

Developments in financial services arbitration: Revision of the ISDA arbitration guide

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International arbitration is increasingly recognized as the preferred dispute resolution mechanism for cross-border derivative transactions. The International Swaps and Derivatives Association, Inc. (ISDA) originally published its arbitration guide in 2013 (2013 Arbitration Guide) and recently revised and updated this, producing an updated guide in 2018 (2018 Arbitration Guide) which provides useful guidance on the use of an arbitration clause with both the 2002 and 1992 ISDA Master Agreements.

Hogan Lovells lawyers from our offices across the globe – including Hong Kong, London, New York, Paris, and Shanghai – participated in the ISDA consultation process together with other ISDA members, major financial institutions, arbitral institutions, and other law firms. We welcomed this opportunity and the publication of the 2018 Arbitration Guide as we see a growing number of financial disputes being referred to arbitration, particularly those involving parties from emerging markets. The 2018 Arbitration Guide will undoubtedly serve users of the ISDA Master Agreements well in understanding and crafting the appropriate mechanisms to resolve their financial disputes.

In response to users feedback, the 2018 Arbitration Guide added a number of new model clauses and made several amendments reflecting recent developments in institutional rules and international arbitration practices. The most notable change is that the 2018 Arbitration Guide now provides model clauses referring disputes under the 2002 or 1992 ISDA Master Agreement to be arbitrated under:

- the Arbitration Rules of the Stockholm Chamber of Commerce (SCC) with Stockholm seat;
- the Arbitration Rules of the German Arbitration Institute (DIS) with Frankfurt seat;
- the Dubai International Financial Centre-London Court of International Arbitration (DIFC-LCIA) Arbitration Rules with DIFC seat; and
- the Arbitration Rules of the Vienna International Arbitration Centre (VIAC) with Vienna seat.

Their inclusion is a seal of approval given the reputation and capability of these institutions and seats to resolve complex cross-border derivative disputes.

In addition, the 2018 Arbitration Guide contains a model clause for use with the 2002 ISDA Master Agreement (Irish law), which provides for arbitration under the LCIA Rules with a seat in Dublin.

These model clauses are in addition to those currently in the 2013 Arbitration Guide providing for arbitration under:

- the Rules of Arbitration of the International Chamber of Commerce (ICC) with London, New York, and Paris seats;
- the Arbitration Rules of the LCIA with London seat;
- the Arbitration Rules of the American Arbitration Association-International Centre for Dispute Resolution (AAA-ICDR) with New York seat;
- the Administered Arbitration Rules of the Hong Kong International Arbitration Centre (HKIAC) with Hong Kong seat;
- the Arbitration Rules of the Singapore International Arbitration Centre (SIAC) with Singapore seat;
- the Swiss Rules of International Arbitration with Zurich or Geneva seat; and
- Panel of Recognized International Market Experts in Finance Arbitration Rules (P.R.I.M.E. Finance Rules) with London, New York, and The Hague seats.

The aim of the 2018 Arbitration Guide is not a wholesale replacement, but rather an update, and much of the 2013 Arbitration Guide has been left intact. The 2018 Arbitration Guide does however, refer to recent trends in international arbitration such as the rise in multi-party and multi-contract disputes, the advent of summary/early determination procedures, as well as the implications of recent decisions (such as the Russian Supreme Court holding that a clause providing for arbitration under the ICC Rules would lack certainty under Russian law if it were to fail to state expressly that the ICC International Court of Arbitration would administer the arbitration).

The 2018 Arbitration Guide is published at a time where financial institutions and their counsel are contemplating arbitration with much greater interest than ever before. In the 2018 version of Queen Mary University of London's International Arbitration Survey, more than half of the respondents anticipate an increased use of arbitration in the Banking and Finance sector – an increase from the previous iteration of the survey. There are also clear signs that arbitral institutions are now making every effort to enhance their arbitral rules and services to better accommodate finance disputes in the arbitration setting, such as the HKIAC's creation of a Panel of Arbitrators for Financial Services Disputes and recent amendments to its rules providing for an early determination procedure. Coupled with the advantages of arbitration (including the resolution of disputes involving parties in emerging markets and the enforcement of an arbitral award under the New York Convention, the prospect of a neutral forum, and the ability to choose specialist arbitrators who are familiar with the ISDA Master Agreement), it is highly expected that the use of arbitration to resolve disputes in the financial services sector will only grow in the near future.

As a global firm with leading arbitration and derivative practices in key financial centers across the globe, we are in the best position to assist our clients in light of the growing number of financial disputes being referred to arbitration, particularly those involving parties from

emerging markets. For all questions related to derivatives and arbitration matters, please do not hesitate to get in touch with the relevant Hogan Lovells contacts in this alert.

The 2018 Arbitration Guide can be downloaded [here](#).

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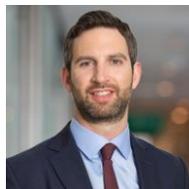
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