# Arbitration on its way back: The reinvigoration of arbitration under the IAMA Rules

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## Abstract

*Legislative changes to Australia's domestic commercial arbitration landscape have prompted the review of the Institute of Arbitrators and Mediators Australia (IAMA) Arbitration Rules. The review has aligned the IAMA Rules to the revised Commercial Arbitration Acts and international best practice under the UNCITRAL Model Law, ensuring arbitral practice remains efficient and cost-effective. This article will examine the theoretical and historical background to the recent reform, the IAMA review process and the major changes and features of the 2014 IAMA Rules, with reference to the 2007 IAMA Rules.*



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# I Introduction

In recent years there has been significant reform in the domestic commercial arbitration landscape in Australia. The impetus of the reform has been to improve the timeliness and cost-effectiveness of arbitration as a dispute resolution process, by way of cultural change. Australia's revised uniform legislation on domestic commercial arbitration[4] (the **CAAs**) is now harmonious with the international arbitral regime in Australia.[5] The Institute of Arbitrators and Mediators Australia (**IAMA**) has now introduced arbitration rules, which operate on and from 2 May 2014 (**2014 IAMA Rules**) which are designed to operate under either arbitral law.

The purpose of this article is to set out the key changes to the 2014 IAMA Rules.

As a prelude, the article will briefly consider:

1 the theoretical and historical background leading to reform;

2 the Terms of Reference for review and the consultation process; and

3 the major changes and new features of the 2014 IAMA Rules that practitioners should be aware of.

# II Background to the reform process

## (A) Theoretical background

### *a) The relationship between lex arbitri and arbitral rules*

There is an important difference between the lex arbitri (or procedural law) and procedural rules. The *lex arbitri* provides the general framework of the parties' rights, arbitrator's duties

4 *Commercial Arbitration Act 2010* (NSW); *Commercial Arbitration Act 2011* (Vic); *Commercial Arbitration Act 2011* (SA); *Commercial Arbitration (National Uniform Legislation) Act 2011* (NT); *Commercial Arbitration Act 2011* (Tas); *Commercial Arbitration Act 2012 (WA)* and the *Commercial Arbitration Act 2013* (Qld) (collectively, 'the new CAAs'). The Australian Capital Territory (ACT) operates under the *Commercial Arbitration Act 1986* (ACT) which is the old uniform legislation.

5 Both adopt the UNCITRAL Model Law in International Commercial Arbitration (2006 Revision) ('Model Law').

and the broad manner in which the arbitral procedure may be conducted. It is a law which typically contains broad legal parameters governing the conduct of the arbitration.[6]

On its own, however, the *lex arbitri* may give insufficient guidance for the conduct of an arbitration.[7] It does not usually contain a detailed framework for how the arbitral procedure is to unfold. For this reason, more detailed procedural rules are usually required. These can come from an arbitral institution, such as IAMA. Alternatively, the parties can use the United Nations Commission on International Trade Law (**UNCITRAL**) Arbitration Rules[8] or even develop their own set of rules.

There may be some overlap and even inconsistency between the *lex arbitri* and procedural rules. This is best avoided, but it is not fatal. In such circumstances, it is the procedural rules chosen by the parties which normally prevail, unless the relevant provision of the *lex arbitri* is considered a mandatory provision.[9] It is not always easy, however, to work out whether a provision in the *lex arbitri* is a mandatory requirement.[10]

*b) The 2007 IAMA Rules*

IAMA has been operating since 1975 as a non-profit organisation and is Australia's largest and most experienced operator in the fields of mediation and domestic arbitration. It provides a multi-disciplinary service with membership including engineers, accountants, lawyers, building consultants, architects and other professionals. Alongside the educational material it provides to practitioners, IAMA publishes its institutional procedural rules to support and facilitate arbitral proceedings.

The purpose of the 2014 IAMA Rules review process was to amend the 2007 IAMA Arbitration Rules (**2007 IAMA Rules**). Those Rules were a culmination of a lengthy process, which included a National Arbitration Day in Melbourne on 5 December 2006 and an Arbitration Survey. Most of this process was dedicated to the formulation of the Fast Track Rules.[11] The 2007 IAMA Rules (incorporating the IAMA Fast Track Rules) replaced the earlier Rules for the Conduct of Commercial Arbitration (incorporating Expedited Commercial Arbitration Rules), of 13 August 1999, and were launched at the 2007 IAMA National Conference and adopted by the IAMA Council on 1 June 2007.

6. See Alan Redfern et al, *Redfern and Hunter on International Arbitration* (Oxford University Press, 5th ed, 2009) 175.
7. Ibid 179.
8. As discussed further below, the UNCITRAL Rules are the most important and most widely used set of rules for *ad hoc* arbitrations. Many institutional rules are also based on, or heavily informed by, the UNCITRAL Rules.
9 For example, the parties are not free to deviate from provisions requiring the arbitrator to be impartial and independent. Many Rules contain a rule to the effect that the Rules shall govern the arbitration except where they conflict with applicable law from which the parties cannot derogate; for example UNCITRAL Rules (2010), r 1.3.
10 See Jeff Waincymer, 'International Commercial Arbitration and the Application of Mandatory Rules of Law' (2009) 5(1) *Asian International Arbitration Journal* 1. In some jurisdictions – like the United Kingdom – the relevant arbitration law expressly nominates which provisions are mandatory: *Arbitration Act 1996* (UK), Schedule 1.
11 See President's Message in (2007) 26(1) *Arbitrator & Mediator* vi and 75-100. See also James L, 'New Horizons: Launch of the IAMA Arbitration Rules (incorporating the Fast Track Arbitration Rules)' (2007) 26(1) *Arbitrator & Mediator* 1-4.

The 2007 IAMA Rules were clearly conscious of the importance of promoting efficient proceedings. To this end, Rule 1 contained an 'overriding objective' to conduct the arbitration 'fairly, expeditiously and cost effectively'.[12]

Schedule 2 of the 2007 IAMA Rules set out the Fast Track arbitration procedure. The objective was to enable the arbitrator to produce an award (except as to costs) within 150 days of the arbitrator entering upon the reference. The schedule set out a template procedural timetable, which could be modified by the parties and the arbitrator, aimed at achieving that objective.

The 2007 IAMA Rules have been applied principally to domestic arbitrations but they also purport to apply to international arbitrations. They envisage minimal institutional activity by IAMA as compared with some other arbitral institutions.

*c) Compatibility of 2007 IAMA Rules with the CAA and IAA*

The recent reform of the IAMA Rules has been driven by a need to harmonise those Rules with the new CAAs[13] and the IAA[14] (as amended in 2010) in a number of important ways.

For instance, the 2007 IAMA Rules defined 'agreement' as any written agreement between the parties to submit present or future disputes to arbitration,[15] whereas the new arbitration legislation expanded the concept of an agreement in writing.[16]

There was also inconsistency in the definition of 'international arbitration'. Rule 2 of the 2007 IAMA Rules contained a narrow definition stating that an arbitration is international if one of the parties does not carry out business in Australia. By contrast, Article 1(3) of the UNCITRAL Model Law on International Commercial Arbitration (**Model Law**) contains a more comprehensive definition such that an arbitration may be 'international' where, for example, a substantial part of the contract is to be performed outside the country of the parties (even if both parties are domiciled in the same country).

Finally, Rule 2 of the 2007 IAMA Rules defined the 'Model Law' as the UNCITRAL Model Law adopted on 21 June 1985. This reference has become out of date for Australian purposes as both the new CAAs and the IAA (as amended) implement the Model Law as revised and adopted by UNCITRAL on 7 July 2006.

12 This was probably a bit ahead of its time: it was not until this year that the ICC, for example, included a similar provision. See ICC Rules (2012). The ACICA Rules do not contain a similar requirement.

13 See Note 1 above.

14 *International Arbitration Act 1974* (Cth).

15 2007 IAMA Arbitration Rules, r 2.

16 Section 7 of the new CAA (and the corresponding provision in the IAA) reflects Option I of Article 7 of the UNCITRAL Model Law (2006 revision).

## (B) Historical background

### *a) A flurry of change in the Asia-Pacific*

There has been a flurry of changes to arbitral rules over the past few years. In recent years, UNCITRAL, the ICC,[17] SIAC,[18] HKIAC,[19] KCAB,[20] CIETAC,[21] ACICA[22] and the KLRCA[23] have all modified their arbitration rules.

It is easy to discern the key drivers behind these changes. Undoubtedly it reflects the intensifying competition between jurisdictions as seats for arbitration in the Asia-Pacific region. Moreover, the 2010 revision of the UNCITRAL Rules has prompted amendments by those institutions which model their rules on the UNCITRAL Rules. Finally, and perhaps most importantly, parties are increasingly demanding faster and more cost-effective arbitration. One Australian legal publication recently ran a headline that arbitration is '*losing its sheen*'.[24] One US commentator has ventured that arbitration has become '*the new litigation*' due to its length and complexity.[25] The flurry of reforms is an attempt to counter perceptions of this sort.

When the recent rule revisions are looked at closely, two trends emerge:

1 the first is gradual harmonisation. Many institutions in the Asia-Pacific region now model their rules closely on the UNCITRAL Rules. This means that anyone familiar with, say, the ACICA Rules, will also have a good grasp of the SIAC, HKIAC and KLRCA Rules.

2 the second is, unsurprisingly, an attempt to make arbitral proceedings more efficient. One manifestation of this is the proliferation of 'fast track' (or 'expedited procedure') rules. Other notable changes include the increased use of time limits in rendering awards, as well as the imposition of express obligations on parties to conduct arbitrations in a cost-effective manner.[26]

### *b) Updating the Australian domestic arbitration Acts*

As previously mentioned, the domestic commercial arbitration landscape has seen sweeping changes since July 2010. The states and territories have gradually repealed and replaced the old uniform commercial arbitration regime adopted across Australia in the 1980s and early 1990s (previous uniform Acts). The new uniform commercial arbitration legislation is based on the UNCITRAL Model Law, reflecting world's best practice. In 2010, New South Wales

17 International Chamber of Commerce.
18 Singapore International Arbitration Centre.
19 Hong Kong International Arbitration Centre.
20 The Korean Commercial Arbitration Board.
21 China International Economic and Trade Arbitration Commission.
22 Australian Centre for International Commercial Arbitration.
23 Kuala Lumpur Regional Centre for Arbitration.
24 Claire Chaffey, 'Arbitration Losing its Sheen' (23 April 2012) *Lawyers Weekly* (online) <http://www.lawyersweekly.com.au/news/arbitration-losing-its-sheen>
25 Thomas J. Stipanowich, 'Arbitration: The "New Litigation"' (2010) *University of Illinois Law Review* 1.
26 For time limits, see KLRCA Rules (2010), Art 6.1; SIAC Rules (2010), Art 5.2 and 28.1; CIETAC Rules (2012), Art 46.1; KCAB International Rules (2011), Art 33.1; KCAB Domestic Rules (2011), Art 48.1; ICC Rules (2012), Art 30. For efficiency obligations, see ICC Rules (2012), Art 22.

was the first state to enact the new uniform commercial arbitration legislation.[27] Victoria,[28] South Australia[29] and Tasmania[30] followed suit in 2011 with the enactment of their revised CAAs. Western Australia[31] and the Northern Territory[32] enacted their revised CAAs in 2012 and Queensland in 2013.[33] The Australian Capital Territory is the only jurisdiction remaining that is yet to bring its legislation in line with the revised CAAs.

## (C) Preliminary drafting issues

Two threshold drafting issues arose in the shaping of the 2014 IAMA Rules.

### *a) Should IAMA adopt and supplement the UNCITRAL Rules?*

The UNCITRAL Rules were first introduced in 1976 in an attempt to harmonise arbitral procedure in international commercial arbitration. They inspired the UNCITRAL Model Law that was first introduced in 1985. They were updated in 2010 in light of decades of experience by a specialist UNCITRAL Working Group, comprised of academics and practitioners, who held numerous sessions over four years (between 2006 and 2010) working closely with a range of organisations.[34]

The reasons for which the UNCITRAL Rules have proved so popular are clear:

(a) they were developed by arbitration experts around the world;
(b) they are concise, clear and cover all the major procedural steps in an arbitration in a logical and coherent fashion;
(c) they are well known among arbitration practitioners;
(d) numerous commentaries are available which explain each provision of the UNCITRAL Rules,[35] and which can be relied on by arbitrators and parties in cases of doubt; and
(e) they are compatible with the UNCITRAL Model Law (which now forms the backbone of both the domestic and international arbitration legislation in Australia).

In short, the UNCITRAL Rules represent international best practice. There was consensus throughout the IAMA Rules review process that the 2014 IAMA Rules should be aligned to the UNCITRAL Model Law, which will be discussed further in Section IV.

27 *The Commercial Arbitration Act 2010* (NSW) commenced on 1 October 2010.
28 *The Commercial Arbitration Act 2011* (Vic) commenced on 17 November 2011.
29 *The Commercial Arbitration Act 2011* (SA) commenced on 1 January 2012.
30 *The Commercial Arbitration Act 2011* (Tas) commenced on 16 June 2011.
31 *The Commercial Arbitration Act 2012* (WA) commenced on 29 August 2012.
32 *The Commercial Arbitration Act (National Uniform Legislation) Act 2012* (NT) commenced on 1 August 2012.
33 The *Commercial Arbitration Act 2013* (Qld) commenced on 14 March 2013.
34 For more on the process leading up to the 2010 revision of the rules, see Justice Clyde Croft, 'The Revised UNCITRAL Rules of 2010: A Commentary' (2010) 29(1) *The Arbitrator & Mediator* 17.
35 See, e.g., Thomas H. Webster, *Handbook of UNCITRAL Arbitration* (Sweet & Maxwell, 2010). See also Jeff Waincymer, 'The New UNCITRAL Arbitration Rules: An Introduction and Evaluation' (2010) 14 *Vindobona Journal of International Law & Arbitration* 223. For commentary on the 1976 Rules, see David D. Caron, Matti Pellonpää and Lee M. Caplan, *The UNCITRAL Arbitration Rules: A Commentary* (Oxford University Press, 2006). The *travaux préparatoires* for the UNCITRAL Rules are also available and can be a useful tool of interpretation.

*b) Should IAMA update its Fast Track Rules?*

A central issue in the review process was whether IAMA's Fast Track Rules should be freestanding, alternatively combined with the revised IAMA Rules.

In line with the demand from users for faster and cheaper arbitration, a number of arbitral institutions in the Asia-Pacific region have introduced fast track (or expedited procedure) rules.[36] IAMA itself introduced a fast track option in its 2007 Rules. ACICA introduced expedited rules in 2008. Likewise, SIAC introduced an expedited procedural option in 2010. The KLRCA released fast track rules in 2010 and revised them in March 2012.[37] The ICC has no separate expedited procedure, although it allows the parties to agree on a shorter time limit for rendering the award.[38]

KLRCA and ACICA have completely separate, standalone expedited (or fast track) rules, while SIAC, KCAB, HKIAC and CIETAC have a special expedited procedure option outlined within the body of their standard rules.

A matter that informed the review process was that under the new arbitral legislative regime, supervising courts no longer have power in a domestic arbitration to extend the time fixed by the arbitration agreement for doing any act in relation to an arbitration.[39] The former power contained in the old CAA provided a safety valve for the otherwise rigorous operation of the IAMA Fast Track Rules.[40]

During the consultation process it was resolved that the IAMA Fast Track Rules should be replaced with a single set of arbitration rules providing for *all* arbitrations to be conducted on an expedited basis, with an obligation imposed on the arbitral tribunal to use its best endeavours to render all awards within 365 days of the appointment of the arbitral tribunal, unless the parties otherwise agree.

# III Reform of the IAMA Rules

## (A) The Terms of Reference

The drafting of the 2014 IAMA Rules involved extensive IAMA and stakeholder consultation. The first round of feedback received as part of the consultation process informed the drafting of Terms of Reference, which established five main priority areas for the 2014 IAMA Rules:

(a) concise and flexible rules that incorporate, or are substantially based on the UNCITRAL Rules;

(b) that arbitral awards should be rendered within a 365 day deadline;

(c) capping of arbitrators fees and recoverable legal costs of the parties, such that:

36 ACICA, KLRCA, SIAC, HKIAC, KCAB.

37 See "MALAYSIA: KLRCA issues revised fast-track rules", (29 March 2012) *Global Arbitration Review* <http://globalarbitrationreview.com/news/article/30437/malaysia-klrca-issues-revised-fast-track-rules>

38 For an overview of the ICC experience on this, see Mirèze Philippe, 'Are Fast-Track Arbitration Rules Necessary?' (2001) *Arbitration in Air, Space and Telecommunications Law* 253.

39 Contrast, for example, *Commercial Arbitration Act* 1984 (Vic) s 48.

40 Under the 2007 IAMA Fast Track Rules, if an arbitral award was not rendered within 170 days (150 days + 20 days maximum extension by the arbitrator in the event of exceptional circumstances) of entry on the reference, absent the agreement of the parties, the arbitrator was *functus officio*.

(i) arbitrators to charge fees on the basis of reasonable hourly/daily rates, subject to a cap that is dependent upon the amount in dispute;

(ii) the recoverable legal costs to be awarded to a successful party are to be capped at or shortly following the preliminary conference, with the cap dependent on amount in dispute;

(d) opt-out provisions relating to disclosure and oral hearings (linked to the quantum in dispute):

(i) Disclosure of documents – there shall be no disclosure for disputes that involve a quantum less than $500,000.

(ii) Hearings – no formal hearings for disputes where the quantum involved is less than $250,000.

(iii) Peer review of awards: IAMA to arrange draft awards to be peer reviewed, at the parties' cost; and

(e) additional toolkits to be developed progressively to assist arbitrators in areas such as preliminary conferences, expert evidence, disclosure and party representation.

The Terms of Reference were endorsed by the National Council of IAMA on 17 August 2013.

### (B) The consultation process

A committee was appointed by the National Council to draft the 2014 IAMA Rules in accordance with the Terms of Reference. Draft Rules were produced and sent out for a second round of feedback from IAMA State Chapters and industry stakeholders. Considerable debate took place in respect of the proposed changes contained in the draft Rules. As a result of this consultation process, further changes were made and a final version of the Rules was adopted by Council on 17 April 2014 to come into effect from 2 May 2014.[41] The 2014 IAMA Rules were officially launched at IAMA's National Conference in Canberra in May 2014.

Contentious issues arising from the consultation process were primarily in relation to the changes to interim measures and the caps imposed on recoverable legal costs, arbitrators' fees and IAMA's fees. For example, in regard to interim measures, there was feedback that there should be no limit on security for costs and interrogatories should only be used in very limited circumstances. Feedback on the proposed capped recoverable legal costs, arbitrator's fees and IAMA's fees indicated that there was scepticism as to the benefits of capping such costs in an arbitration. These issues, in turn, will be addressed below.

## IV Major changes and features of the 2014 IAMA rules

Set out below is a summary of the major changes brought about by the new IAMA Rules. Moreover, **Appendix A** to this article contains a table which compares the UNCITRAL Rules (2010), the 2007 IAMA Rules and the 2014 IAMA Rules according to the different stages of the arbitral process.

41 The 2014 IAMA Rules apply to any notice of dispute filed on or after 2 May 2014, regardless of the date on which the arbitration agreement pursuant to which the notice of dispute was filed, was entered into.

## (A) Adoption of the UNCITRAL Rules – with additions

The consensus during the consultation process was that the 2014 IAMA Rules should be based on the UNCITRAL Rules. Where a departure from the UNCITRAL Model Law was required in the 2014 IAMA Rules, the drafting committee referred to the ACICA Arbitration Rules (2011) for guidance and to harmonise the domestic and international framework in Australia. A departure from the UNCITRAL Rules was made in regard to the 365 day time limit, the capped costs on arbitrator's fees and recoverable legal costs, restrictions on disclosure, hearings, security for costs and interrogatories, and peer review of an award.

## (B) Appointment of arbitrators

The 2014 IAMA Rules provide that the default position is to appoint one arbitrator to determine a dispute (Article 8). The process for appointment when the parties have provided for three arbitrators differs. The 2014 IAMA Rules provide that each party shall appoint one arbitrator, and that the two arbitrators appointed shall then choose the third who will act as the chairperson of the arbitral tribunal (Article 9(1)). In terms of the delivery of the award, where there is more than one arbitrator, any award (or other decision) of the arbitral tribunal shall be made by a majority of the arbitrators and failing a majority decision on any issue, the opinion of the chairperson shall prevail (Article 33).

In comparison, the 2007 IAMA Rules provided that where there is an even number of arbitrators, the arbitrators may appoint an *umpire* and will do so if the arbitrators fail to agree on any matter for determination (Rules 20.1 and 20.2). The use of umpires is now relatively out-dated. It is derived from English arbitral practice. There has been a distinct move away from the use of umpires in Australia under the CAAs. Under the 2007 IAMA Rules, where an umpire was appointed under Rule 20 and the arbitrators failed to agree on any matter for determination, the arbitrators were to provide the umpire with a joint written statement listing the points of agreement and disagreement together with all written material relevant to the matter (including exhibits). Following this procedure, the umpire would then proceed to deliver an award as soon as reasonably practicable, taking into account the written material provided by the arbitrators (but was not bound by any of the points of agreement between the arbitrators).

As it can be seen, the 2014 IAMA Rules seek to modernise the process in line with the new CAAs and UNCITRAL Rules.

## (C) Challenge to arbitrators

The 2014 IAMA Rules enable a party to challenge an arbitrator if there is a 'real danger of bias' on the arbitrator's behalf (Article 12). The concept of real danger of bias can be found in s 12(5) of the CAAs[42] and s 18A of the IAA. It is a relatively new concept in Australia and replaces the lower test of 'justifiable doubts as to impartiality or independence' in Article 12 of the Model Law. The procedure for challenging an arbitrator is for a party to send notice of its intention to challenge an arbitrator within 15 days of being notified of the appointment of the arbitrator or within 15 days after becoming aware of a real

42 *Commercial Arbitration Act 2010* (NSW) s 12(5); *Commercial Arbitration Act 2011* (Vic) s 12(5); *Commercial Arbitration Act 2011* (SA) s 12(5); *Commercial Arbitration (National Uniform Legislation) Act 2011* (NT) s 12(5); *Commercial Arbitration Ac 2011* (Tas) s 12(5); *Commercial Arbitration Act 2012* (WA) s 12(5) and the *Commercial Arbitration Act 2013* (Qld) s 12(5).

danger of bias on that arbitrator's behalf (Article 13(1)). Article 13(3) states that 'if the other party does not agree to the challenge within seven days and the challenged arbitrator does not resign within seven days, the decision on the challenge shall be made by the arbitral tribunal within a further 14 days'.

## (D) Amendments to the claim or defence

In regard to amendments to the claim or defence, there is no great difference between the 2014 IAMA Rules and the 2007 IAMA Rules (r 13.3). However, it is important to note that during the consultation process, the question was asked whether it was appropriate to adopt the position under the UNCITRAL Rules – that is, if it is appropriate for the party requesting the amendment to bear the onus of satisfying the arbitral tribunal that the amendment is appropriate. There was consensus that it is best practice for an arbitral tribunal to maintain discretion as there is no 'as of right' amendments given the new 365 day time limit for all arbitrations. Accordingly, a party may amend or supplement its claim or defence (including a counterclaim or a claim for the purpose of a set-off) provided the arbitral tribunal considers this appropriate in regard to the delay it could create or prejudice suffered by the other parties (Article 22). Importantly, an amendment to a claim or defence (including a counterclaim or a claim for the purpose of a set-off) must not fall outside the arbitral tribunal's jurisdiction.

## (E) Opt-out measures

A new feature of the 2014 IAMA Rules is that they now provide for opt-out measures. The 2007 IAMA Rules did not provide for these measures. They are important additions to ensure the arbitral procedure is proportionate to both the complexity of the issues and the quantum in dispute. These opt-out measures include restrictions on hearings, disclosure of documents, security for costs and interrogatories (the latter two are discussed under 'Interim Measures' below). While the parties may opt-out of these measures (or restrictions), the default position is that they apply.

The key opt-out measures are as follows:

(a) if the total amount of claims, counterclaims and set-off defences is less than $250,000 (excluding interest and costs), there shall be no hearings for the presentation of evidence by witnesses, including expert witnesses or for oral argument, unless requested in writing by all parties or directed by the arbitral tribunal (Article 17(6));

(b) there shall be no disclosure of documents if the total amount of the claims, counterclaims and set-off defences (excluding interest and costs) is less than $500,000, unless requested in writing by all parties or directed by the arbitral tribunal (Article 26(11)).

## (F) Expanded powers of the arbitrators

Under Article 30(4) of the 2014 IAMA Rules, power is conferred on the arbitral tribunal to make adverse inferences as it sees fit in its award where one of the parties is recalcitrant. An instance where this may occur is where a party fails to disclose documents or comply with the procedural directions within the established period of time. An arbitrator also has power under Article 30(3) to still make an award, notwithstanding the default of a party, on the evidence before it and make adverse inferences for the failure to produce documents, exhibits or other evidence within the established time period.

## (G) Interim measures

In comparison to the 2007 IAMA Rules, the 2014 IAMA Rules provide that an arbitral tribunal may grant interim measures at the request of a party (Article 26(1)). Interim measures are designed to maintain the status quo and ensure parties to a dispute suffer minimum harm during arbitral proceedings pending the publication of a final award. Similar to an interlocutory injunction in litigious matters before the courts, an interim measure is of a temporary nature and can be used for purposes such as the preservation of assets and evidence (Article 26(2)(a)-(d)). Article 26(3)(a)-(h) sets out that the arbitral tribunal may makes orders with respect to a range of matters, including:

(a) security for costs, but only where the total amount of the claims, counterclaims and set-off defences (excluding interest and costs) is more than $1 million (Article 26(3)(a)); and

(b) interrogatories, but only where the total amount of the claims, counterclaims and set-off defences (excluding interest and costs) is more than $2.5 million (Article 26(3)(c)).

The restriction on security for costs applications is consistent with the caps on recoverable legal costs. Interrogatories were seen to be a creature of litigation and it is hoped that arbitral tribunals will exercise their discretion sparingly in ordering them.

## (H) Hearings

While there are no major changes to the provisions allowing oral hearings, it is important to highlight the key articles on hearings. Hearings afford the parties an opportunity to present their case to the tribunal. They also allow the parties to present and test the veracity of key evidence. Under the 2014 IAMA Rules, oral hearings are to be held in camera unless the parties otherwise agree (Article 28(3)). The arbitral tribunal may hear witnesses (including expert witnesses) under the conditions and examined in the manner set by the tribunal (Article 28(2)). In accordance with the principles of natural justice, parties must be given adequate advance notice of any hearing (of the date, time and place thereof).

## (I) Scrutiny of awards

One of the new features of the 2014 IAMA Rules is that an arbitral award may be peer reviewed at the request of the parties before an award is handed down. The request for peer review is to be made in writing and with payment of a $2,500 fee to IAMA (Article 34(7)). However, it is at the discretion of the arbitral tribunal to implement any of the suggestions of the peer reviewed award and the suggestions of the peer reviewer will not be available to the parties (Article 34(8)). Such a review process is consistent with processes adopted by other institutions.

For example, the ICC has sought to improve efficiency at the enforcement stage by evaluating a draft copy of the award.[43] The ICC Rules provide that, before the award is signed, a draft copy must be submitted to the ICC Court. The Court can require modifications of the form of the award, but can only make suggestions on points of substance. The justification is that a small time investment by the institution to ensure the enforceability of the award can save a lot of trouble later in court proceedings.[44]

43 See ICC Rules (2012), Art 33. See also CIETAC Rules (2012), Art 49. Similarly, Rule 22.2 of the SIAC Rules contains such a provision.

44 See Yves Derains and Eric A. Schwartz, *Guide to the ICC Rules of Arbitration* (Kluwer Law International), 2nd ed, 2005), 312.

In 2010, the ICC published a check-list used by it in the scrutiny of draft ICC awards.[45] Generally, the scrutiny process is directed to identifying any clerical errors or any matter that may affect the enforceability of the award. CIETAC,[46] SIAC[47] and the KCAB Domestic Rules[48] also provide for some level of scrutiny of awards.

While IAMA is yet to publish a check list for its peer review process, it is likely that a similar process to that of the ICC could be adopted by IAMA with the appointment of a special committee made up of Grade 1 Arbitrators to scrutinise awards for serious errors, whether in terms of formality requirements or reasoning. In the latter category, the object of the scrutiny process would be to ensure that awards do not suffer from incompleteness, inconsistency or ambiguity. The scrutiny process would not necessarily extend to challenging legal reasoning on the basis that the law has been incorrectly stated or applied.

Some may argue that a review process is more appropriate for a large institution with ample administrative resources. This may explain why most arbitral institutions operating in the Asia-Pacific do not require draft awards to be reviewed. Yet IAMA has taken the opportunity to distinguish itself from other smaller arbitral institutions. Implementation of this peer review mechanism is likely to improve the quality of domestic arbitration awards and encourage confidence in the use of IAMA as an appointing authority.

## (J) 365 day time limit for rendering the award

Article 16 of the 2014 IAMA Rules provides for a time limit for rendering arbitral awards. This is a key change to the 2007 IAMA Rules, and is in accordance with international arbitration practice. All arbitrations should now be conducted on a pseudo 'fast track' basis with awards being delivered within 365 days of the appointment of the arbitral tribunal, unless the parties and/or the arbitral tribunal otherwise agree. Article 16 of the 2014 IAMA Rules also provides that if the arbitral tribunal cannot deliver the award by the due date, the tribunal must provide notification of, and reasons to IAMA for the delay in delivering the award. IAMA may decide to keep a record of arbitrators who are unable to meet this 365 day time limit.

A time limit on arbitral proceedings seeks to prevent lengthy delays, as was the case in *Westport Insurance Corporation v Gordian Runoff Ltd.*[49] In that case, Justice Heydon remarked that the arbitration between the appellant reinsurers (Westport Insurance Corporation) and the respondent (Gordian Runoff Ltd) had 'no other point of superiority over conventional litigation'.[50] His Honour made this point in reference to the lack of speed (the appeal to the High Court came almost seven years after commencement of the arbitral proceedings) and the limited cost-effectiveness of the arbitration.[51]

45 'ICC issues checklist for arbitrators drafting awards' (2010) 21(1) *ICC International Court of Arbitration Bulletin* 19.
46 CIETAC Rules (2012), Art 49.
47 SIAC Rules (2010), Art 28.2.
48 KCAB Domestic Rules (2011), Art 48.3. This provides that the KCAB Secretariat may provide 'opinions' on the form, but, unlike the ICC, CIETAC and SIAC, approval of the award is not required.
49 (2011) 244 CLR 239, [111].
50 Ibid.
51 Ibid.

The 365 day deadline creates more certainty as to the delivery of an award in comparison to the 2007 IAMA Arbitration Rules (Rule 19.1) which provided that the final award was to be delivered within a 'reasonably practicable time', leaving the definition of 'reasonably' open to interpretation and often resulting in lengthy arbitral proceedings.

It must be noted that internationally, many arbitral institutions contain a specific time limit, albeit with different ways of calculating the time limit for rendering the award – whether measured from the date of entry upon the reference or from the close of arbitral proceedings. For example, the KLRCA, SIAC, CIETAC, KCAB and ICC all have time limits.[52] The UNCITRAL Rules, by contrast, contain no time limit. Indeed, they do not even contain a requirement for an award to be delivered within a 'reasonable time'.

## (K) Recoverable legal costs

The introduction of capped limits on recoverable legal costs, arbitrator's fees and IAMA's fees are also key features of the 2014 IAMA Rules. Under the 2007 IAMA Rules, no such caps applied. These capped limits should ensure greater control over both the cost and time involved in an arbitral proceeding. The limits also ought to drive the parties and their advisors to be commercially sensible and to take proportionate actions. In short, the rationale is to drive economic efficiencies in the arbitral process.

Unless otherwise ordered by the arbitral tribunal, the recoverable legal costs, in terms of the amount awarded to a successful party, will be capped by reference to the amount in dispute which provides a 'worst case' estimate of the costs to be paid to the successful party. While it is at the discretion of the parties to determine the amount of money they are willing to spend on legal costs, only a certain amount in legal fees will be recoverable in the arbitration by the successful party.

## (L) Capping arbitrators' fees

Arbitrator's fees under the 2014 IAMA Rules will be calculated on an hourly rate (unless otherwise agreed) (Article 41(1)), with total remuneration capped based on the amount in dispute (Article 41(5)). The arbitrator's hourly rate is to be agreed between the parties and if they fail to reach agreement, the hourly rate shall be determined by IAMA (Article 41(2)). This will ensure greater transparency and fairness in proceedings. The 2007 IAMA Rules did not determine how an arbitrator's fees were to be calculated.

## (M) IAMA's fees

The 2014 IAMA Rules provide for two types of fees to be payable to IAMA as the appointing authority:

1) a registration fee upon the request for arbitration being lodged with IAMA (Article 3 and Schedule 1); and

52 See KLRCA Rules (2010), Art 6.1 (within three months of close of proceedings); SIAC Rules (2010), Art 5.2 (award shall be rendered within six months from the date the tribunal was constituted where the parties have agreed to an expedited proceeding) and 28.2 (draft award must be submitted to SIAC for review within 45 days of the close of proceedings); CIETAC Rules (2012), Art 46.1 (6 months after tribunal is constituted); KCAB In- ternational Rules (2011), Art 33.1 (45 days after final submissions); KCAB Domestic Rules (2011), Art 48.1 (30 days after the closure of hearings); ICC Rules (2012), Art 30 (6 months after Terms of Reference are signed).

2) a nominee fee capped by reference to the amount in dispute (Article 40 and Schedule 1).[53]

These fees replace those previously levied under the 2007 IAMA Rules:

1) a nomination fee which was defined as 'an amount as may be prescribed by IAMA from time to time for it to nominate an arbitrator or arbitrators'; and
2) a nominee fee which was calculated as 10% of the arbitrator's professional fees and which was 'for advancement of the stated objectives in IAMA's Constitution'.

The uncapped nominee fee which prevailed under the 2007 IAMA Rules is more openly disclosed and capped at more moderate levels in the 2014 IAMA Rules.

The 2014 IAMA Rules do not include a 'nomination fee' but rather introduce a 'registration fee' which is payable by a party when initiating recourse to arbitration. Arbitral proceedings do not commence under the 2014 IAMA Rules until the later of the receipt of the notice of arbitration by the respondent party or receipt of the registration fee by IAMA. The registration fee provides a new avenue for IAMA to monitor arbitral activity in Australia as it is payable irrespective of whether nomination of an arbitrator is required to be made by IAMA. The registration fee will provide IAMA some recompense for its potential functions under the 2014 IAMA Rules.[54]

## (N) Confidentiality

Although both the 2014 IAMA Rules and 2007 IAMA Rules do not make express provisions on confidentiality, a short note will be made in relation to the current legislation and older case law.

Arbitral proceedings, in comparison to litigation, are private in nature. It is said that the private nature of arbitration allows parties to preserve important commercial reputations and this remains one of the advantages of commercial arbitration. The 2014 IAMA Rules do not expressly deal with confidentiality as this is provided for in the CAAs. Section 27E of the CAAs provides that parties and the tribunal must not disclose confidential information, unless otherwise agreed by the parties. On the other hand, sections 23C to 23G of the IAA provide for a statutory obligation of confidentiality on an opt-out basis.

Prior to the enactment of the new CAAs in Australia (and the 2010 amendments to the *International Arbitration Act 1974* (Cth)), the legal position on confidentiality in arbitral proceedings in Australia was established by *Esso Australia Resources Ltd v Plowman ('Esso')*,[55] which sparked considerable debate and dissatisfaction. In *Esso*, the decision of the High Court of Australia differed from English authorities that affirmed the confidential nature of arbitral proceedings.[56] The High Court held that documents produced or disclosed in the course of arbitral proceedings attracted the same confidentiality that would be the case if the dispute were litigated, meaning that the private nature of arbitral proceedings did not equate to confidentiality.

53 IAMA will publish on its website further information about the IAMA nominee fee.
54 See Article 8, Article 9, Article 10, Article 13, Article 14, Article 16, Article 34, Article 41 and Article 43.
55 (1995) 183 CLR 10.
56 See *Dolling-Baker v Merrett* [1991] 2 All ER 890.

## (O) Toolkits

While not part of the 2014 IAMA Rules, it was agreed under the Terms of Reference that IAMA will progressively develop toolkits to inform arbitrators of international best practice on practical matters such as preliminary conferences, evidence (including numbers of witnesses and experts), expert evidence, disclosure and guidelines for party representation. Central among these will be a new toolkit addressing practice and procedure. This toolkit will provide a brief history of the development, purpose and application of various procedural elements available to arbitrators. This toolkit will assist arbitrators to distinguish the most appropriate procedural elements to adopt when developing the procedure for the conduct of an arbitration based on its unique issues. This is important as part of IAMA's ongoing educational role and will consider all existing IAMA arbitration Practice Notes. At the 21 June 2014 meeting of the National Council of IAMA, a process for drafting the Toolkits was agreed.

## (V) Conclusion

The recent review process has aligned the 2014 IAMA Rules to the UNCITRAL Rules and Australia's new CAAs. The key areas of changes which guided the drafting of the 2014 IAMA Rules can be summarised as:

(a) Opt out measures creating limits on hearings, disclosure of documents, security for costs and interrogatories;

(b) Caps on the recoverable legal costs and arbitrator's fee, depending on the amount in dispute;

(c) Transparency of IAMA's fees;

(d) 365 day time limit on arbitral proceedings;

(e) Peer review of the arbitral award; and

(f) Alignment with UNCITRAL Rules.

The 2014 IAMA Rules will continue to support and facilitate arbitration in Australia, while ensuring its efficiency and cost-effectiveness. This reform ought to put arbitration back on the stage as a commercially attractive method of alternative dispute resolution.

# Comparative Survey of UNCITRAL (2010), IAMA (2007) and IAMA (2014) Rules

## Abbreviations

AT = Arbitral tribunal PCA=Permanent Court of Arbitration

| ELEMENT OF PROCEDURE | RULES | | |
|---|---|---|---|
| | **UNCITRAL (2010)[1]** | **IAMA (2007)[2]** | **IAMA (2014)[3]** |
| **ROLE OF INSTITUTION** | May be an appointing authority; if parties fail to agree on authority, PCA may be asked to designate one [R6]. | Appointment of AT; replacement of AT. | Appointment of AT; replacement of AT. |
| **STARTING ARBITRATION**<br>***Notice of arbitration*** | C sends notice of arbitration to R [R3.1]. | C sends notice of dispute to R [R6]; only sent to IAMA if appointment requested [R8]. | C sends notice of arbitration to R and IAMA [R3.1]. |
| ***Response*** | R must send response within 30 days to C [R4.1]. | – | R must send response within 14 days to C [R4.1]. |
| ***Emergency arbitrator*** | – | No | – |
| **ARBITRAL TRIBUNAL**<br>***Number of arbitrators*** | If there is no agreement prior to 30 days of R receiving notice of arbitration, 3 arbitrators shall be appointed [R7.1], or 1 if circumstances deem it appropriate. | Parties agree; if none, IAMA appoints 1 [R8] | If there is no agreement prior to 21 days of R receiving notice of arbitration, 1 arbitrator shall be appointed [R7.1]. |
| ***Method of appointment*** | Where sole arbitrator and no agreement between parties, appointing authority will select arbitrator [R8.1]<br>If 3 arbitrators, each party selects 1. The two arbitrators will then select a 3rd, who will preside [R9.1].<br>If they cannot agree (or an arbitrator has not been selected), appointing authority will make the selection [R9] | Parties agree; if none, IAMA appoints [R5 & R8] | Where parties agree for sole arbitrator, but cannot agree who the arbitrator will be, IAMA will nominate the arbitrator [R8.2]. If parties agree for 3 arbitrators, then each party appoints 1 arbitrator. [R9.1] Where 1st party notifies 2nd party that they have appointed an arbitrator, and after 14 days the 2nd party has failed to notify the 1st of the arbitrator they have appointed, then 1st party may request IAMA to nominate 2nd arbitrator. [R9.2] The 2 arbitrators will appoint a 3rd who will preside as chairperson [R9.1].<br>If 2 arbitrators cannot agree on a chairperson, then IAMA will nominate the chairperson [R9.3]. |

1 http://www.uncitral.org/pdf/english/texts/arbitration/arb- rules- revised/arb- rules- revised- 2010- e.pdf
2 http://www.iama.org.au/pdf/IAMAAR_FastTrack07.pdf
3 https://www.iama.org.au/sites/default/files/IAMA%20Arbitration%20Rules%20-%20Approved%2017%20April%202014%20-%20Effective%202%20May%202014%20%28FINAL%29.pdf

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| ***Appointment in cases of multi- party disputes*** | Multiple parties (as joint C or joint R) jointly appoint an arbitrator each [R10.1]; the two arbitrators will then select a presiding arbitrator. | – | If multiple parties (either joint C or joint R), then arbitrators can only be appointed if parties jointly agree [R10.1].<br>If 3 arbitrators and multiple parties cannot jointly agree about who they will be, then IAMA shall appoint the arbitrators, unless all parties agree in writing on a different method of constituting the AT [R10.2]. |
| ***Independence and impartiality of arbitrator*** | Arbitrator must disclose any justifiable doubts as to independence and impartiality [R11]. | Arbitrator must act independently, impartially and fairly, giving all parties reasonable opportunity to present case [R14]. | Arbitrator must disclose any circumstances likely to give rise to a real danger of bias on their part when conducting proceedings [R11]. |
| ***Availability of arbitrators*** | – | – | – |
| ***Challenge of arbitrators*** | Party may challenge if it becomes aware of facts giving rise to justifiable doubts as to arbitrator's independence or impartiality [R12.1]. Challenge must be within 15 days of appointment/becoming aware of circumstances [R13.1]. Challenge decided by appointing authority [R13.4]. | No provision for challenge, but arbitrator automatically removed in case of death, incapacity, or failure to 'enter upon reference' within 1 month [R9]. Model Law applies to international arbitrations [R22.1] and with that, the challenge procedure in Art 13 applies. Rules purport to appoint IAMA as appointing authority for purposes of Model Law Arts 6 and 13 [R22.3]. | A party may challenge if it becomes aware after the arbitrator's appointment [R12.2] of circumstances that give rise to a real danger of bias on the arbitrator's behalf [R12].<br>Challenge must be made within 15 days of becoming aware of circumstances [R13.1].<br>Challenge decided by the arbitral tribunal [R13.3]. |
| ***Replacement of arbitrators*** | Replacement follows same procedure as original appointment; in exceptional circumstances, party can lose right to replace arbitrator or, if after closing of hearings, AT can continue as a 2 member panel [R14]. | Done by IAMA within 10 days of request, where nominated arbitrator does not enter upon the reference to arbitration within 1 month, or if arbitrator dies or becomes incapable of continuing with reference [R10]. | Replacement follows same procedure as original appointment. [R14.1] Replacement of deceased/resigned arbitrator. [R14.2] Replacement of arbitrator who failed to, or found it impossible to, act.<br>Where arbitrator is replaced, the proceedings resume at the stage where the replaced arbitrator ceased to perform duties, unless AT decides otherwise [R15]. |
| **ARBITRAL PROCEEDINGS**<br>***General rule on procedure*** | Rules shall govern arbitration except where they conflict with applicable law from which the parties cannot derogate [R1.3] AT may conduct arbitration in such a manner as it considers appropriate where there is no agreement of the parties on the procedure [R19]. | AT may make any directions or rulings as considered appropriate [R17 & Sch 1] | Rules shall govern arbitration except where they conflict with the applicable law from which the parties cannot derogate [R1.2]. AT may conduct arbitration in such a manner as it considers appropriate, provided that:<br>• The parties are treated with equality and<br>• Each party has a reasonable opportunity to present their case [R17.1]. |

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| ***Expedited procedure*** | – | Fast Track Procedure [Sch 2] | |
| ***Seat*** | AT may determine seat of arbitration where not agreed by parties [R18]. | – | AT may determine seat where not agreed by parties [R18.1]. |
| ***Language*** | Unless agreed by parties, chosen by AT [R19.1]. | – | Unless otherwise agreed, the language is English [R19.1]. |
| ***Joinder*** | At request of a party, AT may allow a third party to be joined provided that they are party to the arbitration agreement [R17.5]. | – | At the request of any party, AT may allow 3rd parties to be joined provided that they are a party to the arbitration agreement. [R17.5]. |
| ***Consolidation*** | – | – | – |
| ***Representation*** | Party may be represented by any person chosen by it.<br>Names and addresses of representatives must be disclosed to all parties [R5]. | Implied that representatives may be used [Sch 1.3] | Party may be represented by any person chosen by it. Names and addresses of representatives must be disclosed to all parties [R5]. |
| ***Challenge to jurisdiction*** | Made to the AT [R23] Shall be raised no later than in the Statement of Defence (or SoD to counterclaim) [R23.2]. | Party must object within a 'reasonable time' [R16.1]<br>Rules purport to appoint IAMA as appointing authority for purposes of Model Law Art 16 for international arbitrations [R22.3]. | Made to the AT [R23]. Shall be raised no later than the statement of defence or, with respect to counterclaims or a claim for the purpose of set-off, in the reply to the counterclaim or claim raising the set-off [R23.2]. |
| ***Additional powers of AT*** | – | – | AT may make inferences from a party's failure to provide evidence [R30.3] or failure to comply with the AT directions [R30.4]. |
| ***Hearings*** | Any party may request a hearing, otherwise AT decides whether an oral hearing is required [R17.3]. | AT to decide whether an oral hearing is required [Sch 1]. | No oral hearing if the total amounts of the claims, counterclaims and set-off defences is less than $250,000 [R17.3, Schedule 1] unless all parties request in writing or AT directs a hearing.<br>Hearings held in camera unless parties otherwise agree [R28.3].<br>AT may hear witnesses under the conditions and in the manner that AT sets [Article 28.2].<br>AT must give adequate notice of the date, time, place of the oral hearing [Article 28.1]. |
| ***Interim measures*** | AT may order interim measures [R26.1]. | No specific rule on interim measures. | AT may order interim measures at the request of either party [Article 26.1].<br>**AT cannot order the discovery of documents unless** total amount of claims, counterclaims and set-off defences (excluding interests and costs) **exceeds $500,000** [Article 26.3(b), Schedule 1 and Article 28.4 is satisfied. |

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| | | | **AT cannot make security for costs orders unless** total amount of claims, counterclaims and set-off defences (excluding interests and costs) **exceeds $1 million** [R26.3(a), Schedule 1] and R26.4 is satisfied.<br>**AT cannot make interrogatory orders unless** total amount of claims, counterclaims and set-off defences (excluding interests and costs) **exceeds $2.5 million** [R26.3(c), Schedule 1] and R26.4 is satisfied. R26.4: the requesting must satisfy the AT that:<br>• Harm that is not adequately reparable by damages would result if no measure is granted;<br>• This harm substantially outweighs the harm that is likely to result to the party against whom the injunction is sought [R26.4(a)];<br>• There is a reasonable possibility that the requesting party will succeed on the merits Even if AT is satisfied there is a reasonable possibility of success, this doesn't affect its discretion to make a subsequent determination [R26.4(b)].<br>• Note: the R26.4 requirements only apply to the extent the AT considers it appropriate [R26.5]. |
| ***Case management*** | As soon as practicable after constitution of AT, AT shall establish a provisional timetable for the arbitration [17.2]. | Within 5 days of appointment, arbitrator must write to parties advising time and place of a 'Preliminary Conference', [R9]. | As soon as practicable after constitution of AT, and after parties have expressed their views, AT shall establish a provisional timetable for the arbitration [R17.2]. |
| ***Tribunal appointed experts*** | After consultation with parties, AT may appoint independent expert(s) to report to it [R29.1]. | – | After consultation with parties, AT may appoint independent expert(s) to report to it [R29.1]. |
| ***Party— appointed experts*** | A party may use expert witnesses [R 17.3]. | The IAMA Rules refer to experts retained by the parties [Schedules 1 and 2] | Subject to Article 17, paragraph 6, if at an appropriate stage of the proceedings any party so request, the arbitral tribunal shall hold hearings for the presentation of evidence by witnesses, including expert witnesses or for oral argument. In the absence of such a request, and subject to Article 17, paragraph 6, the arbitral tribunal shall decide whether to hold such hearings or whether the proceedings shall be conducted on the basis of documents and other materials. |

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| | | | Article 17(6) states that if the total amount of the claims, counterclaims and set-off defences (excluding interest and costs) is less than $250,000 there shall be no hearings for the presentation of evidence by witnesses, including expert witnesses or for oral argument, unless requested in writing by all of the parties or directed by the arbitral tribunal. |
| ***Efficiency obligation*** | AT shall conduct proceedings so as to avoid unnecessary delay and expense and to provide a fair and efficient process for resolving the parties' dispute [17.1] | Overriding objective of fair and expeditious arbitration [R1] | AT shall conduct proceedings so as to avoid unnecessary delay and expense and to provide a fair and efficient process for resolving the parties' dispute [R17.1].<br>AT shall use its best endeavors to **deliver all awards within 365 days of AT appointment**, otherwise will notify IAMA and parties of reason for failure (R16]. |
| ***Confidentiality*** | Award may be made public with parties' consent [R34.5]<br>There is no general confidentiality provision. | – | Award may be made public with parties' consent [R34.5].<br>There is no general confidentiality provision. However, new CAAs impose statutory obligations of confidentiality on an opt-out basis. |
| ***Default*** | C fails to communicate its statement of claim: AT discontinues proceeding. R fails to communicate its defence: proceedings continue<br>If a party fails to appear, AT continues proceedings Failure to provide evidence: AT may determine award based on information available to it [R30] | – | If C fails to communicate its statement of claim, and does not show sufficient cause for their failure, then AT may terminate proceedings, unless there are remaining matters to be decided, and the tribunal considers it appropriate to do so [R30.1a]. If a party fails to appear, and does not sufficient cause for their failure, then AT may continue proceedings [R30.2].<br>If a party fails to provide evidence within a certain time, and does not show sufficient cause for their failure, then AT may make an award based on the evidence before it, and may draw inferences from the failure [R30.3]. |
| **AWARD**<br>***Time limit*** | – | AT must deliver one or more interim awards dealing with all issues in the arbitration, (except for the costs of the arbitration) within a reasonable time of the conclusion of the hearing [R19.1] | AT shall use its best endeavors to **deliver all awards within 365 days of AT appointment**, otherwise will notify IAMA and parties of reason for failure (R16]. |
| ***Scrutiny*** | – | – | IAMA may arrange for an award to be peer reviewed before it is delivered where the parties request this in writing and pay a $2500 fee [R34.7]. |

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| | | | AT has complete discretion as to whether it implements any suggestions of the peer reviewer; the suggestions are not made available to the parties [R34.8]. |
| ***Are majority decisions possible?*** | Yes [R33.1] | – | Yes, chairperson's opinion is the swing vote [R33.1]. |
| ***Correction and interpretation*** | Party may request within 30 days of receipt an interpretation / correction of the award [R37.1 / R38.1] | – | Party may request within 30 days of receipt an interpretation/correction of the award [R37.1 / R38.1]. |
| ***Costs*** | AT shall fix costs in the final award [R40.1]<br>In principle borne by unsuccessful party [R42.1] | | AT shall fix costs in the final award [R40].<br>In principle borne by unsuccessful party [R42.1].<br>**Recoverable legal costs** [R40(e)] are **capped** at a level that varies with the amount in dispute [Schedule 1], unless the parties otherwise agree in writing or the AT otherwise directs. |
| ***Costs (institution)*** | – | Nomination fee [R7] – in practice calculated as 10% of the AT's professional fees | **Registration fee** [R40(h)] of $500 [Schedule 1] – payable on commencement of the arbitration.<br>**Nomination fee** [R40(g)], which is **capped** at a level that varies with the amount in dispute [Schedule 1]. |
| ***Fees (arbitrator)*** | AT must advise how it plans to charge fees promptly after constitution; appointing authority can review reasonableness [R41.3] | – | Arbitrators are remunerated according to an hourly rate [R41.1]. Rate agreed to by parties and the arbitrators. Failing agreement, IAMA decides [R41.2], in which case IAMA takes into account the nature of the dispute [R41.4a] and the standing/experience of the arbitrator [R41.4b].<br>**Arbitrators' remuneration** is **capped** [R41.5] at a level that varies with the amount in dispute [Schedule 1]. |