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Legal Aspects of Regional Laws – Procedures and Rules of Arbitration

A PAPER BY

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Introduction

The author is a practising Arbitrator in London and in St Vincent and the Grenadines, specialising in commercial disputes with particular emphasis on construction, engineering and energy disputes. Also a Deputy District Judge[1], practising Barrister and Mediator, the author has a wide experience of various forms of arbitration in the Caribbean, the UK and internationally.

Litigation has traditionally been the most common way of resolving most legal disputes. It is, of course, slow and costly. Nowadays there are numerous forms of Alternative Dispute Resolution ("ADR") which are suitable for use in resolving disputes and offer a cost effective alternative to litigation. Arbitration is probably the most well known and widely used form of ADR.

[1] South East Circuit in England

Comparing arbitration and litigation

General

Arbitration is an alternative to litigation; it is a private mechanism to resolve commercial disputes. The following is a brief comparison.

Confidentiality

Arbitration: there is no statutory provision on arbitral confidentiality but arbitration is generally confidential. Confidentiality regarding the documents produced and the award maybe implied as a matter of law; this is the case in England and Wales but differs depending on jurisdiction. Arbitration hearings are private and the awards are generally not publicised. However, if a party has to take enforcement action before the courts then the award may become a public document depending on whether the court hears the application in private.

Litigation: statements of case can be viewed and copied by the public. Any documents that are read in open court become public; generally hearings are in open court.

Procedure

Arbitration: much more flexible than litigation, both in terms of time and procedure. Parties can determine the arbitration procedure to be followed in the arbitration agreement either by setting it out in the arbitration agreement itself, adopting Institutional rules or setting out ad hoc rules such as UNCITRAL rules. Alternatively, the procedure can be left to the tribunal, once appointed, to set out in directions. In most cases, arbitration will be quicker which may result in lower costs than litigation.

Litigation: regulated by the CPR which is relatively inflexible but provides predictability as to procedure.

Fees

Arbitration: fees associated with arbitration are usually significantly higher than court fees in litigation as the parties pay the tribunal's fees and expenses. In some instances monies are required at the start of the arbitration process, for example in ICC arbitrations. The fees payable

are dependant upon the amount in dispute. Parties will also generally pay for the use of the arbitration venue.
Litigation: whilst there are fees associated with litigation (for example, fees to start a claim or making an application) there are no fees associated with the trial itself i.e. judge and venue fees.

Arbitrators'/judges' powers
Arbitration: arbitrators' powers depend on the applicable law. In England under the Arbitration Act 1996 ("AA 1996"), arbitrators have mandatory and non-mandatory powers; the non-mandatory powers can be limited by party agreement. It also provides for situations where arbitrators do not have any power, for example, unless agreed by the parties, arbitrators have no power to consolidate proceedings or to set concurrent hearings - section 35.
References: AA 1996, s 35
Litigation: the judges' powers derive from court rules or the courts inherent discretionary power. Judges powers cannot be circumscribed by parties although they may be by statute. For example, the Arbitration Act 1996 provides that a court may not hear a dispute brought before it and must stay the proceedings if there is a valid arbitration clause - section 9.
References: AA 1996, s 9

Interim measures
Arbitration: arbitrators can grant interim measures, unless precluded from doing so by the arbitration agreement. If an interim measure is not granted in an award, the tribunal order granting interim measures cannot be enforced and its execution will be based on parties' consent. It is therefore sensible to seek to have any interim measures set out by the tribunal in an interim award.
Litigation: the CPR provides the court with powers to grant interim measures such as security for costs, freezing orders and search orders.

Awards/judgments

Arbitration: awards are final and binding. The method of enforcement depends on whether it is a domestic or international award. Domestic awards are enforced in the same manner as judgments; by leave of the courts. Enforcement of foreign awards will depend on whether that country is a signatory of the New York Convention. If it is, arbitration awards can only be challenged or appealed in limited circumstances.

Litigation: court judgments requiring enforcement abroad can only be done so in accordance with various international doctrines or conventions concerning judicial assistance in civil matters. These are generally less effective than the New York Convention.

Laws of Arbitration in the Caribbean

In many jurisdictions in the Caribbean, the laws of arbitration have not changed since colonial days. One of the oldest examples of this is the Arbitration Act in Jamaica which dates from 1900. More recent versions include Trinidad 1939, St Vincent and the Grenadines 1952 and Antigua 1975.

By comparison the current Arbitration Act in England is 1996, in New Zealand 1996, in Belize 2000, in Singapore 2002, in Scotland 2010. Other countries that have recently passed new Arbitration Acts include the following:

Ireland

Ireland brought into force the Arbitration Act 2010, which significantly altered the previous position. Prior to this coming into force, separate legislation applied to domestic and international arbitrations; domestic arbitrations were governed by the Arbitration Act 1954 (“the 1954 Act") as amended by the Arbitration Act 1980 (“the 1980 Act"), and international arbitrations were governed by the Arbitration (International Commercial) Act 1998 (“the 1998 Act"). The 1998 Act adopted the UNCITRAL Model Law (as adopted by the United Nations Commission on International Trade Law on 21 June 1985) (“the Model Law"). Under the 2010

Act, the Model Law now applies to all arbitrations in Ireland. Where there is a difference between the 2010 Act and the Model Law, the 2010 Act prevails.

The British Virgin Islands

The British Virgin Islands' (BVI) government brought into force the Arbitration Act 2013, which came into force on 1 October 2014. The Arbitration Act is modelled on the UNCITRAL Model Law on International Commercial Arbitration as adopted by the UN Commission (on 21 June 1985) and further amended (7 July 2006), which provides rules on arbitration proceedings and is recognised internationally.

Barbados

Barbados passed the International Commercial Arbitration Act in 2007. This adopted the UNCITRAL Model Law (with a few amendments) for international arbitrations and does not apply to domestic arbitrations.

Copies of the Acts are available on request

But why does it matter that some Acts are very old? How do the more recent Acts differ form those long ago? One difference is the extent to which the Courts may interfere and become involved in arbitration proceedings. The trend has been to reduce the scope and power of the Courts to dabble in arbitration. The philosophy has been to support and enforce the parties' chosen method of resolving their disputes where there is a valid arbitration agreement.

Earlier acts included, for example, the right of a Court to order an arbitrator to submit a 'Statement of Case' to the Court on a point of law (See for example s.32 of the Trinidad Arbitration Act). More recent Acts do not provide for such Court intervention and leave it to the arbitrator to decide both facts and law.

Institutional and UNCITRAL rules

As a supplement to the applicable Laws, in international arbitrations parties often agree a set of Rules which will govern the procedure to be followed and the powers of the arbitrator. The Rules applicable to an arbitration are generally agreed by the parties and specified in the arbitration agreement but they can also be agreed at the commencement of the arbitration. Rules in common use in international arbitrations include the following:-

ICC
LCIA
ICDR - AAA
Swiss Arbitration Rules
Stockholm Chamber of Commerce
WIPO
UNCITRAL

Which institutional rules are the most appropriate? The key aspects of the various Rules listed above are summarised in Appendix A to this paper.

In dealing with applications to the Court, Judges may need to consider the Rules applicable to an international arbitration and may wish to take account of how such Rules have been interpreted by Courts in other jurisdictions.

<u>How do Courts deal with applications arising from arbitrations?</u>

a) The Privy Council and arbitration; Some sample cases:-

<u>*Cukurova Holding A.S v Sonera Holding B.V [2014] UKPC 15 [British Virgin Islands]*</u>

In the context of an international arbitration, the Privy Council noted the judicial constraints on the court to review any award made under the New York Convention: *"the court cannot refuse to enforce an award on the ground* of *error* of *law, or fact":* paragraph 4. The Privy Council further stated that even when considering the jurisdiction of the arbitral tribunal that it would consider what the arbitral tribunal had to say about its own jurisdiction; at Paragraph 28: *"In*

addition, although the question of jurisdiction is a *matter for the court and not the arbitral Tribunal, the views* of *the Tribunal are nevertheless relevant".*

In the particular international context of this arbitration, the Privy Council further observed that: "***The general approach to enforcement of an award should be pro-enforcement.*** *See e.g. Parsons & Whittemore Overseas Co Inc v Societe Generale 508 F 2d 969 (1974) at 973:*
"*The 1958 Convention's basic thrust was to liberalize procedures for enforcing foreign arbitral awards ... [it] clearly shifted the burden of proof to the party defending against enforcement and limited his defences to seven set forth in Article V*". (Emphasis added)

The Privy Council also made a comparison between the approach of the BVI, and that of English courts: *"Section* 36(3) *reflects Article V(2)(b) of the New York Convention and provides that enforcement may be refused if it would be contrary to public policy, here the public policy of the BVI. It is contrary to public policy in England to enforce a foreign arbitral award where the foreign proceedings violated English principles of natural justice: see e.g. Adams v Cape Industries [1990J Ch* 333. *The same is true of BVI public policy".*

<u>*Alternative Power Solution Limited v Central Electricity Board and another*</u>

<u>[2014] UKPC 31 [Mauritius]</u>

The Privy Council held that the inclusion of an arbitration clause in an agreement between two contracting parties supported the status of a letter of credit as an irrevocable obligation on the second Respondent bank (Standard Bank). The Privy Council identified the arbitration clause as clearly segregating the matters to which the bank could and could not have regard:

> "*the paying bank must pay under* a *letter* of *credit provided only that the documents presented to it conform to the formal requirements* of *the letter of credit. The bank is not concerned with any underlying dispute between the parties. That principle is underlined in this case by the fact that any such dispute is subject to the arbitration clause in the contract*"*:*
> Paragraph 33.

Sans Souci Ltd v. VRL Services Ltd [2012] UKPC 6 [Jamaica]

The Privy Council's judgment recognised the boundaries of the court and the arbitral tribunal's powers following the remission of a matter to an arbitral tribunal. The order from the Court of Appeal had stated that the question of damages was to be remitted. In the judgment of the court it was clear that it was only one part of the total award of damages which was to be considered (the "unrecoverable expenses"). The arbitral tribunal refused to review anything other than the unrecoverable expenses

> "*The Court has only limited powers of intervention. It exercises them on well-established grounds such as (to take the case arising here) the arbitrators' failure to deal with some matter falling within the submission. The reopening by the arbitrators of findings which there were no grounds for remitting and which they had already conclusively decided would therefore have been contrary to the scheme* of *the Arbitration Act. The terms* of *the order may* of *course in some cases be such that it must be concluded that the Court did exceed the proper limits of its functions. But it should not readily be assumed to have done so, especially when its reasons show that it has not":* Paragraph 17.

*The Belize Bank Limited v. The Attorney General of Belize and other*s [2011] UKPC 36 [Belize]

The Privy Council defers to the national court's assessment of the bias of an arbitral tribunal: Lord Dyson (at paragraph 76) states that *"the Board should recognise that the judges of Belize are better equipped than we are to* assess *how the fair-minded and informed Belizean would view matters"*.

Bay Hotel and Resort Limited and Zurich Indemnity Company of Canada v. Cavalier Construction Co. Ltd. and Cavalier Construction Co. Ltd [2001] UKPC 34 [Turks and Caicos Islands]

The Privy Council deferred to the law of the arbitration, and noted that

> *"the question is not what English common lawyers would* say. *It is what reasoned award or written explanation of the award would mean to persons versed in working with the AAA code.*
> *This is a question of fact, analogous to a question of trade usage or custom. Ground* CJ *found Professor Saper's evidence upon it impressive and conclusive. The Court of Appeal affirmed the Chief Justice; they justifiably treated his evidence as not discriminating on this question of interpretation between American law generally and the AAA rules. Their*

Lordships could not rightly differ. However lean and unembellished, the award with its supplement must be found to have been reasoned within the meaning of *the institutional rules. It is not without relevance, albeit not decisive, to add that counsel for The Bay accepted in the Privy Council that, if the arbitration had been governed by United States law, the award and supplement would have to be treated as* a *reasoned award. Whether or not the curial law of the arbitration, United States law is* a *major aid in interpreting the AAA rules. And it would be unconvincing to propose that, when those rules apply, the meaning for their purpose of "*a *written explanation* of *the award" or* "a *reasoned award" will vary according to where the arbitration is held. The main attack upon the award must fail":* Paragraph 43.

b) Recent and/or important cases from the Court of Appeal and House of Lords in England which illustrate the Courts' (supportive) attitude to arbitration;

AES Ust-Kamenogorsk Hydropower Plant LLP v. Ust-Kamenogorsk Hydropower Plant JSC

The Supreme Court affirmed the proposition that a parties' choice of jurisdiction and arbitration clauses takes precedence over the public policy considerations of other legal systems:

"it is clear that the English courts have not hesitated to prefer the parties' choice of English jurisdiction and arbitration clauses to even the public policy requirements of foreign law as *expressed in foreign statute and/or applied in the decisions of foreign courts. This court is not bound by the Kazakhstan courts' construction of the English law arbitration agreement (subject to any question of submission) or by its view that it is contrary to Kazakhstan public policy":* Paragraph 163.

Mr Anthony Lombard-Knight, Mr Jakob Kinde v. Rainstorm Pictures Inc [2014] EWCA Civ 356

The Court of Appeal addressed several matters relating to the validity, and other formal requirements *of* arbitration agreements. In particular, the court noted that under the New York Convention *"the validity of the arbitration agreement* is *dealt with at s. 103(2)(a) and (b) and a challenge to validity is* a *metier for the party resisting recognition and enforcement to raise and prove":* Paragraph 27.

In the same judgment the Court of Appeal addressed the question of the language of the Arbitration Act 1996, which replicates the New York Convention: the statute *"embraces two*

concepts, authentication and certification. The question in this appeal concerns the manner in which a *copy* of *an original arbitration agreement may be duly certified":* Paragraph 1.

The need for formal comparison with the original and subsequent copies of the arbitration agreement was dismissed, and the level of formal authentication required in a digital age was also discussed: in the instant case, the court found that the

> *"Claim Form and its identified attachments produced duly certified copies of the original arbitration agreements. It was inherent in Mr Hodge's Statement of Truth that they were true copies of the originals. By production of the Claim Form it was made sufficiently clear that it was contended by Rainstorm and verified by a statement of truth that these documents were what they purported to be and apparently were, viz, copies of the original arbitration agreements. No doubt it is better practice for the Statement of Truth, Affirmation or Witness Statement to speak expressly to the accuracy of the copy, as envisaged by Mustill and Boyd, but it would I think introduce an unnecessary element of formalism to require the deponent to be able to say that he has compared the copy with the original. It is I think sufficient to say that on the basis of the maker of the statement's information and belief it is a true copy. I note that Ms Beutler does not suggest that she has compared the copy award with the original award, although as Business Manager of the Los Angeles Resolution Center of JAMS she presumably had an opportunity of so doing. It is not suggested that her certificate is insufficient.*
> *34. I would also point out that in modern business conditions an arbitration agreement will very often be found in an exchange of emails, just as in earlier times it will have been found in an exchange of fax messages or an exchange of telexes. The Convention itself speaks of an exchange of telegrams. As it happens there are here traditional signed agreements. However it would be absurd to suggest that the certifier must have actually seen the written record of an electronic transmission as it was first perceived by either the sender or the receiver. The process is intended to promote enforcement, not to put meaningless and purposeless hurdles in the way of enforcement": Paragraphs 33-34.*

<u>*Sucafina SA v. Rotenberg* [2011] EWHC 901</u>

The Court of Appeal distinguished between the different kinds of award, which can be made under the Arbitration Act 1996. Specifically, the notion of a temporary award was rejected: "*an award is either final and binding or it is not. The draftsmen of rules which were intended to facilitate arbitration in London under the provisions of the 1996 Act would never have intended to create such a species of award. It is unfortunate that the draftsman of the rules used the term "interim" as it is capable of giving rise to confusion and also unfortunate that the distinction I have drawn in paragraph 23 above was not reflected exactly in the rules*"; Paragraph 26.

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c) Cases from other Commonwealth countries (e.g. Australia, Canada, Trinidad, Jamaica) which illustrate their Courts' attitude to arbitration;

Mr Vento v. Mr Lake CLAIM NO AXAHCV2013/01 02 [Anguilla]

The court there compared the position in Anguilla with the position in the British Virgin Islands relating to arbitration. Whilst Anguilla has incorporated the Arbitration Act 1996 into its system of law, there was no equivalent of the British Virgin Islands' Arbitration Ordinance 1976, which expressly passed into law The New York Convention. Accordingly the provisions of the New York Convention did not have force in Anguilla: Paragraph 13.

Anzen v. Hermes One Ltd BVIHCMAP2014/0013 [British Virgin Islands]

The court set out the circumstances in which parties will, and will not be bound to arbitration, where there is merely an option for arbitration: An arbitration clause which provides for an option to arbitrate does not create an immediately binding contract to arbitrate. However, as soon as one of the parties invokes the arbitration clause by referring the dispute to arbitration, there is a binding agreement to arbitrate which is covered by section 2 of the Arbitration Act. If one of the parties by-passes the arbitration clause and files a claim in court, the other party still has the option to invoke the arbitration clause, refer the matter to arbitration and apply for a stay of the court proceedings. If the party against which the court proceedings were brought does not refer the matter to arbitration, or submits to the court's jurisdiction, the dispute will proceed under the court's jurisdiction. The appellants not having referred the disputes to arbitration, there was no binding agreement between them and the respondent to refer the disputes to arbitration and therefore, a stay under section 6{2) of the Arbitration Act was not available to them.

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CONCLUSION

In many areas of commerce, arbitration is considered to be the preferred method of resolving disputes arising under international contracts. Foreign companies do not wish to become involved in lengthy and costly litigation in local courts where they are unfamiliar with the procedure and the applicable laws. It is for this reason and often for reasons of confidentiality, that parties include an arbitration clause in their contract. Having specified arbitration as their preferred method of resolving disputes, they expect that the arbitration will proceed unhindered by the courts and that the arbitrator's Award will be valid and enforceable. What they do not expect or want is that arbitration becomes a preliminary step towards litigation.

For the Caribbean region to be competitive in a global market of international commercial arbitration, the applicable Laws must be brought up to date. Parties to international arbitrations expect that their choice to resolve their disputes privately and without undue delay to be respected and do not consider arbitration to be an interim step towards litigation in local courts. For this reason, the Courts should strive to uphold and enforce arbitration agreements and Awards.

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APPENDIX A - EXAMPLES AND COMPARISON OF ARBITRATION RULES

ICC

- Administration: arbitration administered by the International Chamber of Commerce (ICC) in Paris under the ICC Arbitration Rules.

References: ICC Rules

- Fees: the ICC and the tribunal's fees are fixed by reference to the amount in dispute.
- Commencement of proceedings: the proceedings are deemed to have been commenced on the date on which the claimant's request for arbitration is received by the ICC. The ICC notifies the request for arbitration to the respondent, which has 30 days to file its answer.
- Form of pleadings: the request for arbitration sets out the claim in some detail. The answer sets out the defence in some detail. The tribunal prepares the terms of reference, signed by the parties and the tribunal, which include a summary of the parties' claims and relief. No new claim can be submitted to the tribunal after the terms of reference are executed unless the tribunal has so authorised. Further submissions may be required by the tribunal following the execution of the terms of reference.
- Formation of the tribunal: in the absence of agreement, the ICC Court would appoint a sole arbitrator, unless it deems it necessary to appoint a tribunal of three arbitrators. If the arbitration agreement provides for a three-member tribunal, each party nominates an arbitrator or they agree the procedure of appointment for confirmation by the ICC Court.
- Multiple parties: multiple claimants or multiple respondents should nominate an arbitrator jointly. In the absence of a joint nomination or in the event that the parties are unable to agree a method for the constitution of the tribunal, the ICC Court may appoint each member of the tribunal.
- Seat: in the absence of an agreement between the parties, the ICC will determine the seat of arbitration.
- Award: the award must be reasoned. It must be rendered within six months from the last signature of the terms of reference (although this deadline is frequently extended).

LCIA

- Administration: the London Court of International Arbitration (LCIA) in London under the LCIA Arbitration Rules.

References: LCIA Arbitration Rules

- Fees: the LCIA's fees are: the registration fees plus an hourly fee for the time spent by the registrar or the deputy, a sum equivalent to 5% of the tribunal's fees plus expenses. The tribunal's fees are usually fixed at an hourly rate.

- Commencement of proceedings: the proceedings are deemed to have been commenced on the date on which the claimant's request for arbitration is received by the LCIA. The claimant notifies the respondent that the request has been submitted and the respondent has 30 days to file its answer.
- Form of pleadings: the request for arbitration sets out the claim. The respondent sets out in some detail the defence. Statement of claim, defence and reply follow.
- Confidentiality: all awards, orders and material submitted in the course of the arbitration are confidential unless the parties have agreed otherwise. A party can disclose such material in proceedings challenging or enforcing the award or when such disclosure is required by law. Deliberations of the tribunal are confidential to its members. The LCIA does not publish awards without the consent of all the parties and the tribunal.
- Formation of the tribunal: in the absence of agreement, the LCIA appoints the tribunal.
- Multiple parties: in the absence of written agreement concerning a joint nomination for the constitution of the tribunal, the LCIA may appoint each member of the tribunal.
- Joinder: the tribunal has the power to allow, upon an application of a party, a third person to be joined in the arbitration (provided the third person consents) and to make a single or separate award in respect of all the parties involved in the arbitration.
- Seat: in the absence of an agreement between the parties, the seat of arbitration is London.
- Award: it must be reasoned and in writing.

ICDR - AAA

- Administration: by the American Association of Arbitration (AAA) in Dublin (ICDR) or New York under the AAA International Arbitration Rules.

References: ICDR - AAA Rules

- Fees: institutional fees are fixed by reference to the sum in dispute. The tribunal's fees are usually fixed at an hourly rate taking into account the size and complexity of the case.
- Commencement of proceedings: the proceedings are deemed to have been commenced on the date on which the claimant's written notice of arbitration is received by the AAA. The claimant sends the notice to the respondent, which has 30 days to file its defence.
- Form of pleadings: the notice of arbitration sets out in some detail the claim. The respondent sets out in some detail the defence. Statement of claim, defence and reply follow.
- Confidentiality: all awards, orders and material submitted in the course of the arbitration must be kept confidential by the tribunal and administrator unless required by the applicable law or the parties have agreed otherwise. Unless the parties have

agreed otherwise, the AAA may publish awards edited to conceal the names of the parties and other details not in public domain.

- Formation of the tribunal: in the absence of an agreement, the AAA appoints a sole arbitrator unless it feels that the dispute has to be decided by a panel of three members.
- Multiple parties: the arbitral tribunal should be constituted in accordance with the parties' agreement. In the absence of a different agreement between the parties, the AAA may appoint each member of the tribunal within 45 days from commencement of the arbitration.
- Seat: in the absence of an agreement between the parties, the seat of arbitration is fixed by AAA.
- Award: it must be reasoned and in writing.

Swiss Arbitration Rules

- Administration: the six Chambers of Commerce in Switzerland under the Swiss Rules of International Arbitration.

References: Swiss Arbitration Rules

- Fees: institution and tribunal's fees are fixed by reference to the sum in dispute.
- Commencement of proceedings: the claimant submits its written notice of arbitration to any of the six chambers with a copy for each party. The respondent has 30 days to file its answer from the date on which it had received the notice of arbitration from the chamber.
- Form of pleadings: the notice of arbitration sets out the claim in detail. The respondent sets out the answer in detail. Statement of claim and defence would follow.
- Confidentiality: all awards, orders and material submitted in the course of the arbitration are confidential unless the parties have agreed otherwise. A party can disclose such material in proceedings challenging or enforcing the award or when such disclosure is required by law. Deliberations of the tribunal are confidential. In certain circumstances the awards may be published, e.g. where all the references to the parties have been deleted.
- Formation of the tribunal: in the absence of an agreement, the chamber appoints one or three arbitrators, depending on the circumstances.
- Multiple parties: the arbitral tribunal should be constituted in accordance with the parties' agreement. In the absence of a joint nomination or in the event that the parties are unable to agree a method for the constitution of the tribunal, the chamber may appoint each member of the tribunal.
- Consolidation: where a notice of arbitration is submitted between parties (even if the parties are not identical) already involved in other arbitral proceedings, the chamber may refer the new dispute to the tribunal already constituted.
- Joinder: the tribunal has the power to allow, upon an application of a party or of a third person, the joinder of the third person in the arbitration.

- Seat: in the absence of an agreement between the parties, the seat of arbitration is fixed by the special committee. This committee can ask the tribunal to make such determination.
- Award: it must be reasoned and in writing.

Stockholm Chamber of Commerce

- Administration: by the Stockholm Chamber of Commerce (SCC) in Stockholm under the Rules of Arbitration Institute of the Stockholm Chamber of Commerce.

References: SCC Arbitration Rules

- Fees: institution and tribunal's fees are fixed by reference to the sum in dispute.
- Commencement of proceedings: the proceedings are deemed to have been commenced on the date on which the claimant's written request for arbitration is received by the SCC. The SCC would notify the request to the respondent and the respondent has to file its defence within the time frame set by the SCC.
- Form of pleadings: the request for arbitration is followed by the reply, statement of claim and statement of defence. The tribunal may require further submissions.
- Formation of the tribunal: in the absence of an agreement, the SCC appoints one or three arbitrators, depending on the circumstances. Note that since 1 January 2010 the rules provide for the appointment of an emergency arbitrator prior to the formation of the tribunal. The emergency arbitrator will have powers to decide on any requests for interim measures prior to the appointment of the arbitral tribunal. The rules for emergency arbitrators are in appendix III of the SCC Rules
- Seat: in the absence of an agreement between the parties, the seat of arbitration is fixed by the SCC.
- Award: it must be reasoned and in writing.

WIPO

- Administration: by the World Intellectual Property Organisation (WIPO) Arbitration and Mediation Center under the WIPO Arbitration Rules.

References: WIPO Arbitration Rules

- Fees: institution and tribunal's fees are fixed by reference to the sum in dispute and taking into account an hourly fee rate.
- Commencement of proceedings: the claimant submits its request for arbitration to the WIPO Center and to the respondent, which has 30 days to file its answer.
- Form of pleadings: the request for arbitration sets out the claim in detail. The respondent sets out the answer in detail. Statement of claim and defence would follow.

- Confidentiality: all awards, orders and material submitted in the course of the arbitration are confidential unless the parties have agreed otherwise.
- Formation of the tribunal: in the absence of an agreement, the WIPO Center appoints one or three arbitrators, depending on the circumstances.
- Seat: in the absence of an agreement between the parties, the seat of arbitration is fixed by the WIPO Center.
- Award: it must be reasoned and in writing.

UNCITRAL

- Administration: the arbitration is not administered; however, the parties can request the Secretary-General of the Permanent Court of Arbitration at The Hague to designate an appointing authority for the selection of arbitrators.

References: UNCITRAL Rules (2010)

- Fees: the tribunal's fees are determined by the tribunal. There may be institutional fees in the event that an institution has served as appointing authority.
- The proceedings are deemed to have been commenced: on the date on which the claimant's notice of arbitration is received by the respondent.
- Form of pleadings: if notice of arbitration does not contain a statement of claim, the claimant must subsequently submit one. The respondent submits a statement of defence. Further submissions may be required by the tribunal.
- Formation of the tribunal: in the absence of agreement, three arbitrators are appointed. Each party appoints one arbitrator and the two arbitrators choose the chairman of the tribunal. In the absence of appointment the parties can request such appointment by the appointing authority (in the absence of which, a request to identify an appointing authority can be addressed to the Secretary-General of the Permanent Court of Arbitration at The Hague).
- Seat: in the absence of an agreement between the parties, the tribunal will determine the seat of arbitration.
- Award: it must be reasoned and in writing.

Which institutional rules are the most appropriate?

Depending on the circumstances, one institution may be more appropriate than another:

Issue	Institution
The arbitration is ad hoc	Consider UNCITRAL
The amount in dispute is substantial and the	May be cost-effective to choose an institution

issues in dispute are straightforward	in which arbitrators' fees are determined on an hourly basis, e.g. LCIA, ICDR - AAA and WIPO
Terms of reference are needed; useful in defining the scope of the arbitration and have the benefit of identifying subject matter, parties, relief sought, place of arbitration and procedural law (sometimes there is also a list of issues in dispute).	ICC: only major institution providing for terms of reference
Multi-party arbitration	ICC, LCIA, ICDR - AAA and Swiss Arbitration rules have provisions for multi-party arbitration
Joinder	LCIA and Swiss Arbitration rules
Require express statement that materials in the proceedings are confidential	LCIA, ICDR - AAA, WIPO and Swiss Arbitration rules. LCIA states expressly that it does not publish awards without the consent of all the parties and the tribunal
Intellectual property dispute	WIPO
Seat in London	LCIA provides that in the absence of a choice of the parties, the seat of the arbitration is London. Other institutional rules do not specify a place in the absence of party choice. The institution retains discretion to designate the seat

END

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