

# A Comparison of International Arbitral Rules

*Susan W. Tiefenbrun\**

## INTRODUCTION

Arbitration is a desirable method for facilitating the amicable settlement of international business disputes. Several international arbitral regimes are available to parties seeking alternative dispute resolution. Often, however, it is difficult to choose the best set of rules to apply to an arbitral issue. To assist clients, as well as scholars, to make the best choice, the following chart<sup>1</sup> compares and contrasts the main provisions of three international regimes—(1) the United Nations Commission on International Trade Law (UNCITRAL), adopted by the General Assembly on December 15, 1976; (2) the Rules of the International Chamber of Commerce (ICC), Court of Arbitration, first published in April 1975 as Publication No. 291, as amended and in effect January 1, 1988; and (3) the American Arbitration Association Commercial Arbitration Rules (AAA), as amended and in effect January 1, 1990.

Specifically, the chart summarizes provisions from UNCITRAL's Arbitration Rules (referred to by article); ICC's Rules of Conciliation and Arbitration (referred to by article); and AAA's Commercial Arbitration Rules (referred to by section), Supplementary Procedures for International Commercial Arbitration (referred to as Supp. Proc. for Int'l Comm. Arb.), and Code of

---

\* Of Counsel to Holtzmann, Wise and Shepard, New York, NY; Adjunct Professor of Law at Hofstra University School of Law; B.A., University of Wisconsin, 1965; M.S., University of Wisconsin, 1966; Ph.D., Columbia University, 1971; J.D., New York University School of Law, 1986.

<sup>1</sup> This chart updates and revises an earlier version by Mr. R. Doak Bishop entitled *Comparative Chart of Rules of International Arbitral Regimes* appearing in 1, 3 INT'L LITIG. Q. 263 (Dec. 1985). The AAA rules were amended in 1990 and the ICC rules were amended in 1988, necessitating an update of Mr. Bishop's chart. The format of the revised chart is similar to Mr. Bishop's for ease of comparison. The use of gender-based language in the revised chart reflects the language used in the provisions of each arbitral regime.

### Ethics for Arbitrators in Commercial Disputes (referred to as AAA Code of Ethics).

The author strongly advises her readers to consult the rules of each arbitral regime, which may contain additional, related provisions and/or exceptions to the rules. The chart does not draw conclusions about the international arbitral regimes, rather it is intended to provide information in summary form in order to assist in the complex process of arbitral regime selection. The chart compares and contrasts the following issues: costs of the arbitration;<sup>2</sup> initiation of arbitration proceedings;<sup>3</sup> number of arbitrators;<sup>4</sup> pleadings;<sup>5</sup> interim protective measures;<sup>6</sup> locale and language of the arbitration;<sup>7</sup> law, equity, and customs relating to the arbitration;<sup>8</sup> discovery procedures;<sup>9</sup> experts;<sup>10</sup> hearings;<sup>11</sup> and awards.<sup>12</sup>

---

<sup>2</sup> See *infra* pp. 27–28.

<sup>3</sup> See *infra* p. 28.

<sup>4</sup> See *infra* pp. 28–31.

<sup>5</sup> See *infra* pp. 32–34.

<sup>6</sup> See *infra* p. 34.

<sup>7</sup> See *infra* p. 35.

<sup>8</sup> See *infra* pp. 35–36.

<sup>9</sup> See *infra* p. 37.

<sup>10</sup> See *infra* p. 38.

<sup>11</sup> See *infra* pp. 38–45.

<sup>12</sup> See *infra* pp. 45–49.

**A. Costs****1. Definition & Limitation****UNCITRAL**

Fees of the arbitral tribunal; arbitrators' travel and other expenses; experts' expenses and fees; witnesses' travel and other expenses; attorney's fees of the successful party, if reasonable; and appointing authority's fees and expenses [Art. 38].

**ICC**

Arbitrator's fees; administrative costs; arbitrator's expenses; experts' fees and expenses; and normal legal costs incurred by the parties [Art. 20(2); App. III(2)].

**AAA**

Administrative fees [§ 48]; neutral arbitrator's fees (when applicable) [§ 50]; expenses (all expenses of arbitration including travel and other expenses of the arbitrator and of AAA representatives, expenses of witnesses, and cost of any proof requested by the arbitrator) [§ 49]; stenographic records costs [§ 23]; interpreter's costs [§ 24]; and deposits [§ 51].

**2. Arbitrators' Fees****UNCITRAL**

No fixed schedule, although the appointing authority's schedule (if any) may be taken into account—the fee must be reasonable considering the amount in dispute, the complexity of the subject matter, the time spent by the arbitrators, and other relevant circumstances [Art. 39].

**ICC**

Fee Schedule (percentage of amount in dispute) [App. III (5); Arts. 18 & 20(3)].

**AAA**

No compensation for day one; thereafter fixed schedule—agreed fees [§ 50].

**3. Administrative Fees****UNCITRAL**

No fee schedule.

**ICC**

Fee schedule (amount plus percentage of amount in dispute) [App. III(5)(A)].

**AAA**

Fee schedule set by AAA [§ 48].

**4. Allocation of Costs****UNCITRAL**

Borne by the unsuccessful party (in principle), but may be apportioned as reasonable. The arbitral tribunal shall be free to determine which party bears the costs of attorney's fees [Art. 40].

**ICC**

Fixed by the arbitrator [Art. 20].

**AAA**

Borne equally unless the parties agree otherwise or the arbitrator assesses them against one party [§ 49].

**A. Costs continued****5. Deposit of Costs****UNCITRAL**

Advance deposit of some costs: fees of the arbitral tribunal; arbitrators' travel and other expenses and fees; supplementary deposits at intervals [Art. 41].

**ICC**

Advance deposit of the costs of arbitration—arbitrator's fees and administrative fees [Art. 9; App. III(3)(b)].

**AAA**

Advance deposit of arbitration expenses and arbitrator's fees [§ 51].

**B. Initiation of Arbitration Proceedings****UNCITRAL**

Arbitral proceedings commence on the date the respondent receives from the claimant a notice of arbitration containing a demand for arbitration, the names and addresses of the parties, a reference to the arbitration clause or agreement invoked, a reference to the contract giving rise to the dispute, the general nature of the claim, the amount involved, the remedy sought, and a proposal as to the number of arbitrators (if not agreed) [Art. 3].

**ICC**

A party shall submit a request for arbitration to the Secretariat of the ICC Court of Arbitration, which shall notify the relevant National Committee of the request. The request shall contain the full names, description and addresses of the parties, a statement of the claimant's case, the relevant agreements, such documentation or information as is necessary to establish the circumstances of the case, and all relevant information concerning the number and choice of arbitrators [Art. 3].

**AAA**

The initiating party shall give the other party written notice of its intention to arbitrate including a statement of the nature of the dispute, the amount involved, the hearing locale requested, and the remedy sought, and shall file three copies of the notice and arbitration provisions of the contract at any AAA regional office and pay the administrative fee. The AAA shall give notice of the filing to the respondent [§ 6].

**C. Arbitrators****1. Number of Arbitrators****UNCITRAL**

Three, unless the parties agree to one [Art. 5].

**ICC**

Disputes may be settled by a sole arbitrator or by three arbitrators. One, unless the parties agree to three or unless the ICC Court of Arbitration deems it necessary to appoint three [Arts. 2(2) & 2(5)].

**AAA**

One, unless the AAA directs more than one [§ 17].

**C. Arbitrators continued****2. Nationality of Sole or Neutral Arbitrator****UNCITRAL**

The appointing authority will take into account such considerations as are likely to secure the appointment of an independent and impartial arbitrator (including the advisability of appointing an arbitrator who is not a national of either party) [Art. 6(4)].

**ICC**

The ICC Court of Arbitration considers the proposal of National Committee. The arbitrator cannot be a national of either party (unless neither party objects) [Art. 2(6)].

**AAA**

The arbitrator cannot be a national of either party [§ 16; Supp. Proc. for Int'l Comm. Arb. § 1].

**C. Arbitrators continued****3. Appointment of Arbitrators****UNCITRAL**

If the parties cannot agree on a sole arbitrator within thirty days of receipt of the proposal, then the appointing authority shall select the sole arbitrator after submitting a list of names to the parties who may (within fifteen days) delete any names to which objection is made and rank the remaining names in the order of preference [Art. 6(2) & (3)]. If three arbitrators are to be used, each party shall appoint one arbitrator, and these arbitrators shall select the third, presiding arbitrator [Art. 7(1)]. If one party does not designate its arbitrator within thirty days after the other party has notified the party of the selection of its first arbitrator, the appointing authority shall make the appointment [Art. 7(2)(a)]. If the two party-appointed arbitrators do not select the presiding arbitrator within thirty days after the selection of the second arbitrator, the appointing authority shall select the third arbitrator after submitting a list of names to the parties who may (within fifteen days) delete any names to which objection is made and rank the remaining names in the order of preference [Art. 7(3)].

**ICC**

If the parties fail to agree on a sole arbitrator within thirty days after communication of the request for arbitration, the ICC Court of Arbitration shall choose the arbitrator [Art. 2(3)]. If three arbitrators are to be named, each party shall nominate one arbitrator [Art. 2(4)]. If a party fails to nominate an arbitrator, the ICC Court of Arbitration shall appoint the arbitrator [Art. 2(4)]. The ICC Court of Arbitration shall appoint the third arbitrator unless the arbitration agreement provides that the party-appointed arbitrators shall do so [Art. 2(4)]. If the agreement provides for appointment of the third arbitrator by the arbitrators and they fail to do so, the ICC Court of Arbitration shall choose the third arbitrator. [Art. 2(4)].

**AAA**

If no method of appointment is provided in the arbitration agreement, the AAA shall submit a list of names to the parties who shall (within ten days) cross off any names to which they object and rank the remaining names in the order of preference [§ 13]. If the parties do not make their appointments or if acceptable arbitrators are unable to act, or if the appointment cannot be made from the list, the AAA shall make the appointment [§ 13]. If the agreement of the parties names an arbitrator or specifies a method of appointing an arbitrator, that designation or method will be followed [§ 14]. The AAA shall appoint a neutral arbitrator if the party arbitrators, authorized to appoint a neutral arbitrator, fail to do so within ten days after the appointment of the last party arbitrator [§ 15]. The neutral arbitrator shall act as chairperson [§ 15].

**C. Arbitrators continued****4. Independence of Party-Appointed Arbitrators****UNCITRAL**

Any arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence [Art. 10(1)].

**ICC**

The arbitrator appointed by the parties shall be independent of the party appointing him [Arts. 2(4) & 2(7)].

**AAA**

No requirement for independence of party-appointed arbitrator [*See* § 12; AAA Code of Ethics Canon VII].

**5. Challenge to Arbitrators****UNCITRAL**

An arbitrator may be challenged if circumstances indicate a justifiable doubt as to his impartiality or independence [Art. 10(1)]. A party can challenge the arbitrator he appoints only for reasons of which he becomes aware after the appointment has been made [Art. 10(2)].

Within fifteen days after notice of the appointment of an arbitrator, a party may, in writing, challenge the appointment [Art. 11]. The decision on the challenge shall be made by the appointing authority if the other party does not agree to the challenge and the challenged arbitrator does not withdraw [Art. 12(1)].

**ICC**

A challenge is submitted timely to the Secretary General of the ICC Court of Arbitration, in writing [Art. 2(8)]. The Court shall make a final decision on any challenge to an arbitrator [Art. 2(9)].

**AAA**

The AAA shall make a conclusive decision as to the disqualification of a neutral arbitrator [§ 12 & § 19].

**D. Pleadings****1. Complaint****UNCITRAL**

Unless the statement of claim was contained in the notice of arbitration, the claimant shall communicate a written statement of claim to the respondent and to each of the arbitrators [Art. 18(1)]. The claimant shall attach copies of the contract and the arbitration agreement, and shall include in the statement of claim the names and addresses of the parties, a statement of the facts supporting the claim, the points at issue, and the remedy sought. Relevant documents may be attached [Art. 18(2)].

**ICC**

The original Request for Arbitration, submitted to the Secretariat of the ICC Court of Arbitration, shall contain the full names, a description and the addresses of the parties, a statement of the claimant's case, the relevant agreements, such documentation or information as is necessary to establish the circumstances of the case, and all relevant information concerning the number and choice of arbitrators [Art. 3(1) & (2)].

**AAA**

The initiating party shall give the other party written notice of its intention to arbitrate, including in the notice a statement of the nature of the dispute, the amount involved, the hearing locale requested, and the remedy sought [§ 6; *see* § 7].

**2. Answer****UNCITRAL**

Within time limits specified by the arbitral tribunal, the respondent shall communicate his written statement of defense to the claimant and to each of the arbitrators, and shall reply to each of the particulars of the statement of claim [Art. 19(1) & (2)]. The documents relied upon for a defense may be attached [Art. 19].

**ICC**

Within thirty days from receipt of the Request for Arbitration, the Defendant shall comment on the proposals for the number and choice of arbitrators, nominate an arbitrator (where appropriate), set out his defense, and supply relevant documents (or apply for an extension of time to file his defense and documents) [Art. 4(1)]. A copy shall be sent to the claimant [Art. 4(2)].

**AAA**

A party upon whom a demand for arbitration is made may file an answering statement with the AAA within ten days of the mailing and send a copy to the other party [§ 8].



**D. Pleadings continued****3. Counter-claim****UNCITRAL**

In his statement of defense (or later if the arbitral tribunal decides the delay was justified), the respondent may make a counter-claim or a claim for a set-off, and the statement of the counter-claim or the set-off claim shall contain the names and addresses of the parties, a statement of the facts supporting the claim, the points at issue, and the remedy sought. Relevant documents may be attached [Arts. 19(3) & (4)].

**ICC**

The parties may make new claims or counter-claims [Art. 16]. A counter-claim shall be filed with the Secretariat at the same time as the Defendant's Answer and the Claimant may file a Reply within thirty days after the counter-claim is communicated to him [Art. 5].

**AAA**

If a new or different claim or counter-claim is asserted, it shall be in writing and filed with the AAA, with a copy to the other party [§ 8].

**4. Amendments****UNCITRAL**

As long as the amendment falls within the scope of the arbitration clause or agreement, either party may amend or supplement its claim or defense unless the arbitral tribunal considers it inappropriate due to reasons of delay, prejudice, or other circumstances [Art. 20].

**ICC**

The parties may make new claims before the arbitrator, provided these fall within the Terms of Reference, a document defining, *inter alia*, the issues to be determined and the parties' claims [Art. 16; *see* Art. 13].

**AAA**

Before the arbitrator is appointed (or thereafter with his consent), either party may make any new or different claims by filing them in writing with the AAA and mailing a copy to the other party, who shall have ten days from the date of the mailing to file an answer [§ 8].

**D. Pleadings continued****5. Jurisdictional Challenges****UNCITRAL**

A plea that the arbitral tribunal does not have jurisdiction shall not be raised later than in the statement of defense or the reply to a counter-claim [Art. 21(3)]. The arbitral tribunal shall have the power to rule on a jurisdictional objection (including one relating to the existence or validity of the arbitration clause or agreement) [Art. 21(1)].

**ICC**

The arbitrator may make the decision as to his own jurisdiction [Art. 8(3)]. His jurisdiction shall not cease because of a claim that the contract is null and void [Art. 8(4)].

**AAA**

No express provision.

**E. Interim Protective Measures****UNCITRAL**

The arbitral tribunal may make an interim award and take any interim measures necessary for the conservation of the goods in dispute, such as ordering their deposit with a third person or their sale, if perishable [Art. 26(1)]. A request for interim measures addressed to a judicial authority will not be deemed incompatible with the arbitration agreement or a waiver of that agreement [Art. 26(3)]. The arbitral tribunal may make interim, interlocutory, or partial awards [Art. 32].

**ICC**

Before the file is transmitted to the arbitrator, the parties may apply to any competent judicial authority for interim measures [Art. 8(5)].

**AAA**

The arbitrator may issue any orders necessary to safeguard the property in dispute without prejudice to the rights of the parties [§ 34].

## **F. Locale & Language**

### **1. Place of Arbitration**

#### **UNCITRAL**

Unless the parties have agreed on the place for the arbitration, the arbitral tribunal shall make the determination, having regard to the circumstances of the arbitration [Art. 16(1)]. The arbitral tribunal may hold meetings or make inspections of goods, property, or documents at any place it deems appropriate [Art. 16(3)].

#### **ICC**

Unless agreed upon by the parties, the place of arbitration shall be fixed by the ICC Court of Arbitration [Art. 12].

#### **AAA**

The parties may agree on the place of arbitration. If one party requests a specific locale and the other party does not object within ten days after notice of the request, the locale shall be the one requested [§ 11].

### **2. Language**

#### **UNCITRAL**

Unless agreed to by the parties, the language to be used in the arbitral proceedings shall be determined by the arbitral tribunal [Art. 17(1)].

#### **ICC**

The arbitrator shall determine the language or languages of the arbitration, paying due regard to the language of the contract and other relevant circumstances [Art. 15(3)].

#### **AAA**

If the parties have not agreed on the language of the arbitration and designated a method for deciding that question, the AAA will determine the language to be used in the proceedings, giving consideration to the parties' nationality, their counsel and potential witnesses, and to the location of the hearings [Supp. Proc. for Int'l Comm. Arb. § 6].

## **G. Law, Equity & Customs**

### **1. Governing Law**

#### **UNCITRAL**

The arbitral tribunal shall apply the substantive law designated by the parties. If the parties fail to designate the applicable law, the tribunal shall apply the law determined by the conflict of laws rules which it considers applicable [Art. 33(1)].

#### **ICC**

The parties shall be free to determine the law to be applied to the merits of the dispute. If the parties do not indicate the applicable law, the arbitrator shall apply the law designated by the rule of conflict he deems appropriate [Art. 13(3)].

#### **AAA**

No express provision.

**G. Law, Equity & Customs continued****2. Amiable Compositeur****UNCITRAL**

The arbitral tribunal shall decide the dispute as an *amiable compositeur* or *ex aequo et bono* only if the parties have expressly authorized the tribunal to do so and if the applicable procedural law permits [Art. 33(2)].

**ICC**

The arbitrator shall assume the powers of an *amiable compositeur* if the parties have agreed to grant such powers [Art. 13(4)].

**AAA**

No express provision.

**3. Trade Usages****UNCITRAL**

In all cases, the arbitral tribunal shall take into account the usages of the trade and shall decide in accordance with the terms of the contract [Art. 33(3)].

**ICC**

In all cases, the arbitrator shall take account of the relevant trade usages and provisions of the contract [Art. 13(5)].

**AAA**

No express provision.

**4. Release of Documents****UNCITRAL**

The arbitral tribunal may require a party to deliver to the tribunal and to the other party a summary of the documents [Art. 24(2); *see* Art. 27(2)].

**ICC**

No express provision [*see* Art. 4(1)].

**AAA**

The AAA shall, upon written request of a party, release documents required in judicial proceedings relating to the arbitration [§ 46].

**5. Applications to Court and Exclusion of Liability****UNCITRAL**

No express provision.

**ICC**

No express provision.

**AAA**

No judicial proceeding shall be deemed a waiver of the right to arbitrate [§ 47(a)]. Neither the AAA nor any arbitrator shall be liable to any party for any act or omission in connection with any arbitration under these rules [§ 47(d)].

**H. Discovery****UNCITRAL**

The arbitral tribunal may require a party to deliver to the tribunal and to the opposing party, within a specified period of time, a summary of the documents and other evidence which he will use to support the facts set out in his statement of claim or defense [Art. 24(2)]. The arbitral tribunal may require the parties to produce (within a specified period of time) documents, exhibits, or other evidence [Art. 24(3)]. At least fifteen days before any oral hearing at which witnesses are to be heard, each party shall communicate to the arbitral tribunal and to the other party the names and addresses of the witnesses to be presented, the subject upon which they will testify, and the language in which they will testify [Art. 25(2)].

**ICC**

The claimant's request for arbitration should contain such documentation or information necessary to establish clearly the circumstances of the case [Art. 3(2)(c)]. Within thirty days from receipt of the request for arbitration, the defendant shall supply relevant documents or seek an extension of time in which to do so [Art. 4(1)].

**AAA**

At the request of any party, the AAA will make arrangements for the exchange of documentary evidence or lists of witnesses between the parties [Supp. Proc. for Int'l Comm. Arb. § 3]. Upon request of any party or at the discretion of the AAA, an administrative conference with the AAA and the parties will be scheduled to expedite the arbitration proceedings [§ 10].

**I. Experts****UNCITRAL**

The arbitral tribunal may appoint one or more experts to report on specific issues, and the parties shall provide any relevant information, documents, or goods to such expert [Art. 27(1) & (2)]. A party shall be entitled to examine any document on which the expert relied [Art. 27(1)]. A party has the right to demand a hearing, interrogate the tribunal's expert, and present other expert witnesses on the points in issue [Art. 27(4)].

**ICC**

The arbitrator may appoint one or more experts, define their Terms of Reference, and/or receive their oral testimony [Art. 14(2)].

**AAA**

No express provision.

**J. Hearings****1. Burden of Proof****UNCITRAL**

Each party shall have the burden of proving the facts relied on to support his claim or defense [Art. 24(1)].

**ICC**

No express provision.

**AAA**

No express provision.

**2. Representation by Counsel****UNCITRAL**

The parties may be represented or assisted by persons of their choice. The names and addresses of such persons, however, must be communicated in writing to the other party and the communication must specify whether they are representing or assisting the party [Art. 4].

**ICC**

The parties may appear in person or through duly accredited agents, and they may be assisted by advisers [Art. 15(5)].

**AAA**

Any party may be represented by counsel. Unless the attorney has either initiated the arbitration or replied for a party, the name and address of the counsel shall be transmitted to the other party and to the AAA at least three days prior to the first hearing at which counsel is to appear [§ 22].

**J. Hearings continued****3. Written Testimony****UNCITRAL**

Evidence of witnesses may be presented in the form of signed written statements [Art. 25(5)].

**ICC**

The arbitrator may decide the case on the relevant documents alone if the parties so request or agree [Art. 14(3)].

**AAA**

The arbitrator shall receive and consider the evidence of witnesses by affidavit, but shall give it only such weight as he deems it is entitled to after considering any objections to its admission [§ 32].

**4. Oral Testimony****UNCITRAL**

Upon request of either party or upon its own motion, the arbitral tribunal shall hold hearings for the presentation of evidence by witnesses [Art. 15(2)].

**ICC**

The arbitrator shall hear the parties together in person if one of them requests, or upon his own motion. He may decide to hear any other person [Art. 14(1)].

**AAA**

At the hearing, the complaining party shall present his claims, proofs, and witnesses who shall submit to questions or other examination [§ 29]. The parties may offer such evidence as is relevant and material to the dispute. When the arbitrator is authorized by law to subpoena witnesses or documents, he may do so upon the request of any party or upon his own authorization [§ 31]. All evidence shall be taken in the presence of all the arbitrators and of all the parties [§ 31].

**5. Oaths****UNCITRAL**

The arbitral tribunal is free to determine the manner in which witnesses are examined [Art. 25(4)].

**ICC**

No express provision.

**AAA**

The arbitrator, in his discretion, may require witnesses to testify under oath, and if required by law or if requested by either party, he shall do so [§ 27].

## **J. Hearings continued**

### **6. Admissibility of Evidence**

#### **UNCITRAL**

The arbitral tribunal shall determine the admissibility, relevance, materiality, and weight of the evidence offered [Art. 25(6)].

#### **ICC**

No express provision.

#### **AAA**

The arbitrator shall be the judge of the relevancy and materiality of the evidence offered, and conformity to legal rules of evidence shall not be necessary [§ 31].

### **7. Exclusion of Witnesses During Proceedings**

#### **UNCITRAL**

The arbitral tribunal may require the retirement of any witness or witnesses during the testimony of other witnesses [Art. 25(4)].

#### **ICC**

No express provision.

#### **AAA**

No express provision.

### **8. Arbitrators' Power to Require the Production of Evidence**

#### **UNCITRAL**

At any time during the arbitral proceedings, the arbitral tribunal may require the parties to produce documents, exhibits, or other evidence within a specified period of time [Art. 24(3)].

#### **ICC**

No express provision.

#### **AAA**

The parties shall produce such evidence as the arbitrator may deem necessary to an understanding and determination of the dispute [§ 31].

### **9. Inspections**

#### **UNCITRAL**

The arbitral tribunal may meet at any place it deems appropriate for the inspection of goods, other property, or documents, and the parties shall be given sufficient notice to enable them to attend [Art. 16(3)].

#### **ICC**

No express provision.

#### **AAA**

Whenever the arbitrator deems it necessary to make an inspection or investigation, he shall direct the AAA to so advise the parties. If a party does not attend, the arbitrator shall make a verbal or written report and give them an opportunity to comment [§ 33].



**I. Hearings continued****10. Stenographic Record****UNCITRAL**

The arbitral tribunal shall make arrangements for a record of the hearing if the parties have agreed or if the tribunal deems it necessary [Art. 25(3)].

**ICC**

No express provision.

**AAA**

Any party desiring a stenographic record shall make arrangements directly with a stenographer, and the requesting party shall pay the cost of such record [§ 23].

**11. Translation and Interpreters****UNCITRAL**

The arbitral tribunal shall make arrangements for the translation of oral statements made at a hearing if the parties have agreed or if the tribunal deems it necessary [Art. 25(3)].

**ICC**

No express provision.

**AAA**

Any party wishing an interpreter shall make all arrangements directly with the interpreter and assume the cost of such service [§ 24].

**12. Majority Decision****UNCITRAL**

An award shall be made by a majority if there are three arbitrators [Art. 31(1)].

**ICC**

When three arbitrators are appointed, the award is given by majority decision, or if there is no majority, by the Chairman of the arbitral tribunal alone [Art. 19].

**AAA**

All decisions of the arbitrators must be made by a majority [§ 28].

**13. Absence of a Party****UNCITRAL**

If one of the parties, duly notified under these rules, fails to appear at a hearing, the arbitral tribunal may proceed with the arbitration [Art. 28(2)].

**ICC**

If one of the parties refuses or fails to take part in the arbitration, the arbitration shall proceed notwithstanding such refusal [Arts. 8(2) & 15(2)].

**AAA**

Arbitration may proceed in the absence of any party who, after due notice, fails to be present [§ 30].

**I. Hearings continued**

**14. Close of Hearing & Reopening of Hearing**

**UNCITRAL**

**ICC**

**AAA**

The arbitral tribunal may inquire of the parties if they have any further proof to offer, witnesses to be heard, or submissions to make, and if there are none, it may declare the hearings closed. The arbitral tribunal may reopen the hearings on its own motion or on request of a party at any time before the award is made [Art. 29].

No express provision.

If satisfied that the record is complete, the arbitrator shall declare the hearing closed [§ 35]. The hearing may be reopened on the arbitrator's initiative, or upon application of a party, at any time before the award is made [§ 36].

**15. Waiver of Oral Hearings**

**UNCITRAL**

**ICC**

**AAA**

In the absence of a request for oral argument, the tribunal shall decide whether to hold such hearings [Art. 15(2)].

No express provision.

The parties may provide for waiver of oral hearings by written agreement [§ 37].

**16. Waiver of Right to Object**

**UNCITRAL**

**ICC**

**AAA**

A party who knows that any provision of, or requirement under, these Rules has not been complied with and yet proceeds with the arbitration without promptly stating his objections, shall be deemed to have waived his right to object [Art. 30].

No express provision.

Failure to state an objection to a provision of the arbitration rules shall be deemed a waiver [§ 38].

**17. Extension of Time**

**UNCITRAL**

**ICC**

**AAA**

The arbitral tribunal may extend time limits if it concludes that an extension is justified [Art. 23].

The ICC Court of Arbitration may extend the six-month time limit for making the award [Art. 18(2)].

Parties may modify any period of time by mutual agreement [§ 39].

**J. Hearings continued****18. Serving of Notice****UNCITRAL**

For the purposes of these Rules, any notice, including a notification, communication, or proposal, is deemed to have been received if it is physically delivered to the addressee at his last known residence or place of business [Art. 2(1)].

**ICC**

Notification shall be deemed to have been effected when received against receipt or forwarded by registered post to the last known address by the party in question [Art. 6(2) & (3)].

**AAA**

Each party shall be deemed to have consented to service of notice on a party by mail addressed to the last known address or by personal service [§ 40].

**19. Applicable Procedures****UNCITRAL**

The arbitral tribunal may conduct the arbitration in such manner as it considers appropriate [Art. 15(1)].

**ICC**

The rules governing the proceedings before the arbitrator shall be those resulting from the ICC rules [Art. 11].

**AAA**

Unless the AAA determines otherwise, expedited procedures shall be applied where no claim or counter-claim exceeds \$25,000. The parties may agree to expedited procedures in cases involving claims in excess of \$25,000 [§ 9].

**20. Vacancies****UNCITRAL**

In the event of the death or resignation of an arbitrator, a substitute arbitrator shall be appointed [Art. 13].

**ICC**

An arbitrator shall be replaced upon his death, upon the acceptance by the ICC Court of Arbitration of a challenge, or upon the acceptance by the Court of the arbitrator's resignation [Art. 2(10)].

**AAA**

If an arbitrator is unable to act, the AAA may declare the office vacant [§ 20].

## **J. Hearings continued**

### **21. Postponements**

#### **UNCITRAL**

The periods of time fixed by the arbitral tribunal for the communication of written statements should not exceed forty-five days. However, the arbitral tribunal may extend the time limits if it concludes an extension is justified [Art. 23].

#### **ICC**

The ICC Court of Arbitration may extend the six-month time limit for making the award [Art. 18(2)].

#### **AAA**

The arbitrator for good cause may postpone any hearing upon the request of a party or upon the arbitrator's own initiative [§ 26].

### **22. Absence of Agreement**

#### **UNCITRAL**

Where the parties to a contract have agreed in writing that disputes shall be referred to arbitration under UNCITRAL Rules, then disputes shall be settled in accordance with these Rules [Art. 1].

#### **ICC**

If no *prima facie* agreement to arbitrate exists, or the agreement does not specify the ICC, arbitration cannot proceed [Art. 7].

#### **AAA**

The parties shall be deemed to have made these rules a part of their arbitration agreement whenever they have provided for arbitration by the AAA [§ 1].

### **23. Filing of Documents**

#### **UNCITRAL**

No express provision.

#### **ICC**

The file is transmitted to the arbitrator for filing of documents upon receipt of the Defendant's answer [Art. 10].

#### **AAA**

Quick filing directions are available and parties to a dispute may commence arbitration by filing three copies of a written submission to arbitrate, signed by the parties [§ 7].

**J. Hearings continued****24. Default****UNCITRAL**

If, within the period of time fixed by the arbitral tribunal, the claimant has failed to communicate his claim without showing sufficient cause for such failure, the arbitral tribunal shall issue an order for the termination of the arbitral proceedings [Art. 28(1)]. If one of the parties duly notified under these Rules fails to appear at a hearing, the arbitral tribunal may proceed with the arbitration [Art. 28(2)].

**ICC**

If one of the parties refuses or fails to take part in the arbitration, the arbitration shall proceed notwithstanding such refusal or failure [Art. 8(2)]. Should one of the parties refuse to take part in the drawing up of a document or its signing, the ICC Court of Arbitration shall set a time limit for the signature of the statement by the defaulting party, at the expiration of which the arbitration shall proceed and the award shall be made [Art. 13(2)].

**AAA**

Unless the law provides otherwise, the arbitration may proceed in the absence of any party or representative who, after due notice, fails to be present [§ 30].

**25. Replacement of an Arbitrator****UNCITRAL**

If any arbitrator is replaced, prior hearings may be repeated at the discretion of the arbitral tribunal [Art. 14].

**ICC**

An arbitrator shall be replaced upon his death, upon the acceptance by the ICC Court of Arbitration of a challenge, or upon the acceptance by the Court of the arbitrator's resignation [Art. 2(10)].

**AAA**

No express provision.

**K. Awards****1. Time of Award****UNCITRAL**

No express provision.

**ICC**

The award shall be made within six months of the date of signing the terms of reference unless the ICC Court of Arbitration, in exceptional circumstances, extends this time limit [Art. 18].

**AAA**

The award shall be made promptly unless agreed to by the parties no later than thirty days after either the close of the oral hearings or the transmission of the final statements and proofs to the arbitrator [§ 41].

**K. Awards continued****2. Form of Award****UNCITRAL**

When there are three arbitrators, an award shall be made by a majority [Art. 31(1)]. The award shall be made in writing [Art. 32(2)]. The award shall be signed by the arbitrators and shall be dated. The award shall state the reason for the absence of any arbitrator who fails to sign the award [Art. 32(4)].

**ICC**

The award shall be given by a majority decision when there are three arbitrators or by the Chairman of the arbitral tribunal when there is no majority [Art. 19]. It is implied that the award will be in writing, signed by the arbitrator, and dated [*See* Arts. 21 & 22]. The form of the award shall be approved by the ICC Court of Arbitration [Art. 21].

**AAA**

The award shall be in writing and shall be signed by a majority of the arbitrators [§ 42].

**3. Reasons for Award****UNCITRAL**

The arbitral tribunal shall state the reasons upon which the award is based unless the parties have agreed otherwise [Art. 32(3)].

**ICC**

No express provision.

**AAA**

In consultation with the parties and the arbitrator, the AAA can make arrangements, in international cases for a written opinion from the arbitrator explaining the reasons for the award [Supp Proc. for Int'l Comm. Arb. § 7].

**4. Place of Award****UNCITRAL**

No express provision.

**ICC**

The arbitral award shall be deemed to be made at the place of the arbitration proceedings and on the date when it is signed by the arbitrator [Art. 22].

**AAA**

The arbitrator shall set the date, time, and place for each hearing [§ 21].

**K. Awards continued****5. Scope of Award****UNCITRAL**

No express provision.

**ICC**

No express provision.

**AAA**

The arbitrator may grant any remedy or relief which he deems just and equitable and within the scope of the arbitration agreement including, but not limited to, specific performance of a contract [§ 43].

**6. Finality of Award****UNCITRAL**

The award shall be final and binding on the parties. The parties undertake to carry out the award without delay [Art. 32(2)].

**ICC**

The arbitral award shall be final [Art. 24(1)]. The parties shall be deemed to have undertaken to carry out the award without delay and to have waived any right to appeal [Art. 24(2)].

**AAA**

No express provision.

**7. Privacy of Award****UNCITRAL**

The award may be made public only with the consent of both parties [Art. 32(5)].

**ICC**

Copies of the award are not to be made available to anyone but the parties [See Art. 23(2) & (3)].

**AAA**

The arbitrator shall maintain the privacy of the hearings [§ 25].

**8. Notification of Parties****UNCITRAL**

Copies of the award signed by the arbitrators shall be communicated to the parties by the arbitral tribunal [Art. 32(6)].

**ICC**

The ICC Secretariat shall notify the parties of the text of the signed award and additional certified copies may be obtained from the Secretariat-General of the ICC Court of Arbitration [Art. 23(1) & (2)].

**AAA**

The AAA shall deliver the award to the parties by mail to the party's last known address, to his attorney, or by personal service, or by the filing of the award as prescribed by law [§ 45].

## **K. Awards continued**

### **9. Filing of Award**

#### **UNCITRAL**

The arbitral tribunal shall comply with any arbitration law of the country where the award is made, requiring the filing or registration of the award [Art. 32(7)].

#### **ICC**

An original of each award shall be deposited with the Secretariat of the ICC Court of Arbitration, which shall assist the parties in complying with whatever further formalities may be necessary [Art. 25].

#### **AAA**

The award will be filed if prescribed by law [§ 45].

### **10. Award by Consent**

#### **UNCITRAL**

The arbitral tribunal may, upon request of both parties, record a settlement in the form of an arbitral award on agreed terms [Art. 34(1)].

#### **ICC**

Upon consent of the parties, a settlement shall be recorded in the form of an arbitral award [Art. 17].

#### **AAA**

If the parties settle their dispute during the course of the arbitration, the arbitrator may set forth the terms of an agreed settlement in an award [§ 44].

### **11. Interpretation of Award**

#### **UNCITRAL**

Within thirty days after receipt of an award, either party may request that the arbitral tribunal give an interpretation of the award and such interpretation shall be given in writing within forty-five days after receipt of the request [Art. 35].

#### **ICC**

No express provision.

#### **AAA**

No express provision.

### **12. Correction of Award**

#### **UNCITRAL**

Within thirty days after receipt of an award, either party may request that the arbitral tribunal correct any clerical, typographical, computational, or similar errors in the award [Art. 36].

#### **ICC**

No express provision.

#### **AAA**

No express provision.



**K. Awards continued****13. Additional Award****UNCITRAL**

Within thirty days after receipt of an award, either party may request that the arbitral tribunal make an additional award as to claims presented in the arbitral proceedings but omitted from the award. If the arbitral tribunal considers the request justified, it shall complete the award within sixty days after receipt of the request [Art. 37(1) & (2)].

---

**ICC**

No express provision.

**AAA**

No express provision.