Introduction to ICDR Arbitration
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I. Introduction to ICDR arbitration 0.01

This book is a guide to the International Centre for Dispute Resolution (ICDR) International Arbitration Rules as amended by a Rules Revision Committee in 2014 (hereinafter referred to as the ‘ICDR Rules’ or the ‘2014 Rules’).1 The ICDR is the international arm of the American Arbitration Association (AAA) and one of four currently existing AAA divisions.2

0.02 While the bulk of this book is devoted to an article-by-article analysis of the ICDR Rules, an understanding and brief overview of the long history of the AAA leading up to the creation of its international division in 1996 and its subsequent expansion is important. The Introduction also provides a snapshot of statistics relating to the AAA’s and ICDR’s caseload, as well as a brief overview of the genesis of the ICDR Rules and major changes over time, leading up to the substantial overhaul of the ICDR Rules effected in 2014.

0.03 Statistics and information on the ICDR's standard administrative practices stated herein, unless indicated otherwise, are drawn from various AAA and ICDR public communications, material available on the AAA website,3 and/or discussions with ICDR senior management. Where appropriate, ICDR administrative practices will be discussed. Importantly, note that the ICDR is not bound by these administrative practices and may deviate from them to apply a different case management strategy where the parties’ particular agreement and/or the specific circumstances of the case so require.

(p. 2) A. The American Arbitration Association (AAA)—an historic foundation

1. The AAA’s history 0.04

The AAA was founded as a not-for-profit public service organization in 1926 and is the result of a merger of three pioneering arbitration groups active in New York in the early 1920s.

0.05 Inspired by Julian Cohen’s treatise, Commercial Arbitration and the Law, the New York Chamber of Commerce and the New York State Bar Association co-sponsored arbitration legislation resulting in the state of New York’s enactment of a first modern arbitration statute in 1920. The New York arbitration statute in turn inspired the formation of the Arbitration Society of America in 1922, instrumental in effecting the passage of the 1925 Federal Arbitration Act, the formation of the Arbitration Foundation in 1924, and the formation of the Arbitration Conference in 1925. The AAA is the result of a merger of the Arbitration Society of America, Arbitration Foundation, and Arbitration Conference in 1926.

2. The AAA’s case management approach
On both the domestic level and the international level, the AAA was founded with the ambition to be sufficiently adaptable to serve the evolving and ever-changing needs of its users and of interstate and international commerce.

The AAA's stated mission is to guide the parties fairly and equitably through the arbitral process in the most efficient manner while staying impartial as to the outcome of the dispute. The institution has had to develop its rules and its administrative procedures against a backdrop of what was once open hostility by the courts, legislators, and others towards arbitration. The general perception of, and attitude towards, arbitration has now greatly improved. Nevertheless, the AAA has always had to be very sensitive to ensuring that it does not get ahead of public sentiment, especially regarding more controversial issues such as consumer arbitration. In this respect, it can point to a very strong record of US and non-US courts upholding AAA awards and rejecting claims of institutional excess of power. Accordingly, the AAA and ICDR Rules should be understood as the product of careful incremental, at times innovative, changes in response to developing international and domestic norms and incorporating provisions that have been tested in US and foreign courts, so as to provide a high degree of quality assurance.

With its long history and experience in the field of alternative dispute resolution (ADR), the AAA developments continue to be driven by user demand. The AAA provides individuals, businesses, and governmental entities with services related to arbitration and other forms of dispute resolution.

The AAA's work extends beyond administering arbitrations. The institution plays an important role in various initiatives to promote the use of arbitration, to encourage the enactment of modern arbitration legislation, to develop procedures for the conduct of arbitral proceedings, and to implement educational programmes for users and neutrals to gain a greater understanding of arbitration practice.

The AAA administers cases for individuals and organizations that wish to resolve conflicts out of court. The AAA's administrative services include assisting in the appointment of mediators and arbitrators, setting hearings, and providing users with information on dispute resolution options, including settlement through mediation. Ultimately, the AAA aims to move cases through arbitration or mediation in a fair and impartial manner from filing until completion.

Additional AAA services include the design and development of ADR systems for corporations, unions, government agencies, law firms, and the courts. Various US government entities have turned to the AAA to assist in the resolution of disputes through over 300 state and federal statutes and regulations. The AAA also provides election services, as well as education, training, and publications for those seeking a broader or deeper understanding of ADR.

Headquartered in New York, the AAA maintains twenty-six offices worldwide. Since 2009, all of the AAA's cases, including international matters under the ICDR Rules and regardless of the type of case or the geographical location, are to be filed with the AAA Case Filing Center in Voorhees, New Jersey. Claimants should file directly with the AAA Case Filing Center, preferably electronically. Alternatively, Claimants may file at any other AAA office, including the ICDR's office in New York, or online. Indeed, in 2017, 347 ICDR cases have been filed online using the proprietary WebFile service administered by the AAA/ICDR. Once electronically submitted, the AAA/ICDR sends an acknowledgement via email to the filer promptly and does not require hardcopies in addition.

The AAA has continued to adjust its service portfolio to provide products to different industries requiring ADR services. It has also remained sensitive to its users' demands for organizational improvements. In 2010, the AAA created a customer-focused alignment of its resources through five divisions. Today, user demand is served through four divisions.

3. Principal AAA arbitration and mediation procedures

0.14 AAA arbitrations and mediations address a variety of industry-specific situations through general commercial and also industry-specific rules. These rules and procedures detail the steps in the resolution process, and ensure that all parties to a case are treated fairly and equitably.

0.15 In addition to the ICDR Rules, the AAA’s other principal sets of applicable rules and procedures comprise:

1. the Commercial Arbitration Rules and Mediation Procedures (including Procedures for Large, Complex Commercial Disputes) (the ‘Commercial Rules’);
2. the Construction Industry Arbitration Rules and Mediation Procedures;
3. Consumer Arbitration Rules;
4. the Employment Arbitration Rules and Mediation Procedures;
5. the Labour Arbitration Rules (including the Expedited Labour Arbitration Rules); and

0.16 The calculus used for deciding which set of rules applies to a specific dispute in an international context will be discussed in this chapter in detail. In general, however, the AAA Commercial Rules are commonly used for the AAA’s administration of US domestic commercial cases, but may also be applied in international cases administered by the ICDR. Cases involving claims or counterclaims either of which exceeds US$500,000 are subject to the Supplemental Procedures for Large, Complex Commercial Disputes, included with the Commercial Rules.

0.17 In 2013, the AAA issued revised Commercial Arbitration Rules effective as at 1 October 2013. The 2013 Commercial Arbitration Rules aim for ‘arbitrations to be more efficiently managed and predictable, while retaining the ability of parties to control and customize the arbitration process to fit the needs of a particular dispute’. All commercial cases with claims exceeding $75,000 will automatically proceed to mediation with the caveat that any party may unilaterally opt out of mediation. The AAA reported an increase of 51 per cent in AAA Commercial Case Mediations once the Commercial Arbitration Rules provided for mediation by default.

0.18 The AAA also administers a large number of construction cases. Construction disputes are subject to the Construction Industry Arbitration Rules and Mediation Procedures where the parties ‘have provided for arbitration by the [AAA] under its Construction Industry (p. 5) Arbitration Rules or whenever they have provided for arbitration of a construction dispute pursuant to the Rules of the AAA without designating particular AAA Rules’.

0.19 In addition, the Supplementary Rules for Fixed Time and Cost Construction Arbitration apply to construction disputes where the parties specifically agreed to them. Application of the Supplementary Rules allows parties to control the maximum time to complete the arbitration, the number of hearing days, and the arbitrator costs.

0.20 The AAA, in collaboration with the National Construction Dispute Resolution Committee (NCDRC), has made important changes to its rules for construction disputes to address user preferences for a more streamlined, cost-effective arbitration process. In 2014, the AAA introduced the new Supplementary Rules for Fixed Time and Cost
Construction Arbitration, effective 15 June 2014,22 and in 2015 it updated its Construction Arbitration Rules and Mediation Procedures effective 1 July 2015.23

0.21 In addition, the AAA applies the Consumer Arbitration Rules which were released in September 2014, replacing the Supplementary Procedures for Consumer-Related Disputes.24 The Consumer Arbitration Rules are the first stand-alone set of rules developed for arbitration clauses existing in agreements between individual consumers and businesses in which the business has a standardized, systematic application of arbitration clauses with customers, and where the terms and conditions of the purchase of standardized, consumable goods or services are non-negotiable or primarily non-negotiable in most or all of its terms, conditions, features, or choices. The Consumer Arbitration Rules include a glossary of ADR terms.

0.22 Since 2003, the AAA also administers class action arbitrations in accordance with the Supplementary Rules for Class Arbitrations. On 8 October 2003, in response to the ruling of the US Supreme Court in Green Tree Financial Corp v Bazzle,25 the AAA issued its Supplementary Rules for Class Arbitrations to govern proceedings brought as class arbitrations. In Bazzle, the Supreme Court held that, where an arbitration agreement was silent regarding the availability of class-wide relief, an arbitrator, and not a court, must decide whether class relief is permitted. Accordingly, the AAA administers demands for class (p. 6) arbitrations if the underlying agreement specifies that disputes arising out of the parties’ agreement shall be resolved by arbitration in accordance with any of the AAA's rules and the agreement is silent with respect to class claims, consolidation, or joinder of claims.26

0.23 Demands for class arbitration will not be administered where the underlying agreement prohibits class claims, consolidation, or joinder, unless a court orders the parties to the underlying dispute to submit any aspect of their dispute involving such issues to an arbitrator or to the AAA. While a class arbitration could conceivably arise in the international context, the ICDR has confirmed that no such action has ever been brought or administered by the ICDR.27

0.24 The AAA also administers cases relating to accounting, auditing, tax, and consulting services under its recently revised Accounting and Related Services Arbitration Rules and Mediation Procedures, effective 1 February 2015.28 These rules were changed to address demands for more efficient and cost-effective proceedings. To achieve this objective, the revised rules limit document requests.

0.25 Since November 2013, AAA/ICDR also provides parties with an elective streamlined, high-level review of arbitral awards under the Optional Appellate Arbitration Rules.29 The rules are intended for parties wishing ‘a more comprehensive appeal of an arbitration award within the arbitral process’.30 In particular, these rules allow parties to expand the grounds for review of arbitration awards, an option that is generally not available to them under the limited grounds of review conducted in a United States court in accordance with the US Federal Arbitration Act (FAA).31

0.26 Importantly, the Optional Appellate Arbitration Rules only apply where the parties have expressly agreed to an appeal of their arbitration award under the Optional Appellate Arbitration Rules.32 These rules allow for review of an award that was issued either ad hoc or under the rules of another arbitral institution.

0.27 According to Article A-10 of the Optional Appellate Arbitration Rules ‘[a] party may appeal on the grounds that the Underlying Award is based upon: (1) an error of law that is material and prejudicial; or (2) determinations of fact that are clearly erroneous’.33
The arbitral appellate process lasts about three months and the appellate arbitrators are drawn from the ranks of former federal or state judges and experienced arbitrators with strong appellate litigation backgrounds. For international awards, the appellate tribunal is to be selected from a separately maintained International Appellate Panel.

Additional sets of rules that the ICDR applies include the ICDR Supplementary Procedures for Internet Corporation for Assigned Names and Numbers (ICANN) Independent Review Process, the ICDR Protocol for Manufacturer/Supplier Disputes, and the Final Offer Arbitration Supplementary Rules (providing a structure for so-called ‘baseball arbitration’). The ICDR also administers ad hoc arbitrations pursuant to the Commercial Arbitration and Mediation Center for the Americas (CAMCA) Rules and the Inter-American Commercial Arbitration Commission (IACAC) Rules. For ad hoc arbitrations under the United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules, the ICDR applies its Procedures for Cases under the UNCITRAL Rules. All of these alternative or supplementary rules can be accessed through the ICDR’s website.

4. AAA early dispute resolution options

In addition to industry-specific arbitration and mediation procedures, the AAA offers a portfolio of tools that help lead to early dispute resolution. The AAA has developed a set of procedures for these scenarios including:

• ‘early neutral evaluation’ by means of expert assessment—neutral evaluations provide parties with an assessment of the merits of their case based on assessments by neutral third parties with industry-specific expertise;
• ‘fact-finding’ by means of an independent third-party fact investigation commonly referred to as ‘expert determination’ outside of the AAA context; and
• ‘mini-trials’, which, in their most common form, involve representatives from each company presenting the evidence in its case to a panel made up of an AAA neutral or panel chair and senior executives from each of the companies in the dispute.

In addition, the AAA/ICDR makes available a host of ‘à la carte’ services, including the ability to solely administer the finances of the arbitral process as well as the arbitrators’ compensation. Further AAA/ICDR services include: AAA eDiscovery Special Master Select, AAA Arbitrator Select: List Only or List and Appointment Services, Arbitrator Challenge Review Procedures for Non-Administered Arbitrations, and Judicial Settlement Conferences.

5. AAA’s additional services and online tools

In June 2013, the AAA launched a free new mobile app that provides access to AAA Rules, Codes and Protocols, and AAA contact information.

On 4 December 2012, the AAA launched an online arbitration and mediation tool called ClauseBuilder, designed ‘to assist individuals and organizations in drafting clear and effective arbitration and mediation agreements’. The tool is accessible at <http://www.clausebuilder.org>.

The ClauseBuilder allows parties to select the appropriate AAA/ICDR standard arbitration agreement depending on the nature of their contractual relationship and/or the type of dispute. The tool also permits users to specify in the arbitration agreement the number of arbitrators; the arbitrators’ qualifications; locale provisions; the governing law; the duration of arbitration proceedings; and whether to use arbitration, mediation, or both.
While the initial version of ClauseBuilder was created for domestic commercial contracts, today’s version compromises standard arbitration clauses for Construction, Executive/Negotiated Employment Contract under Employment Arbitration Rules, Health Care and International. The AAA added the ICDR’s recommended international arbitration clause to the ClauseBuilder tool in January 2016.

In 2015, the AAA in association with DecisionQuest, a litigation consulting firm, launched the online tool CaseXplorer Arbitration. CaseXplorer Arbitration aims to provide a cost-effective alternative to in-person mock arbitrations. A party can select evaluative arbitrators and present them with the facts and/or legal arguments of the case, as well as questions. The evaluative arbitrators are expected to respond with impressions of the case within forty-eight to seventy-two hours.

The AAA’s arbitration policy initiatives

More than a clearing house for arbitration, mediation, and early dispute resolution rules, the AAA also monitors the ADR legislative climate and intervenes where deemed appropriate to uphold the laws that support the enforcement of arbitration clauses and awards. While most of this is in the domestic US policy arena, as shall be discussed, the AAA/ICDR is actively involved in international policy initiatives, from judicial training to UNCITRAL Working Group meetings.

(a) Amicus briefs in Hall Street and BG Group v Argentina

Most prominently in the US domestic sphere, in 2007, the AAA filed an amicus brief in Hall Street Associates v Mattel, one of the most important arbitration cases decided in the past decade by the US Supreme Court. In Hall Street, the question presented was whether parties may expand the standards of judicial review of arbitration awards beyond those specifically provided for in the US Federal Arbitration Act (FAA).

The AAA viewed the case as one that was important with respect to the development of arbitration law in the USA and also believed that the AAA’s views would be of interest to the Court. The AAA’s amicus brief was filed in support of the prevailing view that the text of the FAA itself did not permit parties’ agreements for expanded judicial review, and that if such agreements were permissible, they would detract from the finality normally afforded to arbitration awards. In addition, the AAA emphasized that expanding judicial review of arbitration awards would result in the diminishing of the benefits of the arbitration process. The Supreme Court’s decision in Hall Street essentially embraced the positions advanced by the AAA.

In 2012, the AAA also filed an amicus brief in the internationally important BG Group Plc v Republic of Argentina case before the US Supreme Court. After obtaining an award in its favour, BG Group proceeded to enforce the award in the USA. The question arose whether a US court should either defer to or review de novo an arbitral tribunal’s interpretation of an investment treaty’s requirements for commencing arbitration.

The AAA’s interest in the case was twofold. First, the arbitration was conducted under the UNCITRAL Arbitration Rules, which served as the starting point for the International Rules. Second, the AAA sought ‘to ensure the continued development of arbitration law in a manner that supports the use of arbitration and that is consistent with the national policy favoring arbitration embodied in the Federal Arbitration Act’.

The AAA took the position that a de novo review of the arbitral tribunal’s interpretation of an investment treaty’s requirements for commencing arbitration (i) risks to impose ‘an unprecedented and unsupported “temporal limitation” on when the parties’ incorporation of [arbitration rules] became effective’; and (ii) that such review could be ‘used as a precedent to challenge the effectiveness of the incorporation of ... the rules of ... major arbitral institutions’. The AAA also argued that well-established case law granted
deference to the arbitrator’s finding whether a precondition to arbitration had been met. The Supreme Court agreed with the AAA’s position in its ultimate decision.

(b) The AAA-ICDR Foundation

On 29 October 2015, the AAA and the ICDR announced the establishment of the AAA-ICDR Foundation. In part financially supported by arbitrators’ annual panel fees, the foundation establishes and funds projects within its broad mission to support the use and improvement of dispute resolution processes in the USA and internationally. In 2017, the Foundation approved a total of twelve grants totalling approximately US$435,000, including a US$125,000 grant to fund a multi-year pilot for court online dispute resolution (ODR) for consumer debt cases, the New York State Unified Court System Online Dispute Resolution Platform.

(p. 10) 7. The AAA’s educational activities

The AAA does not decide any cases itself. Accordingly, it is dependent on fostering and strengthening knowledge of arbitration amongst judges, arbitrators, lawyers, and commercial users of its services. Its various initiatives take many forms.

Most obviously, the AAA invests in its panels of arbitrators and mediators and focuses on appointing qualified professionals quickly. AAA arbitrators and mediators are carefully screened and trained, and are required to possess years of industry-specific knowledge and experience. As of 2018, the AAA’s panel of neutrals includes more than 7,000 individuals located throughout the world. The AAA's international division maintains a worldwide panel of 745 arbitrators and mediators, of which more than half are located outside the USA. Members of the panels are required to undergo continued arbitrator and mediator training offered by the AAA in order to maintain an active status on the panel.

In addition to the guidelines provided in the relevant arbitration rules, arbitrator conduct is guided by the AAA’s Code of Ethics for Arbitrators in Commercial Disputes, co-authored with the American Bar Association (ABA).

Another example of the AAA’s educational outreach is its sponsorship of various projects aimed at students or younger arbitration practitioners. Besides its annual sponsorship of the Willem C Vis International Commercial Arbitration Moot in Vienna, Austria, and Hong Kong, two noteworthy initiatives in this respect include the establishment of ICDR Young and International (ICDR Y&I) and the A Leon Higginbotham Jr Fellows Program. In 2004, ICDR Y&I was created with the ambition to provide a professional development organization for international dispute resolution practitioners under the age of forty. ICDR Y&I membership is open to attorneys in the field of international dispute resolution, in-house counsel involved primarily in cross-border work, government employees involved in dispute resolution, and academics and graduate students with an interest in the field. As at publication, it has more than 3,000 members from 114 countries and has held more than fifty-five events in over twenty-four cities.

In 2009, the AAA also created the A Leon Higginbotham Jr Fellows Program in order to provide training, mentorship, and networking opportunities to up-and-coming diverse ADR professionals who have historically not been included in meaningful participation in the field of ADR. The AAA reported in 2013 that the Fellows Program was ‘showing concrete results, with past Fellows making gains in their ADR careers, including five prior Fellows who have successfully advanced to the AAA’s Roster of Neutrals’.

B. The International Centre for Dispute Resolution (ICDR)—the AAA’s division focused on international disputes
1. The ICDR's history

0.49 As international trade and commerce grew in the 1980s, so did international disputes. With this came a realization that international disputes present unique institutional challenges to those involved in providing dispute resolution services. These challenges include overcoming the complexities created by different languages, different legal cultures, and the logistical burdens inherent in cross-border disputes. 

0.50 In an effort to provide a framework for resolving international disputes, but within the structure of arbitration rules designed for largely domestic commercial matters, the AAA introduced its Supplement for International Commercial Arbitration in 1986. This set of additional rules, addressing issues such as the language of the proceedings, was designed as an add-on to the AAA Commercial Rules. The AAA continued to administer these ‘international cases’ together with US domestic cases. As will be discussed, it took until 1991 for the introduction of the first set of rules entitled ‘International Arbitration Rules’.

0.51 Meanwhile, the magnitude of international trade and international economic disputes merited a different institutional approach from the traditional industry-specific strategies applied by the AAA in US domestic settings. Having administered both US domestic and international cases for several years, in 1996, the AAA established its International Centre for Dispute Resolution (ICDR)—a new division, the name of which did not contain the word ‘American’.

0.52 Following a revision of the International Arbitration Rules in 1996–97, the ICDR was charged with all of the AAA’s international services. In its first year of existence, the ICDR already administered 194 cases. Twenty plus years later, the ICDR’s expertise in the administration of international arbitrations is well recognized.

(p. 12) 2. The ICDR’s case management approach

0.53 As stated in the ICDR’s 2010 International Dispute Resolution Procedures, the ICDR’s international case management system is:

premised on its ability to move matters forward, facilitate communications, ensure that qualified arbitrators and mediators are appointed, control costs, understand cultural sensitivities, resolve procedural impasses, and properly interpret and apply its International Arbitration and Mediation Rules.

The Fee Schedule further states:

Where the applicable arbitration agreement does not reference the ICDR or the AAA, the ICDR will attempt to obtain the agreement of all parties to have the arbitration administered by the ICDR/AAA.

Thus, for example, while the ICDR received 884 notices of arbitration in 2009, it administered only 836 of those cases.

3. ICDR New York headquarters, offices, and overseas locations

0.54 For its case management function, the ICDR maintains specialized administrative facilities in New York, where a staff of twenty multilingual attorneys fluent in at least eight languages supervises the administration of international cases. In June 2013, the AAA and ICDR moved their headquarters within New York to 120 Broadway in Lower Manhattan. By May 2013, the AAA/ICDR had already opened their New York Dispute
Resolution Center in Midtown Manhattan, housing the New York Regional Office and state-of-the-art AAA/ICDR hearing rooms.63

0.55 Not only because of the AAA's long ties to New York, but also because of New York’s prominence as a seat for international arbitration, New York was chosen as the ICDR's main administrative base. New York is by far the leading venue for cases administered by the ICDR, both by number of cases and by amount in dispute. In 2017, of a total of 1,026 new ICDR cases registered, 278 were seated in New York. Historically, approximately one in four ICDR cases filed each year designate New York as the place of arbitration.64 The most popular seats after New York were, respectively, Miami and Los Angeles. However, an increasing number (p. 13) of ICDR arbitrations are seated outside the USA.65 For example, in 2017, Canada was the seat of arbitration in thirty-one cases.66

0.56 In 2015, the ICDR opened two new offices in the USA to expand its case management services across several regions and the world.67 The Miami office focuses on the Southeast United States, Central and South America, and the Caribbean, in particular, for the practice areas Commercial, Construction, and Intellectual Property. The Houston office concentrates on the South-Central United States and cross-border actions in Mexico, with a primary focus on the energy sector.

0.57 In February 2006, the ICDR opened an office in Mexico City through a joint venture with the Mediation and Arbitration Commission of the Mexico City National Chamber of Commerce (CANACO).68

0.58 In October 2007, the ICDR also opened an office in Singapore through a joint venture with the Singapore International Arbitration Centre (SIAC). The affiliation resulted from the ICDR’s increasing Asian caseload and in recognition of Singapore’s growing role as a leading arbitration centre in Asia. As a direct effect of this growth, in August 2009, ICDR Singapore relocated its Asia Centre to Maxwell Chambers in Singapore.69

0.59 In December 2008, the AAA/ICDR signed a memorandum of understanding with Bahrain’s Ministry of Justice and Islamic Affairs to establish the Bahrain Chamber for Dispute Resolution (BCDR-AAA), the first ADR services provider in Bahrain. The BCDR-AAA developed its own rules based on the ICDR's International Dispute Resolution Procedures. The BCDR-AAA formally opened in January 2010.70 The BCDR-AAA Arbitration Rules were substantially revised in 2016.71

0.60 Established in 2015, the International Centre for Dispute Resolution Canada (ICDR Canada) provides dispute resolution services for Canadian domestic disputes nationwide. ICDR Canada operates under the auspices of the ICDR. ICDR Canada provides full administrative services and support from case filing to closing in English and French for arbitration, mediation, and arbitrator appointment services for parties located throughout Canada’s provinces and territories. Canadian parties have access to a dedicated administrative team and dozens of independent arbitrators and mediators across Canada.72

(p. 14) 4. International cooperative agreements

0.61 Beyond its own offices and immediate network, the ICDR also has access to hearing facilities and other services by means of some eighty-five cooperative agreements with arbitral institutions and chambers of commerce in fifty-two jurisdictions.

0.62 Confidential in nature, the AAA’s and the ICDR’s cooperative agreements form the basis for educational relationships, as well as cooperation in the administration of arbitration proceedings. Organizational cooperation may range from making available hearing room facilities, to cooperation in developing and maintaining lists of arbitrator candidates.
0.63 The first cooperative agreement concluded by the AAA was reached with the Manchester Chamber of Commerce in the UK in 1946. Notable cooperative agreements include the AAA's agreement with the Court of Arbitration for Sports (CAS) by which the ICDR serves as one of CAS's decentralized offices on a permanent basis. The annual AAA/ICDR/International Chamber of Commerce (ICC)/International Centre for Settlement of Investment Disputes (ICSID) Joint Colloquium in November of each year is also based on cooperative agreements between the respective organizations.

0.64 Recently concluded cooperative agreements include those with the Chamber of Commerce in Bogotá, Colombia in 2009, and the Chamber of Commerce in Lima, Peru. In 2013, the ICDR signed a cooperative agreement with Seoul IDRC, Korea.

5. Scope of the ICDR’s services

0.65 The ICDR is responsible for administering ‘international disputes’, the definition of which is discussed in detail in this introduction. Importantly, the ICDR is empowered to apply any one of several sets of rules and procedures. By far the most common applicable set of rules is the ICDR Rules, closely followed by the AAA Commercial Rules. However, the ICDR might also be asked to administer an arbitration governed by one of the many industry-specific sets of rules discussed earlier in this chapter.

0.66 Important from an international perspective, the ICDR also administers ad hoc arbitrations pursuant to the Commercial Arbitration and Mediation Centre for the Americas (CAMCA) Rules and the Inter-American Commercial Arbitration Commission (IACAC) Rules. Further, for ad hoc arbitrations under the UNCITRAL Arbitration Rules, the ICDR applies its Procedures for Cases under the UNCITRAL Rules.

0.67 The ICDR also manages and administers the Energy Arbitrators’ List which is a free, online, word-searchable database of arbitrators with experience in energy disputes. Users can search the database by geographic area, expertise, keyword, language, and nationality of the arbitrators as well as thirteen separate industry categories.

0.68 The Energy Arbitrators’ List was created more than a decade ago as a result of discussions among energy experts, corporate and outside counsel to help identify capable and experienced energy arbitrators. Today, an independent review committee identifies and vets the arbitrators.

0.69 Since the 1996/1997 revision, the ICDR Rules are part of the ICDR’s so-called International Dispute Resolution Procedures, combining in one publication the ICDR Rules with the ICDR’s International Mediation Rules. The inclusion of the International Mediation Rules underscores the ICDR’s commitment to promoting all forms of ADR. The International Mediation Rules provide a set of standardized procedures for conducting mediation, as well as offering the ICDR Administrator an opportunity to encourage disputing parties facing an arbitration to try mediation. Parties often respond favourably to inquiries by the ICDR regarding their interest in mediation. According to ICDR statistics, in about 8–10 per cent of all arbitrations administered by the ICDR, parties settle through mediation. In 2017, 64 per cent of all cases submitted to ICDR mediation settled. Mediation is discussed further in the context of the increased focus on mediation in the 2014 ICDR Rules, especially Article 5.

6. ICDR Guidelines for Arbitrators Concerning Exchanges of Information

0.70 All international cases initiated and administered by the ICDR after 31 May 2008 were governed by the ICDR Guidelines for Arbitrators Concerning Exchanges of Information. The 2014 revision of the ICDR Rules incorporated the ICDR Guidelines for Arbitrators Concerning Exchanges of Information into Article 21 of the Rules.
C. Statistics on AAA and ICDR arbitration

1. AAA arbitration

0.71 The AAA claims to maintain the world’s largest caseload of any arbitration institution. In its more than ninety-year history, the AAA has administered over 4.1 million alternative dispute resolution cases in a wide range of subject areas.\(^87\)

(p. 16) 0.72 On average, the AAA provides dispute resolution services in more than 150,000 cases annually. While statistics vary, the AAA administered some 230,000 cases in 2002 and more than 113,000 cases including arbitrations (of any sort), mediations, and other ADR processes in 2009. In 2017, the AAA opened a new office in Buffalo, New York, to assist with its high-growth and high-volume New York State insurance caseload of 290,486 cases.\(^88\)

2. ICDR arbitration

0.73 As a reflection of the globalization of the economy, the ICDR has seen continued growth in its international caseload. Based on statistics provided by the ICDR, the institution recorded an increase in its caseload from 194 international cases in 1996 to 510 in 2000.\(^89\) From 2001 until 2007, the ICDR reported an average of more than 600 administered cases annually, involving total claims and counterclaims in excess of US$35 billion and parties and arbitrators from about seventy-five nations. Since 2010, the ICDR has reported roughly 1,000 new cases annually.

0.74 In 2001, the ICDR administered 649 cases, involving more than US$10 billion in claims and counterclaims, almost half of which involved claims of more than US$1 million or undisclosed amounts; in 2002, it administered 672 cases involving US$3.4 billion in claims and counterclaims, involving parties from more than seventy countries; in 2003, 614 cases involving arbitrators and parties from sixty-nine nations; and in 2004, 646 cases with parties and arbitrators involved from seventy-two countries. In 2005, 580 cases were filed involving US$3.25 billion and 1,225 parties from seventy-nine countries.\(^90\)

0.75 In 2005, hearings were held in twenty-six countries, including such cities as New York, London, Geneva, Zurich, Tokyo, Stockholm, Rio de Janeiro, Panama City, and San Salvador. There was an increase of over 50 per cent in requests for locales outside of the USA. More than one-third of the newly filed cases exceeded US$1 million in dispute.

0.76 In 2006, the ICDR administered 586 cases involving US$6.2 billion and parties from seventy-six countries, and in 2007, 621 cases, involving US$4.7 billion and parties from sixty-five countries.\(^91\)

0.77 In 2008, there were 703 new case filings involving US$4 billion and seventy-five countries. International case filings exceeded 800 for the first time in 2009, with 884 cases filed that year.\(^92\) Of the 884 cases files, 836 were administered by the ICDR. In 2009, parties in ICDR arbitrations originated from eighty-seven countries. The number of cases not involving any (p. 17) US party more than doubled from thirty-two in 2008 to sixty-five in 2009.\(^93\) In 2010, a total of 888 cases were filed.\(^94\)

0.78 In 2011, case load increased to 994, an increase of almost 12 per cent compared to cases filed in 2010. The cases varied in size and included multi-party, complex cases in excess of one billion USD. The cases involved parties and arbitrators from more than ninety countries. The highest growth in caseload was achieved in the Asian region.\(^95\)

0.79 In 2012, the ICDR administered 996 international cases involving parties from ninety-two countries. In 2013, the ICDR handled nearly 1,165 cases. The cases involved parties from over 100 countries with an aggregate amount of $7.2 billion for claims and
International cases have continued to exceed 1,000 since then: 1,165 in 2013, 1,015 in 2014, 1,064 in 2015, and 1,050 in 2016.

In 2017, the 1,026 new cases filed involved total claims and counterclaims of US$6.978 billion, with the average claim size being approximately US$7 million. The largest claims by industry were (in descending order) in technology, commercial insurance, energy, aviation/aerospace/national security, pharmaceuticals, financial services, and commercial construction. Industries with the greatest number of case filings included construction, franchise, hospitality/travel, insurance, technology, and energy.

Based on cases that went to an award from 2015 until 2017, the ICDR calculates that the average time per proceeding from commencement of the case with the Notice of Arbitration through to submission of the final award is approximately 13.1 months. Calculated from the time of the constitution of the tribunal to the final award, this amounts to some nine to ten months. According to the ICDR's records, the average time period between the close of the proceeding and the issue of the award is between thirty-five and forty-five days.

D. History of the ICDR Rules

As described, the AAA’s first tentative steps into specialized international dispute resolution procedures was the 1986 Supplement for International Commercial Arbitration, designed as an annex to the AAA Commercial Rules. It took until 1991 for the introduction of the first set of rules actually entitled ‘International Arbitration Rules’. The 1991 AAA International Arbitration Rules were very closely modelled on the UNCITRAL Arbitration Rules of 1976 (1976 UNCITRAL Rules). The 1976 UNCITRAL Rules provided an internationally accepted set of provisions that would help to overcome the perception that the AAA (as it then was) was ‘too American’. As discussed herein, while the 1991 Rules represented an historic departure from some uniquely American aspects of the AAA Commercial Rules, they were not adopted unchanged. The AAA made certain modifications to the UNCITRAL (p. 18) Rules in an attempt to tailor them to the institution’s caseload and its existing experience with the AAA Commercial Rules.

Several revisions and amendments followed. Major revisions are discussed here, while additional changes will be addressed in the detailed commentary on the respective Articles.

1. The 1993 revision

A first revision took place in 1993. As a jurisdictional matter, the 1993 International Arbitration Rules stated that they would apply only where the parties agreed to apply them, while the Commercial Rules provided that they would apply either when specifically chosen or when the parties have provided generally for arbitration by the AAA. This inevitably slowed the growth of the cases covered by the International Arbitration Rules.

2. The 1996/1997 revision

As described, 1996 saw the introduction of the ICDR. In anticipation of this development, the AAA substantially restructured the manner in which it administered international arbitrations. Today’s ICDR Rules are substantially based on this 1996 version.

The 1996 revised ICDR Rules continued to reflect the model of the UNCITRAL Rules, but contained some important innovations that led to an increase in use of the ICDR Rules. Perhaps most importantly, as a result of the revision, the ICDR was charged with the exclusive administration of all of the AAA’s international arbitrations. Under the 1996 ICDR Rules, and subsequent versions, a case is administered by the ICDR in two scenarios: (1) if the parties have chosen the ICDR Rules; and (2) if the arbitration is international and the
parties have chosen the ICDR or AAA without designating particular rules. The revised ICDR Rules became effective on 1 April 1997.

3. Introduction of the International Dispute Resolution Procedures in 2003

0.87 The ICDR Rules were again amended in 2003. On 1 July 2003, the ICDR released the International Dispute Resolution Procedures to combine in one publication the ICDR Rules with the ICDR’s International Mediation Rules.

0.88 The International Arbitration Rules themselves remained largely unchanged, except for the addition of Article 27(8). In an effort to further the study of international arbitration, unless the parties agree otherwise, Article 27(8) allows the ICDR to publish awards that have been edited to conceal the names of the parties and other identifying details, or that have been made publicly available in the course of enforcement proceedings or otherwise.


0.89 On 1 May 2006, the ICDR amended the ICDR Rules again and included procedures for emergency relief prior to the formation of the arbitral tribunal.99 The resulting new Article 37 (now Article 6) was based on the AAA’s Optional Rules of Emergency Measures of Protection, which had been in existence since 1999. While the Optional Rules of Emergency Measures of Protection could always be expressly adopted in writing by the parties, Article 37 made pre-tribunal emergency relief automatically available to all parties to ICDR arbitration agreements entered into on or after 1 May 2006.100

5. 2009/2010 and 2017 changes to the Fee Schedule

0.90 Additional changes to the ICDR Rules took place with effect from 1 June 2009, 1 January 2010, and 1 June 2010. In addition to the Standard Fee Schedule, a Flexible Fee Schedule was introduced affording lower up-front filing fees and reduced overall costs if disputes are resolved before arbitrator appointment. The Fee Schedule was last updated with effect from 1 October 2017. The Fee Schedule currently in force is discussed within Article 2. (As the last substantive amendment prior to 2014 was in 2009, those rules are referred to herein as the ‘2009 Rules’ or ‘old Rules’.)

0.91 Consistent with the diversity of users and parties involved in ICDR arbitration, the Rules are now available in Arabic, Chinese, French, German, Italian, Portuguese, and Spanish, in addition to the official English version.101

6. The 2014 amendments to the ICDR Rules

0.92 In 2013, the ICDR tasked a subcommittee with reviewing and recommending changes to the 2009 ICDR Rules.102 Not only had it been almost five years since the last major amendments to the Rules, but the review took place in the middle of a period in which several other arbitral institutions were making amendments.103 The subcommittee was divided into six (p. 20) working groups tasked with reviewing and making recommendations on different aspects of the rules. In total, the review process took some eighteen months. After a draft was released for comment, the new rules became effective on 1 June 2014.104

0.93 While the 2014 ICDR Rules became effective as of 1 June 2014, Article 1(1) provides a transitional regime so that they apply to any arbitration commenced on or after 1 June 2014 but ‘subject to modifications that the parties may adopt in writing’.105 Thus, for example, where the parties’ arbitration agreement provides for the application of the arbitration rules in effect at the date of execution of the underlying contract, and the contract precedes 1 June 2014, an earlier version of the ICDR Rules will apply.

0.94 While the ICDR Rules had undergone several changes since they were first introduced in 1991, the 2014 amendments are of considerably greater scale than prior amendments. The 2014 changes are progressive and comprehensive, with the primary objective of meeting users’ demands to improve the speed and cost-effectiveness of ICDR arbitration proceedings.106 Thus, several amendments were made to avoid unnecessary
delay or expense, including increased powers of the arbitrators and extended obligations of the parties. In addition, the new Rules codify several well-established administrative ICDR practices or set them out in more detail, and also introduce new provisions to reflect best international arbitration practices or to address the changing demands of international arbitration. Although the amendments are far-reaching, the committee was also at pains to ensure that there was not change for the sake of change and that the unique characteristics of ICDR arbitration were retained. These revisions are discussed in great detail in the commentary.

Footnotes:

1 This book has benefited from comments and suggestions made by senior management at the ICDR in October 2018. The authors wish to express their gratitude.


4 See IR Macneil, RE Speidel, and TJ Stipanowich, Federal Arbitration Law: Agreements, Awards, and Remedies under the Federal Arbitration Act (Aspen, New York, 1999) ss 4.3 and 5 (addressing the development of arbitration in the USA), and 6.2 (addressing the AAA).

5 See discussion of Art 39 at paras 39.04–39.05.

6 As will be discussed in detail herein, the ICDR Rules have been developed in reliance on several seminal international arbitration instruments, most noticeably the 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention), the United Nations Commission on International Trade Law’s Arbitration Rules first promulgated in 1976 (1976 UNCITRAL Rules), and the UNCITRAL Model Law on International Commercial Arbitration first promulgated in 1985 (UNCITRAL Model Law).

7 See generally <http://www.adr.org/about>.


9 See <http://www.adr.org/OfficeLocations. See also para 1.34 for the ICDR locations.


11 Interview with ICDR senior management, October 2018.

A list of arbitration rules appearing on the AAA website is set out as Appendix 10.

See discussion in Chapter 1 at paras 1.31-1.35.

AAA Commercial Rules, Rule R-1, L-1 to L-3.


AAA Commercial Rules, Rule R-9.


Construction Industry Arbitration Rules and Mediation Procedures, R-1 Agreement of Parties and Designation of Applicable AAA Rules provides: ‘The parties shall be deemed to have made these Rules a part of their arbitration agreement whenever they have provided for arbitration by the American Arbitration Association (hereinafter AAA) under its Construction Industry Arbitration Rules or whenever they have provided for arbitration of a construction dispute pursuant to the Rules of the AAA without designating particular AAA Rules.’

Supplementary Rules for Fixed Time and Cost Construction Arbitration, SR-1 Agreement of Parties and Applicability provides: ‘The Supplementary Rules, along with the then-current Construction Industry Arbitration Rules of the American Arbitration Association, shall apply to disputes arising out of contracts or agreements providing for arbitration under the Supplementary Rules.’

According to Fee Schedule 1 of the Supplementary Rules, cases with an amount in dispute between US$250,000 and US$500,000 should be completed within 180 days of filing, with no more than three hearing days. The Fee Schedule limits the arbitrator’s compensation for hearing days and study time to twelve hours and caps the arbitrator’s fee at US$275/hour, and the AAA's administrative fees are fixed at US$5,000.


See <http://www.adr.org/classarbitration>.

Interview with ICDR senior management, October 2018.


AAA Press Release, ‘New Optional Appellate Arbitration Rules from the AAA and ICDR Provide Further Arbitration Flexibility’, 1 November 2013. The International Institute for Conflict Prevention & Resolution (CPR) and the Judicial Arbitration and Mediation Services (JAMS) issued their Appellate Rules in 1999 and in 2003, respectively.

Optional Appellate Arbitration Rules, Introduction.


See Appendix 7. See further Optional Appellate Arbitration Rules, A-1.
Agreement of Parties

Whenever, by stipulation or in their contract, the parties have provided for the appeal of an arbitration award (‘Underlying Award’) rendered under the auspices of the American Arbitration Association (AAA), or the International Centre for Dispute Resolution (ICDR), or have otherwise provided for these Appellate Arbitration Rules, they shall be deemed to have made these Rules, as amended and in effect as of the date of submission of the appeal, a part of their agreement.

33 Optional Appellate Arbitration Rules, A-10 (Appendix 7).
34 See Appendix 9.
35 See <https://www.icdr.org/about_icdr >.
36 See <https://www.adr.org/ALaCarteServices >.
40 DecisionQuest has provided trial and jury consulting for over 19,000 high-stakes litigation cases and has over thirty years of experience.
45 ibid.
46 BG Group, Plc v Republic of Argentina, 134 S Ct 1198 (2014).
47 AAA Press Release, ‘Newly Established AAA-ICDR Foundation Now Accepting Proposals’, 29 October 2015. The foundation’s mission includes: ‘Fostering measures that reduce potential escalation, manage, and resolve conflicts, Expanding the use of dispute resolution processes tailored to the conflict. Supporting research, education and initiatives promoting high quality, efficient and fair dispute resolution. Increasing access to justice in and through alternative dispute resolution. Encouraging collaborative processes to resolve public conflicts. Sharing expertise across diverse groups and cultures. Partnering with others dedicated to advancing the Foundation’s mission.’ The foundation internet address is <>.

50 See <https://www.adr.org/aaa-panel>.

51 Interview with ICDR senior management, October 2018.

52 See The Code of Ethics for Arbitrators in Commercial Disputes, effective 1 March 2004. The Code of Ethics for Arbitrators in Commercial Disputes was originally prepared in 1977 by a joint committee consisting of a special committee of the AAA and a special committee of the ABA. The Code was revised in 2003 by an ABA Task Force and special committee of the AAA.

53 See <https://www.icdr.org/about_icdr>.

54 The AAA Higginbotham Fellows Program is a one-year programme designed to offer the full breadth of the AAA resources to up-and-coming diverse professionals who are interested in pursuing a future career in alternative dispute resolution (ADR), and to allow the participants to immerse themselves in all aspects of ADR. See <https://www.adr.org/higginbothamfellowsprogram>; AAA Press Release, ‘American Arbitration Association Launches 2014 Higginbotham Fellows Program’, 9 February 2015. ‘The program’s foundation is a week-long intensive training program conducted this year at the AAA’s San Francisco office, consisting of seminars on dispute resolution topics taught by leading ADR professionals, participation in mock arbitrations and mediations, and a full day seminar focused on the topic of “Building a Career in ADR.” AAA Higginbotham Fellows are afforded additional training and networking opportunities throughout the year and are paired with mentors in their field of interest.’; AAA Press Release, ‘American Arbitration Association Launches 2013 Higginbotham Fellows Program—Fifth Annual Initiative to Increase Diversity in Alternative Dispute Resolution’, 3 June 2013. ‘Now in its fifth year, the Fellows Program is showing concrete results, with past Fellows making gains in their ADR careers, including five prior Fellows who have successfully advanced to the AAA’s Roster of Neutrals. Four of these Fellows have already been listed for numerous cases and have been appointed to at least two cases.’


58 In November 2010, the Internal Revenue Service (IRS) entered into an agreement with the ICDR to provide administrative services in support of arbitration under the ‘mutual agreement procedure’ article of US income tax treaties concluded with Belgium, Canada, and Germany. See AAA Press Release, ‘ICDR Selected by IRS to Arbitrate International Tax Cases’, 4 November 2010.

59 Introduction to the ICDR’s International Dispute Resolution Procedures, amended and effective 1 June 2009 (Fee Schedule amended and effective 1 June 2010) (hereinafter ‘2009 Rules’ or ‘old Rules’).

60 Administrative Fee Schedules (Standard and Flexible Fees), amended and effective 1 October 2017. See <http://www.icdr.org/feeschedule>.
61 Interview of ICDR senior management, October 2018. See <https://www.icdr.org/about_icdr>.


63 ibid; AAA Press Release, ‘AAA Opens State-of-the-Art Hearing Location in New York City’, 8 May 2013, available at <http://www.adr.org/aaa/faces/s/news>. ‘The new location will have eight hearing rooms that can accommodate six–24 parties and representatives. Each hearing, mediation, and meeting room has ample room, ergonomically designed furniture, excellent lighting, and utmost privacy. These rooms will also be outfitted with the latest video and audio technology allowing parties to present evidence and witnesses in-person and remotely.’ AAA/ICDR cooperates with the New York International Arbitration Center (NYIAC) at the Manhattan Midtown location.


65 The AAA/ICDR also works with organizations such as NYIAC, who promote New York City as the favoured US arbitral seat. See NYIAC Press Release, ‘New York City Maintains Lead as The Favored U.S. Arbitral Seat’, 18 May 2018, available at <https://nyiac.org>.

66 Interview with ICDR senior management, October 2018.


68 ICDR, The ICDR International Arbitration Reporter 3 (Issue 1, 2010).

69 Maxwell Chambers is a state-of-the-art hearing facility in Singapore that also houses leading international ADR institutions. See ICDR, The ICDR International Arbitration Reporter 4 (Issue 4, September 2013), ‘ICDR’s Asia-related cases (with at least one Asian party) have steadily increased from 134 cases in 2006 to 226 (out of 994 ICDR total filings) in 2011 and 201 (out of 996) in 2012.’; ICDR, The ICDR International Arbitration Reporter 3 (Issue 1, 2010).

70 ICDR, The ICDR International Arbitration Reporter 3 (Issue 1, 2010).


72 See <https://icdr.org/icdrcanada>.


75 See discussion in Chapter 1 at para 1.38.

76 See Appendix 10 and discussion at paras 0.14–0.30.

77 ICDR, The ICDR International Arbitration Reporter 3 (Issue 1, 2010).

78 See UNCITRAL Model Arbitration Clause: ‘The appointing authority shall be … [name of Institution or person].’ The functions of the appointing authority compromise appointment of arbitrators, decision on challenge of arbitrator, replacement of arbitrator, and assistance in fixing fees of arbitrators, as well as administrative services of a technical or secretarial nature. See UNCITRAL Arbitration Rules, Articles 6-13, 39(2.) A copy of the Procedures for Cases under the UNCITRAL Rules is provided as Appendix 9.


81 A full list of the AAA’s sets of rules applicable in international cases is available online at <http://www.adr.org>.

82 The International Mediation Rules provide the means of initiating and terminating mediation, a method for appointing the mediator, the authority of the mediator, and extend confidentiality to the process.

83 Interview with ICDR senior management, October 2018.

84 See discussion at paras 5.01–5.05.


86 See Chapter 21.


97 Interview with ICDR senior management, October 2018.

98 William K Slate II, President and CEO of the AAA, appointed a task force to revise the 1993 International Arbitration Rules under the guidance of late AAA General Counsel, Michael F Hoellering. Task force members were David W Rivkin (chair), Charles A Beach, James H Carter, Dana H Freyer, Robert Layton, and John M Townsend. The task force considered other commercial arbitration rules, including the WIPO Rules, and those of the
Commercial Arbitration and Mediation Centre for the Americas, and conducted discussions with Robert B von Mehren and Howard H Holtzmann, chairs of the AAA Arbitration Law Committee and International Arbitration Committee, respectively. The draft revised rules were sent to more than 100 experts in the field and responses were received from about 25 per cent. See American Arbitration Association Task Force on the International Rules, ‘Commentary on the Proposed Revisions to the International Arbitration Rules of the American Arbitration Association’, 2(1) ADR Currents (1996/1997).


100 As of October 2018, the total ICDR case count for emergency proceedings is eighty-seven cases: sixty-seven under the ICDR Rules, eighteen under the Commercial Rules and two under the ICDR Canada Rules. In each of 2017 and 2018 up until October 2018, nine cases were registered. The average emergency relief procedure completion time is three weeks.

101 These are available online at <http://www.adr.org/active-rules>.

102 The subcommittee, chaired by Paul Friedland of White & Case, was compromised of experienced arbitration practitioners, corporate users, and academics and benefited from the input of several members of the ICDR and AAA. The members included Paul Friedland (Chair), Mark Appel (ICDR Liaison), Mark Baker, Stephanie Cohen, John Fellas, Grant Hanessian, James Hosking, Reza Mohtashami, Peter Rees, and Daniel Aun (Secretary), from the ICDR management ICDR Senior Vice President Richard Naimark and ICDR Vice Presidents Luis Martinez, Steve Andersen, Thomas Ventrone, and Michael Lee. The ICDR Subcommittee also relied on input from advisers. See P Friedland and J Templeman, ‘The New ICDR International Arbitration Rules’ (2014), available at <http://www.arbitrationconference.com/download/file/216>. See also B Dunning and LM Martinez, ‘In Conversation with Luis Martinez—Vice President of the International Centre for Dispute Resolution’, Clyde & Co’s International Arbitration 1/3 LY (2015) at 3, available at <https://www.adr.org/sites/default/files/document_repository/Luis%20Martinez%20InterviewInterview.pdf>.

103 Other institutions undertaking comprehensive reviews at the time and the dates on which their new rules became effective include: SCC (1 January 2010); UNCITRAL (15 August 2010); ICC (1 January 2012); Swiss Rules (1 June 2012); SIAC (1 April 2013); AAA Commercial Rules (1 October 2013); HKIAC Administered Rules (1 November 2013); ICDR (1 June 2014); LCIA (1 October 2014); and CIETAC (1 January 2015).

104 At the same time, another ICDR subcommittee was working on drafting the Expedited Arbitration Rules (discussed in Part II). Other groups were simultaneously drafting the amended AAA Commercial Rules (effective 1 October 2013) and the Final Offer Supplementary Arbitration Rules (effective 1 January 2015).


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See ICDR Rules, Arts 20(2) (‘the tribunal and the parties may consider how technology, including electronic communications, could be used to increase the efficiency and economy of the proceedings’); 21(6) (‘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 ICDR Rules, Arts 20(7) (‘The arbitral tribunal may allocate costs, draw adverse inferences, and take such additional steps as are necessary to protect the efficiency and integrity of the arbitration.’); 21(1) (‘The arbitral tribunal shall manage the exchange of information between the parties with a view to maintaining efficiency and economy.’). See also Art 30(1) (‘the final award shall be made no later than 60 days from the date of the closing of the hearing’).

See ICDR Rules, Art 20(7) (‘The parties shall make every effort to avoid unnecessary delay and expense in the arbitration.’); Art 13 (parties’ duty to disclose any circumstances that may give rise to doubts as to an arbitrator’s impartiality).

See ICDR Rules, Arts 4 (Administrative Conference), 12(6) (ICDR list method for appointing arbitrators), 14 (Opportunity to respond to challenge of arbitrator), 21 (Exchange of Information—incorporating the ICDR Guidelines for Arbitrators Concerning Exchanges of Information).

See ICDR Rules, Arts E-1 to E-11 (International Expedited Procedure), 21(6) (E-Disclosure); 1 (does no longer contain an ‘in writing’ requirement), 21(10) (‘U.S. court procedures generally are not appropriate’).

See ICDR Rules, Arts 7 (Joinder), 8 (Consolidation).