

Written by leading practitioners in the field, this fifth edition of *Arbitration World* provides readers with a single reference guide to over 50 different arbitration regimes and institutions around the world.

Arbitration World provides an informative, comparative and balanced overview of the key issues and is an essential resource for parties and lawyers engaged in arbitration, or considering arbitration as an option.

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INTERNATIONAL SERIES

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FOREWORD

Karyl Nairn QC & Patrick Heneghan | Skadden, Arps, Slate, Meagher & Flom (UK) LLP

We are delighted to have been invited once again by Thomson Reuters to edit this fifth edition of *Arbitration World*, published by its widely recognised legal arm, Sweet & Maxwell (and forming part of their new *International Series*).

Following the success of the previous publication, we are hoping that this revised and extended fifth edition will serve as an invaluable reference guide to the key arbitration jurisdictions, rules and institutions across the globe.

In the three years since the last edition was published, the arbitral landscape has continued to evolve, with important developments in both the law and practice of arbitration. For example, new arbitration centres have opened in New York, Seoul, Moscow and Mumbai; established institutions such as the LCIA, AAA, HKIAC, ICDR, SIAC, VIAC, UNCITRAL and WIPO have published revised arbitration rules; new arbitration legislation has been enacted in Hong Kong, Australia, Belgium and Austria; while other jurisdictions, such as India, have sought through case law to improve their “arbitration-friendly” credentials.

The global status and popularity of arbitration has also grown since the last edition of *Arbitration World*. From 2012 to 2014, ICSID saw the highest annual number of filings in its history, notwithstanding the criticisms in certain quarters about the legitimacy of the existing system of investment treaty arbitration. Arbitration is also extending its global reach – arbitral institutions are reporting that the parties to arbitration are more diversified than ever; 156 state parties have now adopted the New York Convention.

To reflect this trend of expansion, we have continued to broaden the scope of *Arbitration World*. This latest edition has 55 chapters, including 38 jurisdictions and 16 arbitration institutions. We feature 11 new chapters, comprising Belgium, Cayman Islands, Colombia, Egypt, Korea, Malta, Peru, Scotland and the arbitral institutions of CIETAC, SIAC and the SCC.

Arbitration World aims to provide a simple and practical guide to arbitration law and practice for parties and practitioners, enabling its readers to assess the comparative benefits and challenges of arbitrating in various jurisdictions and/or under the auspices of different institutions.

We should like to take this opportunity to express our gratitude to all the authors of *Arbitration World*, old and new. The popularity of this publication is testament to the quality and expertise of the leading law firms, practitioners and institutions who have committed their time to the project.

We should also like to thank Emily Kyriacou and her team at Thomson Reuters, including Katie Burrington, Nicola Pender and Chris Myers, for their superb management and coordination efforts. We also extend our gratitude to Michele O’Sullivan for commissioning the project all those years ago.

Finally, we wish to pay tribute to our hard-working colleagues at Skadden, Gulnaar Zafar, Ben Jacobs, Sabeen Sheikh, Bing Yan, Anna Grunseit, Judy Fu, Nicholas Lawn, Kam Nijar, Laura Feldman, David Edwards, Ekaterina Churanova, Calvin Chan, Ross Rymkiewicz, Catherine Kunz, Melis Acuner, Emma Farrow, Devika Khopkar, Sara

Nadeau-Seguin, Nicholas Adams, Ahmed Abdel-Hakam, Simon Mercouris, Anna Heimbichner, Joseph Landon-Ray, Simon Walsh, Alex van der Zwaan, Tom Southwell, Christopher Lillywhite and Eleanor Hughes, who have assisted with the review and editing of the chapters featured in this latest edition; *Arbitration World* has been a true Skadden team effort and we are most grateful for all the support received.

Patrick Heneghan and Karyl Nairn QC, July 2015

AUSTRALIAN CENTRE FOR INTERNATIONAL COMMERCIAL ARBITRATION (ACICA)

**Deborah Tomkinson & Margaux Barhoum* | Australian Centre for
International Commercial Arbitration**

1. INSTITUTIONAL HISTORY AND ORGANISATIONAL FRAMEWORK

1.1 How is the institution organised and run and what is its history?

The Australian Centre for International Commercial Arbitration (ACICA) is Australia's premier international arbitral institution. Established in 1985 as a not-for-profit company, ACICA's mission is to educate, promote and encourage the use of international commercial arbitration as a means of dispute resolution within Australia and the Asia Pacific region. ACICA has its headquarters at the Australian International Disputes Centre (AIDC) in Sydney, and also has registries in Melbourne and Perth.

ACICA provides a full range of administrative and other services to assist international arbitrations and mediations conducted in Australia and in the region (*see www.acica.org.au*).

ACICA works closely with AIDC and its case management operation, the Australian Commercial Disputes Centre (ACDC), and together both organisations are able to offer efficiently administered commercial dispute resolution services. While ACICA deals primarily with international arbitration and mediation, ACDC focuses on domestic disputes and assists with managing a range of alternative dispute resolution procedures. AIDC also offers tailor-made rooms for arbitration and mediation hearings.

ACICA is governed by a board that is composed of some of Australia's leading international arbitration practitioners. The day-to-day running of ACICA is managed by the ACICA Secretariat. ACICA maintains panels of international arbitrators and mediators, and lists of experienced arbitration and mediation practitioners.

In 2007 ACICA launched a commission with the objective to support and facilitate the conduct of both international and domestic arbitration and mediation in respect of maritime and transport disputes. The Australian Maritime and Transport Arbitration Commission (AMTAC) works closely with industry to promote an understanding of, and to provide services for, maritime and transport dispute resolution in Australia and the Asia Pacific region.

* The authors wish to acknowledge the work of Michelle Sindler and Lorraine Hui in the preparation of the earlier edition of this chapter.

In recent years, ACICA has played a crucial role in the Australian government's reform of the International Arbitration Act 1974 (Cth) (IAA), which governs the international arbitration regime in Australia. The IAA underwent substantial amendments in 2010 in a move to encourage the use of arbitration. In March 2011, the Australian government appointed ACICA as the sole default appointing authority competent to perform the arbitrator appointment functions under the amended IAA. This landmark action removes the requirement for parties to commence proceedings in one of the state or territory Supreme Courts or in the Federal Court to have an arbitrator appointed under the IAA.

ACICA is a signatory to cooperation agreements with over 50 other arbitration institutions and associations, including the Permanent Court of Arbitration in The Hague. A more substantial cooperative relationship exists between ACICA and those organisations that are members of the Asia Pacific Regional Arbitration Group.

2. REGIONAL SCOPE AND STATISTICS

2.1 Which regions are covered by the institution?

ACICA's current caseload comprises arbitrations and mediations seated in Australia. ACICA has not kept detailed statistics over the years. However, ACICA's caseload has increased significantly since the inception of AIDC in August 2010. Cases have involved parties from all over Australia and from all regions in the world, including countries such as South Korea, Japan, Fiji, Papua New Guinea, India, Cyprus, New Zealand, Hong Kong, Singapore, the United States, South Africa, France, the United Kingdom, Germany and Switzerland. ACICA's caseload shows an increasing number of foreign parties choosing Australian seats, with 90% of ACICA cases in the last two years involving at least one foreign party and more than a third of cases involving two foreign parties with no other connection to Australia other than it being the choice of seat.

3. RULES

3.1 Which arbitration rules are associated with your institution? What are the main areas covered by those rules? Are there any distinguishing features, for example, with respect to expedited formation? Have your rules recently changed or are they about to change? If so, how?

ACICA launched its current set of arbitration rules on 1 August 2011 (ACICA Arbitration Rules). In this chapter, references are to the 2011 version unless otherwise stated.

The 2011 version of the ACICA Arbitration Rules is a significant step forward from the previous 2005 version as it introduces, in Schedule 2, provisions on emergency arbitration. As explored further in *Section 8* below, these provisions allow a party to apply to ACICA for emergency interim measures of protection prior to the constitution of the arbitral tribunal. Other distinguishing features of the ACICA Arbitration Rules include: (i) provisions in Article 18 requiring parties and the arbitral tribunal to keep confidential all matters relating to the arbitration (including the existence of the arbitration), the award, the materials created for the purposes of the arbitration and the documents produced by another party to the arbitration (these confidentiality provisions are subject to the usual exceptions); and (ii) a provision stating that the arbitral tribunal shall have regard to (although not be

bound to apply) the International Bar Association Rules on the Taking of Evidence in International Arbitration (IBA Rules on Evidence).

In 2011, ACICA also revised its Expedited Arbitration Rules (ACICA Expedited Rules). The ACICA Expedited Rules provide a simplified procedure for arbitration, whereby a sole arbitrator appointed by ACICA determines the matter. Ordinarily, no hearing will take place unless the arbitrator determines that exceptional circumstances exist and either the arbitrator or the parties require a hearing to take place. The arbitrator is generally required to deliver a final award within four months of being appointed if there is no counterclaim or set-off, and otherwise within five months.

ACICA also launched new Appointment of Arbitrator Rules (ACICA Appointment Rules) in 2011. The ACICA Appointment Rules apply where ACICA is required to appoint arbitrators pursuant to:

- Any ad hoc agreement.
- Articles 6–8 of the UNCITRAL Arbitration Rules.
- Statutory powers granted by the IAA: under section 18 of the IAA, ACICA is an authority that is competent to appoint arbitrators in accordance with Article 11 of the UNCITRAL Model Law on International Arbitration 1985 (with amendments as adopted in 2006) (Model Law), which has the force of law in Australia.

ACICA has also developed specific rules for the resolution of maritime and transport disputes by AMTAC (AMTAC Arbitration Rules). In addition to the AMTAC Arbitration Rules, AMTAC provides a “rocket docket” procedure for expedited, documents-only arbitration to be completed within three months of commencement.

The ACICA Arbitration Rules are currently undergoing review and an Exposure Draft of the proposed ACICA Arbitration Rules 2015 was released at the end of 2014 for public comment. Once this review is complete, a new version of the ACICA Arbitration Rules will be released.

4. COMPLEX ARBITRATIONS

4.1 **Have your arbitration rules developed specific provisions to address common joinder and consolidation issues that arise in multi-party arbitrations? How do you add an additional party to an ongoing arbitration? How do you pursue claims arising out of multiple contracts in a single arbitration and combine two or more separate but related arbitrations?**

The current ACICA Arbitration Rules do not contain specific provisions on joinder and consolidation, however, inclusion of such provisions in the ACICA Arbitration Rules 2015 is under consideration. Currently, parties to multiple contracts may either agree to the appointment of the same arbitral tribunal or apply to ACICA for the appointment of the same arbitral tribunal in both matters and request an order from the arbitral tribunal to consolidate the cases or hear them concurrently.

5. COSTS OF THE ARBITRATION

5.1 **How do you calculate fees and what are the parties' obligations in this respect? Are arbitrators' fees and the fees of the institution charged on an ad valorem or hourly basis? Do you require a provisional advance or any advance on costs? Is there provision for separate advances on costs?**

Any reference to an amount of fees or costs is a reference to the applicable fees or costs as at January 2015 in Australian dollars.

The costs of arbitration under the ACICA Arbitration Rules include:

- (a) The fees of the arbitral tribunal.
- (b) Travel and other reasonable expenses incurred by arbitrators.
- (c) Costs of expert advice and other assistance required by the arbitral tribunal.
- (d) Travel and other reasonable expenses of witnesses to the extent such expenses are approved by the arbitral tribunal.
- (e) Legal and other costs directly incurred by the successful party if such costs were claimed during the arbitral proceedings and only to the extent that the arbitral tribunal determines that the amount of such costs is reasonable.
- (f) ACICA's administration fee.
- (g) Fees for facilities and assistance provided by ACICA.
- (h) ACICA's registration fee, currently A\$2,500 (which is initially payable by the claimant upon submitting a Notice of Arbitration).
- (i) Costs associated with any request for emergency interim measures of protection.

The costs of arbitration are in principle borne by the unsuccessful party, although the arbitral tribunal has discretion to apportion costs differently if it determines that such apportionment is reasonable, taking into account the circumstances of the case (*Article 41.1, ACICA Arbitration Rules*).

The ACICA Arbitration Rules do not provide a scale of costs for the arbitral tribunal's fees. Instead, arbitrators are remunerated at an hourly rate agreed upon by the parties or, failing agreement, determined by ACICA (*Articles 40.1 and 40.2, ACICA Arbitration Rules*). Where ACICA is requested to determine the hourly rate, it must take into account, amongst other things, the nature of the dispute, the amount in dispute, and the standing and experience of the arbitrator (*Article 40.4, ACICA Arbitration Rules*).

ACICA charges an administration fee, the amount of which is dependent upon the amount in dispute. Schedule 1 to the ACICA Arbitration Rules sets out the method for calculating the administration fee. In general, where the amount in dispute exceeds A\$500,000, the administration fee comprises a fixed fee component plus a variable

fee of between 0.02 and 0.5% of the amount in dispute. The maximum administration fee payable is capped at A\$99,000.

For the purpose of determining the amount in dispute, all claims, counterclaims and set-off defences are added together (*Appendix A, Article 2.2, ACICA Arbitration Rules*). If the amount in dispute is not specified in the statement of claim or counterclaim, it is determined by the arbitral tribunal.

Each party is required to deposit an amount as an advance for costs referred to in (a), (b), (c), (f) and (g) above (*Article 42.1, ACICA Arbitration Rules*). The arbitral tribunal may establish separate deposits where a counterclaim is submitted (*Article 42.2, ACICA Arbitration Rules*) or may require the parties to make supplementary deposits during the course of the arbitral proceedings (*Article 42.3, ACICA Arbitration Rules*). After the award has been rendered, any unexpended balance of the deposit is returned to the parties (*Article 42.7, ACICA Arbitration Rules*). ACICA maintains a trust account into which advances on fees can be paid (*Article 42.5, ACICA Arbitration Rules*).

The costs of arbitration, apportionment of costs and advance deposit of costs under the ACICA Expedited Rules are similar to those provided for in the ACICA Arbitration Rules. The key difference is that the administrative fee charged by ACICA for expedited proceedings is significantly lower than the administrative fee charged under the ACICA Arbitration Rules, as less administration work is required by ACICA, given the nature of the expedited process.

5.2 If money is held in advance of arbitration costs, is the interest credited to parties or the institution? What procedures are available if a party is unhappy with the proposed or actual costs? What are the consequences of one party refusing to pay any required advance on costs? Are there any provisions dealing with security for costs?

As ACICA may make a charge for its trust account services, the interest on moneys held is kept by ACICA as the charge for use of the trust account.

If one party is uncooperative with regard to the payment of an advance on costs, the other party may pay the full amount of the advance in order to progress the proceedings (and avoid a suspension or termination of the proceedings by the arbitral tribunal under Article 42.6 of the ACICA Arbitration Rules).

If parties are unhappy with the advance sought, ACICA can assess the situation and, if needed, can seek to intervene with the arbitrators in an endeavour to reach a compromise regarding the advance to ensure that the arbitration is not delayed unnecessarily.

Article 28.2(e) of the ACICA Arbitration Rules provides for the possibility of the arbitral tribunal ordering security for legal or other costs of any party as an interim measure of protection.

6. AGREEMENTS TO ARBITRATE

6.1 Does your institution recommend a standard form arbitration clause? If so, please provide details

ACICA recommends the following standard form arbitration clause for both domestic and international arbitration governed by the ACICA Arbitration Rules:

“Any dispute, controversy or claim arising out of, relating to or in connection with this contract, including any question regarding its existence, validity or termination, shall be resolved by arbitration in accordance with the ACICA Arbitration Rules. The seat of arbitration shall be Sydney, Australia [or choose another city]. The language of the arbitration shall be English [or choose another language]. The number of arbitrators shall be one [or three, or delete this sentence and rely on Article 8 of the ACICA Arbitration Rules].”

Where parties select the ACICA Expedited Rules, ACICA recommends the following standard form arbitration clause:

“Any dispute, controversy or claim arising out of, relating to or in connection with this contract, including any question regarding its existence, validity or termination, shall be resolved by arbitration in accordance with the ACICA Expedited Arbitration Rules. The seat of arbitration shall be Sydney, Australia [or choose another city]. The language of the arbitration shall be English [or choose another language].”

ACICA also acts as an appointing authority under the UNCITRAL Arbitration Rules. If the parties choose to select UNCITRAL arbitration, ACICA recommends the following standard form arbitration clause:

“Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules as at present in force.

The appointing authority shall be the Australian Centre for International Commercial Arbitration. The number of arbitrators shall be [one or three]. The place of arbitration shall be Sydney, Australia [or choose another venue]. The language(s) to be used in the arbitral proceedings shall be ...”

7. INITIATING PROCEEDINGS

7.1 **What must a party wishing to commence an arbitration submit to the institution (that is, required documents)? What are the contents of such submission? What are the procedural requirements? Who has responsibility for serving the proceedings, the institution or the initiating party?**

Under the ACICA Arbitration Rules, a claimant must submit to ACICA a Notice of Arbitration in two copies (or such additional number as ACICA directs), along with payment of ACICA's registration fee of A\$2,500 (*Article 4.1*).

Article 4.3 of the ACICA Arbitration Rules requires that the Notice of Arbitration include all of the following:

- (a) A demand that the dispute be referred to arbitration.
- (b) The names, postal addresses, telephone and facsimile numbers and email addresses (if any) of the parties and their counsel.
- (c) A copy of the arbitration clause or the separate arbitration agreement that is invoked.
- (d) A reference to the contract out of, relating to, or in connection with which the dispute arises.
- (e) The general nature of the claim and an indication of the amount involved, if any.
- (f) The relief or remedy sought.

-
- (g) A proposal as to the number of arbitrators (that is, one or three), if the parties have not previously agreed thereon.

The Notice of Arbitration may also include (*Article 4.4, ACICA Arbitration Rules*):

- (a) In the case where a sole arbitrator is to be appointed, the claimant's proposal for the appointment of a sole arbitrator.
- (b) In the case where three arbitrators are to be appointed, notification of the claimant's appointment of an arbitrator.
- (c) The statement of claim. A statement of claim is required under Article 21.1 of the ACICA Arbitration Rules and, if not contained in the Notice of Arbitration, must be communicated within a period of time to be determined by the arbitral tribunal. The statement of claim must include a statement of facts supporting the claim, the points at issue and the relief or remedy sought.

Arbitral proceedings are deemed to commence on the date ACICA receives the Notice of Arbitration or the registration fee, whichever occurs later (*Article 4.2, ACICA Arbitration Rules*). ACICA will then communicate the Notice of Arbitration to the other party (or parties) to the dispute (*Article 4.6, ACICA Arbitration Rules*).

Under the ACICA Expedited Rules, a claimant commences arbitration by submitting to ACICA a Notice of Arbitration containing the same details as those required under Article 4.3(a)–(g) of the ACICA Arbitration Rules outlined above. In addition, the Notice of Arbitration must include a statement of claim, which annexes any documents or witness statements that the claimant seeks to rely upon.

8. INTERIM RELIEF

8.1 **Are there any provisions dealing with interim relief prior to the formation of the tribunal? Are there any provisions dealing with the appointment of an “emergency arbitrator”?**

In 2011, ACICA introduced new provisions to the ACICA Arbitration Rules to allow parties to apply for emergency interim measures prior to the constitution of the arbitral tribunal.

Schedule 2 of the ACICA Arbitration Rules provides that a party may apply for emergency interim measures of protection by writing to ACICA either at the same time as or following the filing of the Notice of Arbitration. A party applying for an emergency measure must notify all other parties prior to, or at the same time as making the application, and provide a statement to ACICA certifying that all other parties have been notified or an explanation of the steps taken in good faith to notify the other parties of the application (*Schedule 2, Article 1.2, ACICA Arbitration Rules*).

The application must contain details of:

- (a) The nature of the relief sought.
- (b) The reasons why such relief is required on an emergency basis.

(c) The reasons why the party is entitled to such relief (*Schedule 2, Article 1.3, ACICA Arbitration Rules*).

The application must also be accompanied by payment of two fees: an application fee of A\$2,500 and the emergency arbitrator fee of A\$10,000 (*Schedule 2, Article 1.4, ACICA Arbitration Rules*).

Upon receiving the application and payment of fees, ACICA will use its best endeavours to appoint an emergency arbitrator within one business day and notify the parties as soon as possible (*Schedule 2, Article 2.1, ACICA Arbitration Rules*).

Once the emergency arbitrator has been appointed, ACICA will refer the application to the emergency arbitrator (*Schedule 2, Article 2.4, ACICA Arbitration Rules*), who must make any decision on the application within five business days (*Schedule 2, Article 3.1, ACICA Arbitration Rules*). The emergency arbitrator has the power to order or award any emergency interim measure of protection that he or she deems necessary and on such as terms he or she deems appropriate (Emergency Interim Measure) (*Schedule 2, Article 3.3, ACICA Arbitration Rules*).

The party applying for emergency relief must satisfy the emergency arbitrator that:

- (a) Irreparable harm is likely to result if the Emergency Interim Measure is not ordered.
- (b) Such harm substantially outweighs the harm that is likely to result to the party affected by the Emergency Interim Measure if the Emergency Interim Measure is granted.
- (c) There is a reasonable possibility that the requesting party will succeed on the merits, provided that any determination on this possibility shall not affect the liberty of decision of the arbitral tribunal in making any subsequent determination (*Schedule 2, Article 3.5, ACICA Arbitration Rules*).

In this regard, it should be noted that these threshold requirements are the same as those in Article 28.3 of the ACICA Arbitration Rules that apply where a party seeks interim measures of protection from the arbitral tribunal.

The emergency arbitrator may require a party to provide appropriate security as a condition of any Emergency Interim Measure (*Schedule 2, Article 3.6, ACICA Arbitration Rules*).

Any Emergency Interim Measure is binding on the parties (*Schedule 2, Article 4.1, ACICA Arbitration Rules*). However, it will cease to be binding if:

- (a) The arbitral tribunal makes a final award.
- (b) The claim is withdrawn.
- (c) The emergency arbitrator or the arbitral tribunal (whichever applies) so decides.
- (d) The arbitral tribunal is not appointed within 90 days of the Emergency Interim Measure being made (*Schedule 2, Article 4.3, ACICA Arbitration Rules*).

The emergency arbitrator's jurisdiction and powers cease upon the appointment of the arbitral tribunal (*Schedule 2, Article 5.1, ACICA Arbitration Rules*). It is important to note that an emergency arbitrator cannot act as an arbitrator in the proceedings unless the parties agree otherwise in writing (*Schedule 2, Article 2.3, ACICA Arbitration Rules*).

The ability to obtain emergency interim measures under the ACICA Arbitration Rules does not exclude the availability of court-ordered interim measures. Under the IAA, a party may apply to the court for an interim measure. A court has the same power to issue an interim measure in relation to arbitration proceedings, as it has in relation to proceedings in courts (*Article 17J, Model Law*). This is recognised in Article 7.2 of Schedule 2 of the ACICA Arbitration Rules.

The advantage of utilising the emergency arbitration provisions in the ACICA Arbitration Rules is that the process provided for is short and expedient. The time-frame envisaged by the ACICA Arbitration Rules is such that an Emergency Interim Measure can be obtained as quickly as within six business days. The ACICA Arbitration Rules are silent on whether formal hearings are required in order to obtain an Emergency Interim Measure, whereas an application for a court-ordered interim measure will inevitably involve some kind of hearing.

More importantly, a court exercising its power to order interim measures must do so in accordance with its own procedures, although it must also consider the specific features of international arbitration. Consequently, the elements that an applicant must establish to obtain an Emergency Interim Measure are different from those in court proceedings and, depending on the relief sought, the threshold for obtaining an Emergency Interim Measure may be lower.

In addition, the court's powers to order interim measures are restricted to those powers which it would ordinarily have in relation to judicial proceedings. An emergency arbitrator's powers are not subject to such constraints. Using an emergency arbitrator, parties also have access to experienced arbitration practitioners in a private and neutral forum.

As noted above, an Emergency Interim Measure is binding on the parties. Article 4.2 of Schedule 2 to the ACICA Arbitration Rules provides that "[t]he parties undertake to comply with any Emergency Interim Measure without delay". Consequently, if a party does not comply with the Emergency Interim Measure, the other party may be able to claim that there has been a breach of the express undertaking given. As a practical matter, the arbitral tribunal subsequently appointed is unlikely to look favourably on a party that has failed to comply with a prior order or award by an emergency arbitrator.

9. SELECTION/APPOINTMENT/CHALLENGE OF ARBITRATORS

9.1 **How are arbitrators appointed? Are there any requirements as to the number of arbitrators? How are their independence and availability ensured? What is the procedure with respect to sole arbitrators, co-arbitrators and the selection of the chairman?**

Number of arbitrators

The ACICA Arbitration Rules do not provide a default number of arbitrators. Instead, if the parties cannot agree on the number of arbitrators within 15 days of receipt by the respondent of the Notice of Arbitration, ACICA will determine the number of arbitrators, taking into account all relevant circumstances (*Article 8, ACICA Arbitration Rules*).

ACICA's Expedited Rules provide that there will only be one arbitrator, who is appointed by ACICA (*Articles 8.1 and 8.2, ACICA Expedited Rules*).

Independence and availability

Under Article 13.1 of the ACICA Arbitration Rules, a prospective arbitrator is required to disclose in writing to those who approach him or her in connection with his or her possible appointment "any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence". Once appointed, the arbitrator must disclose such circumstances in writing to all parties, as well as to ACICA. It is important to note that Article 13.1 of the ACICA Arbitration Rules picks up the language of Article 12 of the Model Law. Section 18A of the IAA specifies that, for the purposes of Article 12 of the Model Law, there are justifiable doubts as to the impartiality or independence of a person only if there is a "real danger of bias" on the part of that person conducting the arbitration. As a practical matter, the ACICA Secretariat will ask arbitrators for confirmation of their independence and availability to conduct the matter in a timely way.

Similarly, Article 8.3 of the ACICA Expedited Rules imposes an obligation on a prospective arbitrator to disclose circumstances likely to give rise to justifiable doubts as to his or her impartiality and independence. Further, in making the appointment, ACICA must have regard to such considerations as are likely to secure the appointment of an independent and impartial arbitrator and take into account the advisability of appointing an arbitrator of a nationality other than the nationalities of the parties (*Article 8.4, ACICA Expedited Rules*). ACICA may also have regard to the International Bar Association Guidelines on Conflicts of Interest in International Arbitration (*Article 8.6, ACICA Expedited Rules*).

The ACICA Appointment Rules apply where ACICA is requested to appoint an arbitrator pursuant to statute, the UNCITRAL Arbitration Rules or an ad hoc agreement between the parties. Under these rules, the Appointment Committee is required to have regard to the independence and impartiality of potential arbitrators, as well as their availability (*Article 7.1, ACICA Appointment Rules*).

Appointment of a sole arbitrator

Where a sole arbitrator is to be appointed, the ACICA Arbitration Rules provide that either party may propose to the other the names of one or more persons, one of whom would serve as the sole arbitrator (*Article 9.1, ACICA Arbitration Rules*). If, within 30 days after receipt by a party of a proposal to appoint a particular arbitrator, the parties have not reached agreement and provided written evidence of their agreement to ACICA, the sole arbitrator will be appointed by ACICA (*Article 9.2, ACICA Arbitration Rules*).

As discussed above, the ACICA Expedited Rules provide for the appointment of a sole arbitrator. The sole arbitrator is appointed by ACICA within 14 days from the commencement of arbitration (*Article 8.2, ACICA Expedited Rules*).

Appointment of three arbitrators

Where three arbitrators are to be appointed under the ACICA Arbitration Rules, each party appoints one arbitrator and the two arbitrators then choose the third arbitrator, who acts as the chairperson of the arbitral tribunal (*Article 10.1, ACICA Arbitration Rules*). If, within 30 days after the receipt of a party's notification of the appointment of an arbitrator, the other party has not notified the first party of the arbitrator it has appointed, the first party may request ACICA to appoint the second arbitrator (*Article 10.2, ACICA Arbitration Rules*). If, within 30 days after the

appointment of the second arbitrator, the two arbitrators have not agreed on the choice of the chairperson, ACICA shall appoint the chairperson (*Article 10.3, ACICA Arbitration Rules*).

Appointment of arbitrators in multi-party disputes

Under the ACICA Arbitration Rules, where there are multiple parties, any appointments of arbitrators pursuant to Article 9 (which concerns the appointment of a sole arbitrator) and Article 10 (which concerns the appointment of three arbitrators) have no effect unless the multiple claimants or respondents have acted jointly in the appointment of the arbitrator and provide written evidence of their agreement to ACICA (*Article 11.1, ACICA Arbitration Rules*). If the appointments are not made by the claimants or respondents jointly, ACICA will appoint each member of the arbitral tribunal and will designate one of them to act as chairperson unless the parties have agreed otherwise in writing (*Article 11.2, ACICA Arbitration Rules*).

9.2 What are the procedures for mounting challenges, including when and how the parties may submit objections and how arbitrators' appointments can be challenged after the event? How can arbitrators be replaced once removed/unable to continue with the appointment?

Challenges to arbitrators

Under the ACICA Arbitration Rules, any arbitrator may be challenged if there are circumstances that give rise to justifiable doubts as to the arbitrator's impartiality or independence (*Article 13.2, ACICA Arbitration Rules*). In the case of a party-appointed arbitrator, the party may challenge the arbitrator appointed by it only for reasons it becomes aware of after the appointment has been made (*Article 13.3, ACICA Arbitration Rules*). The procedure for challenging an arbitrator is commenced by a party sending its notice of challenge within 15 days after being notified of the appointment of that arbitrator or within 15 days after becoming aware of circumstances likely to give rise to justifiable doubts as to that arbitrator's impartiality or independence (*Article 14.1, ACICA Arbitration Rules*). The challenge must be made in writing, must include the reasons for the challenge and must be notified to the other party, all the members of the arbitral tribunal (including the arbitrator being challenged) and ACICA.

After a challenge has been made by one party, either the other party can agree to the challenge or the arbitrator being challenged can resign of his or her own accord (*Article 14.3, ACICA Arbitration Rules*), then a substitute arbitrator will be appointed in accordance with the procedure for appointing an arbitrator described above. If the other party does not agree to the challenge or the arbitrator does not resign in response to the challenge, then ACICA will decide on the challenge. If the challenge is sustained by ACICA, a substitute arbitrator will be appointed in accordance with the procedure described above.

Under the ACICA Expedited Rules, an arbitrator may be challenged in similar circumstances (*Article 9, ACICA Expedited Rules*). The procedure for raising a challenge is the same as under the ACICA Arbitration Rules, although the challenge must be made within seven days of notification by ACICA of the appointment of the arbitrator or within seven days of the challenging party becoming aware of circumstances giving rise to justifiable doubts as to that arbitrator's impartiality or independence (*Article 10.1, ACICA Expedited Rules*). The other party can agree to the challenge or the arbitrator being challenged can resign; in either case, a substitute arbitrator will be appointed by ACICA (*Article 10.3, ACICA Expedited Rules*). Otherwise, ACICA will decide on the challenge, and if the challenge is sustained, will appoint a substitute arbitrator (*Article 10.5, ACICA Expedited Rules*).

Replacement of arbitrators

Under the ACICA Arbitration Rules, in the event of the death or resignation of an arbitrator during the course of the arbitral proceedings, a substitute arbitrator will be appointed in accordance with the procedure described above (*Article 15.1, ACICA Arbitration Rules*). If an arbitrator fails to act or it is impossible de jure or de facto for the arbitrator to perform his or her functions, the procedure in respect of challenging and replacing an arbitrator described above will apply (*Article 15.2, ACICA Arbitration Rules*).

Under the ACICA Expedited Rules, in the event of the death or resignation of an arbitrator during the arbitral proceedings, ACICA will appoint a substitute arbitrator (*Article 11.1, ACICA Expedited Rules*). If an arbitrator fails to act or it is impossible for the arbitrator to perform his or her functions, the procedure for challenging and replacing an arbitrator described above will apply (*Article 11.2, ACICA Expedited Rules*).

Role of ACICA in monitoring arbitrators

ACICA takes an active role in case management and monitoring the timely conduct of cases and the performance of arbitrators, including dealing with any complaints of delays on the part of arbitrators in conducting proceedings and rendering their awards.

ACICA regularly follows up with parties and arbitrators as to the progress of proceedings in order to ensure that timetables are being followed and that the cases are proceeding as efficiently as possible. If a complaint is made during the course of arbitration proceedings regarding delays by the arbitrators, ACICA will investigate the matter to ascertain the cause of any delay and, if necessary, will do whatever possible to assist with progressing the case.

If a complaint is made after the arbitration proceedings, ACICA will review the case file and, if the complaint is justified, will take that complaint into consideration in future appointments of arbitrators.

10. RESOLUTION OF JURISDICTIONAL ISSUES

10.1 Does the institution play a role in determining jurisdiction disputes? How does the role of the institution interplay with the role of the tribunal and the national courts in this regard?

Australian arbitration law adopts the approach that an arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement (*Article 16(1), Model Law, which is given force of law by section 16, IAA*). This is reflected in Article 24.1 of the ACICA Arbitration Rules, which provides for the power of the arbitral tribunal to rule on objections that it has no jurisdiction. ACICA has no separate role in determining jurisdiction disputes.

If there is no reference to ACICA in the arbitration agreement, then it is not an ACICA case and parties are informed that it can be taken no further. The parties can, of course, subsequently enter into a clear agreement providing for ACICA arbitration. Where there is an ACICA arbitration clause but it potentially has problems, the jurisdictional matter will need to be raised with the arbitral tribunal.

If the arbitral tribunal rules as a preliminary question that it has jurisdiction, any party may request the Supreme Court of a state or territory, or the Federal Court to decide the matter, within 30 days after receiving notice of the

arbitral tribunal's ruling (*Article 16(3), Model Law*). The decision of the court cannot be appealed and, while such a request is pending, the arbitral tribunal may continue the arbitral proceedings and make an award.

11. TYPICAL AND/OR REQUIRED PROCEDURES

11.1 In brief, what are the key documents which must be filed by the parties (for example, request for arbitration, defence, reply) and the timescales for filing them?

Following the initiation of proceedings by Notice of Arbitration (*see Section 7 above*), Article 5 of the ACICA Arbitration Rules requires that, within 30 days of receiving the Notice of Arbitration from ACICA, the respondent(s) must submit an Answer to Notice of Arbitration (Answer) to ACICA.

The Answer must include:

1. Contact details of the respondent and its counsel.
2. Any plea that an arbitral tribunal constituted under the ACICA Arbitration Rules does not have jurisdiction.
3. The respondent's comments on the particulars set forth in the Notice of Arbitration.
4. The respondent's answer to the relief or remedy sought in the Notice of Arbitration.
5. The respondent's proposal as to the number of arbitrators if the parties have not previously agreed.

The Answer may also include:

1. In the case where a sole arbitrator is to be appointed, the respondent's proposal for the appointment of a sole arbitrator, or, in the case where three arbitrators are to be appointed, the respondent's notification of the appointment of an arbitrator.
2. The statement of defence, which replies to the statement of claim.
3. Any counterclaim or claim for the purpose of a set-off arising out of, relating to or in connection with the contract.

ACICA will then provide a copy of the Answer to the claimant. Once the registration fee has been paid and all arbitrators have been confirmed, ACICA will transmit the file to the arbitral tribunal.

Unless the statement of defence was contained in the Answer, the respondent must communicate its statement of defence to the claimant, each of the arbitrators and ACICA within the period of time determined by the arbitral tribunal. Under the ACICA Expedited Rules, the respondent must communicate its statement of defence within 28 days of ACICA providing it with the Notice of Arbitration (*Article 18.1, ACICA Arbitration Rules*). The statement of defence must reply to the statement of facts, points in issue and relief or remedy stated in the statement of claim. The respondent must also annex to the statement of defence any documents or witness statements that it seeks to rely upon.

11.2 How is the procedural timetable established? What written submissions/memorials are typically required? What are the general rules with respect to document production and hearings, and the typical length of proceedings?

Procedural timetable, submissions and hearings

The ACICA Arbitration Rules give broad general powers to the arbitral tribunal to conduct the arbitration in such manner as it considers appropriate, provided that the parties are treated equally and that each party is given a full opportunity to present its case (*Article 17.1, ACICA Arbitration Rules*).

There is no specific rule as to the manner in which a procedural timetable is set. In relation to submissions and hearings, the arbitral tribunal must hold hearings for the presentation of evidence by witnesses (including experts) or for oral argument if either party so requests. If neither party makes that request, the arbitral tribunal must decide whether to hold such hearings or whether the proceedings will be conducted on the basis of documents and other materials (*Article 17.2, ACICA Arbitration Rules*). The ACICA Arbitration Rules also provide that the arbitral tribunal is to have regard to, but is not bound to apply, the IBA Rules on Evidence (*Article 27.2, ACICA Arbitration Rules*).

The ACICA Expedited Rules also allow the arbitrator to conduct the arbitration in such manner as he or she finds appropriate (*Article 13.1, ACICA Expedited Rules*). However, the ACICA Expedited Rules provide that there shall be no hearing unless the arbitrator determines that exceptional circumstances exist and either the arbitrator or the parties require a hearing to take place (*Article 13.2, ACICA Expedited Rules*). Any hearing will be limited to one day unless the arbitrator decides otherwise (*Article 13.3, ACICA Expedited Rules*). The arbitrator is also required to have regard to, but is not bound to apply, the IBA Rules on Evidence (*Article 23.3, ACICA Expedited Rules*).

Document production

As noted above, both the ACICA Arbitration Rules and the Expedited Rules provide arbitrators with broad discretion to conduct the arbitration in any manner they see fit, including making orders for document production.

The ACICA Arbitration Rules do not otherwise specifically address document production. The ACICA Expedited Rules provide that there will be no discovery. The arbitrator may however, order a party to produce particular documents that the arbitrator considers relevant and, if the arbitrator believes that a party has failed to produce any relevant document without good reason, the arbitrator may draw an adverse inference from that party's failure to produce (*Articles 23.4 and 23.5, ACICA Expedited Rules*).

In addition, section 23 of the IAA provides that a party to arbitral proceedings may apply to a court to issue a subpoena, provided the permission of the arbitral tribunal has been obtained. The subpoena may require a person to attend for examination before the arbitral tribunal and/or produce documents to the arbitral tribunal. The addressee of the subpoena may be a party or non-party, although in the case of a non-party the court will not issue a subpoena unless it is satisfied that it is reasonable in all circumstances to issue it to the person. Section 23 of the IAA applies generally unless the parties have agreed that it will not apply.

12. AWARDS

12.1 Are there any time limits for the rendering of awards? What is the scope of awards available (for example, interim, partial, final)? Is there a process for scrutiny of the tribunal's award by the institution and its internal bodies?

Under both the ACICA Arbitration Rules and the ACICA Expedited Rules, the arbitrators may make interim, interlocutory or partial awards. The ACICA Arbitration Rules do not require awards to be rendered within a particular time limit. However, under the ACICA Expedited Rules, the arbitrator is generally required to deliver a final award within four months of being appointed if there is no counterclaim or set-off, and otherwise within five months.

ACICA does not scrutinise awards made by the arbitral tribunal. Once the arbitral tribunal has finalised its award, it is required to communicate copies of the award signed by the arbitrators to the parties and ACICA (*Article 33.5, ACICA Arbitration Rules; Article 28.5, ACICA Expedited Rules*).

A party may request that the arbitral tribunal give an interpretation of the award (*Article 36, ACICA Arbitration Rules; Article 31, ACICA Expedited Rules*). Such a request must be made within 30 days after receipt of the award under the ACICA Arbitration Rules or within seven days after receipt of the award under the ACICA Expedited Rules. Notice of the request for an interpretation must be given to the other party. The arbitral tribunal must give the interpretation in writing within 45 days after receipt of the request under the ACICA Arbitration Rules or within 28 days after receipt of the request under the ACICA Expedited Rules. The interpretation will then form part of the award.

A party may also request that the arbitral tribunal correct any errors of computation, any clerical or typographical errors, or any errors of a similar nature (*Article 37, ACICA Arbitration Rules; Article 32, ACICA Expedited Rules*). Such a request must be made within 30 days after receipt of the award under the ACICA Arbitration Rules or within seven days after receipt of the award under the ACICA Expedited Rules. Notice of request for correction must be given to the other party. The arbitral tribunal may also make corrections on its own initiative within 30 days after communication of the award under the ACICA Arbitration Rules or within 28 days after communication of the award under the ACICA Expedited Rules.

13. CONFIDENTIALITY

13.1 What are the rules as to confidentiality of the work of the institution, the materials generated during the proceedings, the documents and evidence produced and the award rendered by the tribunal? What are the duties of confidentiality of the parties, the institution members and staff and the arbitrators?

Article 18 of the ACICA Arbitration Rules and Article 14 of the ACICA Expedited Rules provide that generally all hearings are to take place in private, and that the parties, the arbitrators and ACICA must treat all matters relating to the arbitration (including the existence of the arbitration), the award, materials created for the purpose of the arbitration, and documents produced by another party in the proceedings and not in the public domain, as confidential and shall not disclose to a third party, without prior written consent from the parties, except:

1. For the purpose of making an application to any competent court;

2. For the purpose of making an application to the courts of any state to enforce the award;
3. Pursuant to the order of a court of competent jurisdiction;
4. If required by the law of any state which is binding on the party making the disclosure; or
5. If required to do so by any regulatory body.

A party wishing to make disclosure pursuant to the above exceptions must, within a reasonable time prior to the intended disclosure, notify the arbitrators, ACICA and the other parties (if the disclosure is during the arbitration), or ACICA and the other parties (if the disclosure takes place after the conclusion of the arbitration), and furnish details of the disclosure and an explanation of the reason for it.

Further, to the extent that a witness is given access to evidence or other information obtained in the arbitration, the party calling that witness is responsible for the maintenance by the witness of the same degree of confidentiality as that required of the party.

As noted above, both the ACICA Arbitration Rules and the ACICA Expedited Rules require that the arbitrators are to have regard to, but are not bound to apply, the IBA Rules on Evidence. Article 3 of the IBA Rules on Evidence provides that any document submitted or produced by a party or non-party in the arbitration and not otherwise in the public domain must be kept confidential by the arbitral tribunal and the other parties, and can only be used in connection with the arbitration. This requirement applies except to the extent that disclosure may be required of a party to fulfil a legal duty, protect or pursue a legal right, or enforce or challenge an award in bona fide legal proceedings before a court or other judicial authority. This confidentiality requirement in the IBA Rules on Evidence is without prejudice to other obligations of confidentiality in the arbitration (*including, for example, Article 18, ACICA Arbitration Rules or Article 14, ACICA Expedited Rules*).

In addition, the IAA contains confidentiality provisions that apply if the parties have agreed that they are to apply (*see sections 23C–23G, IAA*). These provisions set out the confidentiality obligation, the circumstances in which disclosure of confidential information may be allowed, the circumstances in which a court may make an order prohibiting the disclosure of confidential information and the circumstances in which a court may make an order allowing disclosure of confidential information.

14. INSTITUTIONAL ADVANTAGES

14.1 What are the main advantages and strengths of the institution? Are there any other unique institutional features which make arbitrating under its auspices more attractive relative to other similar service providers?

The new provisions introduced in 2011 bring the ACICA Arbitration Rules on par with international best practice. The ACICA Arbitration Rules address key problems such as confidentiality of arbitration proceedings and the ability to obtain urgent interim relief prior to the constitution of the arbitral tribunal.

The ACICA Expedited Rules provide a more cost-effective and quick alternative for smaller value or less complex disputes.

ACICA has a reputation for providing parties with transparent and efficient administration of their disputes. ACICA is also able to assist parties and/or counsel with all aspects of arranging hearings and associated services.

The advantages of ACICA arbitration are complemented by an advanced legislative regime supporting international arbitration in Australia. The IAA, as amended in 2010, adopts most of the provisions of the Model Law. Of particular significance to parties to ACICA arbitration is that interim measures granted by the arbitral tribunal (*for example, pursuant to Article 28, ACICA Arbitration Rules*) can be recognised and enforced in Australian courts with relative ease. In addition, parties may apply to Australian courts to issue subpoenas requiring a person (whether a party or a non-party) to produce documents to the arbitral tribunal or appear for examination before the arbitral tribunal (*section 23, IAA*). A party also has the right to apply to a court to compel a person to comply with an order of the arbitral tribunal requiring that person to attend before the arbitral tribunal, to produce a document, to appear as a witness or to do any other thing that the arbitral tribunal requires to assist it in the performance of its functions (*section 23A, IAA*).

15. OTHER DISPUTE RESOLUTION SERVICES

15.1 Are there any other mediation, expert determination or alternative dispute resolution services offered by your organisation?

ACICA provides a full range of administrative and other services to assist the conduct of international arbitrations, including assistance in determining the number of arbitrators to be appointed and appointing arbitrators in circumstances where the parties cannot agree on a candidate.

ACICA also provides mediation services under the ACICA Mediation Rules 2007 and maintains a panel of mediators for international disputes as well as for domestic disputes.

ACICA's partner organisation, AIDC, offers a full suite of alternative dispute resolution services through its case administration and training arm, ACDC. ACDC offers recommended rules and guidelines for commercial mediation, workplace mediation, commercial conciliation, expert determination and domestic arbitration (*see www.disputescentre.com.au*). AIDC and ACDC also offer training in mediation and other alternative dispute resolution mechanisms.

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