

Conrad/Münch/Black-Branch (Eds.)

**International
Commercial Arbitration**

Standard Clauses and Forms

Commentary

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

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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

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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) |