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Global Legal Group

The International Comparative Legal Guide to: International Arbitration 2011

A practical cross-border insight into international arbitration work

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The International Comparative Legal Guide to: International Arbitration 2011

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Contributing Editors

Steven Finizio and
Wendy Miles, Wilmer
Cutler Pickering Hale and
Dorr LLP

Account Managers

Monica Fuertes, Dror
Levy, Florjan Osmani,
Oliver Smith, Rory Smith,
Toni Wyatt

Marketing Manager

George Archer

Sub Editors

Suzie Kidd
Jodie Mablin

Senior Editor

Penny Smale

Managing Editor

Alan Falach

Publisher

Richard Firth

Published by

Global Legal Group Ltd.
59 Tanner Street
London SE1 3PL, UK
Tel: +44 20 7367 0720
Fax: +44 20 7407 5255
Email: info@glgroup.co.uk
URL: www.glgroup.co.uk

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Preface:

1 Preface by Gary Born, Head of International Arbitration Group, Wilmer Cutler Pickering Hale and Dorr LLP

General Chapters:

1	Meeting the Challenge: Efficiency and Flexibility in International Commercial Arbitration - Kate Davies, Wilmer Cutler Pickering Hale and Dorr LLP	1
2	The Search for Cost Effective and Efficient International Commercial Arbitration: There is a Solution - Richard Chernick & Robert B. Davidson, JAMS	8
3	Participation of Third Parties in International Arbitration: Thinking Outside the Box - Marc S. Palay & Tanya Landon, Sidley Austin LLP	14
4	The Recent Global Economic Environment: Impact on Damages and Valuation in International Arbitration - Sharon Moore & Greig Taylor, FTI Consulting	19

Asia Pacific:

5	Overview	Dr. Colin Ong Legal Services: Dr. Colin Ong	25
6	Australia	Clayton Utz: Doug Jones & Björn Gehle	33
7	Brunei	Dr. Colin Ong Legal Services: Dr. Colin Ong	43
8	China	Boss & Young: Xu Guojian & Mingjie Zhang	51
9	Hong Kong	Clayton Utz in association with Haley & Co: Glenn Haley & Patrick Daley	61
10	India	Kachwaha & Partners: Sumeet Kachwaha & Dharmendra Rautray	73
11	Indonesia	Soewito Suhardiman Eddymurthy Kardono (SSEK): Michael Carl & Dewi Savitri Reni	82
12	Japan	Anderson Mori & Tomotsune: Yoshimasa Furuta & Kiyoko Yagami	95
13	Malaysia	SKRINE: Ashok Kumar Mahadev Ranai & Lubna Sheikh Ghazali	103
14	Pakistan	Ebrahim Hosain: Zahid F. Ebrahim & Shabnam Noorali	114
15	Singapore	Hogan Lovells Lee & Lee: Paul Teo & Jonathan Leach	122
16	Vietnam	Tilleke & Gibbins: Michael Lee & Doan Ngoc Tran	130

Central and Eastern Europe:

17	Albania	Tonucci & Partners: Neritan Kallfa & Majlinda Sulstarova	138
18	Estonia	Aivar Pilv Law Office: Pirkka-Marja Pöldvere & Ilmar-Erik Aavakivi	146
19	Hungary	CMS Cameron McKenna: Dr Zsolt Okányi LL.M. (Yale) & Dr Gergely László	153
20	Lithuania	Motieka & Audzevicius: Ramūnas Audzevičius & Mantas Juozaitis	162
21	Macedonia	Karanovic & Nikolic: Veton Ooku	170
22	Poland	GESSEL Attorneys at law: Dr. Beata Gessel-Kalinowska vel Kalisz & Małgorzata Badowska	177
23	Romania	CMS Cameron McKenna: Gabriel Sidere & Florin Dutu	185
24	Russia	Clifford Chance CIS Limited: Timur Aitkulov & Roman Khodykin	194

Western Europe:

25	Overview	Bredin Prat: Tim Portwood	205
26	Austria	Konrad & Justich: Christian W. Konrad & Philipp A. Peters	209
27	Belgium	DLA Piper: Caroline Verbruggen & Jean-Michel Detry	217
28	England & Wales	Wilmer Cutler Pickering Hale and Dorr LLP: Wendy Miles & Kate Davies	226
29	France	Bredin Prat: Tim Portwood	241
30	Germany	DLA Piper: Dr. Frank Roth & Dr. Daniel H. Sharma	250
31	Ireland	Matheson Ormsby Prentice: Nicola Dunleavy & Gearóid Carey	258
32	Liechtenstein	Ritter + Wohlwend Rechtsanwälte AG: Dr.iur. Ursula Wachter & Mag.iur. Samuel P. Ritter	267

Continued Overleaf →

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The International Comparative Legal Guide to: International Arbitration 2011

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33	Luxembourg	Elvinger, Hoss & Prussen: Yves Prussen & Marc Elvinger	274
34	Netherlands	De Brauw Blackstone Westbroek: Eelco Meerdink & Edward van Geuns	283
35	Portugal	Abreu Advogados: José Maria Corrêa de Sampaio & Pedro Sousa Uva	291
36	Spain	Cuatrecasas, Gonçalves Pereira: Cristian Conejero Roos & Iñigo Quintana Aguirre	302
37	Sweden	Frank Advokatbyrå AB: Hans Bagner & Kristoffer Persson	310
38	Switzerland	Homburger: Felix Dasser & Balz Gross	318

Latin America:

39	Overview	DLA Piper: Pedro J. Martínez-Fraga & Harout Jack Samra	327
40	Dominican Republic	Jiménez Cruz Peña: Marcos Peña Rodríguez & Laura Medina Acosta	333
41	Mexico	Oscós Abogados: Dario U. Oscos C & Dario A. Oscos R	341
42	Paraguay	Vouga & Olmedo Abogados: Rodolfo Vouga Müller & Rodolfo G. Vouga Zuccolillo	350
43	Venezuela	Macleod Dixon: Ramón J. Alvins Santi & Pedro J. Saghy C.	357

Middle East / Africa:

44	Overview	Habib Al Mulla & Co.: Gordon Blanke & Soraya Corm-Bakhos	368
45	Egypt	Shalakany Law Office: Khaled El Shalakany	372
46	Israel	Sherby & Co., Advs.: Eric S. Sherby & Sami Sabzerou	380
47	Nigeria	PUNUKA Attorneys & Solicitors: Anthony Idigbe & Omone Tiku	389
48	South Africa	Werksmans Attorneys: Des Williams	403
49	UAE	Habib Al Mulla & Co.: Gordon Blanke & Karim Nassif	413

North America:

50	Canada	Borden Ladner Gervais LLP: Daniel Urbas & Robert J.C. Deane	422
51	USA	K&L Gates LLP: Peter J. Kalis & Roberta D. Anderson	430

The Search for Cost Effective and Efficient International Commercial Arbitration: There is a Solution

JAMS

Richard Chernick



Robert B. Davidson



The growth of international commercial arbitration over the past three decades has been principally driven by the advent of the New York Convention [see Endnote 1], which entered into force for the United States in 1970 and now binds over 140 countries. This growth has also been materially assisted (and, indeed, enabled in the United States) by the United States Supreme Court's broad embrace of the international arbitration process and its rejection of legal doctrines that attempt to limit its effective use [see Endnote 2]. Arbitration was generally transformed in the 1980s and 1990s by a series of decisions interpreting the United States Federal Arbitration Act ("FAA") [see Endnote 3] which have made arbitration more accessible and its enforcement more predictable. These developments in turn have not only encouraged, but – in the context of an international arbitration – effectively mandated, business users with roughly equal bargaining leverage to agree to arbitration in an international commercial transaction.

Popularity has not been without drawbacks. As counsel and arbitrators have become more sophisticated in dispute process design, international arbitrations now often incorporate many elements of a civil or common law court proceeding which, in turn, has complicated the management and conduct of those proceedings. Litigation procedures such as document disclosure and other discovery devices dispositive motions, and certain evidentiary constructs, such as cross-examination, are commonly now a part of an international arbitration. Commercial arbitration is often now referred to as the "new litigation" or by such portmanteau terms as "Litarbigation" [see Endnote 4].

One consequence of these changes has been increased expense and delay. The more processes parties employ, the slower and, therefore, the more expensive the arbitration. [See Endnote 5.] In these circumstances, a contract clause calling for litigation in a national court, provided one of the parties has the bargaining leverage to insist on such a provision, may become preferable.

What has caused this shift of opinion about international commercial arbitration, and what changes to the process are warranted and, indeed, possible? To preserve the benefits of international arbitration – unbiased decision-makers, confidentiality and (hopefully) advantages in terms of time and cost – it is necessary to address the processes that drive expense and delay, such as the emphasis in some proceedings on extensive document disclosure, or even U.S. style depositions. Other things that cause delay and expense include the parties' selection of arbitrators who are too busy to schedule prompt hearings or hearings on consecutive days or who are unwilling or unable to manage the process efficiently. Each of the stakeholders in the arbitration process – business users and inside counsel, outside counsel, arbitrators and provider organisations – has a role to play in addressing solutions that restore confidence in the process.

The Role of Business Users and Inside Counsel

Business users and their inside counsel are in the best position to determine how and when arbitration will be utilised to settle a business dispute and what form that process ought to take. They act most effectively by including dispute resolution clauses in their transactional documents. Often predispute choices are made without much thought, particularly where the parties' focus is upon the venture's future success and not the possibility of conflict. Often a "boilerplate" arbitration clause is inserted in the document at the eleventh hour, or a decision is made (consciously or inadvertently) not to address dispute resolution at all.

A well crafted and thought out dispute resolution clause can save enormous amounts of time and money. In that regard, several choices are critical for transactional counsel. First, always carefully consider whether to write a custom arbitration clause, one that will assure an arbitration that best serves economy, efficiency and other business priorities. Be deliberate about choosing between "one-size-fits-all" arbitration procedures and more streamlined or bounded procedures. [See Endnote 6.]

It is also desirable for any dispute resolution clause to require at least one pre-arbitration settlement step, such as negotiation or mediation. Make the clause effective by requiring that all steps preliminary to arbitration be complied with before arbitration may proceed, but design the procedure so that it does not unduly delay the process or prejudice a party. Thus, for example, even if a mediation is a condition precedent to arbitration, it should not preclude immediate application by one of the parties for interim measures or other relief in aid of arbitration. (Model clauses and clause drafting guides are published by many providers of international arbitration services. See, e.g., ICC Rules of Arbitration, JAMS International Arbitration Rules.)

Set specific time limits on arbitration and make sure they are enforced. There are a number of techniques for imposing time limits on the arbitration process. An outside limit could be specified (for example, one year from the commencement of the arbitration to the issuance of the final award). This could be combined with limits on intermediate process steps (appointment of the arbitrators, submission of initial pleadings, commencement of the evidentiary hearing, issuance of an award following the completion of the hearing, etc.) or the provider's rules may be relied on where they impose such limits. Some institutional rules contemplate party-control over time limits or provide streamlined versions of their standard rules. JAMS International Arbitration Rules ("JAMS Rules"), Art. 21; ICC Rules, Art. 32(1), 32(2); LCIA Rules of Arbitration ("LCIA Rules"), Art. 9 (panel formation); Art 22(b) (panel discretion to change or impose time limits). [See Endnote 7.]

Care should be taken not to set limits that are not achievable, and discretion should be accorded to the arbitrator to vary these limits in exceptional circumstances [see Endnote 8]. Any clause-based provisions should be reassessed after the dispute arises to confirm that the predispute choice is consistent with the attributes of the actual dispute.

Inside counsel or client representatives should stay actively involved throughout the dispute resolution process to assure the expedition and efficiency of the process as well as other client objectives. Direct participation by inside counsel or a client representative in the prehearing conference, regular monitoring of the progress of the arbitration and participation in strategic decisions all will help to effectuate the earlier structural choices. (Lessons learned will also help to guide decisions in the next case.)

Select outside counsel for arbitration expertise and commitment to business goals. [See Endnote 9.] Select arbitrators with strong case management skills. [See Endnote 10.] The selection of arbitrators willing and able to manage the chosen process effectively is crucial in achieving economy and efficiency. An experienced managerial arbitrator, once selected, can also advise against inappropriate process choices.

Establish guidelines for early identification of issues, claims, defences, and possible process choices for the arbitration. There are many opportunities for identifying, sequencing or limiting issues. Carefully conducted prehearing conferences and carefully drafted procedural orders will help guide the parties through the necessary steps. [See Endnote 11.] Pre-hearing case management techniques are addressed at length below.

Do not be afraid to use a single arbitrator in appropriate circumstances. [See Endnote 12.] It is often difficult for inside counsel to assume the “risk” of having a dispute resolved by a single arbitrator, but often the probable dispute will not warrant the added expense of a tripartite panel. Many commercial cases are more efficiently (and correctly) handled by a sole arbitrator.

The Role of Outside Counsel

Outside counsel plays a critical role in working with the other stakeholders, including the arbitrators, to encourage a process that is both fair and efficient. Flexibility is one of the main benefits of arbitration. Because arbitration is contractual, the parties are free to stipulate to appropriate procedures. Even experienced counsel do not always take advantage of their ability to tailor the arbitration process to fit a particular case. Here are some ways for outside counsel to ensure a fair and efficient process.

First, be sure that your Request for Arbitration not only conforms to the rules of the provider organisation specified in your arbitration agreement, but contains, at the least, a summary of the background facts and a list of all claims. [See Endnote 13.] Lengthy litigation-style formulaic pleadings, if not required by the rules under which you are operating, are neither required nor particularly helpful. [See Endnote 14.] Claims, answering statements, and counterclaims should be written in a straightforward and concise manner.

Next, give the preliminary conference ample attention. The preliminary conference is extremely important to the process. [See Endnote 15.] At this meeting, the participants discuss the particulars of the case and the goals of the parties. Moreover, they collaborate with the arbitration panel to design an effective process. This conference presents the opportunity to agree on a range of items, including the issues to be tried, the setting of hearing dates and location, the appropriate scope of discovery or information disclosure, the dates for exchanging witness statements, arbitration

exhibits, and prehearing briefs. Many of these arrangements will be memorialised in Terms of Reference if you are arbitrating in accordance with the Rules of the ICC, or in a written Procedural Order that will reflect the agreements that are being made.

The Role of the Arbitration Panel

Arbitrators must familiarise themselves with the facts and legal issues in a case at the earliest opportunity in order to guide their conduct of prehearing activity. The preliminary conference is the first opportunity in most cases for the arbitrators to interact with counsel and the parties and to express considered views about possible process alternatives, to comment on issues raised by the clause or submission agreement and to begin the process of focusing on possible limitations on key aspects of the process, such as limited document disclosure, potential bifurcation or other structural issues.

Arbitrators often work from agendas or checklists suggested by UNCITRAL or other organisations (or custom crafted) that are sent to counsel prior to the conference. Counsel should be required to meet and confer on these issues before the conference is convened. It is common for such checklists to include at least the following points (and the sequence and timing of their use): whether there are threshold issues of arbitral jurisdiction, such as jurisdiction over certain parties or subject matter; whether there is an issue as to the scope of the arbitration; whether there are issues of compliance with applicable arbitrator disclosure procedures and the confirmation of the arbitrator’s appointment; whether there is agreement on the governing law; the language of the arbitration; the seat of the arbitration; whether there will be written witness statements *in lieu* of direct testimony and the timing for such exchanges; whether one or both parties should be required to prepare a summary of its claims or defences as an initial matter; whether there will be an exchange of information and what form that should take (document exchange, securing documents in the possession of third parties; e-discovery issues, if any, and the setting of a procedure to resolve any disclosure disputes that might arise; whether there will be experts and the procedure for the designation of expert witnesses and the provision of expert witness reports, whether a separate stipulation relating to the confidentiality of documents and testimony is necessary; establishing a process for the identification of exhibits and the format for their presentation at the hearing (notebooks, electronic storage only, etc.); whether there will be cross-examination and its limits, if any; and whether it makes sense to bifurcate certain threshold issues. Post-hearing issues, such as briefing or oral argument can also be discussed.

Efficiencies can be achieved if the arbitrators focus the parties on a prehearing and hearing process that is proportionate to the magnitude of the case (particularly with regard to document disclosure) and if they then manage the process accordingly.

Management generally: The skills required of the arbitrator as manager of the process are threefold: an understanding of the process elements of arbitration; a willingness to work with the parties and counsel to design a process well-suited to the particular case; and the ability to manage the chosen process effectively and efficiently through the hearing. Sophisticated parties understand the importance of these skills and regard their opportunity to choose the arbitrator as perhaps their most important “process” choice. Arbitrators who possess these skills are sometimes referred to as “managerial arbitrators”. A managerial arbitrator assumes the primary responsibility for managing the chosen process in order to achieve the parties’ goal of an effective and efficient proceeding and to strike a balance between efficiency and fairness. These responsibilities and the techniques to achieve them are well-

understood in the profession. [See Endnote 16.]

Structuring the case. Consider whether the hearings should be bifurcated into liability and damages phases, for example, or otherwise set to move forward in phases. [See Endnote 17.] Care should be taken not to create a series of hearings on different issues where one hearing as to all issues will be manageable. Much time is consumed with sequencing and conducting several separate hearings, and bifurcation should only be undertaken where the complexity of the case or the nature of the issues compels it.

Document disclosure and other discovery. As arbitration has become more like litigation, the scope and extent of discovery has increased and become more costly in business cases. Many international arbitrations severely limit document disclosure and deny any third party discovery [see Endnote 18], but there is an increasing trend to grant greater rights of document disclosure and discovery.

These phases typically add significant time and great expense to an arbitration, especially now that so much of it involves electronically stored information. There is, in fact, a growing consensus that the principal culprit in overlong and over-expensive arbitration is excessive discovery and e-discovery. The baseline consideration is what the clause and the applicable rules say about parties' entitlement to document disclosure and evidence from the other side. The key to efficiency in the document disclosure and discovery process is to limit discovery to that which is proportionate to the magnitude of the dispute and, particularly, to limit e-discovery. [See Endnote 19.] The JAMS Guidelines observe in this regard:

The framework of Pre-Hearing Disclosure in international arbitrations will always be based on the judgment of the arbitrator, brought to bear in the context of variables such as the applicable rules, the customs and practices for arbitrations in the industry in question, and the expectations and preferences of the parties and their counsel. In exercising this judgment, JAMS arbitrators: (i) produce a protocol for Pre-Hearing Disclosure that is specific and appropriate to the given case and is consistent with the accepted norms of international arbitration practice; and (ii) exercise sound judgment to ensure enough Pre-Hearing Disclosure and evidence to permit a fair result, balanced against the need for an efficient process. [See Endnote 20.]

E-discovery. Several sources provide guidance on the conduct of efficient e-discovery. For example, the International Centre for Dispute Resolution (ICDR) has issued guidelines for information exchange in international arbitrations as follows:

Electronic Documents. When documents to be exchanged are maintained in electronic form, the party in possession of such documents may make them available in the form (which may be paper copies) most convenient and economical for it, unless the Tribunal determines, on application and for good cause, that there is a compelling need for access to the documents in a different form. Requests for documents maintained in electronic form should be narrowly focused and structured to make searching for them as economical as possible. The Tribunal may direct testing or other means of focusing and limiting any search. [See Endnote 21.]

Similar guides have been issued by the International Institute for Conflict Resolution and Prevention (CPR) and by the Chartered Institute of Arbitrators. [See Endnote 22.] The NY State Bar guidelines and the JAMS Guidelines are detailed and functional. Several key points in managing e-discovery are the following:

- There shall be production of electronic documents only from sources used in the ordinary course of business. Absent a showing of compelling need, no such documents are required to be produced from back-up servers, tapes or other media.

- Absent a showing of compelling need, the production of electronic documents shall normally be made on the basis of generally available technology in a searchable format which is usable by the party receiving the e-documents and convenient and economical for the producing party. Absent a showing of compelling need, the parties need not produce metadata, with the exception of header fields for email correspondence.
- Where the costs and burdens of e-discovery are disproportionate to the nature and gravity of the dispute or to the amount in controversy, or to the relevance of the materials requested, JAMS arbitrators will either deny such requests or order disclosure on condition that the requesting party advance the reasonable cost of production to the other side, subject to the allocation of costs in the final award. [See Endnote 23.]

Resolving disputes regarding pre-hearing disclosure. Objections to document disclosure requests and requests to the arbitrators for orders of production may extend the pre-hearing process unduly and significantly add to the cost of the arbitration. The JAMS Guidelines offer several helpful points:

- Where there is a panel of three arbitrators, the parties may agree, by stipulation or otherwise, that the Chair or another member of the panel is authorised to resolve discovery issues, acting alone.
- Lengthy briefs on Pre-Hearing Disclosure matters should be avoided. In most cases, a prompt discussion or submission of brief letters will sufficiently inform the arbitrator with regard to the issues to be decided. [See Endnote 24.]
- The parties should negotiate Pre-Hearing Disclosure differences in good faith before presenting any remaining issues for the arbitrator's decision.
- The existence of unresolved Pre-Hearing Disclosure disputes should not impede the progress of Pre-Hearing Disclosure in all other areas in which there are no differences. [See Endnote 25.]

Witnesses. Assuming the use of written witness statements, witnesses, whether fact or expert, will be necessarily identified well prior to a hearing. Occasionally, an adverse party will seek to examine an officer or employee of the other side who has not submitted a written statement and the arbitrators must be prepared to deal with that eventuality. [See Endnote 26.] The key to efficiency in this process is careful and diligent management by the arbitration tribunal in the organisation of this phase of the case.

Motion practice. Motions, particularly dispositive motions, can be extraordinarily wasteful, particularly if there has been little discovery. Dispositive motions involving issues of fact are rarely granted in arbitration but there are some matters for which a motion for partial summary disposition might provide an opportunity for shortening, streamlining or focusing the arbitration process - as, for example, where arbitrators are able to rule on a statute of limitations defence, determine whether a contract limits certain kinds of damages, or construe a key contract provision. [See Endnote 27.]

Hearing Issues. Arbitration hearings are best held on consecutive days. It usually makes sense to schedule an extra day or two in case the hearings take more time than expected, since a continuance can result in considerable additional expense. Particularly where there is a tripartite panel, calendar conflicts may necessitate a months-long delay in finding the few extra days needed to complete a hearing. Huge costs are involved in preparing for hearings and then having to re-mobilise months later. A continuous hearing is not only more efficient for counsel; it is also more conducive to a decision-making process that is based on the actual recollection of testimony. The parties may also agree to limit the arbitration to a scheduled number of hearing days that contain a set number of

hours each day. The “chess clock” approach, where the parties divide time equally, is one of the methods to avoid unnecessary costs. This approach has the added benefit of assuring that the arbitrators will hear a clear and concise presentation of claims and defences. Limited time also tends to focus available hearing time and to avoid the rambling cross-examination of witnesses.

Finally, if there are witnesses who may be unavailable, discuss how to preserve their testimony or make plans to have them testify via video conference or even Skype. Many arbitrators will allow these arrangements in order to assist counsel in presenting the case efficiently.

None of these techniques for making arbitration economical will work unless the arbitrators are experienced, decisive, and willing to make necessary rulings. Experienced arbitrators actively manage the proceeding, and are skilled at making rulings as needed. [See Endnote 28.] Counsel should review the biographies of proposed arbitrators, including examples of cases they have handled, and ask for references. Particularly in large cases, it is customary to interview potential arbitrators—not *ex parte*, of course, but jointly with opposing counsel. During these interviews, arbitrators should not be asked about any of the issues in the case but rather about their experience and managerial style.

Arbitral Institutions

The College of Commercial Arbitrators has studied the effectiveness of arbitral providers and, in cooperation with arbitration users and arbitrators, developed Protocols for expeditious and cost effective commercial arbitration. While this study was conducted in the context of domestic, U.S.-based commercial arbitration, the recommendations have equal relevance to international commercial arbitration. Among the ideas suggested for provider organisations are the following (many of which have been addressed above in the discussion of the roles of the other arbitration stakeholders):

- Offer business users clear options to fit their priorities.
- Promote arbitration in the context of a range of process choices, including stepped dispute resolution processes (i.e. negotiation or mediation as a condition precedent to arbitration).
- Develop and publish rules that provide effective ways of limiting discovery to essential information.
- Offer rules that set strict presumptive deadlines for completion of arbitration; train arbitrators in the importance of enforcing stipulated deadlines.
- Publish and promote “fast track” arbitration rules.
- Develop procedures that promote limited motion practice.
- Require arbitrators to have training in process management skills and commitment to cost and time-saving.
- Require fact pleading, early disclosure of documents and witnesses.
- Provide for electronic service of submissions and orders.
- Obtain and make available information on arbitrator effectiveness.
- Provide for expedited appointment of arbitrators.
- Require arbitrators to confirm availability.
- Afford business users an effective mechanism for raising and addressing concerns about arbitrator case management.
- Offer process orientation for first-time users. [See Endnote 29.]

In response to concerns raised about the cost and complexity of domestic commercial arbitration, in October 2010 JAMS added

optional Expedited Procedures to its Comprehensive Rules (Rules 16.1 and 16.2) and is considering proposing them for its International Rules. [See Endnote 30.] These procedures are available for even the largest cases by agreement of the parties and provide for an arbitration to be completed in 150 days. The procedures place limits on document disclosure and discovery. For example, document requests are limited to those directly relevant to the dispute. They are further restricted in terms of subject matter, time frame, and persons or entities to which the requests pertain. This rule essentially provides a document regime quite similar to that set forth in the IBA Rules on the Taking of Evidence. The JAMS procedures also place limitations on e-discovery and give the arbitrators the power to shift costs in situations where the costs and burdens of e-discovery are disproportionate to the nature of the dispute or the amount in controversy. Dispositive motions are not permitted except as set forth in the JAMS Discovery Protocols (which were adopted in 2009 and are intended to guide parties and arbitrators in the development of reasonable and proportionate discovery plans, particularly in larger and more complex cases) or as agreed by the parties.

This model embraces the notion of proportionality – that the process should match the complexity and size of the dispute and that the arbitrators are the key actors in imposing appropriate limits. Where all stakeholders understand the opportunity to shape a process to fit the dispute and are willing to exercise good judgment in designing and executing an appropriate process, economy and efficiency will surely be the result.

Endnotes

- 1 See 9 U.S.C. § 201 *et seq.*
- 2 See, e.g., *Mitsubishi v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614 (1985).
- 3 9 U.S.C. § 1 *et seq.*
- 4 See JAMS advertisements in various industry publications.
- 5 The International Chamber of Commerce (“ICC”) estimates that 82% of the cost of an international arbitration is the cost of outside counsel. The remaining 18% is divided 16% to the arbitrators and 2% to the provider institution. *Techniques for Controlling Time and Costs in Arbitration, Report of the ICC Commission on Arbitration* (cited herein as “ICC Report”), Introduction.
- 6 E.g. ICC Rules of Arbitration (“ICC Rules”), Art. 32(1); JAMS International Arbitration Rules, Art. 21. See also Paul D. Friedland, *Arbitration Clauses for International Contracts*, Ch. 5, 9.
- 7 U.S. Domestic commercial arbitration providers offer separate sets of streamlined or expedited rules. See, e.g., JAMS Streamlined Arbitration Rules and Procedures; American Arbitration Association Expedited Arbitration Rules (within the AAA Commercial Arbitration Rules) and JAMS Expedited Arbitration Procedures, Rules 16.1 and 16.2 within the JAMS Comprehensive Arbitration Rules and Procedures. The adoption of such specialised rules in the international context is addressed more fully below.
- 8 See ICC Report, ¶ 7 (risk that clause-based time limits for issuance of an award will result in jurisdictional and enforcement problems if the time specified is unrealistic or unclear). See also UNCITRAL Notes on Organizing Arbitral Proceedings (“UNCITRAL Notes”) at 89.
- 9 ICC Report at ¶¶ 9, 15.
- 10 Be sure the arbitrator is also reasonably available to spend adequate time to manage the case and to be available for a hearing in a reasonable time frame. *Id.* at ¶ 12.
- 11 See ICC Report, ¶¶ 21, 31-34; JAMS Efficiency Guidelines

- for the Pre-Hearing Phase of International Arbitrations (“JAMS Guidelines”) at pp. 2-3; New York State Bar Association Guidelines for the Arbitrator’s Conduct of the Pre-hearing Phase of International Arbitrations (“NY State Bar Guidelines”) at pp. 2-3. The preliminary conference is often referred to as the “case management conference.” We use the terms interchangeably. (Often there are multiple conferences but for simplicity we refer to either in the singular.)
- 12 ICC Report at ¶ 11.
- 13 Under ICC practice the Statement of Claim is not expected to set out the full particulars of the claim but must comply with all formal elements required under the Rules. More complete statements may be required as part of the preparation of terms of reference or thereafter. ICC Report, ¶ 16, 17, 22-24. See also Rules of the Netherlands Arbitration Institute which, in Rule 4.5 provides for a short statement of claim to be followed by more detailed pleadings.
- 14 There is a caveat here. Some civil systems insist upon extremely detailed initial statements of claim supported by the evidence upon which a party intends to rely. If that be the case, then by all means comply with the rule or custom. Most international provider rules, however, do not impose such a requirement, and a shorter, more concise, statement of claim will usually lead to a faster proceeding with time later provided for further evidentiary submissions.
- 15 ICC Report, ¶ 21-23, 31; JAMS Guidelines at p. 2; NY State Bar Guidelines at p. 2.
- 16 With a tripartite panel, at least the chair must have these skills, but they are desirable for all arbitrators. Routine, administrative and procedural rulings are often delegated to the Chair of the Panel. See ICC Report at ¶ 26.
- 17 ICC Report, ¶ 41.
- 18 See, e.g., IBA Rules on Taking Evidence, Art. 3, 4; UNCITRAL Notes, ¶ 50.
- 19 The “e-discovery” debate is somewhat of a red herring. Whether arbitrating parties like it or not, the world now operates almost wholly by electronic communication, whether email or other forms of such communication. Thus, it is meaningless to decry “e-discovery” generally. Any document disclosure regime will include electronic communications. The real issue is how to control and manage such disclosure to avoid unnecessary burden and expense. See NY State Bar Guidelines, pp. 4-6; ICC Report, ¶¶ 52-55; IBA Rules on Taking Evidence, Art. 3, 4.
- 20 JAMS Guidelines at p. 2. See also NY State Bar Guidelines at p. 2. See also Ex. A to both Guidelines, which detail relevant factors in determining the appropriate scope of prehearing disclosure in international arbitrations.
- 21 This provision applies to all international arbitration proceedings administered by ICDR and commenced after May 31, 2008, unless the parties expressly agree to opt out of its application.
- 22 The IBA and ICC have not yet issued any e-discovery guidelines but the matter is under consideration within both bodies.
- 23 JAMS Guidelines pp. 4-5; see NY State Bar Guidelines at p. 5.
- 24 The use of a Redfern schedule may also add considerable efficiency to the process.
- 25 JAMS Guidelines at p. 5; see NY State Bar Guidelines at pp. 5-6.
- 26 See UNCITRAL Notes at ¶¶ 59-73, IBA Rules on Taking Evidence, Art. 4-6.
- 27 See generally, JAMS Guidelines at pp. 5-6 and NY State Bar Guidelines, pp. 6-7 for effective techniques to limit dispositive motions.
- 28 ICC Report, ¶ 15.
- 29 College of Commercial Arbitrators, *Protocols for Expeditious, Cost-Effective Commercial Arbitration*, pp. 43-60 (2010).
- 30 JAMS also gives the parties the option, without cost, of appointing a “Mediator in Reserve” who stands by to mediate an international case when the parties feel they are ready. This programme is described in detail on the JAMS website, www.jamsadr.com.

**Richard Chernick**

JAMS
707 Wilshire Blvd., 46th Floor
Los Angeles, CA 90017
USA

Tel: +1 213 620 1133
Fax: +1 213 620 0100
Email: rchernick@jamsadr.com
URL: www.jamsadr.com

Richard Chernick is Vice President and Managing Director of JAMS' Arbitration Practice. He has conducted hundreds of large and complex arbitrations and mediations employing various rules and before major administering institutions, both domestic and international. Specific subject matters range from commercial, real property, employment, entertainment, intellectual property, technology, telecommunications, biotechnology, construction to public law matters. He is the author or co-author of leading texts on ADR, employment ADR and international arbitration and mediation; he is a frequent trainer and lecturer on arbitration and mediation topics. Richard is a former Chair of the Dispute Resolution Section of the American Bar Association and the Founding President of the College of Commercial Arbitrators. He served as the ABA's Advisor to the Revised Uniform Arbitration Act. He is a Fellow of the Chartered Institute of Arbitrators and a member of the arbitration panels of the Hong Kong International Arbitration Center, the Beijing Arbitration Commission, the Kuala Lumpur Regional Centre for Arbitration and the Chicago International Dispute Resolution Association (CIDRA).

**Robert B. Davidson**

JAMS
620 Eighth Avenue, 34th Floor
New York, New York 10018
USA

Tel: +1 212 751 2700
Fax: +1 212 751 4099
Email: rdavidson@jamsadr.com
URL: www.jamsadr.com

Mr. Davidson is a retired senior litigation partner formerly at Baker & McKenzie in New York and a highly respected arbitrator and mediator with significant complex financial, commercial and international claims experience. Since October 2003, he has been a full-time mediator and arbitrator and the Executive Director of JAMS' Arbitration Practice.

Mr. Davidson is the past Chair of the Committee on Arbitration of the New York City Bar Association, sits regularly as a sole arbitrator, chairman or member of tripartite panels in numerous domestic and international arbitrations conducted under the rules of various institutions including JAMS, the ICC, the AAA, the ICDR, CPR, CIETAC, the Hong Kong International Arbitration Centre, and the Netherlands Arbitration Institute. He has also mediated over 200 commercial disputes. He is listed by Chambers as one of the leading international arbitrators in the United States and is also listed in various *Who's Who* publications and has been named a New York Super Lawyer in ADR since 2006.

Education: J.D., Columbia University School of Law, 1972 (Harlan Fiske Stone Scholar); B.S. in Economics, *cum laude*, Wharton School of Finance and Commerce, University of Pennsylvania, 1967.



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