

**Conrad/Münch/Black-Branch (Eds.)**

**International  
Commercial Arbitration**  
**Standard Clauses and Forms**  
**Commentary**

**Helbing Lichtenhahn Verlag**  
**C.H. Beck · Hart · Nomos**

Conrad/Münch/Black-Branch (eds.)

# **International Commercial Arbitration**

Standard Clauses and Forms

Commentary



# International Commercial Arbitration

Standard Clauses and Forms

Commentary

edited by

**Nicole Conrad**

Professor at Zurich University  
of Applied Sciences (ZHAW),  
School of Management and Law

**Peter Münch**

Professor at Zurich University  
of Applied Sciences (ZHAW),  
School of Management and Law

**Jonathan Black-Branch**

Professor at Royal Holloway University of London  
and University of Bedfordshire  
Lecturer at Zurich University of Applied Sciences (ZHAW),  
School of Management and Law

**Helbing Lichtenhahn**

C.H.Beck · Hart · Nomos

*Published by*

Helbing Lichtenhahn Verlag, Elisabethenstrasse 8, 4051 Basel, Switzerland  
www.helbing.ch

*Co-published by*

Verlag C. H. Beck oHG, Wilhelmstrasse 9, 80801 München, Germany  
www.beck.de

Nomos Verlagsgesellschaft mbH & Co. KG, Waldseestrasse 3-5,  
76530 Baden-Baden, Germany  
www.nomos.de

Hart Publishing, 16C Worcester Place, Oxford, OX1 2JW, United Kingdom  
www.hartpub.co.uk

Published in North America (US and Canada) by Hart Publishing,  
c/o International Specialized Book Services, 930 NE 58th Avenue, Suite 300,  
Portland, OR 97213-3786, USA, eMail: orders@isbs.com

Recommended form of citation: ICA-Comm.-AUTHOR, marg. no. 3.103

Bibliographic information published by the Deutsche Nationalbibliothek

The Deutsche Nationalbibliothek lists this publication in the  
Deutsche Nationalbibliografie; detailed bibliographic data are available  
in the Internet at <http://dnb.d-nb.de>.

All rights reserved. No part of this book may be reproduced by any means,  
or transmitted, or translated into machine language without the written  
permission of the publisher.

ISBN 978-3-7190-3098-8 (Helbing Lichtenhahn)

ISBN 978-3-406-64858-8 (C. H. Beck)

ISBN 978-1-8494-6489-5 (Hart Publishing)

ISBN 978-3-8487-0145-2 (Nomos)

© 2013 Helbing Lichtenhahn, Basel

## Preface

Arbitration is becoming increasingly important in the field of international business. In the past, the typical parties to arbitration proceedings were big enterprises, represented by international law firms. As a consequence of globalization and the opening of markets in Asia, medium-sized enterprises can now become global players, joined by small and medium-sized law firms.

While there are already many introductions to arbitration law to choose from, this book is different. It serves as a form book in which practitioners will find not only generic models but also models with commentaries for use in different jurisdictions. However, it is not the editors' intention to formalize or standardize arbitral proceedings. Rather, this book provides practical guidelines to help steer clients through arbitral proceedings. By using it to check submissions for completeness and formal accuracy, a practitioner can avoid pitfalls and thus improve the efficiency of the arbitration process.

This publication aims to be a useful tool for practitioners involved in international arbitration proceedings. However, every case is different. The model forms must be adapted to take into account the specific characteristics of each individual case.

The publication also focuses on institutional arbitration rules in Asia, introducing the reader to the SIAC, HKIAC, CIETAC, and KLRCA Rules in their current versions. The UNCITRAL commentary is based on the revised Rules adopted in 2010.

The concept of the handbook has been developed at the Zurich University of Applied Sciences (ZHAW), School of Management and Law. The editors are proud to have won over 20 certified specialists for their vision of a form book on international arbitration law. Constructive feedback is most welcome and can be addressed to either the editors or the publishers.

Winterthur, January 2013

The editors:

Nicole Conrad  
Peter Münch  
Jonathan Black-Branch



## Authors' List

LOUISE BARRINGTON, JD, LL.M., FCIArb, FHKIA  
Independent Arbitrator and Mediator; Director, Vis East International  
Commercial Arbitration Moot

§ 11

BARBARA BAUMANN, BSc.  
Zurich University of Applied Sciences (ZHAW), School of Management and Law,  
Department Business Law

§§ 2, 3

JONATHAN BLACK-BRANCH, JP, FRSA Prof. D. Phil. Ph.D.  
Zurich University of Applied Sciences (ZHAW), School of Management and Law,  
Department Business Law; Royal Holloway University of London and University of  
Bedfordshire

§§ 1, 9

JENS BREDOW, RA, Secretary General  
German Institution of Arbitration DIS (Cologne)

§ 10

ÖMER CILINGIR, LL.B., LL.M.  
Zurich University of Applied Sciences (ZHAW), School of Management and Law,  
Department Business Law

§§ 2, 3

NICOLE CONRAD, Prof. Dr., LL.M., RAin  
Zurich University of Applied Sciences (ZHAW), School of Management and Law,  
Department Business Law

§§ 2, 3, 11

SANDRA DE VITO BIERI, RAin, LL.M.  
Bratschi Wiederkehr & Buob (Zurich)

§ 16

ALEJANDRO GARCIA, RA, lic. iur., LL.M.  
Herbert Smith Freehills LLP (London)

§ 5

KARIN GRAF, RAin, LL.M.  
Wenger Plattner Attorneys at Law (Zurich)

§ 16

HANNO KÄMPF, Prof. Dr.  
University of Applied Sciences Mainz

§ 12

TIMOTHY KAUTZ, Prof. Dr.  
University of Applied Sciences Mainz

§ 12

THOMAS R. KLÖTZEL, RA, Dr. iur.  
Thümmel, Schütze & Partner (Stuttgart)  
§§ 13, 14

NICOLINA KNECHT, RAin, lic. iur., Mediatorin, MAS  
Krepper Knecht & Partner (Zurich)  
§ 17

SOPHIE LEMAIRE, Prof. Dr.  
Université Paris-Dauphine  
§ 4

VANESSA A. LIBORIO GARRIDO DE SOUSA, RAin, LL.M.  
Akin Gump Strauss Hauer & Feld LLP (Geneva)  
§ 8

MARIE ÖHRSTRÖM, RAin, LL.M.  
Senior Associate, Setterwalls (Stockholm); previously SCC Deputy Secretary General  
§ 15

ARNAUD RAYNOUARD, Prof. Dr.  
Université Paris-Dauphine  
§ 4

MARGUERITA SEDRATI-MÜLLER, Bakk. phil., Mag.  
Dorda Brugger Jordis Rechtsanwälte (Vienna)  
§ 6

CHRISTOPH STIPPL, RA, LL.M., Dr.  
Dorda Brugger Jordis Rechtsanwälte (Vienna)  
§ 6

SABINE STRICKER-KELLERER, RA, Dr.  
Freshfields Bruckhaus Deringer (Munich)  
§ 7

SARAH THEURICH, LL.M.  
Senior consultant, WunschARB Sàrl (Beijing, China); previously Legal Staff at  
the WIPO Arbitration and Mediation Center  
§ 5

PETER YUEN, RA  
Fangda Partners (Hong Kong)  
§ 7

## Table of Contents

Preface . . . . .	V
Authors' List . . . . .	VII
List of Abbreviations . . . . .	XI
§ 1 Introduction to Arbitration . . . . .	1
§ 2 Sample Clauses for International Arbitration Agreements . . . . .	11
<b>Arbitration Rules and Country Reports</b>	
§ 3 UNCITRAL Rules . . . . .	35
§ 4 ICC . . . . .	123
§ 5 WIPO Arbitration Rules and WIPO Expedited Arbitration Rules . . . . .	175
§ 6 Austria . . . . .	231
§ 7 China . . . . .	307
§ 8 Dubai . . . . .	345
§ 9 England & Wales . . . . .	407
§ 10 Germany . . . . .	455
§ 11 Hong Kong . . . . .	499
§ 12 India . . . . .	553
§ 13 Malaysia . . . . .	643
§ 14 Singapore . . . . .	677
§ 15 Sweden . . . . .	713
§ 16 Switzerland . . . . .	753
<b>Beyond Arbitration</b>	
§ 17 Alternative Dispute Resolution . . . . .	859
Index . . . . .	885



This icon indicates that the respective sample form or document is available for download on the webpage of the publisher. Documents may be downloaded by redemption of access code.

**Redemption of access code:** Remove rubber layer on the code provided on the backside of the front board. Open the URL **download.helbing.ch**. Enter your access code in the “Berechtigungscod”-box. Click “Download”.



## List of Abbreviations

AA	Arbitration Act
AAA	American Arbitration Association
AALCO	Asian-African Legal Consultative Organization
ACA	Arbitration and Conciliation Act, 1996
ACCP	Austrian Code of Civil Procedure
ADR	Alternative Dispute Resolution
AGICOA	Association of International Collective Management of Audiovisual Works (Association de Gestion Internationale Collective des Oeuvres Audiovisuelles)
AO	Arbitration Ordinance
Art.	article
Arts.	articles
ASA	Association Suisse de l'Arbitrage (Switzerland's Arbitration Association)
BAC	Beijing Arbitration Commission
BeckRS	Beck-Rechtsprechung
BGB	Bürgerliches Gesetzbuch
BGH	Bundesgerichtshof
BSK	Basel Commentary (Basler Kommentar)
BT-Drucksache	Deutscher Bundestag: Drucksache
CAS	Court of Arbitration for Sport (Lausanne)
CCP	Swiss Code on Civil Procedure (Schweizerische Zivilprozessordnung vom 19. Dezember 2008, SR 272)
CCP	French Code of Civil Procedure
CEDR	The Centre for Effective Dispute Resolution
cf.	confer
CIArb	Chartered Institute of Arbitrators
CIETAC	China International Economic and Trade Arbitration Commission
CIPAA	Construction Industry Payment and Adjudication Act 2012
CMAC	China Maritime Arbitration Commission
CNICA	Council for National and International Commercial Arbitration
consid.	consideration
CV	curriculum vitae
DAB	Dispute Adjudication Board
DAC	Delhi High Court Arbitration Centre
DAC	Department Advisory Committee on Arbitration Law
DFT	Decision of the Swiss Federal Tribunal
DIAC	Dubai International Arbitration Centre
DIFC	The Dubai International Financial Centre
DIS	German Institution for Arbitration/Deutsche Institution für Schiedsgerichtsbarkeit e.V.
DRB	Dispute Review Board
e.g.	exempli gratia (= for example)
e.V.	eingetragener Verein (Association)
EC	European Commission
ECHR	European Convention on Human Rights

ed.	edition/editor
eds.	editors
EPCs	Export Promotion Councils
et seq./et seqq.	et sequens [and the following one]/et sequens [and the following ones]
etc.	et cetera
EU	European Union
f./ff.	(and the) following (page)/(and the) following (pages)
FACT	Federation on Indian Chambers of Commerce
FAQs	Frequently Asked Questions
FIAC	Frankfurt International Arbitration Center
FICCI	Federation of Indian Chambers of Commerce and Industry
FIDIC	Fédération Internationale des Ingénieurs Conseils/International Federation of Consulting Engineers
FOSFA	The Federation of Oils, Seeds and Fats Associations
Frankfurt a.M.	Frankfurt am Main
GAA	German Arbitration Act
GAFTA	The Grain and Feed Trade Association
GCC Convention	Gulf Cooperation Council Convention
GPR	Zeitschrift für Gemeinschaftsprivatrecht
HKIAC	Hong Kong International Arbitration Centre
i.e.	id est (= that is)
IBA	International Bar Association
IBA Guidelines	IBA Guidelines on Conflicts of Interest in International Arbitration of 22 May 2004
IBA Rules of Evidence	IBA Rules on the Taking of Evidence in International Commercial Arbitration of 29 May 2010
ibid.	ibidem (= in the same place)
ICA	Indian Council of Arbitration
ICADR	International Centre for Alternative Dispute Resolution
ICC	International Chamber of Commerce
ICC Rules	ICC Rules of Arbitration of 1 January 2012
ICSID	International Centre for Settlement of Investment Disputes
IIAM	Indian Institute of Arbitration and Mediation
JBI	Juristische Blätter
KG	Kammergericht
KLRCA	Kuala Lumpur Regional Centre for Arbitration
LCIA	London Court of International Arbitration
LICA Rules	LCIA Arbitration Rules of 1 January 1998
LLC	Limited Liability Company
LMAA	London Maritime Arbitrators Association
Ltd.	Limited
marg. no./nos.	margin number/numbers
MEDALOA	Mediation and Last-Offer-Arbitration
Med-Arb	Mediation-Arbitration
MIAC	Mauritius International Arbitration Centre Limited
ML	Model Law
MOFCOM	PRC Ministry of Commerce
New York Convention	New York Convention of 10 June 1958 on the Recognition and Enforcement of Foreign Arbitral Awards

NJW	Neue Juristische Wochenschrift
no.	number
nos.	numbers
NPO	non-profit organization
OGH	Austrian Supreme Court of Justice
ÖJZ	Österreichische Juristenzeitung
OLG	Oberlandesgericht
op. cit.	opere citato
p.	page
para.	paragraph
PCA	Permanent Court of Arbitration
PILA	Swiss Private International Law Act (Bundesgesetz vom 18. Dezember 1987 über das Internationale Privatrecht, SR 291)
POA	Power of Attorney
PORAM	The Palm Oil Refiners Association of Malaysia
pp.	pages
PRC	People's Republic of China
PSUs	Public Sector Undertakings
revUNICTRAL Rules	revised UNICTRAL Arbitration Rules of 15 August 2010
RIW	Recht der Internationalen Wirtschaft
RWZ	Zeitschrift für Recht und Rechnungswesen
s./ss.	section/sections
SAC	Shanghai Arbitration Commission
SAR	Stockholm Arbitration Report
SCAM	Singapore Chamber of Maritime Arbitration
SCC	Stockholm Chamber of Commerce
SCCAM	Swiss Chamber Court of Arbitration and Mediation
SchiedsRÄG	Schiedsrechts-Änderungsgesetz
SchiedsVZ	Zeitschrift für Schiedsverfahren
SchO	Schiedsordnung
SGD	Singapore Dollar
SIAC	Singapore International Arbitration Centre
SIAC SGX-DC	Singapore Exchange Derivatives Clearing Limited
SIAR	Stockholm International Arbitration Review
SiARB	Singapore Institute of Arbitrators
SPC	Supreme People's Court (China)
SPR	Specific Procedural Rules
SRCoLD	DIS Supplementary Rules for Corporate Law Disputes
SREP	DIS Supplementary Rules for Expedited Proceedings
Suppl.	Supplement
Swiss Code of Obligation	Federal Act on the Amendment of the Swiss Civil Code of 30 March 1911 (Part Five: The Code of Obligations), SR 220
Swiss Constitution	Federal Constitution of the Swiss Confederation of 18 April 1999, SR 101
Swiss Federal Tribunal Statute	Federal Act of 17 June 2005 on the Federal Tribunal
2004 Swiss Rules	Swiss Rules of International Arbitration of 1 January 2004
2012 Swiss Rules	Swiss Rules of International Arbitration of 1 June 2012
SWK	Steuer- und WirtschaftsKartei

TAS	Tribunal Arbitral du Sport (Lausanne); see also: CAS
TOR/ToR	Terms of Reference
U.S.	United States
U.S.C.	United States Code Classification
UAE	United Arab Emirates
UK	United Kingdom
UN	United Nations
UNCITRAL	United Nations Commission on International Trade Law
UNCITRAL Arbitration Rules	Revised UNICTRAL Arbitration Rules of 15 August 2010
VAT	Value Added Tax
VIAC	Vienna International Arbitration Centre
Vol.	Volume
Vols.	Volumes
wbl	wirtschaftsrechtliche blätter
WIPO	World Intellectual Property Organization (Geneva)
WM	Zeitschrift für Wirtschafts- und Bankenrecht
Zak	Zivilrecht Aktuell
ZfRV	Zeitschrift für Europarecht, Internationales Privatrecht und Rechts- vergleichung
ZPO	Zivilprozessordnung (Switzerland, Austria, Germany)