

English Law Week 2017:  
The Law – A noble profession or just business?

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Materials Handout  
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## Latest Guidelines, Tools and Publications

Arbitral institution	Latest guidelines, tools and publications
International Chamber of Commerce (ICC)	<p><b>Rules</b> – The new ICC Rules came into force on 1 March 2017<sup>1</sup>. The new rules introduce an expedited procedure where the amount in dispute is under \$2 million. Parties can opt-in to the expedited procedure if the amount in disputes exceeds the threshold. The new rules also reduce the time limit within which the Terms of References must be signed from two months to 30 days following transmission of the file to the tribunal<sup>2</sup>.</p> <p><b>Tools</b> – Useful tools on the ICC website include Model Clauses<sup>3</sup>, a Costs Calculator<sup>4</sup> and the ICC Digital Library, launched on 20 April 2017<sup>5</sup>.</p> <p>Recent <b>Guidelines/Publications</b> on the ICC website include:</p> <ul style="list-style-type: none"> <li>- Note to Parties and Arbitral Tribunals on the Conduct of Arbitration (30 October 2017)<sup>6</sup></li> <li>- Note to Parties and Arbitral Tribunals on ICC Compliance (29 September 2017)<sup>7</sup></li> <li>- Various Forms and Checklists</li> </ul>
London Court of International Arbitration (LCIA)	<p><b>Rules</b> – the latest LCIA Arbitration Rules came into force on 1 October 2014. The 2014 Arbitration Rules aim at improving the efficiency of the arbitration process. Notable changes include<sup>89</sup>:</p> <ul style="list-style-type: none"> <li>- The introduction of emergency arbitrator provisions;</li> <li>- The reduction of timescales to submit statements of case from 30 to 28 days;</li> <li>- An e-filing system for the Request for Arbitration;</li> <li>- Inclusion of an Annex setting out core guidelines on the conduct of party representatives.</li> </ul> <p><b>Tools</b> – Useful tools on the LCIA website include Recommended Clauses<sup>10</sup> and Schedules of Costs<sup>11</sup>.</p> <p>Recent <b>Guidelines/Publications</b> on the LCIA website include:</p> <ul style="list-style-type: none"> <li>- Facts and Figures – 2016: a Robust Caseload<sup>12</sup></li> <li>- Cost and Duration Analysis 2013-2016<sup>13</sup>. This Analysis seeks to provide the general public with information which will help them make informed decisions about whether they want to include LCIA arbitration</li> </ul>

<sup>1</sup> <https://iccwbo.org/dispute-resolution-services/arbitration/rules-of-arbitration/>

<sup>2</sup> Norton Rose Fulbright, An Overview of New Rules of International Arbitration (June 2017)

<sup>3</sup> <https://iccwbo.org/dispute-resolution-services/arbitration/arbitration-clause/>

<sup>4</sup> <https://iccwbo.org/dispute-resolution-services/arbitration/costs-and-payments/cost-calculator/>

<sup>5</sup> <http://library.iccwbo.org/>

<sup>6</sup> <https://cdn.iccwbo.org/content/uploads/sites/3/2017/03/icc-note-to-parties-and-arbitral-tribunals-on-the-conduct-of-arbitration.pdf>

<sup>7</sup> <https://cdn.iccwbo.org/content/uploads/sites/3/2017/11/note-to-parties-and-arbitral-tribunals-on-icc-compliance-english.pdf>

<sup>8</sup> Norton Rose Fulbright, New LCIA Arbitration Rules come into force today (October 2014)

<sup>9</sup> Herbert Smith Freehills, Innovation at the LCIA (1 February 2016)

<sup>10</sup> [http://www.lcia.org/Dispute\\_Resolution\\_Services/LCIA\\_Recommended\\_Clauses.aspx](http://www.lcia.org/Dispute_Resolution_Services/LCIA_Recommended_Clauses.aspx)

<sup>11</sup> [http://www.lcia.org/Dispute\\_Resolution\\_Services/schedule-of-costs.aspx](http://www.lcia.org/Dispute_Resolution_Services/schedule-of-costs.aspx)

<sup>12</sup> <http://www.lcia.org/LCIA/reports.aspx>

<sup>13</sup> <http://www.lcia.org/News/lcia-releases-updated-costs-and-duration-analysis.aspx>

	<p>as their method of dispute resolution.</p> <ul style="list-style-type: none"> <li>- Notes for Arbitrators (26 October 2017) – the update seeks to provide more detail and clarity on the LCIA’s approach regarding the role and the use of Tribunal Secretaries (following ICC, HKIAC and SIAC)<sup>14</sup>.</li> </ul>
Arbitration Institute of the Stockholm Chamber of Commerce (SCC)	<p><b>Rules</b> – The SCC Arbitration Rules came into force on 1 January 2017<sup>15</sup>. The SCC also released a set of Rules for Expedited Arbitrations (SCC Expedited Rules<sup>16</sup>) on the same date. Notable changes include<sup>17</sup>:</p> <ul style="list-style-type: none"> <li>- Introduction of a summary procedure;</li> <li>- New provisions for multi-party and multi-contract disputes;</li> <li>- Introduction of procedure for submissions from third parties.</li> </ul> <p><b>Tools</b> – Useful tools on the SCC website include Costs calculator<sup>18</sup> and Model clauses<sup>19</sup>.</p> <p>Recent <b>Guidelines/Publications</b> on the SCC website include:</p> <ul style="list-style-type: none"> <li>- Arbitrator’s Guidelines published in January 2017<sup>20</sup></li> <li>- SCC Policy on the Appointment of Arbitrators, updated on 8 September 2017<sup>21</sup></li> <li>- Various Articles<sup>22</sup></li> </ul>
Hong Kong International Arbitration Centre (HKIAC)	<p><b>Rules</b> – The HKIAC Administered Arbitration Rules came into force on 1 November 2013. The HKIAC Rules Revision Committee is considering amending some of the Rules<sup>23</sup>.</p> <p>The HKIAC Procedures for the Administration of Arbitration under the UNCITRAL Arbitration Rules came into force on 1 January 2015<sup>24</sup>. The Rules work in conjunction with the UNCITRAL Rules.</p> <p><b>Tools</b> – Useful tools on the HKIAC include Model Clauses<sup>25</sup>; Schedules of Fees and Fee calculators<sup>26</sup>.</p> <p><b>Guidelines/Publications</b> include:</p> <ul style="list-style-type: none"> <li>- Practice Note on the Costs of Arbitration – Schedule 2 and Practice Note on the Costs of Arbitration – Schedule 3 (1 June 2016)<sup>27</sup></li> <li>- Guidelines<sup>28</sup></li> <li>- 2016 Case Statistics<sup>29</sup></li> <li>- HKIAC Arbitration Clause Negotiation Workshop on 27 November 2017<sup>30</sup></li> </ul>

<sup>14</sup> The LCIA updates its guidance on the use of tribunal secretaries

<sup>15</sup> [http://sccinstitute.com/media/169838/arbitration\\_rules\\_eng\\_17\\_web.pdf](http://sccinstitute.com/media/169838/arbitration_rules_eng_17_web.pdf)

<sup>16</sup> [http://www.sccinstitute.com/media/178161/expedited\\_arbitration\\_rules\\_17\\_eng\\_web.pdf](http://www.sccinstitute.com/media/178161/expedited_arbitration_rules_17_eng_web.pdf)

<sup>17</sup> Ibid 2

<sup>18</sup> <http://www.sccinstitute.com/dispute-resolution/calculator/>

<sup>19</sup> <http://www.sccinstitute.com/dispute-resolution/model-clauses/>

<sup>20</sup> <http://www.sccinstitute.com/media/171486/guidelines-january-2017.pdf>

<sup>21</sup> <http://www.sccinstitute.com/media/220131/scc-policy-appointment-of-arbitrators-2017.pdf>

<sup>22</sup> <http://www.sccinstitute.com/about-the-scc/digital-library/articles/>

<sup>23</sup> Kluwer Arbitration Blog, Public Consultation Paper on Proposed Amendments to the 2013 HKIAC Administered Arbitration Rules

<sup>24</sup> Jones Day, Procedures for the Administration of Arbitration under the UNCITRAL Arbitration Rules

<sup>25</sup> <http://www.hkiac.org/arbitration/model-clauses>

<sup>26</sup> <http://www.hkiac.org/arbitration/fees>

<sup>27</sup> Deacons, HKIAC updates Practice Notes on costs of arbitration (29 June 2016)

<sup>28</sup> <http://www.hkiac.org/arbitration/guidelines>

<sup>29</sup> <http://www.hkiac.org/about-us/statistics>

Singapore International Arbitration Centre (SIAC)	<p><b>Rules</b> – The SIAC Rules 2016 came into force on 1 August 2016<sup>31</sup>. SIAC also released the SIAC Investment Arbitration Rules<sup>32</sup> (effective from 1 January 2017), specifically designed for disputes involving a State, a State-controlled entity or an intergovernmental organisation arising out of a contract, treaty, statute or other instrument<sup>33</sup>. Parties need to expressly refer their dispute to the SIAC IA Rules (there is no mechanism by which disputes can be transferred from the SIAC Rules 2016 to the SIAC IA Rules). Notable provisions include <i>inter alia</i><sup>34</sup>:</p> <ul style="list-style-type: none"> <li>- Emergency arbitrators;</li> <li>- Authorisation of third party funding;</li> <li>- Third-party submissions (a non-disputing contracting party to a treaty that is the subject of the dispute may make written submissions to the tribunal on questions of treaty interpretation directly relevant to the issues in dispute);</li> <li>- Time limits for the appointment of the tribunal, challenges to arbitrators, responses to the notice of arbitration and jurisdictional objections.</li> </ul> <p><b>Tools</b> – Useful tools on the SIAC website include Model Clauses<sup>35</sup>, a Fee Calculator<sup>36</sup> and Practice Notes from 2014. Recent <b>Guidelines/Publications</b> on the SIAC website include:</p> <ul style="list-style-type: none"> <li>- Articles and Press Release 2017<sup>37</sup></li> <li>- Annual Report (2016)<sup>38</sup></li> </ul>
Swiss Chambers' Arbitration Institution	<p><b>Rules</b> – Swiss Rules of International Arbitration came into force on 1 June 2012<sup>39</sup>.</p> <p><b>Tools</b> – Useful tools include Arbitration Clauses<sup>40</sup> and a Cost Calculator<sup>41</sup>.</p> <p><b>Guidelines/Publications</b> include:</p> <ul style="list-style-type: none"> <li>- Guidelines for Arbitrators (2014)<sup>42</sup></li> <li>- Publications (2014 latest)</li> <li>- Statistics (2015 latest)</li> <li>- Newsletters and Press Review</li> <li>- Events and Workshops, e.g. SCAI Innovation Conference on 1 February 2018<sup>43</sup></li> </ul>

<sup>30</sup> <https://www.herbertsmithfreehills.com/latest-thinking/hong-kong-international-arbitration-centre-hkiac-arbitration-clause-negotiation>

<sup>31</sup> <http://www.siac.org.sg/our-rules/rules/siac-rules-2016>

<sup>32</sup> <http://www.siac.org.sg/images/stories/articles/rules/IA/SIAC%20Investment%20Arbitration%20Rules%20-%20Final.pdf>

<sup>33</sup> Ibid 2

<sup>34</sup> Latham & Watkins, SIAC Releases New Investment Arbitration Rules

<sup>35</sup> <http://www.siac.org.sg/model-clauses>

<sup>36</sup> <http://www.siac.org.sg/component/siaccalculator/?Itemid=448>

<sup>37</sup> <http://www.siac.org.sg/2013-09-18-01-57-20/2015-03-05-02-23-37/2017>

<sup>38</sup> <http://www.siac.org.sg/2013-09-18-01-57-20/2013-09-22-00-27-02/annual-report>

<sup>39</sup> <https://www.swissarbitration.org/Arbitration/Arbitration-Rules-and-Laws>

<sup>40</sup> <https://www.swissarbitration.org/Arbitration/Arbitration-clauses>

<sup>41</sup> <https://www.swissarbitration.org/Arbitration/Cost-of-Arbitration>

<sup>42</sup> [https://www.swissarbitration.org/files/36/Guidelines%20for%20Arbitrators/guidelines\\_for\\_arbitrators\\_2014.pdf](https://www.swissarbitration.org/files/36/Guidelines%20for%20Arbitrators/guidelines_for_arbitrators_2014.pdf)

<sup>43</sup> <https://www.swissarbitration.org/events>

<p>International Centre for Settlement of Investment Disputes (ICSID)</p>	<p><b>Rules</b> – ICSID Convention (14 October 1966) + the Arbitration Rules (10 April 2006)</p> <p><b>Tools</b> – useful tools on the ICSID website include a Schedule of Fees effective from 1 July 2017<sup>44</sup></p> <p>Recent <b>Guidelines/Publications</b> include:</p> <ul style="list-style-type: none"> <li>- ICSID Annual Report (2017)<sup>45</sup></li> <li>- <i>ICSID Caseload – Statistics (2017)</i></li> <li>- <i>ICSID Review – Spring 2017</i><sup>46</sup></li> </ul> <p><i>Following a consultation, ICSID has identified 16 areas where the Arbitration Rules could be amended which is likely to take place in early 2018</i><sup>47</sup>.</p>
<p>American Arbitration Association (AAA)</p>	<p><b>Rules</b> – Commercial Arbitration Rules effective from 1 October 2013. The Fee Schedule has been amended and is effective from 1 October 2017.</p> <p><b>Tools</b> – useful tools on the AAA website include Fee Schedules<sup>48</sup>, Forms<sup>49</sup>, Clause drafting<sup>50</sup> and a clause builder tool<sup>51</sup>.</p> <p>Recent <b>Guidelines/Publications</b> include:</p> <ul style="list-style-type: none"> <li>- Measuring the Costs of Delay in Dispute Resolution<sup>52</sup></li> <li>- 2016 B2B Dispute Resolution Infographic<sup>53</sup></li> </ul>

<sup>44</sup> <https://icsid.worldbank.org/en/Pages/icsiddocs/Schedule-of-Fees.aspx>

<sup>45</sup> <https://icsid.worldbank.org/en/Pages/resources/ICSID-Publications.aspx>

<sup>46</sup> <https://academic.oup.com/icsidreview/issue/32/2>

<sup>47</sup> Mayer Brown, Global International Arbitration Update (August 2017)

<sup>48</sup> [https://www.adr.org/sites/default/files/commercial\\_arbitration\\_fee\\_schedule.pdf](https://www.adr.org/sites/default/files/commercial_arbitration_fee_schedule.pdf)

<sup>49</sup> <https://www.adr.org/CommercialForms>

<sup>50</sup> <https://www.adr.org/Clauses>

<sup>51</sup> [https://www.clausebuilder.org/cb/faces/index?\\_afLoop=7172258761622279&\\_afWindowMode=0&\\_adf.ctrl-state=4ycggt1hg\\_4](https://www.clausebuilder.org/cb/faces/index?_afLoop=7172258761622279&_afWindowMode=0&_adf.ctrl-state=4ycggt1hg_4)

<sup>52</sup> <http://go.adr.org/impactsofdelay.html>

<sup>53</sup> [https://www.adr.org/sites/default/files/document\\_repository/2016\\_B2B\\_Case\\_Statistics.pdf](https://www.adr.org/sites/default/files/document_repository/2016_B2B_Case_Statistics.pdf)

## Choosing Arbitrators

### Checklist of factors to consider when selecting an arbitrator

- Are there any specific stipulations in the arbitration agreement regarding the qualities of the arbitrators?
- Who are the parties involved (e.g. investor/state)?
- What is the applicable law?
- What is the seat of the arbitration?
- What is the language of the procedure?
- What is the sector/industry?
- Is there a key legal question that will predominate?
- Is technical expertise important?
- Are any key procedural issues anticipated?
- Will assessment of quantum be a major issue in the dispute?
- Does the arbitrator need to be a lawyer?
- How experienced is the arbitrator with the arbitral procedure?
- Is the arbitrator going to be a co-arbitrator or president of the tribunal?
- What are the likely dynamics of the tribunal?
- What is the arbitrator's stature/reputation?
- How available is the arbitrator likely to be?
- How efficient is the arbitrator known to be?
- Is there a prospect of a challenge?
  - Consider the IBA Guidelines on Conflicts of Interest in International Arbitration for guidance

### Checklist for due diligence on arbitrators

What information can be garnered from:

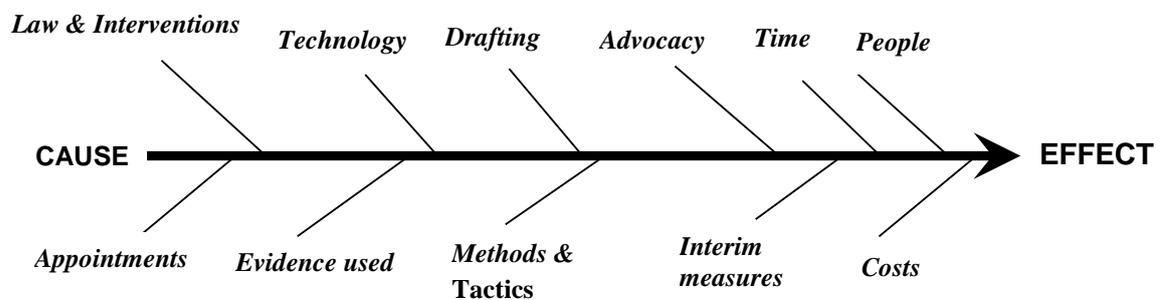
- directories and publically available databases?
  - Consider consulting the following resources:  
Chambers and Partners directory  
(<http://www.chambersandpartners.com/>)  
Who's Who Legal (<http://whoswholegal.com/>)  
International Arbitration Institute (<http://www.iaiparis.com/>)  
Energy Arbitrators List (<http://www.energyarbitratorslist.com>)  
Equal Representation in Arbitration – search for female arbitrators  
(<http://www.arbitrationpledge.com/arbitration-search>)  
Arbitral Women (<http://arbitralwomen.org/>)  
Arbitrator Intelligence (<http://www.arbitratorintelligence.org/>)  
Global Arbitration Review's Arbitrator Research Tool  
(<http://globalarbitrationreview.com/arbitrator-research-tool>)
- the public record about the arbitrator's views on the issues in dispute (arbitral awards, articles, conference presentations)?
- external counsel?
- internal colleagues?
- interviewing the arbitrator?
  - Consider CI Arb Practice Guideline 16: The Interviewing of Prospective Arbitrators

## Improving efficiency and reducing costs

### Increasing Efficiency and Reducing Costs in Arbitration with Cause & Effect Diagrams

Often when leading engineering companies make a product to a very high quality standard, they invest time in sitting down to analyse what can be done better. These quality control teams ask themselves: “Where did things fall below perfection?”<sup>54</sup> By conducting this focused retrospective dissection and recording in detail what was planned versus what actually occurred, the engineering team leader and all members have a very valuable record on how to deploy fewer, more or different resources in the future. Arbitration teams could also sensibly use Cause & Effect diagrams to facilitate continuous improvement.

*Diagram 1. Cause & Effect Diagram Adapted for Arbitration*



**Throughout the arbitral process which factors caused the effect?**

To illustrate how a Cause & Effect diagram works, under the *Diagram 1*. topic “*Methods and Tactics*”, representing counsel would sit down, regardless of the success of the result or their own belief in their performance, and collectively discuss and record answers to many questions including:

- How was time used precisely compared with its planned use?
- Were the documents produced excessive, insufficient or sufficient?
- Were cross-examinations excessive, insufficient or sufficient?

<sup>54</sup> This summary is an extract from an article entitled 'Qualitative Analytical Models for Arbitration' (2016) 33 Journal of International Arbitration, Issue 2, pp. 171–183.

# Ethics

## Ethics in international arbitration – key takeaways

- Lack of a level playing field – different approaches in different jurisdictions.
- Key documents:
  - IBA Guidelines on Party Representation in International Arbitration (<https://www.ibanet.org/Document/Default.aspx?DocumentUid=6F0C57D7-E7A0-43AF-B76E-714D9FE74D7F>). Areas covered:
    - i. Conflicts of interest arising as a result of counsel's relationship with an arbitrator (see eg *Hrvatska Elektroprivreda, d.d. v. Slovenia*);
    - ii. *Ex parte* communications between counsel and an arbitrator;
    - iii. False submissions or submitting evidence known to be false;
    - iv. Document production; and
    - v. Assisting witnesses.
  - Annex to the 2014 LCIA Rules
- Penalties
  - Admonishing counsel;
  - Drawing adverse inferences in assessing evidence or arguments advanced by counsel;
  - Adverse costs orders; and/or
  - take any other appropriate measure in order to preserve the fairness and integrity of the proceedings.

Possibility of going to local courts and regulators (eg Solicitors Regulation Authority or Bar Council in England & Wales).