGHT: The data reveals a significant correlation between the challenges institutions face in implementing sustainability actions and the recognition of sustainability as a priority. While sustainability is a recognised priority across various sectors, practical challenges hinder its implementation. This disparity indicates a gap between the recognised importance of sustainability and the ability to implement it effectively. Addressing these challenges will require focused efforts on resource allocation, funding, technology access, and specific environmental management solutions to bridge the gap between prioritisation and practical implementation.

*HOW CAN ARBITRATION INSTITUTIONS EFFECTIVELY COMMUNICATE THEIR COMMITMENT TO SUSTAINABILITY TO STAKEHOLDERS AND THE BROADER COMMUNITY?

- **90%** of respondents believe institutions can effectively communicate their commitment to sustainability by showcasing successful sustainability initiatives.
- **60%** suggested engaging with media and at industry events.
- **58%** recommend communicating through public statements and reports.

*The total percentage exceeds 100% because respondents could select more than one option.

This consensus highlights the importance of transparency and active promotion in demonstrating sustainability efforts to stakeholders and the broader community. Institutions are encouraged to highlight their achievements, leverage media and event platforms, and issue public communications to effectively convey their dedication to sustainable practices.

Building for the Future

*HOW CAN THE GREEN PROTOCOLS BE MADE MORE ACCESSIBLE AND USER-FRIENDLY FOR ARBITRATION STAKEHOLDERS?

- **82%** express a desire for the Campaign to offer more training and educational resources. This indicates a strong demand for better accessibility and user-friendliness of the Green Protocols among arbitration stakeholders.
- **80%** of respondents would like the Campaign to provide practical examples and case studies for the application of the Green Protocols. This suggests that stakeholders are not only interested in theoretical knowledge but also in practical applications that demonstrate how to effectively implement the Green Protocols in real-world scenarios.

*The total percentage exceeds 100% because respondents could select more than one option.

*HOW CAN FEEDBACK FROM STAKEHOLDERS BE EFFECTIVELY GATHERED AND USED TO CONTINUOUSLY IMPROVE THE GREEN PROTOCOLS?



*The total percentage exceeds 100% because respondents could select more than one option.

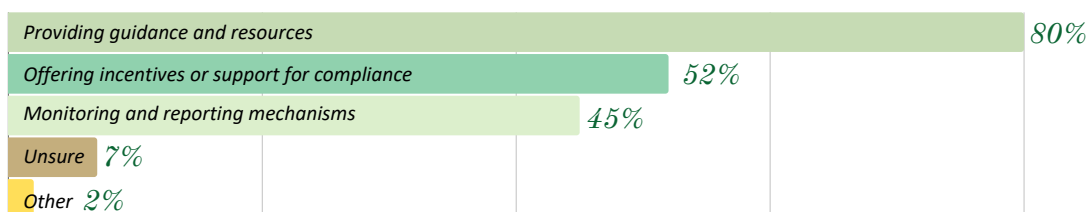
“Arbitral institutions in Latin America in recent years have strongly encouraged the incorporation of technology for the management and conduction of arbitrations. This has been promoted with greater force after the COVID-19 pandemic. In the case of CAM Santiago, in Chile, the creation of its digital platforms is even earlier, and it dates back to 2013, being e-CAMSantiago a pioneer in the region and the world.

In recent years, the digitalization of arbitration procedures has increased, as well as remote hearings and its acceptance, which allows for reduced costs and improved access to justice for people in different geographic locations, reducing the physical barriers that in-person hearings can sometimes present.

Additionally, in Central America, the new Sustainability and Efficiency Policy created this year by the Arbitration and Conciliation Center of Panama (CeCAP), stands out with the aim that arbitrations can be more environmentally friendly. This initiative underscores the significant role that sustainability plays for arbitration institutions in Latin America and the Caribbean, setting a clear direction for the region to follow in advancing these efforts.”

Laura Aguilera, CAM Santiago

*HOW CAN ARBITRATION INSTITUTIONS COLLABORATE TO ENSURE EFFECTIVE IMPLEMENTATION AND COMPLIANCE WITH THE GREEN PROTOCOLS AND/OR SUSTAINABLE PRACTICES?



*The total percentage exceeds 100% because respondents could select more than one option.



INSIGHT: The data collectively suggest a strong preference for providing comprehensive support through training, educational resources, and practical examples to facilitate the adoption of the Green Protocols. Additionally, while educational resources are critical, they must be complemented by incentives, support, and monitoring mechanisms. This approach ensures effective and sustained compliance with sustainability practices in arbitration, indicating a progression from learning and understanding to active application and accountability.

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Next Steps

The insights gathered from the survey have established a benchmark for the institutions' current practices, highlighting their strengths and areas for improvement. With the implementation of appropriate policies and their effective execution, arbitral institutions can introduce measures that will make a significant impact.

As the Campaign marks five years since its inception, it remains committed to enhancing sustainability within arbitration institutions globally. The suggestions outlined below are intended to guide the refinement of strategies, stakeholder engagement, and meaningful progress toward sustainability goals.

Identify Strengths and Weaknesses - Determine which areas are performing well and which require improvement based on the survey feedback.

Develop Action Plans - Create targeted action plans for each section, addressing identified weaknesses and leveraging strengths to enhance sustainability practices.

Set Priorities - Prioritise initiatives based on the survey findings, focusing on areas with the greatest potential for impact and alignment with organisational goals.

Engage Stakeholders - Communicate the results and action plans to relevant stakeholders, including senior management, employees, and partners, to ensure alignment and support.

Implement Changes - Begin implementing the proposed improvements and initiatives, focusing on the most critical areas first.

Monitor Progress - Establish metrics and monitoring systems to track progress and effectiveness of the implemented changes.

Review and Adjust - Regularly review the progress and adjust the strategies as needed based on ongoing feedback and performance metrics.

Report Outcomes - Share the outcomes and progress with stakeholders to demonstrate commitment to sustainability and transparency.

Plan for Future Surveys - Schedule follow-up surveys to assess the effectiveness of the changes and gather new insights for continuous improvement.



Acknowledgements

When we took on our roles as Co-Chairs of the Institutions Task Force for 2024-2026, the timing couldn't have been better. More than 70 arbitral institutions had already signed the pledge since the Campaign's launch five years ago and we were eager to build on this momentum. Our goal was to help arbitration institutions become more sustainable by understanding their current priorities, challenges, and plans for the present and the next five years. To gather these insights, we launched a survey to learn about the institutions' sustainability journeys. Our intention was to share the results with the arbitration community in order to start conversations, and encourage mutual learning through workshops and discussions. Collaboration is essential and an effective way to drive progress.

The Green Survey, an initiative of the Institutions Task Force of the Campaign, is a crucial step towards identifying the challenges and roadblocks arbitration institutions face in their sustainability efforts. By understanding these specific hurdles, the Campaign can better support their transition to more sustainable practices.

We would like to express our sincere gratitude to everyone who contributed to this survey and report.

In particular, we thank the Global Steering Committee of the Campaign for their unwavering support and dedication to promoting sustainable practices within the arbitration community.

We are also deeply grateful to the members of the Institutions Task Force. Their insights and contribution have been essential in shaping this Survey and making this initiative a reality.

Lastly, we want to thank all the institutions that took the time to complete the survey. In particular, those who took time to share their insights into their own practices within their institutions. We understand the demands on their time, and we greatly appreciate their thoughtful and detailed responses. Their participation has provided us with critical data and perspectives that will guide future initiatives.

Thank you all for your ongoing commitment to greener arbitration practices.

Karen Tan (Maxwell Chambers) and Kiran Sanghera (ACICA)

About the Campaign

The Campaign for Greener Arbitrations began as a promise by an international arbitrator to manage her arbitrations in an environmentally friendly manner. In 2019, Lucy Greenwood launched what she termed her 'Green Pledge' to minimise the impact of her arbitration practice on the environment.

The Green Pledge caught the attention of the wider arbitration community and soon hundreds of individuals had signed up to the pledge. Lucy realised that while the Green Pledge worked for those who practised as arbitrators, the arbitration community was keen to get behind a broader campaign to address the waste and unnecessary travel that often occurred in international arbitrations. As a result, she brought together representatives of key stakeholders in international arbitrations to spearhead the Campaign for Greener Arbitrations.

Individuals from arbitration institutions, arbitrators, law firms, hearing venues, third party funders, conference organisers, legal journalists, legal technology providers and corporate clients have come together to reinforce the message that we all share responsibility for reducing the carbon footprint of our industry.

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About the Campaign

THE GREEN PLEDGE



The Campaign for Greener Arbitrations seeks to raise awareness of the significant carbon footprint of dispute resolution. The Campaign addresses the need for environmentally sustainable practices in arbitration, and encourages all stakeholders (including counsel, arbitrators, parties to disputes, and institutions) to commit to the Campaign's Guiding Principles and reduce their carbon footprint when resolving disputes.

To assist Green Pledge signatories, Campaign members have developed a range of resources to facilitate implementation. These materials begin with the foundational [Green Protocols](#), a detailed set of recommended actions for different stakeholders throughout all stages of arbitral proceedings and daily operations.

- **GREEN PROTOCOL FOR ARBITRAL PROCEEDINGS AND MODEL GREEN PROCEDURAL ORDER**
- **GREEN PROTOCOL FOR LAW FIRMS, CHAMBERS AND LEGAL SERVICE PROVIDERS WORKING IN ARBITRATION**
- **GREEN PROTOCOL FOR ARBITRATORS**
- **GREEN PROTOCOL FOR ARBITRATION CONFERENCES**
- **GREEN PROTOCOL FOR ARBITRAL HEARING VENUES**
- **GREEN PROTOCOL FOR ARBITRAL INSTITUTIONS**

OTHER RESOURCES INCLUDE:

GREEN ACTIONS

A concise list of recommended practices

MODEL PROCEDURAL ORDER

A template for tribunals to adopt in full or in part

MODEL CLAUSE FOR COMPANY OUTSIDE COUNSEL RETENTION

A guideline for use by company legal departments

ARBITRATION TECH AND VIRTUAL HEARINGS TOOLKIT

A summary of rules and resources for conducting remote hearings



Contact us: info@greenerarbitrations.com

SECTION 14.1

GREEN PROTOCOLS CHECKLIST



AFSA

The Arbitration Foundation of Southern Africa
NPC

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CAMPAIGN FOR
**GREENER
ARBITRATIONS**
DRIVING SUSTAINABLE CHANGE

THE GREEN PROTOCOLS - A
CHECKLIST FOR LAW FIRMS,
CHAMBERS AND LEGAL SERVICE
PROVIDERS WORKING IN
ARBITRATION

- **Introduction**

The Campaign for Greener Arbitrations has developed six Green Protocols (the “**Green Protocols**”) to promote environmentally responsible arbitrations through a series of action items. **The Green Protocols - A Checklist for Law Firms, Chambers and Legal Service Providers Working in Arbitration** (the “**Checklist**”) is based on this – and on **The Green Protocol for Law Firms, Chambers and Legal Service Providers Working in Arbitration** in particular.

- **Who is this Checklist aimed at?**

The Checklist is aimed at legal practitioners, business development directors, green ambassadors and managers (together, the “**Practitioners**”)¹ such that they can monitor and assess their progress in these areas. In other words, anyone in the international arbitration industry can use this user-friendly Checklist to implement the Green Protocols and to understand what steps they should take in order to minimise their environmental impact.

- **How should this Checklist be used?**

To use this Checklist, Practitioners should review each item listed and consider whether their law firm, chambers or arbitration-related work place is complying with that item or not and indicate with a “tick”.

To the extent the law firm, chambers or arbitration-related work place is not complying, the Practitioner should consider what action could be taken to address that. Each item is intended to be something to aspire to, rather than be considered mandatory in nature.

This Checklist (and the Green Protocols) are not binding and are not intended to displace applicable rules or derogate from the arbitration agreement, unless and to the extent the Parties so agree (either in the arbitration agreement or subsequently) or the Tribunal so orders. This Checklist and the Green Protocols do not establish liability or a liability standard for legal or regulatory purposes.

¹ This Checklist serves as a summary and user-friendly document for practitioners that would like to take steps to reduce their carbon footprint in their international arbitrations. Reasonable accommodations may be made when needed.

- **The Checklist**

Section	Commitment	✓
I. Initial Commitment		
A.	Commit to working with your leadership teams, with a view to reviewing your existing environmental policies and practises. Consider implementing the recommendations contained in the Protocol. In particular, consider appointing “Green Ambassadors”, who can develop policies and best practises within your organisation based on the recommendations contained in the Protocol. The Green Ambassadors should report back to senior management periodically on the effect of these policies and best practises. <i>Be mindful that the implementation of Sustainability Measures are likely to be more efficient if rolled out on an office-wide basis, rather than within individual departments / offices.</i>	
B.	For arbitration teams within law firms/chambers – ensure draft Procedural Order No.1 (or similar orders that establish the arbitration procedure) incorporate the Green Model Procedural Order or relevant components thereof (e.g., no travelling unless absolutely necessary, no hardcopy bundles, virtual hearings and so on).	
II. Use Green Energy		
A.	Offices are powered by clean or renewable energy sources.	
B.	Energy providers selected have strong renewable and / or ESG credentials.	
III. Reduce Energy Consumption and Environmental Footprint		
A.	Office-wide efforts are ongoing to reduce the energy consumption and improve the energy efficiency of facilities and equipment. Examples include:	
	1. using clean or renewable energy as primary facility energy source;	
	2. using LED lights;	
	3. using natural light sources;	
	4. using plants to reduce humidity levels and increase oxygen;	

	5. introducing sensors and timed lighting systems in offices;	
	6. encouraging employees to power down rather than use screen savers during extended breaks;	
	7. installing smart power strips to reduce phantom power consumption when electronic equipment is not in use;	
	8. using recycling facilities;	
	9. using composters / waste disposal systems to recycle food waste;	
	10. using eco-friendly air conditioning and heating systems;	
	11. using eco-friendly cleaning materials;	
	12. using water-saving facilities in kitchens and restrooms;	
	13. using energy-efficient hand-dryers or roller towels in kitchens and restrooms; and / or	
	14. demonstrating an ongoing commitment to reducing consumption, reusing and repurposing materials, recycling where possible and to offsetting greenhouse gas emissions.	
B.	Office-wide policies are in place, with the assistance of IT team and building management, to:	
	1. ensure all computers, screens, lights and other electrical devices are set to turn off or enter a standby mode after a set period of time when not in use; and / or	
	2. reduce the carbon footprint of emailing by adopting pre-set parameters to reduce the length of email chains, limiting unnecessary attachments, transmitting smaller sized PDFs, etc.	
IV. Go Digital		
A.	Office-wide policies and training are in place to encourage the use of technology, in order to reduce the use of paper, travel and short face-to-face meetings. These technology solutions might include the use of:	
	1. large or double-screen monitors;	
	2. audio or video-conferencing;	
	3. iPad and tablets, or other similar equipment that facilitate a similar or improved experience of using paper materials;	
	4. energy-efficient interactive whiteboards for training, marking-up documents, or facilitating discussions;	
	5. other electronic document sharing or editing platforms; and / or	
	6. smartphones, headsets and audio or video-conferencing systems.	
B.	Office-wide policies and training are in place to develop your employees' technological skills, to raise awareness of the	

	importance of Sustainability Measures and to enable them to adapt to a digital environment, such as by providing training on digital communication and collaboration platforms, audio and video-conferencing facilities and cybersecurity best practices. <i>Note: Consider hiring technology experts or consultants, to assist with implementing and adopting Sustainability Measures, as well as to promote a more sustainable office culture.</i>	
V. Minimise Printing and Use of Paper		
A.	Office-wide policies are in place to reduce printing and to encourage employees to print only what is strictly necessary. In doing so, encourage employees to reduce printing and assume a default position of not printing documents, unless requested.	
B.	Where printing is deemed necessary, office-wide initiatives are in place to minimise the environmental footprint of the printing, including by:	
	1. using less paper (e.g. A5 size), grayscale, double-sided format, and / or reduced margin format, where appropriate;	
	2. using environmentally-friendly toner and ink;	
	3. using recycled and recyclable, chlorine-free and / or tree-free paper;	
	4. using eco-friendly printers (making use, for example, of LED UV printing);	
	5. disposing of printed documents and associated materials (e.g. toner bottles) in an environmentally-friendly way, where appropriate. Examples of printing disposal, whilst adhering to confidentiality obligations, might include recycling and composting; and	
	6. considering whether it is necessary to courier hard copies abroad or whether it is possible to use a local printing service.	
C.	Office-wide policies are in place to encourage employees to consider carefully whether to request that they be provided with printed documents, particularly when working remotely, but in any event taking into account the environmental footprint of printing.	
D.	Office-wide policies are in place to encourage employees and, where possible, all attendees at meetings, to bring laptops or tablets to use for document review and electronic note taking, and to display information using screens / projectors rather	

	than by printing documents. Stationery should be provided only upon request.	
E.	Office-wide policies are in place to prefer the use of business development and marketing materials in digital form over paper form.	
F.	Office-wide policies are in place to prefer the use of electronic case files over hard copy files.	
G.	Individual printers within offices are discouraged or limited.	
H.	Multi-purpose machines for printing, copying, scanning and faxing are preferred over single-use machines.	
I.	Subscriber mailing lists are regularly updated to reduce the volume of general communications via both electronic and paper transmission and endeavour to eliminate or reduce printed mailing wherever practical. This step shall also serve to confirm current contact information.	
J.	Where available for accounts payable and receivable, implement digital funding transfers, to reduce the need for printed checks and mailings.	
VI. Encourage Recycling		
A.	Office-wide environmentally friendly disposal practices are in place, including by:	
	1. providing clearly marked recycling bins in offices and instructions on best practices for recycling;	
	2. eliminating plastic bags in bins and for any other purposes, unless sourced from recycled products; and	
	3. properly disposing of or recycling outdated or broken electronic equipment and furniture.	
B.	Subject to local regulatory requirements and individual matter confidentiality obligations, all files are recycled in accordance with document retention policies.	
C.	Where recycling is not immediately available due to local regulations or building services, other recycling options are explored.	
VII. Limit Use of Single Use Items and Plastic		
A.	Eliminate or limit the use of single-use and / or plastic items, where possible and where deemed safe. In doing so, be guided by the non-exhaustive list below, which identifies items to be eliminated or limited, with alternatives suggested where appropriate.	
B.	Share this list with canteens and in-house restaurants to diminish waste.	

C.	Hold training events to explain why alternative items are being introduced to replace plastic or single-use items, in order to facilitate adoption of these alternative items.	
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<u>Request</u>		<u>Sustainable alternative</u>
No plastic water bottles	→	Re-useable water jugs (e.g. glass, metal or wood)
No plastic straws	→	Re-useable straws, or no straws
No individually wrapped confectionery	→	No confectionery required
No canned drinks	→	Jugs of fruit juice (or just water)
No plastic cutlery	→	Re-useable cutlery (e.g. silver ware)
No paper plates or cups	→	Re-useable plates and glasses / cups
No single portion items e.g. tomato sauce packets / single jams jars / sugar packets / butter packets	→	A single container / jar / dispenser
No Styrofoam or single-use plastic food containers	→	Serve food on re-useable plates / bowls. Alternatively, re-useable containers or cardboard boxes.
No paper napkins	→	Cloth napkins
No plastic cocktail sticks in finger foods	→	Re-useable forks, if needed at all
No unnecessary decorative mini cupcake / bakery liners	×	n/a
No individually wrapped tea bags	→	Pot / dispenser of hot tea
No Nespresso (or equivalent) coffee capsules, if no policy of recycling	→	Pot / dispenser of coffee
No plastic stirrers	→	Re-useable teaspoons
No stationery / writing paper / note pads	→	Attendees to provide their own stationery / writing paper/note pads, if needed
No promotional leaflets	×	n/a

VIII. Partner with “Green” Organisations		
A.	Adopt sustainable practices for catering, including by:	
	1. using sustainable catering companies, such as those that adopt environmentally friendly practices, including the use of alternatives to disposable packaging and the use of locally sourced supplies;	
	2. preferring organic and / or plant-based meals and refreshments free of synthetic pesticides or fertilisers;	
	3. using sustainable marketing materials, considering also the above list to limit single use items and to eliminate plastic; and	

	4. reducing food waste, including by confirming delegate attendance for an accurate head count. Adjustments may then be made to catering orders to avoid waste and attempts shall be made to dispose of excess food in a constructive manner, such as donation or composting.	
B.	Using environmentally-friendly courier services and using courier services efficiently and only when necessary.	
C.	Encouraging your IT teams to add use of Sustainability Measures to their criteria when selecting technology solutions (e.g. video-conferencing and electronic document sharing platforms) plus the data centre that hosts the Facilitators' email and website.	
D.	When involved in a hearing and where possible, aiming to engage service providers, including court reporters, interpreters, etc. who are local to the place of the hearing, to avoid unnecessary transportation and lodging, or to otherwise consider whether audio or video conferencing of service providers is possible.	
E.	Communicating this directive to all organisations, prior to service performance.	
IX. Travel Responsibly		
A.	Employees are encouraged to consider the need for any travel where an alternative technology solution might be available, such as audio or video-conference.	
B.	Employees are encouraged to consider virtual conferencing opportunities as an alternative to in-person conferences, where this would reduce long-distance travel.	
C.	Employees are given flexibility to work from home and, where appropriate, to avoid any unnecessary travel to or from an office by taxis or by car. <i>Note: This may be achieved by encouraging shared transportation or walking, or through cycle schemes.</i>	
X. Incentivise Employees		
A.	Incentivise your employees through schemes that encourage greener behaviours. These might include cycle schemes, reward schemes, or other green campaigns.	
B.	Implement schemes to support employees choosing to work from home to avoid carbon travel footprint. For example, consider subsidising part of broadband or phone bills or supplying or subsidising the purchase of equipment required to set up a functional and suitable office environment.	
XI. Encourage Social Responsibility		

A.	Allow your employees a permitted amount of hours each year to volunteer with organisations involved in sustainability initiatives.	
B.	Organise at least one event per year, which may be an online event, to educate and encourage green behaviours, including the Sustainability Measures set out in the Protocol.	
XII. Offset Carbon Emissions		
A.	Offset residual emissions through schemes that have been accredited as meeting the highest available sustainability standards (e.g. Gold Standard or Verified Carbon Standard, as at the date of the Protocol). <i>Note: The Sustainability Measures contained in the Protocol encourage behavioural change aimed at reducing the environmental impact of arbitrations and priority should be given to their implementation.</i> <i>However, also give due consideration to offsetting any residual emissions caused by conduct, including through travel. In determining how to offset carbon emissions, use internal approved corporate offsetting standards.</i>	
XIII. Report Progress		
A.	Publicly report on targets and achievements, in order to track progress, promote accountability, and encourage other firms to adopt Sustainability Measures. Reporting may also include any costs savings resulting from the implementation of Sustainability Measures.	
B.	Sign up to other green certification initiatives or other initiatives aimed at reducing practitioners' carbon footprint by a specific date.	

SECTION 14.2

GREENER ARBITRATIONS – TECH AND VIRTUAL HEARING TOOLKIT



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Table “A” – International Arbitration Institutions’ Rules and Guides Regarding Holding Virtual Hearing/Examination and Electronic Communication

Arbitration Institution	Virtual Hearing Possibility	Virtual Witness Examination Possibility	Electronic Communication/Filing Possibility	Guides
Arbitration Institute of the Stockholm Chamber of Commerce (SCC)	Yes, under Article 32 of the SCC Arbitration Rules (2023)	Yes, pursuant the arbitral tribunal's broad discretion under Articles 2 and 23 of the SCC Arbitration Rules (2023)	Yes, under Article 5 of the SCC Arbitration Rules (2023)	SCC Virtual Hearing Survey
				SCC arbitrators’ tips for a successful virtual hearing
				The SCC offers its users the SCC Platform , which enables the participants a secure workspace for communication and filing.
Australia Centre for International Commercial Arbitration (ACICA)	Yes, under Sections 25.4 and 35.5 of ACICA Arbitration Rules (2021)	Yes, under Sections 25.5 , 35.5 , and 36.5 of ACICA Arbitration Rules (2021)	Yes, under Sections 4 , 6.1 , 7.1 , and 26.6 of ACICA Arbitration Rules (2021)	Draft Procedural Order for Use of Online Dispute Resolution Technologies in ACICA Rules Arbitrations
CPR Dispute Resolution	Yes, pursuant the arbitral tribunal's broad discretion under Rules 9.1 , 9.2 , and 12.1 of CPR Rules for Administered Arbitration of International Disputes (2019)	Yes, pursuant the arbitral tribunal's broad discretion under Rules 9.1 , 9.2 , and 12.4 of CPR Rules for Administered Arbitration of International Disputes (2019)	Yes, pursuant the arbitral tribunal's broad discretion under Rules 3 and 9.7 of CPR Rules for Administered Arbitration of International Disputes (2019)	Protocol on Cybersecurity in International Arbitration ICCA, NYC Bar, & CPR
				Annotated Model Procedural Order for Remote Video Arbitration Proceedings
Dubai International Arbitration Center (DIAC)	Yes, Articles 20.2 and 26.1 of DIAC Arbitration Rules (2022)	Yes, Article 27.6 of DIAC Arbitration Rules (2022)	Yes, Articles 3.1 , 4.3 , and 5.3 of DIAC Arbitration Rules (2022)	N.A.
German Institute for Arbitration (DIS)	No, the temporary Covid-19 specific procedure is no longer in place except in limited instances such as electronic	No	Yes, Article 4 of DIS Arbitration Rules (2018)	N.A.

Arbitration Institution	Virtual Hearing Possibility	Virtual Witness Examination Possibility	Electronic Communication/Filing Possibility	Guides
	submission of Request for Arbitration.			
Hong Kong International Arbitration Centre (HKIAC)	Yes, pursuant to the tribunal's broad power to determine procedural matters under Articles 13(1) of the HKIAC Rules	Yes, under the tribunal's broad power to determine procedural matters according to 22(5) of the HKIAC Rules	Article 3 of HKIAC Rules	HKIAC Guidelines for Virtual Hearings
International Centre for Dispute Resolution (ICDR)	Yes, Articles 22.1 and 26.2 of ICDR International Arbitration Rules (March 2021)	Yes, Article 26.2 of ICDR International Arbitration Rules (March 2021)	Yes, Article 11.1 of ICDR International Arbitration Rules (March 2021)	Virtual Hearing Guide for Arbitrators and Parties
				Virtual Hearing Guide for Arbitrators and Parties Utilizing ZOOM
				Order and Procedures for a Virtual Hearing via Videoconference
				Virtual Hearing Managed Services
International Centre for Settlement of Investment Disputes (ICSID)	Yes, under Rules 29(4)(f) and 32(2) of the ICSID Arbitration Rules (2022)	Yes, under Rule 38(5) of the ICSID Arbitration Rules (2022)	Yes, under Rule 4 of the ICSID Arbitration Rules (2022)	A Brief Guide to Online Hearings at ICSID
International Chamber of Commerce (ICC)	Yes, Article 26(1) of the ICC Arbitration Rules (2021)	Yes, Pursuant the arbitral tribunal's broad discretion under Article 25 of the ICC Arbitration Rules	Yes, Articles 4 and 5 of the ICC Arbitration Rules (2021)	ICC Checklist for a Protocol on Virtual Hearings and Suggested Clauses for Cyber-Protocols and Procedural Orders Dealing with the Organisation of Virtual Hearings

Arbitration Institution	Virtual Hearing Possibility	Virtual Witness Examination Possibility	Electronic Communication/Filing Possibility	Guides
				Note to Parties and Arbitral Tribunals on the Conduct of the Arbitration under the ICC Rules of Arbitration (2021) (Section VII-C) ICC Arbitration and ADR Commission Report on Leveraging Technology for Fair, Effective and Efficient International Arbitration Proceedings (2022) ICC Arbitration Commission Report on Managing E-Document Production
London Court of International Arbitration (LCIA)	Yes, under Article 19(2) of the LCIA Arbitration Rules (2020)	Yes, pursuant to the arbitral tribunal's broad discretion under Article 14 of the LCIA Arbitration Rules (2020)	Yes, under Articles 1 , 2 and 4 of the LCIA Arbitration Rules (2020)	N.A.
Netherlands Arbitration Institute (NAI)	Yes, pursuant the arbitral tribunal's broad discretion under Articles 21(1) and 25(2) of NAI Arbitration Rules (Jan 2015)	Yes, under Articles 28(3) and 21(10) of NAI Arbitration Rules (Jan 2015)	Yes, under Articles 3 of NAI Arbitration Rules (Jan 2015)	The Hague Video Conferencing and Virtual Hearing Guidelines
New York International Arbitration Centre (NYIAC)	NYIAC hosts and provides assistance for remote hearings and hearing-related conferences	NYIAC hosts and provides assistance for remote hearings and hearing-related conferences	NYIAC hosts and provides assistance for remote hearings and hearing-related conferences	A Brief Guide to Online Hearings at NYIAC
Seoul International Dispute Resolution Center (IDCR)	IDCR hosts and provides assistance for virtual hearing through " V-Hearing "	IDCR hosts and provides assistance for virtual hearing through " V-Hearing "	IDCR hosts and provides assistance for virtual	Seoul Protocol on Video Conferencing in International Arbitration

Arbitration Institution	Virtual Hearing Possibility	Virtual Witness Examination Possibility	Electronic Communication/Filing Possibility	Guides
			hearing through “ V-Hearing ”	Seoul IDRC V-Hearing Guide
Singapore International Arbitration Centre (SIAC)	Yes, pursuant the arbitral tribunal's broad discretion under Rule 19(1) SIAC Arbitration Rules (2016)	Yes, pursuant the arbitral tribunal's broad discretion under Rule 25(3) SIAC Arbitration Rules (2016)	Yes, under Rule 2 and 3 of SIAC Arbitration Rules (2016)	SIAC Guides: Taking Your Arbitration Remote
Swiss Arbitration Centre	Yes, under Article 27(2) of Swiss Rules of International Arbitration (June 2021)	Yes, under Article 27(5) of Swiss Rules of International Arbitration (June 2021)	Yes, under Articles 2 and 3 of Swiss Rules of International Arbitration (June 2021)	The Swiss Arbitration Hub helps practitioners and users organise online/hybrid hearings. It is a platform that allows to find and contact providers of hearing facilities and accommodation, interpreters, court reporters, and providers of other useful services, such as video services, virtual data rooms, eDiscovery services for arbitration.
UNCITRAL Arbitration Rules*	Yes, under Articles 28(3) and 17 of UNCITRAL Arbitration Rules (2021)	Yes, under Articles 28(3) and 17 of UNCITRAL Arbitration Rules (2021)	Yes, under Articles 2 and 17 of UNCITRAL Arbitration Rules (2021)	Technical Notes on Online Dispute Resolution
Vancouver International Arbitration Center (VanIAC)	Yes, under Sections 16(b) and 25 of VanIAC International Commercial Arbitration Rules of Procedure (2022)	Yes, under Sections 16(b) , 23(d) (e) of VanIAC International Commercial Arbitration Rules of Procedure (2022)	Yes, under Section 2 of VanIAC International Commercial Arbitration Rules of Procedure (2022)	VanIAC Guide: Virtual Hearing
				VanIAC Guide: Online Arbitration Platform
Vienna International Arbitration Centre (VIAC)	Yes, under Article 30 of VIAC Rules of Arbitration (2021)	Yes, pursuant the arbitral tribunal's broad discretion under Article 28(1) VIAC Arbitration Rules (2021)	Yes, under Articles 7 and 12 of VIAC Rules of Arbitration (2021)	The Vienna Protocol - A Practical Checklist for Remote Hearing

Arbitration Institution	Virtual Hearing Possibility	Virtual Witness Examination Possibility	Electronic Communication/Filing Possibility	Guides
World Intellectual Property Organization (WIPO) Arbitration and Mediation Center	Yes, under Article 55 of WIPO Arbitration Rules (2021)	Yes, pursuant the arbitral tribunal's broad discretion under Article 37 of WIPO Arbitration Rules (2021)	Yes, under Article 4 of WIPO Arbitration Rules (2021)	WIPO Online Case Administration Tools
				Virtual Hearings – A Partial Checklist
				Draft Procedural Order for Virtual Hearing
				WIPO Checklist for the Online Conduct of Mediation and Arbitration Proceedings

* United Nations Commission on International Trade Law (UNCITRAL) is not an arbitration institution. However, UNCITRAL Arbitration Rules are often used in *ad hoc* arbitrations as the rules of procedure.

Table B - Guidelines Provided by Other Arbitration Institutions Regarding Virtual Hearings

Arbitration Institution	Guide
Africa Arbitration Academy	Protocol on Virtual Hearings in Africa
Delos Dispute Resolution	Checklist on Holding Arbitration and Mediation Hearings in Times of COVID-19
FINRA Dispute Resolution Services	Arbitrator Resource Guide for Virtual Hearings
ICCA-NYC Bar-CPR	2020 Protocol on Cybersecurity in International Arbitration
Indian Arbitration Forum (IAF)	IAF Protocol on Virtual Hearings for Arbitrations
International Bar Association (IBA)	Cyber Security Guidelines
International Bar Association (IBA)	Technology Resources for Arbitration Practitioners
The Chartered Institute of Arbitrators (CIArb)	Guidance Note on Remote Dispute Resolution Proceedings
The Hague Conference on Private International Law	1970 Evidence Convention Guide to Good Practice – The Use of Video-Link
The International Council for Online Dispute Resolution (ICODR)	ICODR Video Arbitration Guidelines
United Nations Commission On International Trade Law (UNCITRAL)	Technical Notes on Online Dispute Resolution

Table C – Technology Resources for Remote Arbitration

Function	Resource	Features	Where to find?	How to use?
Virtual Hearing Platform	Bluejeans	Most prominent features for a remote hearing: • Breakout room tool • Recording meetings • Real-time translation • File sharing	Official Website	See the webpage " Getting Started With BlueJeans "
Virtual Hearing Platform	Endispute	Most prominent features for a remote hearing: • Breakout room tool • Recording meetings • File sharing • Electronic signature capability • Litigation and e-discovery language support	Official Website	See the FAQ page
Virtual Hearing Platform	Google Meet	Most prominent features for a remote hearing: • Breakout Room Tool • Recording Meetings • Private Chat Functionality • Grid View of Up To 16 People • File Sharing • Generate Meeting Transcripts Automatically	Official Website	See Google Meet training and help webpage
Virtual Hearing Platform	GoToMeeting	Most prominent features for a remote hearing: • Breakout room tool • Recording meetings • Show up to 25 participants on the screen at once • File sharing • Drawing tools	Official Website	See the FAQ page
Virtual Hearing Platform	Immediation	Most prominent features for a remote hearing: • Breakout room tool • Recording meetings • E-signing via DocuSign • Provide a holistic legal dispute resolution platform	Official Website	Arbitration product brochure is available here

Function	Resource	Features	Where to find?	How to use?
Virtual Hearing Platform	Legaler	Most prominent features for a remote hearing: • Breakout room tool • Recording meetings • File sharing • Preference-based voting for scheduling meetings • Private, sharable meeting notes	Official Website	See the page " Getting Started with Legaler "
Virtual Hearing Platform	Microsoft Teams	Most prominent features for a remote hearing: • Breakout room tool • Recording meetings • Simultaneous interpretation (through kudo) • File sharing • Private text chats • Show up to 9 meeting participants on the screen at once	Official Website	See Microsoft Teams video training
Virtual Hearing Platform	Transperfect	Most prominent features for a remote hearing: • Recording meetings • File sharing • 24/7 support, including to ensure all parties are connected in advance of the start of the hearing	Official Website	See the page " Centralize Arbitration Management "
Virtual Hearing Platform	TrialMax Cloud	Most prominent features for a remote hearing: • Real-time display of evidence • Video & other media on a secondary monitor • Real-time transcript • Training for all key participants • Review and manage exhibits on FTI's secure online portal	Official Website	See the page " FTI Virtual Courtroom "

Function	Resource	Features	Where to find?	How to use?
Virtual Hearing Platform	Trustpoint.one	Most prominent features for a remote hearing (witness examination): • Real-time transcript • Search for and highlight keywords • Enables toe users to add personal notes • Creates reports, and export data • Introduces exhibits • Enables the users to follow along or annotate the reporters' transcript • Choice between 1 and 2 way video conferences (allows the attorneys to analyze a witness without being seen, or to conduct face-to-face questioning) • Training for participants	Official Website	Visit the Website
Virtual Hearing Platform	Vidyo	Most prominent features for a remote hearing: • Breakout rooms • Recording meetings • Up to 16 participants can be viewed at once on a single screen • File sharing • Private chat	Official Website	See the page " Vidyo Virtual Courts and Justice "
Virtual Hearing Platform	WebEx	Most prominent features for a remote hearing • Breakout room tool • Recording meetings • Up to 25 participants can be viewed at once on a single screen • File sharing • Automatic transcript	Official Website	See the FAQ page
Virtual Hearing Platform	Zoom	Most prominent features for a remote hearing: • Breakout room tool • Recording meetings • Simultaneous interpretation • File sharing • In-meeting and private text chat • Display up to 49 participants in a single screen	Official Website	See the page " Zoom Learning Center "

Function	Resource	Features	Where to find?	How to use?
Remote Interpretation	Interprefy	Most prominent features for a remote hearing: • Simultaneous or consecutive interpretation • Integrating with any online video conferencing software • Listening to real-time interpreting in the language of choice • Standalone web conferencing service	Official Website	See the page " The Remote Simultaneous Interpretation Guide "
Remote Interpretation	Kudo	Most prominent features for a remote hearing: • Accommodates an unlimited number of languages into any meeting • Real-time translation • Integrate with certain conferencing platforms • Include Microsoft Teams • Enable the users to listen to real-time interpreting in the language of choice • Offers support to those who are hearing impaired	Official Website	See the " Solutions " page
Remote Interpretation	Morningside	Most prominent features for a remote hearing: • Simultaneous or consecutive interpretation • On-demand services available 24/7 • Cover over 200 languages	Official Website	See the " Guides " page
Remote Interpretation	Transperfect	Most prominent features for a remote hearing: • Simultaneous or consecutive interpretation • On-demand services available 24/7 • Device-independent solutions	Official Website	See the page " Video remote interpretation "
Management and Transfer of Arbitration Data	Affinitext	Most prominent features for arbitration: • Automatic pop-ups for contract definitions • Makes link to other contract sections or defined terms • The ability to review the history of all contract amendments • Search across all relevant documents • Generates a list of all contractual obligations and entitlements across a group of documents.	Official Website	See the page " Request a Demonstration "
Management and Transfer of Arbitration Data	CaseMap	Most prominent features for arbitration: • Organizes case documents and review and present information in a compelling story or timeline	Official Website	See the page " CaseMap® Cloud Support & Training "

Function	Resource	Features	Where to find?	How to use?
		- Tags documents relevant identifying features to keep track of categories or issues relevant to the matter - Automatically generates output categorised by date, issue or person, among others - Organizes all items categorised by the user as 'facts' to reveal how the evidence stacks up for the case (Fact Card View) - Develops a hierarchy of claims, counterclaims, and any other known arguments		
Management and Transfer of Arbitration Data	Exhibit Manager	Most prominent features for arbitration: - Stores links to pdf files in a database, where they can be analysed, categorised and/or annotated - Inserts the pdf files in a submission where they are automatically numbered and formatted according to the user's specifications - Creates lists of exhibits. (chronological or by exhibit number), stamp exhibits and create bundles automatically - Creates a fully hyperlinked electronic brief of a submission in pdf format.	Official Website	See the FAQ page
Management and Transfer of Arbitration Data	FileCloud	Most prominent features for arbitration: - Secure file sharing in "public" or "private" mode - Enables the users to sync and backup files and folders - Provides an option to restrict users from sending and receiving data across shared or public networks when they are not connected to a trusted network - Enables the users to make "view-only" document access available to the client or other parties, tribunals and institutions in an arbitration that may not necessarily be a FileCloud user.	Official Website	Visit the website
Management and Transfer of Arbitration Data	Opus Magnum	Most prominent features for arbitration: - Provides a platform for hosting, editing, sorting, organising, and sharing litigation and arbitration documents - Security features designed to limit access to a defined universe of users - Offers search, chronology and editing features	Official Website	Visit the website

Function	Resource	Features	Where to find?	How to use?
		Permits parties to share their finalised arbitration pleadings and submissions with the tribunal and opposing counsel through a separate 'shared' database		
Management and Transfer of Arbitration Data	SharePoint	Most prominent features for arbitration: - Provides an intranet platform enabling users to share files inside or outside their organisation - Files and folders can be synced for offline viewing and editing - Empowers teamwork by enabling the users to co-edit a same document - Offers tools to organise and manage content in online libraries.	Official Website	See the page " SharePoint Training "
Management and Transfer of Arbitration Data	Strutlegal	Most prominent features for arbitration - Creates interactive, or hyperlinked, versions of memorials, expert reports or other arbitration submissions - Integrates case documentation, such as pdf, video, excel files and PowerPoint presentations - Creates an index or detailed navigation bookmarks, transformation of expert reports into interactive documents, and/or creation of a modified hyperlinked version of the opposing party's brief in order to help a party review the other side's citations and arguments.	Official Website	See the contact page
Management and Transfer of Arbitration Data	TransCEND	Most prominent features for arbitration - Enables parties, tribunals and institutions to file, exchange, present and access all arbitration documents, from request to award, in a single, secure environment - Provides parties with separate rooms in which they can store, access and edit their own arbitration files directly - Allows the parties to submit the materials by drag and drop in the space avoiding the rejection of files that are too large for email transfer and disputes between the parties over the precise time of submission - Enables the parties to add to hearing bundles without reconstituting the entire arbitration record;	Official Website	See the contact page

Function	Resource	Features	Where to find?	How to use?
Presentation of Graphics and Evidence	Impact Trial	Most prominent features for arbitration: - Handles the technical aspects of the presentation during the hearing, marking and processing exhibits, and organising the case file - Offers visual communication designers to create visually engaging and persuasive graphics for a variety of applications that can be used during opening or closing statements.	Official Website	See the page " Services Offered in Technical Terms "
Presentation of Graphics and Evidence	Prezi	Most prominent features for arbitration: - Provides tools to create, edit and present interactive presentations - Offers a zoom/reveal function to focus on and unveil critical details as the story unfolds - Compatible with Zoom, Webex, and MS Teams.	Official Website	See the page " Prezi product tutorials "
Presentation of Graphics and Evidence	RLM TrialGraphix	Most prominent features for arbitration: Offers two-dimensional (2D) graphics and three-dimensional (3D) visualisations to illustrate issues or items in dispute	Official Website	See Services page
Presentation of Graphics and Evidence	SmartDraw	Most prominent features for arbitration: - Allows the creation of schematic, chart and graph-based diagrams - Integrates with other commonly used software such as Microsoft Office and Google Docs	Official Website	See the page " Features "
Presentation of Graphics and Evidence	TrialPad – Lit Software	Most prominent features for arbitration: - An iPad application that helps organise, annotate and present evidence; - Stores and accessing all relevant documents from an iPad - Offers presentation tools that callout sections of documents, highlight text, create side-by-side document comparisons, edit and show video clips, add exhibit stickers to documents, search document text - Enables the management of case evidence, for example, by assigning tags and issuing codes to evidence, and/or highlighting certain evidence and creating summary reports	Official Website	See the page " TrialPad Video Tutorials "

Function	Resource	Features	Where to find?	How to use?
Presentation of Graphics and Evidence	TrialTech	Most prominent features for arbitration: - Enables the user to create charts, graphs, illustrations, videos, computer-generated animation and working models for producing demonstrative evidence - Supports a “paperless” trial through the use of the latest developments in computer technology	Official Website	Visit the website
Presentation of Graphics and Evidence	Z Axis	Most prominent features for arbitration: - develops a variety of animation, infographics, interactive animation, models and timelines, as well as video production and photography to produce demonstrative evidence - offers case analysis, forensic support, and visual concept and presentation development - provides an artist on-call or with the client at the hearing	Official Website	See Services page
Virtual Reality and Augmented Reality	A2L Consulting (formerly Animators at Law)	Most prominent features for arbitration: - Renders animation in both 2D and 3D - Develops hearing presentation strategy and designs for litigation graphics and demonstrative evidence in the tribunal setting	Official Website	Visit the website
Virtual Reality and Augmented Reality	Cogent Legal	Most prominent features for arbitration: - Renders animation in both 2D and 3D - Develops hearing presentation strategy and designs for litigation graphics and demonstrative evidence in the tribunal setting	Official Website	Visit the website
Virtual Reality and Augmented Reality	Courtroom Visuals	Most prominent features for arbitration: - Permits high-precision 3D measuring, imaging and comparison of parts and compound structures - Provides tools for inspecting components, assemblies and documenting large volume spaces, such as accident scenes, in 3D.	Official Website	Visit the website
Analytical Tools and Mind Mapping	Brainspace	Most prominent features for arbitration: Enables the users to present data through a map-like content ‘Cluster Wheel’ and a ‘Communications Network’ view to track email traffic flows and volumes, which can then be used to organise data for fast review and reduction of data volumes	Official Website	See Training page

Function	Resource	Features	Where to find?	How to use?
		- Analyses the word content of the data - Detects phrases and expanding concepts to uncover adjacent material - Enables the users to assign weights to discovered terms within the datasets, and then extrapolate related datasets through visualised maps or narrow datasets using the weighted terms for a more focused review - Creates a bird's-eye view of the flow and volume of email, and simplifies the view by consolidating email aliases into a single identifier representing each person. This helps with the instantaneous identification of relevant content and the people participating in the discussion - Filters tools to reduce clutter and focus on the communications and content that matter		
Analytical Tools and Mind Mapping	Legal Analytics by Lex Machina	Most prominent features for arbitration - Enable the users to analyse trends of a certain judge that emerge from his or her judgments in prior cases - Helps lawyers to identify their opposing counsels' total open litigation cases, relevant experience in litigation and other data - Assists to find tendencies in how decisions are made, and apply these tendencies to a concrete case (The application of the same features to arbitration should be checked with the provider)	Official Website	See Training page
Analytical Tools and Mind Mapping	Courtroom Visuals	Most prominent features for arbitration: Enables the user to capture and transform ideas into clear, customizable mind maps, flowcharts, and timelines;	Official Website	See the page " Learning Tools for MindManager "
Analytical Tools and Mind Mapping	Ross Intelligence	Most prominent features for arbitration: Enables the users to analyse unstructured information, and provide analytical responses for concrete cases from published and unpublished case law assist in preparing legal briefs by extracting quotes and key points of law from case law, and provide a quick overview of what key legal analyses are discussed within the case as they relate to a query	Official Website	Visit the website

Function	Resource	Features	Where to find?	How to use?
		Assists the users to find other cases with similar language to strengthen specific position. (The application of the same features to arbitration should be checked with the provider)		
Analytical Tools and Mind Mapping	TreeAge Pro	Most prominent features for arbitration: - Enables the users to create decision trees representing the problem in a legal case - Helps users evaluate and compare legal strategies, and study uncertainties in outcomes	Official website	Visit the website

SECTION 14.3

GREEN PROTOCOL FOR ARBITRAL HEARING VENUES



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CAMPAIGN FOR
**GREENER
ARBITRATIONS**
DRIVING SUSTAINABLE CHANGE

GREEN PROTOCOL FOR
ARBITRAL HEARING
VENUES

1

GREEN PROTOCOL FOR ARBITRAL HEARING VENUES

This **Green Protocol for Arbitral Hearing Venues** contains suggested Sustainability Measures¹ for minimising the impact of arbitration facilities and hearing centres on the environment. These Sustainability Measures can be adopted by Hearing Centre Facilitators (“**Facilitators**”) individually or in their entirety, as appropriate.

While all the recommended Sustainability Measures in this Protocol will help reduce the environmental impact of arbitral proceedings, particular focus should be given to measures promoting the use of clean energy as a primary energy source and the reduction of air travel. These two measures will have the largest proportional impact on the overall reduction of emissions associated with arbitration matters. Additional guidance may be found in related **Green Protocols**:

- The Framework for the Adoption of the Green Protocols,
- The Green Protocol for Arbitral Proceedings,
- The Green Protocol for Law Firms, Chambers and Legal Service Providers Working in Arbitration,
- The Green Protocol for Arbitrators,
- The Green Protocol for Arbitration Conferences and
- The Green Protocol for Arbitral Institutions.

¹

The term Sustainability Measures has the meaning set out in the Framework for the Adoption of the Green Protocols.



GREEN PROTOCOL FOR ARBITRAL HEARING VENUES



I. INITIAL COMMITMENT

- A. Facilitators commit to adopt this Protocol or component parts thereof as part of daily operating procedures.
- B. Alternatively, parties may request venue adherence to this Protocol or component parts thereof, in preparation of and for the duration of a particular matter.



II. USE GREEN ENERGY

Facilitators shall consider using clean or renewable energy sources wherever possible. In addition, or in any event, Facilitators shall endeavour to use energy providers that promote renewable energy and / or that demonstrate firm ESG credentials.



III. REDUCE ENERGY CONSUMPTION AND ENVIRONMENTAL FOOTPRINT

- A. Facilitators shall endeavour to reduce the energy consumption and improve the energy efficiency of facilities and equipment, to reduce their environmental footprint. Examples of energy-saving measures and environmentally friendly practices include:
 - A.1 Using clean or renewable energy as primary facility energy source, where possible;
 - A.2 Using LED lights;
 - A.3 Using natural light sources wherever practical;
 - A.4 Using plants to reduce humidity levels and increase oxygen;
 - A.5 Introducing sensors and timed lighting systems in offices;
 - A.6 Encouraging staff and advisors to power down rather than use screen savers during extended breaks;
 - A.7 Installing smart power strips to reduce phantom power consumption when electronic equipment is not in use;
 - A.8 Using recycling facilities;
 - A.9 Using composters / waste disposal systems to recycle food waste;
 - A.10 Using eco-friendly air conditioning and heating systems;
 - A.11 Using water-saving facilities in kitchens and restrooms;
 - A.12 Using energy-efficient hand-dryers or roller towels in kitchens and restrooms;
 - A.13 Using eco-friendly cleaning materials; and / or
 - A.14 Demonstrating an ongoing commitment to reducing consumption, reusing and repurposing materials, recycling where possible and to offsetting greenhouse gas emissions.

GREEN PROTOCOL FOR ARBITRAL HEARING VENUES



IV. CONDUCT OF PROCEEDINGS

- A. Communication and correspondence among Facilitators, Parties and Tribunal shall be made electronically or via audio or video-conferencing, wherever practical.
- B. Throughout proceedings, Facilitators shall implement technology platforms and devices for evidence display in the hearing venue.



V. MINIMISE PRINTING AND USE OF PAPER

- A. Facilitators shall endeavour to:
 - A1 Use digital options for paper-free hearings and conferences.
 - A2 Carefully consider whether hard copy documents are necessary, taking into account the environmental footprint of printing.
 - A3 Encourage Parties, Tribunals, conference attendees and employees to bring laptops or tablets to use for review and electronic note taking in lieu of printing materials and to display information using screens / projectors rather than by printing documents. Stationery shall only be provided upon request.
 - A4 Minimise individual printers within offices and breakout rooms, and instead provide limited floor printers.
 - A5 Produce business development and marketing materials in digital form.
 - A6 Consider using multi-purpose machines for printing, copying, scanning and faxing.
 - A7 Regularly update subscriber mailing lists to reduce the volume of general communications, via both electronic and paper transmission and endeavour to eliminate or reduce printed mailing wherever practical. This step shall also serve to confirm current contact information.
 - A8 Wherever available for accounts payable and receivable, implement digital funding transfers to reduce the need for printed checks and mailings.
- B. Where printing is deemed necessary, Facilitators shall endeavour to minimise the environmental footprint of the printing, including by:
 - B1 Using less paper (e.g. A5 size), grayscale, double-sided format, and / or reduced margin format, where appropriate;
 - B2 Using environmentally friendly toner and ink;
 - B3 Using recycled and recyclable, chlorine-free and / or tree-free paper;
 - B4 Using eco-friendly printers (making use, for example, of LED UV printing); and
 - B5 Disposing of printed documents and associated materials (e.g. toner bottles) in an environmentally friendly way, where appropriate. Examples of printing disposal, whilst adhering to confidentiality obligations, might include recycling and composting.



VI. ENCOURAGE RECYCLING

- A. Facilitators shall endeavour to implement environmentally friendly disposal practices, including by:
 - A1 Providing clearly marked recycling bins in offices and instructions on best practices for recycling;

GREEN PROTOCOL FOR ARBITRAL HEARING VENUES

- A2 Eliminating plastic bags in bins and for any other purposes, unless sourced from recycled products; and
- A3 Properly disposing or recycling outdated or broken electronic equipment and furniture.
- B. Subject to local regulatory requirements and individual matter confidentiality obligations compliance, Facilitators shall recycle all files that have not been used or are not being used after an established period of time.
- C. Where recycling is not immediately available due to local regulations or building services, Facilitators shall endeavour to promote other sections of this Protocol or work with building managers to explore recycling options.



VII. LIMIT USE OF SINGLE USE ITEMS AND PLASTIC

Facilitators shall aim to eliminate or limit the use of single-use and / or plastic items, where possible and where deemed safe. In doing so, Facilitators may be guided by the non-exhaustive list below, which identifies items to be eliminated or limited, with alternatives suggested where appropriate. Facilitators shall share this list with canteens and in-house restaurants to diminish waste.

Request	Sustainable alternative
No plastic water bottles	Re-useable water jugs (e.g. glass, metal or wood)
No plastic straws	Re-useable straws, or no straws
No individually wrapped confectionery	No confectionery required
No canned drinks	Jugs of fruit juice (or just water)
No plastic cutlery	Re-useable cutlery (e.g. silver ware)
No paper plates or cups	Re-useable plates and glasses / cups
No single portion items e.g. tomato sauce packets / single jams jars / sugar packets / butter packets	A single container / jar / dispenser
No Styrofoam or single-use plastic food containers	Serve food on re-useable plates / bowls Alternatively, re-useable containers or cardboard boxes
No paper napkins	Cloth napkins
No plastic cocktail sticks in finger foods	Re-useable forks, if needed at all
No unnecessary decorative mini cupcake / bakery liners	
No individually wrapped tea bags	Pot / dispenser of hot tea
No Nespresso (or equivalent) coffee capsules, if no policy of recycling	Pot / dispenser of coffee

GREEN PROTOCOL FOR ARBITRAL HEARING VENUES

No plastic stirrers

No stationery / writing paper / note pads

No promotional leaflets

Re-useable teaspoons

Attendees to provide their own stationery / writing paper / note pads, if needed



VIII. PARTNER WITH “GREEN” ORGANISATIONS

- A. Facilitators shall endeavour to adopt sustainable practices for catering, including by:
 - A1 Using sustainable catering companies, such as those that adopt environmentally friendly practices, including the use of alternatives to disposable packaging and the use of locally sourced supplies;
 - A2 Preferring organic and / or plant-based meals and refreshments free of synthetic pesticides or fertilisers;
 - A3 Using sustainable marketing materials, considering also the above list to limit single use items and to eliminate plastic; and
 - A4 Reducing food waste, including by confirming delegate attendance for an accurate head count. Adjustments may then be made to catering orders to avoid waste and attempts shall be made to dispose of excess food in a constructive manner, such as donation or composting.
- A. Facilitators shall endeavour to use suppliers who adopt or are aspiring to implement similar Sustainability Measures including use of environmentally friendly products and the use of alternatives to disposable packaging as well as locally sourced supplies. These suppliers might include catering companies, document production and printing suppliers, couriers, cleaning companies, marketing and advertising professionals, offsite event facilities and utility suppliers.
- B. Facilitators shall endeavour to use environmentally friendly courier services and to use courier services efficiently and only when necessary.
- C. Facilitators shall encourage their IT teams to add use of Sustainability Measures to their criteria when selecting technology solutions (e.g. video conferencing and electronic document sharing platforms) plus the data centre that hosts the Facilitators’ email and website.
- D. Facilitators shall encourage Parties to engage service providers, including court reporters, interpreters, etc. who are located locally in the place of the hearing to avoid unnecessary transportation and lodging.
- E. Facilitators shall endeavour to communicate this directive to all organisations prior to service performance.

GREEN PROTOCOL FOR ARBITRAL HEARING VENUES



IX. TRAVEL RESPONSIBLY

- A. Facilitators shall encourage the use of technology through virtual hearing services to minimise travel and promote the use of local vendors and environmentally friendly transport options where appropriate, including by:
 - A1 Using audio and video-conferencing;
 - A2 Using electronic bundles;
 - A3 Using electronic presentation of evidence;
 - A4 Using transcription;
 - A5 Using interpretation;
- B. For those attending a hearing venue in-person:
 - B1 Facilitators shall endeavour to provide lists of local accommodation facilities that adopt or are aspiring to implement similar Sustainability Measures; and
 - B2 Facilitators shall encourage the use of environmentally friendly transport options.
- C. When organising or participating in events, Facilitators shall endeavour to use technology to minimise the need to travel, including by:
 - C1 Enabling or requesting virtual attendance by delegates; and
 - C2 Enabling or requesting virtual participation by speakers, panellists and chairs (with a focus on, e.g. e-diversity).
- D. Facilitators shall carefully consider the need to travel for events and / or other business development activities and shall endeavour to minimise travel wherever possible.
- E. Where travel is deemed necessary, Facilitators shall consider (for themselves or for delegates) the following:
 - E1 Using travel options that minimise carbon emissions;
 - E2 Where flights are necessary, offsetting flights; and
 - E3 Maximising trips to accomplish several objectives to reduce the number of trips overall.



X. OFFSET CARBON EMISSIONS

The Sustainability Measures contained in this Protocol encourage behavioural change aimed at reducing the environmental impact of arbitrations and priority should be given to their implementation. Facilitators shall also, however, give due consideration to offsetting any residual emissions caused by their conduct, including through travel. In determining how to offset carbon emissions, Facilitators shall use their internal approved offsetting standards. In the absence of such standards, Facilitators should endeavour to offset their emissions through schemes that have been accredited as meeting the highest available sustainability standards (e.g. Gold Standard or Verified Carbon Standard, as at the date of this Protocol).

Disclaimer

The Framework and the Green Protocols are not binding and are not intended to displace applicable rules or derogate from the arbitration agreement unless and to the extent the parties so agree (either in the arbitration agreement or subsequently) or the tribunal so orders. The Framework and the Green Protocols do not establish liability or a liability standard for legal or regulatory purposes.



SECTION 14.4

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GREEN PROTOCOL FOR
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1

GREEN PROTOCOL FOR ARBITRAL INSTITUTIONS

This **Green Protocol for Arbitral Institutions** contains suggested Sustainability Measures¹ for minimising the impact of Arbitral Institutions on the environment. These Sustainability Measures can be integrated into the daily operations of an Arbitral Institution and / or adopted on a case-by-case basis by individuals at those Arbitral Institutions. These Sustainability Measures can also be adopted by Arbitral Institutions individually or in their entirety, as appropriate.

While all Sustainability Measures recommended in this Protocol will help reduce the environmental impact of arbitral proceedings, particular focus should be given to measures promoting the use of clean energy as a primary energy source and the reduction of air travel. These two measures will have the largest proportional impact on the overall reduction of emissions associated with arbitration matters. Additional guidance may be found in related **Green Protocols**:

- The Framework for the Adoption of the Green Protocols,
- The Green Protocol for Arbitral Proceedings,
- The Green Protocol for Law Firms, Chambers and Legal Service Providers Working in Arbitration,
- The Green Protocol for Arbitrators,
- The Green Protocol for Arbitration Conferences and
- The Green Protocol for Arbitral Hearing Venues.

¹ The term Sustainability Measures has the meaning set out in the Framework for the Adoption of the Green Protocols.

GREEN PROTOCOL FOR ARBITRAL INSTITUTIONS



I. INITIAL COMMITMENT

- A. Arbitral Institutions commit to working with their staff and leadership teams, with a view to reviewing existing environmental policies and practices and, where appropriate, considering and implementing recommendations from this Protocol.
- B. Arbitral Institutions may appoint “Green Ambassadors”, whose role shall be to help develop policies and best practices within their organisation, based on the recommendations contained in this Green Protocol. Green Ambassadors should periodically report to their senior management on the effect of these policies and best practices.



II. USE GREEN ENERGY

Arbitral Institutions commit to use clean or renewable energy sources wherever possible. In addition, or in any event, Arbitral Institutions shall endeavour to use energy providers that promote renewable energy and / or that demonstrate firm ESG credentials.



III. REDUCE ENERGY CONSUMPTION AND ENVIRONMENTAL FOOTPRINT

- A. Arbitral Institutions shall endeavour to improve the energy efficiency of facilities and equipment to reduce their environmental footprint. Examples of energy-saving measures and environmentally friendly practices include:
 - A1 Using clean or renewable energy as primary facility energy source, where possible;
 - A2 Using LED lights;
 - A3 Using natural light sources wherever practical;
 - A4 Using plants to reduce humidity levels and increase oxygen;
 - A5 Introducing sensors and timed lighting systems in offices;
 - A6 Encouraging employees to power down rather than use screen savers during extended breaks;
 - A7 Installing smart power strips to reduce phantom power consumption when electronic equipment is not in use;
 - A8 Using recycling facilities;
 - A9 Using composters / waste disposal systems to recycle food waste;
 - A10 Using eco-friendly air conditioning and heating systems;
 - A11 Using eco-friendly cleaning materials;
 - A12 Using water-saving facilities in kitchens and restrooms;
 - A13 Using energy-efficient hand-dryers or roller towels in kitchens and restrooms;
 - A14 Using eco-friendly cleaning materials; and / or
 - A15 Demonstrating an ongoing commitment to reducing consumption, reusing and repurposing materials, recycling where possible and to offsetting greenhouse gas emissions.

GREEN PROTOCOL FOR ARBITRAL INSTITUTIONS

- B. Arbitral Institutions shall aim to work with their IT teams and building management to ensure all computers, screens, lights and other electrical devices are set to turn off or enter a standby mode after a set period of time in the evenings or during the day and/or when otherwise not in use (as appropriate).
- C. Arbitral Institutions shall aim to work with their IT teams to reduce the carbon footprint of emailing by adopting pre-set parameters to reduce the length of email chains, limiting unnecessary attachments, transmitting smaller sized PDFs, etc.
- D. In the case where an Arbitral Institution does not own its office, the Arbitral Institution commits to working with building managers, and building services providers in order to facilitate the introduction of the above measures.



IV. GO DIGITAL

- A. Arbitral Institutions shall encourage the use of technology for the conduct of proceedings to minimise printing, the use of paper and travel where appropriate. Examples include:
 - A.1 Expressly permitting in institutional arbitration rules the service of documents by electronic means (e.g., email and online repositories);
 - A.2 Inviting Parties and Tribunals to communicate by electronic means only (e.g., email);
 - A.3 Not requiring hard copies of any documents and encouraging electronic filing;
 - A.4 Offering shared online platforms for filing and storing documents;
 - A.5 When appointing arbitrators considering an arbitrator's ability to use technology for the effective conduct of proceedings, where appropriate;
 - A.6 Providing the Campaign for Greener Arbitrations' **Model Procedural Order** upon constitution of the arbitral Tribunal for their consideration;
 - A.7 Transmitting case files to Tribunals by electronic means and only providing hard copies where expressly requested;
 - A.8 Empowering Tribunals in institutional arbitration rules to consider the effective use of technology;
 - A.9 Assisting Tribunals to find technical support where required and appropriate (e.g., by suggesting the use of a tribunal secretary with the necessary technical capabilities or hearing service providers that can offer support with the conduct of virtual hearings);
 - A.10 Empowering Tribunals to determine how witnesses and experts are examined in institutional arbitration rules, which may include remote examination as appropriate; and
 - A.11 Using broad definitions for references to hearings, which do not exclude virtual hearings, in institutional arbitration rules.
- B. Where Arbitral Institutions provide hearing services, they shall endeavour to offer virtual hearing services and technology solutions for the effective conduct of virtual hearings. Examples include:
 - B.1 Video and audio conferencing;
 - B.2 Electronic bundles;

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- B.3 Electronic presentation of evidence;
- B.4 Transcription;
- B.5 Interpretation;
- B.6 Equipment (e.g. laptops, monitors, portable audio speakers, wireless mics, projectors and screens);
- B.7 Hearing managers; and
- B.8 Testing and consultation.
- C. Arbitral Institutions, when involved in a hearing and where possible, shall encourage Parties to engage service providers, including court reporters, interpreters, etc. who are located locally in the place of the hearing to avoid unnecessary transportation and lodging. To the extent this is not possible, Arbitral Institutions shall encourage Parties to consider whether audio or video conferencing of service providers is possible.



V. MINIMISE PRINTING AND USE OF PAPER

- A. Arbitral Institutions shall carefully consider the need to print documents and shall endeavour to print only what is deemed to be strictly necessary.
- B. Where printing is deemed necessary, Arbitral Institutions shall endeavour to minimise the environmental footprint of the printing. Examples include:
 - B.1 Using environmentally friendly toner and ink;
 - B.2 Using recycled and recyclable, chlorine-free and / or tree-free paper;
 - B.3 Using eco-friendly printers (making use, for example, of LED UV printing);
 - B.4 Disposing of printed documents and associated materials (e.g. toner bottles) in an environmentally friendly way, where appropriate. Examples of printing disposal, whilst adhering to confidentiality obligations, might include recycling and composting; and
 - B.5 Considering whether it is necessary to courier hard copies abroad or whether it is possible to use a local printing service.
- C. Arbitral Institutions shall encourage attendees at all meetings to bring laptops or tablets for document review and electronic note taking and to display information using screens / projectors instead of printing documents. Stationary shall only be provided upon request.
- D. Arbitral Institutions shall encourage the use of business development and marketing materials in digital form.
- E. Arbitral Institutions shall endeavour to maintain electronic case files.
- F. Individual printers within offices are to be discouraged or limited.
- G. Consider using multi-purpose machines for printing, copying, scanning and faxing.
- H. Regularly update subscriber mailing lists to reduce the volume of general communications via both electronic and paper transmission, and endeavour to eliminate or reduce printed mailing wherever practical. This step shall also serve to confirm current contact information.
- I. Wherever available for accounts payable and receivable, implement digital funding transfers to reduce the need for printed checks and mailings.

GREEN PROTOCOL FOR ARBITRAL INSTITUTIONS



VI. ENCOURAGE RECYCLING

- A. Arbitral Institutions shall endeavour to implement environmentally friendly disposal practices. Examples of such practices include:
- A1 Providing clearly marked recycling bins in offices and instructions on best practices for recycling;
 - A2 Eliminating plastic bags in bins and for any other purposes, unless sourced from recycled products; and
 - A3 Proper disposal or recycling of outdated or broken electronic equipment and furniture.
- B. Subject to local regulatory requirements and individual matter confidentiality obligations, Arbitral Institutions shall recycle all files in accordance with their document retention policies.
- C. In the case where an Arbitral Institution does not own its office, the Arbitral Institution commits to working with building managers, and building services providers in order to facilitate the introduction of the above measures.
- D. Where recycling is not immediately available due to local regulations or building services, Arbitral Institutions will endeavour to promote other sections of this protocol or work with building managers to explore recycling options.



VII. LIMIT USE OF SINGLE USE ITEMS AND ELIMINATE PLASTIC

Arbitral Institutions should aim to eliminate or limit the use of single-use and/or plastic items, where possible and where deemed safe to do so. Arbitral Institutions may be guided by the non-exhaustive list below, which identifies items to be eliminated or limited with alternatives suggested where appropriate. Arbitral Institutions can share this list with canteens and in-house restaurants to diminish waste.

Request

No plastic water bottles

No plastic straws

No individually wrapped confectionery

No canned drinks

No plastic cutlery

No paper plates or cups

No single portion items e.g. tomato sauce packets / single jams jars / sugar packets / butter packets

No Styrofoam or single-use plastic food containers

No paper napkins

Sustainable alternative

Re-useable water jugs (e.g. glass, metal or wood)

Re-useable straws, or no straws

No confectionery required

Jugs of fruit juice (or just water)

Re-useable cutlery (e.g. silver ware)

Re-useable plates and glasses / cups

A single container / jar / dispenser

Serve food on re-useable plates / bowls

Alternatively, re-useable containers or cardboard boxes

Cloth napkins

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No plastic cocktail sticks in finger foods

No unnecessary decorative mini cupcake / bakery liners

No individually wrapped tea bags

No Nespresso (or equivalent) coffee capsules, if no policy of recycling

No plastic stirrers

No stationery / writing paper / note pads

No promotional leaflets

Re-useable forks, if needed at all

Pot / dispenser of hot tea

Pot / dispenser of coffee

Re-useable teaspoons

Attendees to provide their own stationery / writing paper / note pads, if needed



VIII. PARTNER WITH “GREEN” ORGANISATIONS

- A. Arbitral Institutions shall endeavour to adopt sustainable practices for meals, including the use of sustainable catering companies (see sub-section B below) and sustainable marketing materials, considering also the above list to limit single use items and to eliminate plastic.
 - A.1 To reduce potential food waste, Arbitral Institutions shall endeavour to confirm delegate attendance for an accurate head count. Adjustments may then be made to catering orders to avoid waste, and attempts shall be made to dispose of excess food in a constructive manner, such as donation or composting.
- B. Arbitral Institutions shall endeavour to using suppliers who adopt or are aspiring to implement similar Sustainability Measures including use of environmentally friendly products and the use of alternatives to disposable packaging as well as locally sourced supplies. These suppliers might include catering companies, document production and printing suppliers, couriers, cleaning companies, marketing and advertising professionals, offsite event facilities, and utility suppliers.
- C. Arbitral Institutions shall endeavour to use environmentally-friendly courier services and to use courier services efficiently and only when necessary.
- D. Arbitral Institutions shall encourage their IT teams to add use of Sustainability Measures to their criteria when selecting technology solutions (e.g. video-conferencing and electronic document sharing platforms) plus the data centre that hosts the facilitators’ email and website.
- E. Arbitral Institutions shall endeavour to communicate this directive to all organisations prior to service performance.



IX. TRAVEL RESPONSIBLY

- A. When organising or participating in events, Arbitral Institutions shall endeavour to use technology to minimise the need to travel. Examples include:
 - A.1 Enabling, or requesting, virtual attendance for delegates; and
 - A.2 Enabling, or requesting, virtual participation for speakers (e.g., e-diversity).



GREEN PROTOCOL FOR ARBITRAL INSTITUTIONS

- B. Arbitral Institutions shall encourage their staff to consider the need for any travel where an alternative technology solution might be available, such as videoconference or the telephone.
- C. Arbitral Institutions shall aim to put in place policies to enable their staff to work from home and, where appropriate, to avoid any unnecessary travel to or from an office by taxi or by car. This may be achieved by encouraging shared transportation or walking, whenever possible.
- D. Arbitral Institutions shall encourage their staff to consider virtual conferencing opportunities as an alternative to in-person conferences, where this would reduce substantial travel.
- E. Arbitral Institutions shall carefully consider the need to travel for events and/or other business development activities, and shall endeavour to minimise travel wherever possible.
- F. Where travel is deemed necessary, Arbitral Institutions shall consider the following:
 - F.1 Use of, or for delegates promoting the use of, travel options that minimise carbon emissions;
 - F.2 Where flights are necessary, offsetting flights or encouraging delegates to offset flights; and
 - F.3 Maximising trips to accomplish several objectives to reduce the number of trips overall.
- G. When organising or participating in events, Arbitral Institutions shall endeavour to use technology to minimise the need to travel. Examples include:
 - G.1 Enabling, or requesting, virtual attendance for delegates; and
 - G.2 Enabling, or requesting, virtual participation for speakers (e.g., e-diversity).



X. INCENTIVISE EMPLOYEES

- A. Arbitral Institutions shall incentivise their staff through schemes that encourage greener behaviours. These might include cycle schemes, reward schemes, or other green campaigns.
- B. Arbitral Institutions shall consider implementing schemes to support staff choosing to work from home to avoid carbon travel footprint. For example, Arbitral Institutions could consider subsidising part of broadband or phone bills, or supplying or subsidising the purchase of equipment required to set up a functionable and suitable office environment.



XI. ENCOURAGE SOCIAL RESPONSIBILITY

- A. Arbitral Institutions shall consider allowing their staff a permitted amount of hours each year, where business/operational needs allow, to volunteer with organisations involved in sustainability initiatives
- B. Arbitral Institutions shall consider organising at least one event per year to educate users about Sustainability Measures and encourage their adoption.

GREEN PROTOCOL FOR ARBITRAL INSTITUTIONS



XII. OFFSET CARBON EMISSIONS

The Sustainability Measures contained in this Protocol encourage behavioural change aimed at reducing the environmental impact of arbitrations and priority should be given to their implementation. Arbitral Institutions shall also, however, give due consideration to offsetting any residual emissions caused by their conduct, including through travel. In determining how to offset carbon emissions, Arbitral Institutions may use their internal approved corporate offsetting standards. In the absence of such standards, Arbitral Institutions should endeavour to offset their emissions through schemes that have been accredited as meeting the highest available sustainability standards (e.g. Gold Standard or Verified Carbon Standard, as at the date of this Protocol).



XIII. REPORT PROGRESS

- A. Arbitral Institutions when implementing this Protocol shall consider publicly reporting on targets and achievements, in order to track progress, promote accountability, and encourage other institutions to adopt Sustainability Measures. Reporting may also include any costs savings resulting from the implementation of Sustainability Measures.
- B. Arbitral Institutions shall also consider signing up to other green certification initiatives or other initiatives aimed at reducing carbon footprint by a specific date.

Disclaimer

The Framework and the Green Protocols are not binding and are not intended to displace applicable rules or derogate from the arbitration agreement unless and to the extent the parties so agree (either in the arbitration agreement or subsequently) or the tribunal so orders. The Framework and the Green Protocols do not establish liability or a liability standard for legal or regulatory purposes.



SECTION 14.5

GREEN PROTOCOL FOR ARBITRAL PROCEEDINGS



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CAMPAIGN FOR

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**GREEN PROTOCOL FOR
ARBITRAL PROCEEDINGS**

1

GREEN PROTOCOL FOR ARBITRAL PROCEEDINGS

This **Green Protocol for Arbitral Proceedings** contains suggested Sustainability Measures¹ for minimising the impact of arbitral proceedings on the environment. These Sustainability Measures can be integrated into arbitration matters and / or adopted by Parties and tribunals individually or in their entirety, as appropriate.

While all Sustainability Measures recommended in this Protocol will help reduce the environmental impact of arbitral proceedings, particular focus should be given to measures promoting the use of clean energy as a primary energy source and the reduction of air travel. These two measures will have the largest proportional impact on the overall reduction of emissions associated with arbitration matters. Additional guidance may be found in related **Green Protocols**:

- The Framework for the Adoption of the Green Protocols,
- The Green Protocol for Law Firms, Chambers and Legal Service Providers Working in Arbitration,
- The Green Protocol for Arbitrators,
- The Green Protocol for Arbitration Conferences,
- The Green Protocol for Arbitral Hearing Venues and
- The Green Protocol for Arbitral Institutions.

¹

The term Sustainability Measures has the meaning set out in the Framework for the Adoption of the Green Protocols.



GREEN PROTOCOL FOR ARBITRAL PROCEEDINGS



I. INITIAL COMMITMENT

Tribunals may officially adopt this Green Protocol for Arbitral Proceedings or component parts thereof as guidance OR as part of a procedural order containing supplementary rules for the proceedings.

*For the purposes of the latter, Tribunals and Parties are referred to the Campaign for Greener Arbitrations **Model Procedural Order** or components thereof for standardised language, as indicated below. Where tribunals and Parties intend to adopt all or part of the Sustainability Measures set out in this Protocol as part of their proceedings, they are encouraged to do so as early as possible during the course of proceedings.*

OR

Parties may incorporate adherence to this Green Protocol for Arbitral Proceedings or component parts thereof into their arbitration agreements as guidance OR as mandatory provisions, to supplement the relevant arbitral rules.

*In determining which Sustainability Measures in the following Protocol should be adopted, the Tribunal and Parties shall give due consideration to the criteria set out in the 'Adopting Appropriate Sustainability Measures' section of the **Framework for the Adoption of the Green Protocols**.*



II. CONDUCT OF PROCEEDINGS

- A. At the outset of a case, the Parties and Tribunals shall confer and endeavour to agree on the adoption of an agreed set of Sustainability Measures as applicable for the entire duration of the arbitral proceedings.
- B. All communications and correspondence shall be made electronically, save where institutional rules or express contract provisions otherwise provide. Parties and Tribunals shall refrain from sending hard copy documents, including correspondence, pleadings, applications, witness and expert evidence and exhibits by courier, particularly via air freight, unless necessary.
- C. Subject to II(B) above, where communications and correspondence includes multiple attachments or exhibits, Parties and Tribunals shall where possible provide an upload link to the attachments or exhibits, rather than sending these as electronic attachments to emails.
- D. Where appropriate, Parties shall consider at the outset of a case, whether there is scope to agree to the use of shared technology platforms or case management systems, for example hosted by institutions or third party providers, for the receipt and organisation of correspondence, pleadings, applications, witness and expert evidence and exhibits.
- E. Throughout the proceedings, Parties and the Tribunal shall endeavour to use electronic platforms, tools and / or devices to annotate documents.
- F. Throughout the proceedings, Parties and the Tribunal shall carefully consider the need to print documents and shall endeavour to only print what is deemed strictly necessary.

GREEN PROTOCOL FOR ARBITRAL PROCEEDINGS

- G. Where printing is deemed necessary, Parties and the Tribunal shall endeavour to minimise the environmental footprint of the printing. Examples include:
 - A1 Using less paper (e.g. A5 size), grayscale, double-sided format, and / or reduced margin format, where appropriate;
 - A2 Using environmentally friendly toner and ink;
 - A3 Using recycled and recyclable, chlorine-free and / or tree-free paper;
 - A4 Using eco-friendly printers (making use, for example, of LED UV printing);
- H. Parties and the Tribunal shall carefully consider whether to request that they be provided with printed documents, taking into account the environmental footprint of printing and transportation.
- I. Parties shall endeavour to use suppliers and service providers who are committed to reducing their environmental footprint.
- J. Following the conclusion of proceedings, Parties and the Tribunal shall endeavour to dispose of all printed documents in an environmentally friendly way. Examples of printing disposal, whilst adhering to confidentiality obligations, might include recycling and composting.

*For draft language on the conduct of proceedings to be included in a Procedural Order, refer to Sections 2 and 3 of the Campaign for Greener Arbitrations **Model Procedural Order** (Conduct of Proceedings).*



III. WRITTEN SUBMISSIONS AND DOCUMENTARY EVIDENCE

- A. Written submissions, including briefs or memorials, applications, witness statements, expert reports, exhibits and legal authorities shall be prepared and served electronically in an e-bundle or similar format, via email, secure link, or via any other electronic means, including on shared platforms, agreed between the Parties or ordered by the Tribunal. Parties shall avoid using and distributing USB keys, unless necessary.
- B. Parties shall endeavour to avoid any repetition of exhibits in the record between their separate pleadings, witness statements and expert reports and to cross-refer to undisputed exhibits in the record.
- C. Electronic versions of documents on the record shall be shared in an agreed form (for example, word-searchable PDF) and arranged in an agreed structure (for example, a separate PDF per document), so as to ensure consistency, ease of use and compatibility across the different systems which may be used by the Parties and Tribunal.
- D. Where the Tribunal has expressed a preference for hard copies of written submissions, the Tribunal shall carefully consider whether it also requires a printed set of one or more of the accompanying exhibits.
- E. Where paper filings are deemed necessary, Parties shall consider only exhibiting short extracts of lengthy documents (over 100 pages). Any such extracts must provide adequate context to the document and the relevant portion being relied on by the Party. Electronic copies of the entire document should be made available on request.

GREEN PROTOCOL FOR ARBITRAL PROCEEDINGS

- F. If unclear from the applicable rules, the Parties shall seek confirmation from institutions administering the arbitration that the institution shall accept electronic filing, without the need for hard copy filings.

*For draft language on written submissions and documentary evidence to be included in a Procedural Order, refer to Section 4 of the Campaign for Greener Arbitrations **Model Procedural Order** (Written Submissions and Documentary Evidence).*



IV. DOCUMENT PRODUCTION

- A. Document production shall be conducted electronically, unless otherwise necessary.

*For draft language on document production to be included in a Procedural Order, refer to Section 5 of the Campaign for Greener Arbitrations **Model Procedural Order** (Document Production).*



V. WITNESSES AND EXPERTS PREPARATION

- A. Whenever possible and appropriate, the consultation, meeting, conferring of witnesses and experts (by Parties) and expert joint meetings shall be performed using video-conferencing rather than in-person meetings.
- B. Where in-person meetings are considered necessary, Parties shall endeavour to limit the number of in-person participants to those strictly necessary.
- C. Whenever possible and appropriate, materials for witness and expert review shall be provided and reviewed electronically.

*For draft language on witnesses and experts to be included in a Procedural Order, refer to Section 6 of the Campaign for Greener Arbitrations **Model Procedural Order** (Witnesses and Experts Preparation).*



VI. HEARINGS

- A. Where possible and appropriate, pre-hearing conferences, procedural or substantive hearings should be conducted remotely, in whole or in part, via audio or video-conferencing.
- B. Where Parties, the Tribunal and any other participants are located in different time zones, the Parties and Tribunal shall consider shorter hearing days to be scheduled at a suitable time for the Parties and the Tribunal, ideally half-way between the Parties with the largest time zone difference, or in another fair and equitable manner, over a longer period to avoid unnecessary travel.
- C. Where in-person hearings are expressly required, Parties shall endeavour to:
- C.1 Select environmentally friendly travel options and avoid unnecessary travel;
 - C.2 Use technology to display documents, submissions, testimony and evidence;
 - C.3 Where cross-examination of witnesses and experts is expected to take less than 1-2 hours, consider using cross-examination via video-conferencing rather than in-person to reduce unnecessary travel; and

GREEN PROTOCOL FOR ARBITRAL PROCEEDINGS

- C.4 Engage service providers, including court reporters, interpreters, etc. who are located in the place of the hearing, or which can provide services remotely.
- D. Use of electronic documents:
 - D.1 Wherever possible, documents or presentations shall be projected onto a screen or otherwise be viewable electronically by each participant at their own command and electronic copies thereof shall be distributed reasonably in advance.
 - D.2 Where hearing bundles are used, they shall be provided in electronic format only, unless otherwise ordered or requested by the Tribunal, or agreed by the Parties.
- E. Where the use of hard copy documents is deemed necessary:
 - E.1 The Parties shall endeavour to agree a core bundle of exhibits which shall include only those exhibits which the Parties intend to refer to during the course of the hearing; and
 - E.2 The Parties and Tribunal shall endeavour to dispose of hard copies of any hearing bundle (including bundles for witnesses and / or experts) after the hearing in an environmentally friendly manner, where appropriate.
- F. Parties shall endeavour to work with hearing centres that have adopted the **Green Protocol for Arbitral Hearing Venues** or parts thereof.

*For draft language on hearings to be included in a Procedural Order, refer to Section 7 of the Campaign for Greener Arbitrations **Model Procedural Order (Hearings)**.*



VII. SETTLEMENTS

- A. Where possible and appropriate, settlement discussions between Parties should be conducted, in whole or in part, via audio or video-conferencing.
- B. Where in-person settlement discussions are necessary, Parties shall endeavour to:
 - B.1 Select travel options that minimise carbon emissions and avoid unnecessary travel;
 - B.2 Wherever possible use technology to display documents or presentations by projecting them onto a screen and distributing electronic copies thereof in order to reduce or eliminate the use of paper;
 - B.3 Limit the number of in-person participants and, where agreed between the Parties, make video-conferencing facilities available to enable additional relevant participants to participate in the discussions.
- C. Parties shall endeavour to engage service providers, including interpreters, who are located in or close to the place of the hearing, or who can provide services remotely.
- D. Where the use of hard copy documents is deemed necessary, Parties shall endeavour to dispose of hard copies in an environmentally friendly manner, where appropriate.
- E. Parties shall endeavour to hold settlement discussions at venues that have adopted the **Green Protocol on Arbitral Hearing Venues** or parts thereof.

GREEN PROTOCOL FOR ARBITRAL PROCEEDINGS



VIII. RESPONSIBLE TRAVEL

- A. The Parties and Tribunal shall:
 - A.1 Endeavour to avoid unnecessary travel and, where travel is necessary, use travel options that minimise carbon emissions; and
 - A.2 Carefully consider the need to fly in order to attend arbitral proceedings and, where flying is deemed necessary, consider offsetting flights.
- B. Arbitrators may include the costs of offsetting their flights in their expenses.
- C. Parties agree that the costs of offsetting air travel may be allocated by the Tribunal as part of a costs award at the end of proceedings, or as otherwise agreed between the Parties.

*For draft language on travel to be included in a Procedural Order, refer to Section 8 of the Campaign for Greener Arbitrations **Model Procedural Order (Travel)**.*



IX. OFFSETTING CARBON EMISSIONS

- A. The Sustainability Measures contained in this Protocol encourage behavioural change aimed at reducing the environmental impact of arbitrations and priority should be given to their implementation.
- B. Parties shall also, however, give due consideration to offsetting any residual emissions caused by their conduct, including through travel. In determining how to offset carbon emissions, Parties and Arbitrators may use their internal approved corporate offsetting standards. In the absence of such standards, Parties and Arbitrators should endeavour to offset their emissions through schemes that have been accredited as meeting the highest available sustainability standards (e.g. Gold Standard or Verified Carbon Standard, as at the date of this Protocol).

*For draft language on offsetting to be included in a Procedural Order, refer to Section 9 of the Campaign for Greener Arbitrations **Model Procedural Order (Offsetting)**.*

Disclaimer

The Framework and the Green Protocols are not binding and are not intended to displace applicable rules or derogate from the arbitration agreement unless and to the extent the parties so agree (either in the arbitration agreement or subsequently) or the tribunal so orders. The Framework and the Green Protocols do not establish liability or a liability standard for legal or regulatory purposes.



SECTION 14.6

GREEN PROTOCOL FOR LAW FIRMS, CHAMBERS, AND LEGAL SERVICE PROVIDERS WORKING IN ARBITRATION



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GREEN PROTOCOL FOR
LAW FIRMS, CHAMBERS
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ARBITRATION

1

GREEN PROTOCOL FOR LAW FIRMS, CHAMBERS AND LEGAL SERVICE PROVIDERS WORKING IN ARBITRATION

This **Green Protocol for Law Firms, Chambers and Legal Service Providers Working in Arbitration** (“**Legal Advisors**”) contains suggested Sustainability Measures¹ for minimising the impact of Legal Advisors and their employees on the environment. These Sustainability Measures can be integrated into Legal Advisors’ operations and / or adopted on a case-by-case basis by individuals at those Legal Advisors. These Sustainability Measures can also be adopted by Legal Advisors individually or in their entirety, as appropriate.

While all Sustainability Measures recommended in this Protocol will help reduce the environmental impact of Legal Advisors’ practices, particular focus should be given to measures promoting the use of clean energy as a primary energy source and the reduction of air travel. These two measures will have the largest proportional impact on the overall reduction of emissions associated with Legal Advisors’ practices. Additional guidance may be found in related **Green Protocols**:

- The Framework for the Adoption of the Green Protocols,
- The Green Protocol for Arbitral Proceedings,
- The Green Protocol for Arbitrators,
- The Green Protocol for Arbitration Conferences,
- The Green Protocol for Arbitral Hearing Venues and
- The Green Protocol for Arbitral Institutions.

¹ The term Sustainability Measures has the meaning set out in the Framework for the Adoption of the Green Protocols.



GREEN PROTOCOL FOR LAW FIRMS, CHAMBERS AND LEGAL SERVICE PROVIDERS WORKING IN ARBITRATION



I. INITIAL COMMITMENT

- A. Legal Advisors commit to working with their leadership teams, with a view to reviewing existing environmental policies and practices and, where appropriate, considering and implementing recommendations contained in this Protocol.
- B. Alternatively, Legal Advisors may appoint “Green Ambassadors”, whose role shall be to help develop policies and best practices within their firm, based on the recommendations contained in this Green Protocol. Green Ambassadors should periodically report to their senior management on the effect of these policies and best practices.
- C. Legal Advisors should be mindful that the implementation of Sustainability Measures is likely to be more efficient if rolled out on a firm-wide basis, rather than on a departmental or office basis.



II. USE GREEN ENERGY

Legal Advisors shall consider using clean or renewable energy sources, wherever possible. In addition, or in any event, Legal Advisors shall endeavour to use energy providers that promote renewable energy and/or that demonstrate firm ESG credentials.



III. REDUCE ENERGY CONSUMPTION AND ENVIRONMENTAL FOOTPRINT

- A. Legal Advisors shall endeavour to reduce the energy consumption and improve the energy efficiency of facilities and equipment, to reduce their environmental footprint. Examples of energy-saving measures and environmentally friendly practices include:
 - A.1 Using clean or renewable energy as primary facility energy source, where possible;
 - A.2 Using LED lights;
 - A.3 Using natural light sources wherever practical;
 - A.4 Using plants to reduce humidity levels and increase oxygen;
 - A.5 Introducing sensors and timed lighting systems in offices;
 - A.6 Encouraging employees to power down rather than use screen savers during extended breaks;
 - A.7 Installing smart power strips to reduce phantom power consumption when electronic equipment is not in use;
 - A.8 Using recycling facilities;
 - A.9 Using composters / waste disposal systems to recycle food waste;
 - A.10 Using eco-friendly air conditioning and heating systems;
 - A.11 Using eco-friendly cleaning materials;
 - A.12 Using water-saving facilities in kitchens and restrooms;
 - A.13 Using energy-efficient hand-dryers or roller towels in kitchens and restrooms; and / or
 - A.14 Demonstrating an ongoing commitment to reducing consumption, reusing and repurposing materials, recycling where possible and to offsetting greenhouse gas emissions.

GREEN PROTOCOL FOR LAW FIRMS, CHAMBERS AND LEGAL SERVICE PROVIDERS WORKING IN ARBITRATION

- B. Legal Advisors shall work with their IT teams and building management to:
 - B.1 Ensure all computers, screens, lights and other electrical devices are set to turn off or enter a standby mode after a set period of time when not in use, where possible and as appropriate;
 - B.2 Reduce the carbon footprint of emailing by adopting pre-set parameters to reduce the length of email chains, limiting unnecessary attachments, transmitting smaller sized PDFs, etc, where possible and as appropriate.
- C. In the case where a Legal Advisor does not own its office, the Legal Advisor shall endeavour to work with building managers and building service providers, to facilitate the introduction of the above Sustainability Measures.



IV. GO DIGITAL

- A. Legal Advisors shall encourage the use of technology and provide the required training, in order to reduce the use of paper, travel and short face-to-face meetings. These technology solutions might include the use of:
 - A.1 Large or double-screen monitors;
 - A.2 Audio or video-conferencing;
 - A.3 iPad and tablets, or other similar equipment that facilitate a similar or improved experience of using paper materials;
 - A.4 Energy-efficient interactive whiteboards for training, marking-up documents, or facilitating discussions;
 - A.5 Other electronic document sharing or editing platforms; and / or
 - A.6 Smartphones, headsets and audio or video-conferencing systems.
- B. Legal Advisors shall aim to develop their employees' technological skills, to raise awareness of the importance of Sustainability Measures and to enable them to adapt to a digital environment, such as by providing training on digital communication and collaboration platforms, audio and video-conferencing facilities and cybersecurity best practices.
- C. Where possible, Legal Advisors shall consider hiring technology experts or consultants, to assist with implementing and adopting Sustainability Measures, as well as to promote a more sustainable office culture.



V. MINIMISE PRINTING AND USE OF PAPER

- A. Legal Advisors shall carefully consider the need to print documents and shall endeavour to print only what is strictly necessary. In doing so they shall encourage employees to reduce printing and shall assume a default position of not printing documents, unless requested.
- B. Where printing is deemed necessary, Legal Advisors shall endeavour to minimise the environmental footprint of the printing, including by:
 - B.1 Using less paper (e.g. A5 size), grayscale, double-sided format, and / or reduced margin format, where appropriate;
 - B.2 Using environmentally friendly toner and ink;
 - B.3 Using recycled and recyclable, chlorine-free and / or tree-free paper;



GREEN PROTOCOL FOR LAW FIRMS, CHAMBERS AND LEGAL SERVICE PROVIDERS WORKING IN ARBITRATION

- B.4 Using eco-friendly printers (making use, for example, of LED UV printing);
- B.5 Disposing of printed documents and associated materials (e.g. toner bottles) in an environmentally friendly way, where appropriate. Examples of printing disposal, whilst adhering to confidentiality obligations, might include recycling and composting; and
- B.6 Considering whether it is necessary to courier hard copies abroad or whether it is possible to use a local printing service.
- C. Legal Advisors shall encourage their employees to consider carefully whether to request that they be provided with printed documents, particularly when working remotely, but in any event taking into account the environmental footprint of printing.
- D. Employees and, where possible, all attendees at meetings, should be encouraged to bring laptops or tablets to use for document review and electronic note taking, and to display information using screens / projectors rather than by printing documents. Stationery should be provided only upon request.
- E. Legal Advisors should encourage the use of business development and marketing materials in digital form.
- F. Legal Advisors, through their case teams, shall aim to maintain electronic case files instead of hard copy files.
- G. Individual printers within offices are to be discouraged or limited.
- H. Legal Advisors shall consider using multi-purpose machines for printing, copying, scanning and faxing.
- I. Legal Advisors shall aim to regularly update subscriber mailing lists to reduce the volume of general communications via both electronic and paper transmission and endeavour to eliminate or reduce printed mailing wherever practical. This step shall also serve to confirm current contact information.
- J. Where available for accounts payable and receivable, Legal Advisors shall endeavour to implement digital funding transfers, to reduce the need for printed checks and mailings.



VI. ENCOURAGE RECYCLING

- A. Legal Advisors shall endeavour to implement environmentally friendly disposal practices, including by:
 - A.1 Providing clearly marked recycling bins in offices and instructions on best practices for recycling;
 - A.2 Eliminating plastic bags in bins and for any other purposes, unless sourced from recycled products; and
 - A.3 Properly disposing of or recycling outdated or broken electronic equipment and furniture.
- B. Subject to local regulatory requirements and individual matter confidentiality obligations, Legal Advisors shall recycle all files in accordance with their document retention policies.
- C. Where recycling is not immediately available due to local regulations or building services, Legal Advisors shall endeavour to promote other sections of this Protocol or work with building managers to explore recycling options.

GREEN PROTOCOL FOR LAW FIRMS, CHAMBERS AND LEGAL SERVICE PROVIDERS WORKING IN ARBITRATION



VII. LIMIT USE OF SINGLE USE ITEMS AND PLASTIC

- A. Legal Advisors shall aim to eliminate or limit the use of single-use and / or plastic items, where possible and where deemed safe. In doing so, Legal Advisors may be guided by the non-exhaustive list below, which identifies items to be eliminated or limited, with alternatives suggested where appropriate.
- B. Legal Advisors shall share this list with canteens and in-house restaurants to diminish waste.
- C. Legal Advisors shall consider holding training events to explain why alternative items are being introduced to replace plastic or single-use items, in order to facilitate adoption of these alternative items.

Request	Sustainable alternative
No plastic water bottles	Re-useable water jugs (e.g. glass, metal or wood)
No plastic straws	Re-useable straws, or no straws
No individually wrapped confectionery	No confectionery required
No canned drinks	Jugs of fruit juice (or just water)
No plastic cutlery	Re-useable cutlery (e.g. silver ware)
No paper plates or cups	Re-useable plates and glasses / cups
No single portion items e.g. tomato sauce packets / single jams jars / sugar packets / butter packets	A single container / jar / dispenser
No Styrofoam or single-use plastic food containers	Serve food on re-useable plates / bowls Alternatively, re-useable containers or cardboard boxes
No paper napkins	Cloth napkins
No plastic cocktail sticks in finger foods	Re-useable forks, if needed at all
No unnecessary decorative mini cupcake/bakery liners	
No individually wrapped tea bags	Pot/dispenser of hot tea
No Nespresso (or equivalent) coffee capsules, if no policy of recycling	Pot/dispenser of coffee
No plastic stirrers	Re-useable teaspoons
No stationery / writing paper / note pads	Attendees to provide their own stationery / writing paper/note pads, if needed
No promotional leaflets	

GREEN PROTOCOL FOR LAW FIRMS, CHAMBERS AND LEGAL SERVICE PROVIDERS WORKING IN ARBITRATION



VIII. PARTNER WITH “GREEN” ORGANISATIONS

- A. Legal Advisors shall endeavour to adopt sustainable practices for catering, including by:
 - A.1 Using sustainable catering companies, such as those that adopt environmentally friendly practices, including the use of alternatives to disposable packaging and the use of locally sourced supplies;
 - A.2 Preferring organic and / or plant-based meals and refreshments free of synthetic pesticides or fertilisers;
 - A.3 Using sustainable marketing materials, considering also the above list to limit single use items and to eliminate plastic; and
 - A.4 Reducing food waste, including by confirming delegate attendance for an accurate head count. Adjustments may then be made to catering orders to avoid waste and attempts shall be made to dispose of excess food in a constructive manner, such as donation or composting.
- A. Legal Advisors shall endeavour to use environmentally friendly courier services and to use courier services efficiently and only when necessary.
- B. Legal Advisors shall encourage their IT teams to add use of Sustainability Measures to their criteria when selecting technology solutions (e.g. video-conferencing and electronic document sharing platforms) plus the data centre that hosts the Facilitators’ email and website.
- C. Legal Advisors shall, when involved in a hearing and where possible, aim to engage service providers, including court reporters, interpreters, etc. who are local to the place of the hearing, to avoid unnecessary transportation and lodging, or to otherwise consider whether audio or video conferencing of service providers is possible.
- D. Legal Advisors shall endeavour to communicate this directive to all organisations, prior to service performance.



IX. TRAVEL RESPONSIBLY

- A. Legal Advisors shall encourage their employees to consider the need for any travel where an alternative technology solution might be available, such as audio or video-conference.
- B. Legal Advisors shall encourage their employees to consider virtual conferencing opportunities as an alternative to in-person conferences, where this would reduce long-distance travel.
- C. Legal Advisors shall consider putting in place policies to enable their employees to work from home and, where appropriate, to avoid any unnecessary travel to or from an office by taxis or by car. This may be achieved by encouraging shared transportation or walking, whenever possible.

GREEN PROTOCOL FOR LAW FIRMS, CHAMBERS AND LEGAL SERVICE PROVIDERS WORKING IN ARBITRATION



X. INCENTIVISE EMPLOYEES

- A. Legal Advisors shall endeavour to incentivise their employees through schemes that encourage greener behaviours. These might include cycle schemes, reward schemes, or other green campaigns.
- B. Legal Advisors shall consider implementing schemes to support employees choosing to work from home to avoid carbon travel footprint. For example, Legal Advisors could consider subsidising part of broadband or phone bills or supplying or subsidising the purchase of equipment required to set up a functional and suitable office environment.



XI. ENCOURAGE SOCIAL RESPONSIBILITY

- A. Legal Advisors shall consider allowing their employees a permitted amount of hours each year to volunteer with organisations involved in sustainability initiatives.
- B. Legal Advisors shall consider organising at least one event per year, which may be an online event, to educate and encourage green behaviours, including the Sustainability Measures set out in this Protocol.



XII. OFFSET CARBON EMISSIONS

The Sustainability Measures contained in this Protocol encourage behavioural change aimed at reducing the environmental impact of arbitrations and priority should be given to their implementation. Legal Advisors shall also, however, give due consideration to offsetting any residual emissions caused by their conduct, including through travel. In determining how to offset carbon emissions, Legal Advisors may use their internal approved corporate offsetting standards. In the absence of such standards, Legal Advisors should endeavour to offset their emissions through schemes that have been accredited as meeting the highest available sustainability standards (e.g. Gold Standard or Verified Carbon Standard, as at the date of this Protocol).



XIII. REPORT PROGRESS

- A. Legal advisors when implementing this Protocol shall consider publicly reporting on targets and achievements, in order to track progress, promote accountability, and encourage other firms to adopt Sustainability Measures. Reporting may also include any costs savings resulting from the implementation of Sustainability Measures.
- B. Legal Advisors shall also consider signing up to other green certification initiatives or other initiatives aimed at reducing a law firm's carbon footprint by a specific date.

Disclaimer

The Framework and the Green Protocols are not binding and are not intended to displace applicable rules or derogate from the arbitration agreement unless and to the extent the parties so agree (either in the arbitration agreement or subsequently) or the tribunal so orders. The Framework and the Green Protocols do not establish liability or a liability standard for legal or regulatory purposes.



SECTION 14.7

MODEL PROCEDURAL ORDER



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CAMPAIGN FOR

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DRIVING SUSTAINABLE CHANGE

MODEL PROCEDURAL ORDER

1

MODEL PROCEDURAL ORDER

This document proposes elements to include in a Procedural Order that will help to reduce the environmental footprint of a new or existing arbitration proceeding. It does not address all matters relevant to a procedural order or an arbitration proceeding. Tribunals and Parties are invited to adopt the **Green Protocol on Arbitral Proceedings** as a guideline throughout the conduct of their proceedings.

While all the recommended Sustainability Measures¹ in this Protocol will help reduce the environmental impact of arbitral proceedings, particular focus should be given to measures requiring the use of clean energy as a primary energy source and the reduction of air travel. These two measures will have the largest proportional impact on the overall reduction of emissions associated with arbitration matters.

Tribunals are invited to adopt this Model Procedural Order in its entirety or component parts thereof in the conduct of proceedings. In determining which measures set out in the Model Procedural Order below should be adopted, the Tribunal and Parties should consider the criteria set out in the 'Adopting Appropriate Sustainability Measures' section of the Campaign for Greener Arbitrations **Framework for the Adoption of the Green Protocols**.

¹ The term Sustainability Measures has the meaning set out in the Framework for the Adoption of the Green Protocols.

MODEL PROCEDURAL ORDER

I. ENVIRONMENTAL PURPOSE

- A. The Parties and Tribunal recognise that international arbitration proceedings can have a significant environmental footprint.
- B. The Parties and Tribunal are mindful of the need to reduce consumption, reuse and repurpose materials, recycle where possible and to offset greenhouse gas emissions related to international arbitration when no reasonable alternative exists.
- C. The Parties and Tribunal welcome the creation of the **Green Protocol for Arbitral Proceedings** and commit to adopting its proposals, including its Sustainability Measures, to minimise the environmental impact of this arbitration proceeding.
- D. The Tribunal welcomes the creation of the **Green Protocol for Arbitrators** and commits to adopting its proposals.
- E. At the outset of a case, the Parties and Tribunal shall confer and endeavour to agree on the adoption of an agreed set of Sustainability Measures as applicable for the duration of the arbitral proceeding.

II. COMMUNICATIONS

- A. All communications and correspondence among the Parties, Tribunal and administering institutions shall be made electronically, save where institutional rules or express contract provisions require otherwise. Parties and the Tribunal shall refrain from sending hard copy documents, including correspondence, pleadings, applications, witness and expert evidence and exhibits by courier, particularly via air freight, unless necessary. Such exchanges shall be deemed official, obviating the need for sending hard copies.
- B. Subject to II(A) above, where communications and correspondence includes multiple attachments or exhibits, Parties shall provide a link to the attachments or exhibits or upload these to an agreed upon shared electronic technology platform or case management system, for example hosted by institutions or third party providers rather than sending these as electronic attachments to emails.

III. CONDUCT OF PROCEEDINGS

- A. Throughout the proceedings and unless otherwise agreed by the Parties or ordered by the Tribunal, the Parties and Tribunal shall:
 - A.1 Use shared electronic technology platforms or case management systems, for example hosted by institutions or third-party providers, for the receipt and organisation of all documentation and correspondence;
 - A.2 Use electronic platforms, tools and / or devices to annotate documents; and
 - A.3 Avoid printing any documents both for internal working purposes and for exchange; save where necessary.
- B. Where printing is deemed necessary, the Parties and the Tribunal shall endeavour to minimise the environmental footprint of the printing wherever possible, including by (but not limited to):
 - B.1 Using less paper (e.g. A5 size), grayscale, double-sided format and / or reduced margin format;

MODEL PROCEDURAL ORDER

- B.2 Using environmentally friendly toner and ink;
- B.3 Using recycled and recyclable, chlorine-free and / or tree-free paper;
- B.4 Using eco-friendly printers (making use, for example, of LED UV printing); and
- B.5 Disposing of printed documents and associated materials (e.g. toner bottles) in an environmentally-friendly way (i.e. by recycling shredded documents).
- C. Following the conclusion of proceedings, the Parties and Tribunal shall endeavour to dispose of all printed documents in an environmentally friendly way, whenever possible. Examples of printing disposal, whilst adhering to confidentiality obligations, might include recycling and composting.

IV. WRITTEN SUBMISSIONS AND DOCUMENTARY EVIDENCE

- A. All written submissions, including briefs or memorials, applications, witness statements, expert reports, exhibits and legal authorities, shall be prepared, served and provided to the other Party(ies) and the Tribunal electronically in an e-bundle or similar format, via email, secure link, or any shared technology platform or case management system agreed upon. The Parties shall avoid using and distributing USB keys, unless strictly necessary.
- B. The Parties shall endeavour to avoid any repetition of exhibits in the record between their separate pleadings, witness statements and expert reports and to cross-refer to undisputed exhibits in the record.
- C. Electronic versions of documents on the record shall be shared in an agreed form (for example, word-searchable PDF) and arranged in an agreed structure (for example, a separate PDF per document), so as to ensure consistency, ease of use and compatibility across the different systems which may be used by the Parties and Tribunal.
- D. Where the Tribunal has a need for hard copies of written submissions, the Tribunal shall carefully consider whether it also requires a printed set of one or more of the accompanying exhibits, failing which only a printed set of the written submissions will be provided.
- E. Where a Tribunal requires a paper filing, Parties shall only exhibit short extracts of lengthy documents on which it relies (deemed to be documents exceeding 100 pages). Any such extracts must provide adequate context to the document and the relevant portion being relied on by the Party. Electronic copies of the entire document shall be made available on request.
- F. If unclear from the applicable rules, the Parties shall seek confirmation from institutions administering the arbitration that the institution will accept electronic filing, without the need for hard copy filings.
- G. The Parties welcome and endeavour to use the **Green Protocol for Arbitral Institutions**.
- H. The Parties and the Tribunal agree to accept copies of documents rather than original documents.

V. DOCUMENT PRODUCTION

All document production shall be conducted electronically unless otherwise necessary.

MODEL PROCEDURAL ORDER

VI. WITNESSES AND EXPERTS PREPARATION

- A. The Parties' consultation, meeting, conferring of witnesses and experts and expert joint meetings shall be performed remotely rather than in-person, unless impractical or inappropriate. Where in-person meetings are considered necessary, Parties shall endeavour to limit the number of in-person participants to those strictly necessary.
- B. Whenever possible and appropriate, materials for witness and expert review shall be provided and reviewed electronically.

VII. HEARINGS

- A. Pre-hearing conferences, procedural hearings and substantive hearings shall be conducted remotely, via audio or video-conference, unless impractical or inappropriate and the Parties and Tribunal agree.
- B. Where Parties, the Tribunal and any other participants are located in different time zones, the Parties and Tribunal shall consider shorter hearing days to be scheduled at a suitable time for the Parties and the Tribunal, ideally half-way between the Parties with the largest time zone difference, or in another fair and equitable manner, over a longer period, to avoid unnecessary travel.
- C. Where in-person hearings are required, the Parties shall, to the extent possible:
 - C.1 Avoid unnecessary travel and, if travel is required, select travel options that minimise carbon emissions and consider offsetting the impacts of their travel;
 - C.2 Use technology to display documents, submissions, testimony and evidence;
 - C.3 Undertake examination of witnesses and experts remotely, to the extent possible; and
 - C.4 Engage suppliers and service providers, including court reporters, interpreters, etc. that are located in the place of the hearing or which can provide services remotely.
- D. Use of electronic documents:
 - D.1 Wherever possible, shall be projected onto a screen or otherwise be viewable electronically by each participant at their own command and electronic copies thereof shall be distributed reasonably in advance.
 - D.2 Where hearing bundles are used, they should be provided in electronic format only, unless otherwise ordered or requested by the Tribunal, or agreed by the Parties.
- E. Where the use of hard copy documents is deemed necessary:
 - E.1 The Parties shall endeavour to agree a core bundle of exhibits which shall include only those exhibits which the Parties intend to refer to during the course of the hearing; and
 - E.2 The Parties and Tribunal shall dispose of hard copies of any hearing bundle (including bundles for witnesses and / or experts) after the hearing in an environmentally-friendly manner where appropriate.
- F. The Parties shall endeavour to select hearing centres that have adopted the **Green Protocol for Arbitral Hearing Venues** or parts thereof.

MODEL PROCEDURAL ORDER

VIII. TRAVEL

- A. The Parties and Tribunal shall:
 - A.1 Avoid unnecessary travel and, if travel is required, use travel options that minimise carbon emissions; and
 - A.2 Carefully consider the need to fly to attend arbitration proceedings and, where flying is deemed necessary, consider offsetting those flights.
- B. The Parties agree that the Tribunal may include the costs of offsetting their travel in their expenses.
- C. The Parties agree that the costs of offsetting any travel may be allocated by the Tribunal as part of a costs award in the proceedings, or as otherwise agreed between the Parties.

IX. OFFSETTING

In addition to the adoption of the Sustainability Measures contained in this Procedural Order, the Parties shall give due consideration to offsetting any residual emissions caused by their activities related to this arbitration. In determining how to offset carbon emissions, Parties and Tribunal may use their own offsetting standards. In the absence of such standards, Parties and Tribunal should endeavour to offset their emissions through schemes that have been accredited as meeting the highest available sustainability standards (e.g. Gold Standard or Verified Carbon Standard, as at the date of this Protocol).

Disclaimer

The Framework and the Green Protocols are not binding and are not intended to displace applicable rules or derogate from the arbitration agreement unless and to the extent the parties so agree (either in the arbitration agreement or subsequently) or the tribunal so orders. The Framework and the Green Protocols do not establish liability or a liability standard for legal or regulatory purposes.



SECTION 14.8

MODEL CLAUSE MODEL LANGUAGE FOR OUTSIDE COUNSEL RETENTION



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THE CAMPAIGN FOR GREENER ARBITRATION

Model Clause for Company Outside Counsel Retention

Purpose

This model clause (Article [1]) draws on principles expressed by the Campaign for Greener Arbitrations and is for use by company legal departments to assist in reducing carbon emissions and other environmental impact associated with managing and resolving disputes. It can be incorporated in part or in its entirety in company guidelines or policies relating to external counsel, or for inclusion in counsel engagement letters, or adapted as appropriate.

Art. [1] Reduction of Environmental Impact and Waste

[Company's name] is seeking to reduce carbon emissions and other environmental impacts associated with a number of activities, including resolving disputes. [Company's name] [has adopted/adhered to/agrees with] the principles expressed in the [Green Pledge](#) and the [Green Protocol for Law Firms](#), available at the Campaign for Greener Arbitrations' [website](#).

Outside counsel will make efforts, consistent with [company's name]'s objectives, to minimize the impact of the resolution of disputes on the environment, including, by way of example:

Travel

- Consider and question the need to fly or the number of people who will fly, and consider instead the use of virtual meeting and hearing technology, including for document review, witness interviews, client meetings, and hearing participation.
- Make reasonable efforts to offset the carbon emissions of any flights taken on [company's name] matters.
- Where available and appropriate, consider the use of train travel as a lower-carbon emitting alternative to flying.

Documents

- Whenever reasonably possible, conduct correspondence through electronic means unless hard copy documents are expressly required under the circumstances.

Hearings

- Consider whether certain issues genuinely require a hearing of any type (virtual or physical presence) to advance [company's name]'s interests in the dispute or whether one or more issues may be decided on the basis of documents and written submissions only.
- Where a hearing is considered necessary or advantageous for [company's name]'s interests, consider whether it genuinely requires the physical, in-person attendance of all participants, or whether some or all of the participants, including witnesses and experts, may participate through virtual hearing technology rather than by traveling to a hearing location.
- Whenever possible, discourage the use of hard copies of documents in arbitrations and instead encourage the use of electronic documents.

Disclaimer

The Framework and the Green Protocols are not binding and are not intended to displace applicable rules or derogate from the arbitration agreement unless and to the extent the parties so agree (either in the arbitration agreement or subsequently) or the tribunal so orders.

The Framework and the Green Protocols do not establish liability or a liability standard for legal or regulatory purposes.

SECTION 14.9

GREEN PROTOCOL FOR ARBITRATORS



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CAMPAIGN FOR
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GREEN PROTOCOL FOR
ARBITRATORS

1

GREEN PROTOCOL FOR ARBITRATORS

This **Green Protocol for Arbitrators** contains suggested Sustainability Measures¹ for minimising the environmental impact of individual arbitrators during the course of arbitral proceedings. These Sustainability Measures can be adopted by Arbitrators separately or in their entirety, as appropriate.

While all the recommended Sustainability Measures recommended in this Protocol will help reduce the environmental impact of arbitrators' individual practices, particular focus should be given to measures requiring the use of clean energy as a primary energy source and the reduction of air travel, which will have the largest proportional impact in the overall reduction of emissions associated with arbitrators' individual practices. Additional guidance may be found in related **Green Protocols**:

- The Framework for the Adoption of the Green Protocols,
- The Green Protocol for Arbitral Proceedings,
- The Green Protocol for Law Firms, Chambers and Legal Service Providers Working in Arbitration,
- The Green Protocol for Arbitration Conferences,
- The Green Protocol for Arbitral Hearing Venues and
- The Green Protocol for Arbitral Institutions.

¹

The term Sustainability Measures has the meaning set out in the Framework for the Adoption of the Green Protocols.



GREEN PROTOCOL FOR ARBITRATORS



I. INITIAL COMMITMENT

Arbitrators shall endeavor to take all practicable steps to ensure that they minimise the environmental impact of their practice.



II. MINIMISE PRINTING AND USE OF PAPER

A. Arbitrators shall endeavour to:

- A.1 Favour electronic communications and correspondence with other Tribunal members, institutions and Parties over paper form, save where deemed strictly necessary;
- A.2 Use electronic tools to annotate documents and to prepare and finalise orders or awards;
- A.3 Carefully consider the need to print documents and endeavour to only print what is deemed strictly necessary; and
- A.4 Maintain electronic case files, instead of hard copy files.

B. Where printing is deemed necessary, Arbitrators shall endeavour to minimise the environmental footprint of the printing wherever possible, including by (but not limited to):

- B.1 Using less paper (e.g. A5 size), grayscale, double-sided and / or reduced margin format where appropriate;
- B.2 Using environmentally friendly toner and ink;
- B.3 Using recycled and recyclable, chlorine-free and / or tree-free paper;
- B.4 Using eco-friendly printers (making use, for example, of LED UV printing); and
- B.5 Disposing of printed documents and associated materials (e.g. toner bottles) in an environmentally friendly way (i.e. by recycling shredded documents).

C. Arbitrators shall carefully consider whether to request that they be provided with printed documents, taking into account the environmental footprint of printing and transportation by international shipping companies.

D. Where applicable, individual printers within offices shall be discouraged and the number of floor printers shall be limited.

E. Following the conclusion of proceedings, Arbitrators shall endeavour to:

- E.1 Dispose of all printed documents in an environmentally friendly way. Examples of printing disposal, whilst adhering to confidentiality obligations might include recycling and composting; and
- E.2 Recycle all hard copy files, subject to local regulatory requirements and individual matter confidentiality obligations and to applicable retention policies.



III. ENCOURAGE SUSTAINABLE ARBITRAL PROCEEDINGS

A. Where Arbitrators are sole arbitrators, they shall adopt the Sustainability Measures listed below, where possible. Where Arbitrators form part of a panel, they



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shall share this Protocol and the **Green Protocol for Arbitral Proceedings** with their co-arbitrators, encourage them to adopt similar Sustainability Measures and consider which Sustainability Measures can be included in the first Procedural Order.

- B. Arbitrators shall encourage Parties at the outset of the case to adopt Sustainability Measures, to reduce the environmental footprint of the arbitration, in particular Sustainability Measures aimed at reducing travel and paper waste.
- C. Arbitrators shall give due consideration to the adoption of the **Green Protocol for Arbitral Proceedings** or parts thereof as part of a procedural order addressing the conduct of proceedings. For example:
 - C1 Where appropriate, Arbitrators shall require written submissions, including briefs or memorials, applications, witness statements, expert reports, exhibits and legal authorities to be served electronically in an e-bundle or similar format, via email, secure link, or any other agreed upon electronic platform.
 - C2 Throughout proceedings, Arbitrators shall encourage the use of technology platforms and, where appropriate, a shared platform for receipt and organisation of materials.
 - C3 Arbitrators shall encourage the use of audio or video-conferencing for case management conferences or preliminary hearings, where appropriate and considered acceptable by parties.



IV. ENCOURAGE SUSTAINABLE HEARINGS

- A. Arbitrators shall prefer the use of e-bundles over paper bundles in hearings.
- B. Arbitrators shall encourage the use of e-technology for evidence display to reduce or eliminate paper in hearing facilities.
- C. Arbitrators shall encourage the use of remote submissions or cross-examination via video-conferencing, rather than in-person submissions or cross-examination to reduce unnecessary travel, where appropriate and considered acceptable by parties.
- D. Arbitrators shall favour the use of audio or video-conferencing for Tribunal deliberations over in-person deliberations, particularly where air travel would be required for the Tribunal to meet in-person.



V. REDUCE ENERGY CONSUMPTION AND ENVIRONMENTAL FOOTPRINT

- A. Arbitrators shall endeavor to improve the energy efficiency of their home or outside offices to reduce their environmental footprint. Examples of energy-saving measures and environmentally friendly practices which can be implemented include:
 - A1 Using clean or renewable energy as primary facility energy source, where possible;
 - A2 Using LED lights;
 - A3 Using natural light sources wherever practical;
 - A4 Using plants to reduce humidity levels and increase oxygen;
 - A5 Introducing sensors and timed lighting systems;

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- A6 Opting to turn off appliances rather than use screen savers during extended breaks;
 - A7 Installing smart power strips to reduce power consumption when electronic equipment is not in use;
 - A8 Using recycling facilities;
 - A9 Using composters / waste disposal systems to recycle food waste;
 - A10 Using eco-friendly air conditioning and heating systems;
 - A11 Using eco-friendly cleaning materials;
 - A12 Using water-saving facilities in kitchens and restrooms; and / or
 - A13 Use of energy-efficient hand-dryers or roller towels in kitchens and restrooms.
- B. Arbitrators shall ensure that their workspace is set up with the correct technological equipment to enable them to adopt the Sustainability Measures in this Protocol, including audio and video-conferencing, the use of e-bundles and the requisite tools to annotate and comment on documents.



VI. ENCOURAGE RECYCLING

- A. Arbitrators shall endeavor to implement environmentally friendly disposal practices, including by:
 - A1 Using recycling bins;
 - A2 Eliminating plastic bags in bins or for any other purposes, unless sourced from recycled products; and
 - A3 Properly disposing of or recycling outdated or broken electronic equipment and furniture.



VII. TRAVEL RESPONSIBLY

- A. Arbitrators shall:
 - A1 Endeavour to avoid unnecessary travel and, where travel is necessary, use travel options that minimise carbon emissions; and
 - A2 Carefully consider the need to fly in order to attend meetings, interviews, hearings and conferences and, where flying is deemed necessary, consider offsetting flights.



VIII. OFFSET CARBON EMISSIONS

- A. The Sustainability Measures contained in this Protocol encourage behavioural change aimed at reducing the environmental impact of arbitrations and priority should be given to their implementation.
- B. Arbitrators shall also, however, give due consideration to offsetting any residual emissions caused by their conduct, including through travel. In determining how to offset carbon emissions, Arbitrators may use their internal approved offsetting standards. In the absence of such standards, Arbitrators should endeavor to offset their emissions through schemes that have been accredited as meeting the highest available sustainability standards (e.g. Gold Standard or Verified Carbon Standard, as at the date of this Protocol).

Disclaimer

The Framework and the Green Protocols are not binding and are not intended to displace applicable rules or derogate from the arbitration agreement unless and to the extent the Parties so agree (either in the arbitration agreement or subsequently) or the Tribunal so orders. The Framework and the Green Protocols do not establish liability or a liability standard for legal or regulatory purposes.

