



# Recent Rule Changes in International Arbitration: Key Lessons for Practitioners

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# Recent Rule Changes in International Arbitration

- Topics

- Emergency Interim Relief
- Consolidation
- Expedited Proceedings
- Document Exchange “Discovery Limits”
- Party Disclosure Duties
- Award Deadline
- Impact on Drafting Arbitration Clauses



# Recent Rule Changes

Institution and Year of Change	Emergency Interim Relief	Joinder	Consolidation	Expedited Proceedings	Party Disclosure Duties	Discovery Limits	e-document Rules	Award Deadline
ICDR 2014	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
ICC 2012	Yes	Yes	Yes	No	No	No	No	Yes
LCIA 2014	Yes	Yes	Yes	No	Yes	No	No	No
UNCITRAL 2010	No	Yes	No	No	No	No	No	No



# International Case Trends

Institution	2009	2010	2011	2012	2013	2014	2015
ICDR	836	888	994	996	1165	1015	1064
ICC	817	793	796	759	767	791	801
ICDR Mediations	70	58	95	105	74	107	127
AAA (U.S. Domestic Cases)	113,307	143,349	187,596	250,367	203,084	215,494	246,831



# Emergency Proceedings

- ICDR – Article 6: Emergency arbitration proceedings are available to parties to ICDR so long as the parties hadn't "opted –out" of the emergency proceedings. There is no hearing requirement and, if constituted, the full arbitration tribunal can vacate or modify any emergency rulings.
- ICC – Article 29: Emergency arbitration proceedings are available to parties to the agreement so long as the arbitration agreement was concluded before 1.1.2012 and the parties hadn't "opted-out" of the ICC's emergency proceedings. Emergency default rulings are not allowed.
- LCIA – Article 9: Unique allows for "expedited formation" of a tribunal and for appointment of an emergency arbitrator.



# ICDR: Emergency Interim Relief

Applicability of Provision	Applies to all cases and no longer requires that contracts be signed after May 1, 2006.
Time to Appoint Special Arbitrator	1 business day
Deadline for Challenge	1 business day
Time to set Schedule for Consideration of Application	2 business days from appointment
Form of decision	Interim award or order can be used
Security	Tribunal can require security for request
Regular Arbitration Tribunal Authority	Tribunal can modify, reconsider or vacate emergency award
Additional Cost	No extra administrative fees. The parties will be responsible for arbitrator compensation



# Consolidation

- ICDR – Article 8: ICDR allows consolidation of two or more arbitration pending under any ICDR or AAA rules where (1) parties agree, (2) claims are made under the same arbitration agreement or (3) where arbitrations have the same legal relationship and parties.
- ICC – Article 10: ICC allows consolidation under essentially the same circumstances as the ICDR.
- LCIA – Article 22: Enables the arbitral tribunal to consolidate arbitrations, (1) where the parties agree in writing, and with the approval of the LCIA; and, (2) where multiple arbitrations have been commenced under the same or compatible arbitration agreements, between the same parties, provided that the arbitral tribunal has not been formed for the other arbitration(s).





# ICDR: Consolidation Rule

Applicability of Article	Any party may request the appointment of a consolidation arbitrator who has the power to consolidate two or more cases under any ICDR or AAA rules.
Time to Appoint Consolidation Arbitrator	After 15 days from notice of consolidation and the absence of party agreement on process or arbitrator
Concurrent Proceedings	Consolidation arbitrator may order other cases to be stayed
Consolidating the Cases	If consolidated, all cases will be consolidated into the cases that was commenced first. Parties can agree otherwise.
Consolidation Arbitrator Appoints the New Arbitral Tribunal	Parties waive the right to appoint the arbitrator. The consolidation arbitrator has authority to name one of the existing tribunals, revoke any arbitrator appointment and complete, as necessary, the appointment of the tribunal.
Consolidation Decision	Rendered within 15 days of final submissions and does not require reasoning.



# Expedited Proceedings

- ICDR – Articles E-1 – E-10: The ICDR is unique in including rules for expedited proceedings.



# ICDR: Expedited Proceedings

Estimated 135 day cycle time to get an Award

**Applies for Cases below USD \$250,000**  
**Written Submissions only for USD \$100,000**

Detailed  
Submissions

Arbitrator  
Appointment  
ICDR List due  
back within  
**10 Days**

Procedural  
Conference  
and Order  
due within  
**14 Days** from  
Appointment

Proceedings  
on Written  
Submissions  
due within  
**60 Days** from  
Order

Proceedings  
with an Oral  
Hearing held  
within **60**  
**Days** from  
Order

The Award is  
due within  
**30 Days** from  
Closing of  
Hearing



# Document Exchange

- ICDR – Article 21: The ICDR is unique in including document exchange “U.S. discovery limits” in its rules.



# ICDR Document Exchange Rules

Applicability	Guidelines created in 2008 are now new Article 21 in 2014.
Document Production	All document requests must be “relevant and material”
E-discovery limitations	e-docs produced in most convenient form Requests must be “narrowly focused”
Depositions, Interrogatories and other US Discovery Procedures	Generally not appropriate under ICDR International Arbitration Rules
Arbitration Tribunal Authority	Manage with a view to maintain efficiency and economy May draw adverse inferences May take failure into account in allocating costs
Art. 22 Privilege	“Apply the same rule to all parties, giving preference to the rules that provide the highest level of protection”



# Party Disclosure Duties

- ICDR – Article 13.5: Failure of a party to disclose any circumstances that may give rise to justifiable doubts as to an arbitrator’s impartiality or independence within a reasonable period...constitutes a waiver of the right to challenge...
- LCIA – Article 10.4: A party may challenge an arbitrator within 15 days of the formation of the tribunal or after becoming aware of a circumstances “that give rise to justifiable doubts as to his impartiality or independence.”



# Award Deadline

- ICDR – Article 30: “Awards shall be made in writing by the arbitral tribunal and shall be final and binding on the parties. The tribunal shall make every effort to deliberate and prepare the award as quickly as possible after the hearing. Unless otherwise agreed by the parties, specified by law, or determined by the Administrator, the final award shall be made no later than 60 days from the date of the closing of the hearing.”
- ICC – Article 30: “The time limit within which the arbitral tribunal must render its final award is six months. Such time limit shall start to run from the date of the last signature by the arbitral tribunal or by the parties of the Terms of Reference. . . . The Court may fix a different time limit based upon the procedural timetable.”
- LCIA – Article 15.10: Final awards are to be rendered as soon as reasonably possible after the last submission from the parties and in accordance with a timetable.



# Drafting Arbitration Clauses

## Issues Checklist

- |   |                                     |   |  |
|---|-------------------------------------|---|--|
| ✓ | Scope of Arbitrable Disputes        | ✓ | Confidentiality                        |
| ✓ | Conditions Precedent to Arbitration | ✓ | Limitations on Discovery               |
| ✓ | Governing Law                       | ✓ | Timing, Length and Location of Hearing |
| ✓ | Number of Arbitrators               | ✓ | Form of the Award                      |
| ✓ | Qualifications of Arbitrators       | ✓ | Timing of the Award                    |
| ✓ | Selection of Arbitrators            | ✓ | Scope of Relief                        |
| ✓ | Administrator                       | ✓ | Equitable Relief                       |
| ✓ | Governing Rules                     | ✓ | Enforcement                            |





# ICDR Standard Clause

The ICDR offers the following model clause for international commercial contracts:

*"Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be determined by arbitration administered by the International Centre for Dispute Resolution in accordance with its International Arbitration Rules."*

The parties should consider adding:

- *"The number of arbitrators shall be (one or three)";*
- *"The place of arbitration shall be [city, (province or state), country]";*
- *"The language(s) of the arbitration shall be \_\_\_\_."*

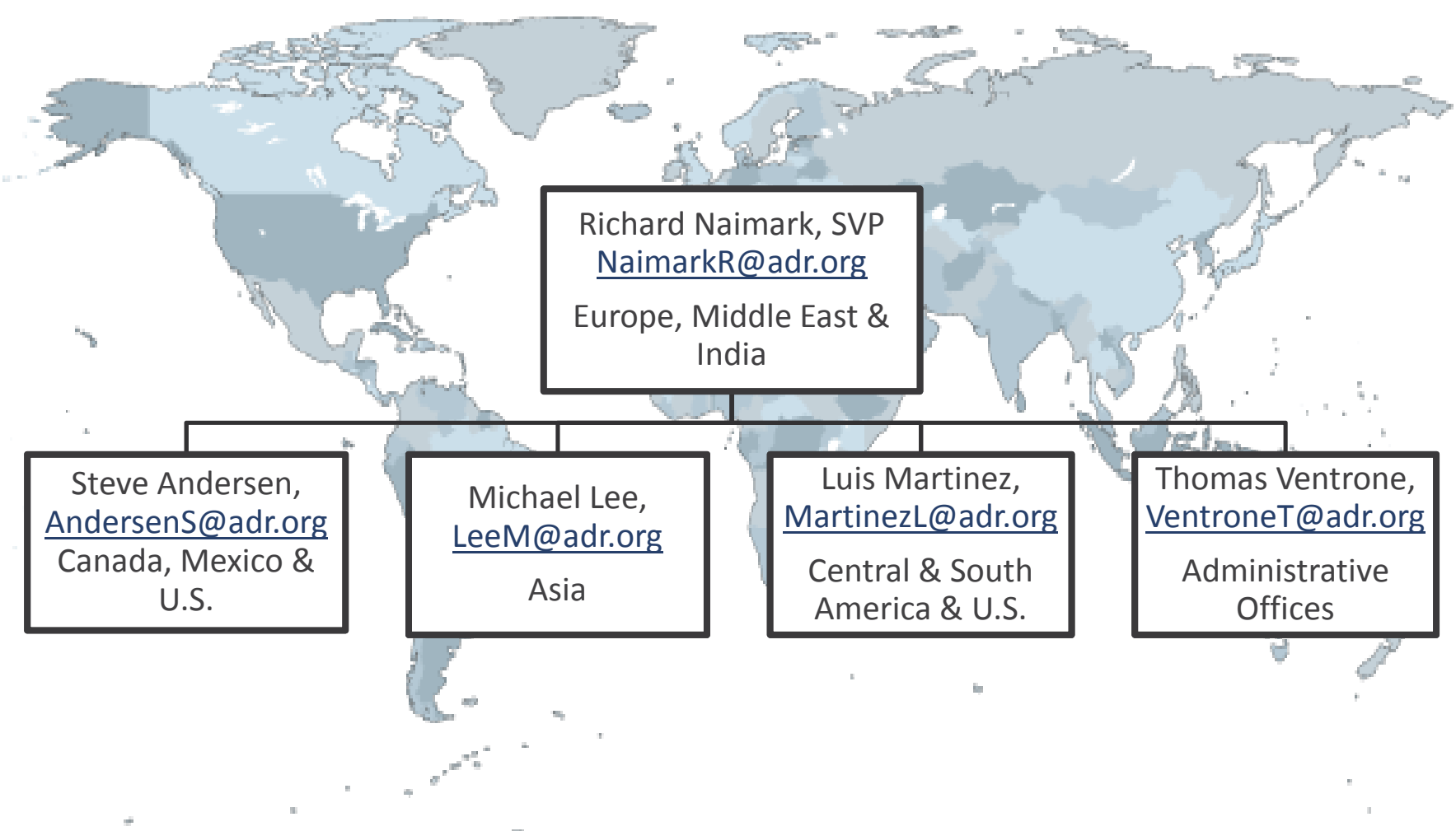


# Mediation Options – ICDR Concurrent Clause

- *Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be determined by arbitration administered by the International Centre for Dispute Resolution in accordance with its International Arbitration Rules. **Once the demand for arbitration is initiated**, the parties agree to attempt to settle any controversy or claim arising out of or relating to this contract, or a breach thereof by mediation, administered by the International Centre for Dispute Resolution under its International Mediation Rules. **Mediation will proceed concurrently with arbitration and shall not be a condition precedent to any stage of the arbitration process.”***



# ICDR Team & Territories



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# Thank You

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