

Value of ACICA Input on Life Cycle of Arbitration

10 Enforceability of Award

ACICA's involvement in the life cycle of the arbitration ensures a greater likelihood of a final and binding, and enforceable outcome.

Studies show that courts are more likely to enforce an institutional award failing voluntary compliance by the unsuccessful party.

9 Award

ACICA is proactive in ensuring that the decision of the Tribunal, the Award, is issued in a timely manner.

There are also time limits for many stages of the proceedings under the rules to help reduce the time of the arbitration

The process may be further accelerated if the parties elect to apply the ACICA Expedited Arbitration Rules, which require the Arbitrator to issue an award within 4 months of appointment.

8 Financial Management of the Process

Managing costs and time, greater certainty of costs, management and secure holding of tribunal deposits and payments.

ACICA requires deposits to be made by each party to ensure certainty of payment by all parties for the costs of arbitration. Such arrangements may be difficult to effect in ad hoc arbitration.

The parties do not bear the tribunal's costs of providing interpretation or correction of an Award (Art 46.4). This may not be possible where an ad hoc approach is taken unless agreed with the arbitrator. In an ad hoc arbitration the absence of an intermediary body to, for example, collect costs, require deposits or set fees of arbitrators may result in disputes.

7 Case Management

ACICA can liaise with the tribunal to ensure current case management practices are being observed per the overriding objective of the ACICA Rules (i.e. provide arbitration that is quick, cost effective and fair).

ACICA provides professional case administration to assist with the whole process (including addressing administrative questions confidentially where a party does not wish to raise it with the tribunal). In an ad hoc arbitration there is no supervision, other than limited supervisory jurisdiction of the Court in prescribed circumstances.

6 Operation of Arbitration

The ACICA Rules are comprehensive and regularly updated to incorporate developments and modern arbitration practice to encourage speedy and efficient resolution of disputes. Parties may, nevertheless, contractually depart from non-mandatory aspects of the ACICA Rules - party autonomy remains paramount.

Any ad-hoc rules in respect of the operation and conduct of the operation may not reflect the more efficient advances made in institutional rules.

1 Contract Drafting Stage

Clause certainty.

The ACICA model clause provides a clear and enforceable dispute resolution mechanism to determine matters referred to arbitration.

2 Initiating Arbitration

ACICA provides guidance to ensure all procedural requirements are met for proper initiation of arbitration process and provides templates reflecting international standard of best practice, such as a sample Notice of Arbitration and Answer to Notice of Arbitration.

3 Appointment of the Arbitral Tribunal

Efficient appointment process, expertise and up-to-date knowledge of suitability of arbitrators to disputes.

Where parties cannot agree on whom to appoint, ACICA can recommend and appoint from a large panel of arbitrators with relevant and necessary skills. ACICA takes into account all the relevant circumstances and does not adopt a one size fits all approach. In an ad hoc arbitration the parties' agreed processes may be ineffective. If parties have not or do not agree, the default position is three arbitrators in international arbitration under the International Arbitration Act, which may be unnecessarily costly for smaller disputes.

4 Consolidation and Joinder of Arbitrations

ACICA is involved in the consolidation and joinder applications thereby ensuring that they are dealt with as efficiently as possible. The existence of a prescriptive and guided mechanism to consolidate and join parties to arbitration reduces the risk of procedural disputes between the parties on these issues.

5 Challenge and Replacement of Arbitrators

Having ACICA as an independent body to manage appointments of arbitrators, and ACICA's ability to determine a challenge of an arbitrator (if required), reduces the need to engage the courts to determine the challenge where there may be a backlog of cases to be heard first.

Upon a successful challenge of an arbitrator, ACICA also as an independent body provides a process to appoint a new arbitrator, failing agreement by the parties.

ACICA involvement assists to minimise delay arising from challenges and replacement, which tend to derail ad hoc arbitrations.

