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From the Experts

## Recent Arbitration Rule Revisions

Corporate Counsel

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This chart's columns are organized by institution:

♦**ICC:** This column references the ICC Rules of Arbitration, which came into force as from January 1, 2012 ("ICC 2012 rules"). Generally these revised rules will only apply to disputes occurring prior to their date of entry into force where specified in the underlying dispute resolution clause and/or agreed by the parties to the dispute. Parentheticals refer to the particular rule references in each cell.

♦**ICDR:** This column references the ICDR's International Dispute Resolution Procedures (including mediation and arbitration rules), effective June 1, 2014 ("ICDR 2014 rules").

♦**LCIA:** This column references the LCIA Arbitration Rules, effective October 1, 2014 ("LCIA 2014 rules").

♦**SIAC:** This column references the arbitration rules of the Singapore International Arbitration Centre, SIAC Rules (5th Ed.), effective April 1, 2013. The new 2013 SIAC rules however, make certain retrospective amendments to the 2007 and 2010 SIAC rules ("SIAC rules").

♦**SCC:** This column references the Arbitration Rules of the Arbitration Institute of the Stockholm Chamber of Commerce, which entered into force on January 1, 2010 ("SCC 2010 rules"). Reference also is made to the expedited rules, which were developed for minor disputes regarding less complex issues and involving a smaller amount in dispute.

Aspect of Arbitration	ICC	ICDR	LCIA	SIAC	SCC
<b>INITIATING PROCEEDINGS</b>					
How is the arbitration started?	By request sent to the secretariat of the ICC Court, which then notifies the other party (4.1) ** <i>The ICC 2012 rules require that the request provide more details concerning the basis for claims/counterclaims and the value</i>	By notice to the ICDR administrator and at the same time to the respondent (2.1)	By request sent to the registrar of the LCIA Court and served on the other party (1.1) ** <i>The LCIA 2014 rules provide that the request can serve as claimant's statement of case</i>	By notice filed with the registrar, with a copy to the respondent notifying the registrar of the same (3)	By request sent to the SCC Institute (2 and 4)
<b>ARBITRAL PANEL</b>					

Aspect of Arbitration	ICC	ICDR	LCIA	SIAC	SCC
How many arbitrators are to be appointed?	In the absence of agreement between the parties, 1, unless the ICC decides 3 is appropriate (12.2)	In the absence of agreement between the parties, 1, unless the administrator decides that 3 is appropriate (11)	In the absence of agreement between the parties, 1, unless the LCIA decides 3 is appropriate ( <u>or, exceptionally, more than 3</u> ) (5.8) <b>** The LCIA 2014 rules introduce the underlined language</b>	In the absence of agreement between the parties, 1, unless the registrar decides 3 is appropriate (6.1)	In the absence of agreement between the parties, 3, unless the SCC decides 1 is appropriate (12)
Who appoints the arbitrators?	The parties by agreement or nomination (confirmed by the ICC Court). In the absence of agreement, the ICC Court will appoint the arbitrators. (12.3-12.4, 13). <b>** The ICC 2012 rules extend the powers of the ICC Court to allow it to appoint a suitable arbitrator in the event that a national Committee fails to make the appointment within the deadline fixed by the Court or the president of the National Committee certifies that a direct appointment is "necessary and appropriate".</b>	Parties agree to procedure for appointment and shall inform administrator of the same. In the absence of party agreement as to the method of appointment, the administrator may use the ICDR list method as provided in 12.6 (appointment from a free-to-access list of specialists, which have been selected for inclusion by independent review committees) (12.1) If not agreed within 45 days after commencement, administrator shall, at the written request of any party, appoint (12.1-12.3) <b>** The ICDR 2014 rules formalize the longstanding practice of using the ICDR list method to appoint arbitrators</b>	The LCIA with reference to the methods or criteria agreed by the parties (5.6, 5.9) <u>Unless the parties agree otherwise, no party can nominate a sole arbitrator or chairperson unilaterally.</u> (7.3) <b>** The LCIA 2014 rules introduce the underlined language.</b>	If the parties have agreed that any arbitrator is to be appointed by one or more of the parties, or by any third person including the arbitrators already appointed, that agreement shall be treated as an agreement to nominate an arbitrator. If within 21 days after receipt by the registrar of the notice of arbitration, the parties have not reached an agreement on the nomination of a sole arbitrator, or if at any time either party so requests, the president shall make the appointment as soon as practicable. In all cases, the arbitrators nominated by the parties, or	Where there is 1 arbitrator, the parties have 10 days to jointly appoint, failing which the SCC appoints. (13.2) <b>** The SCC 2010 rules reduce the time limit for joint appointment by the parties from 30 days to 10 days.</b> Where there is more than 1 arbitrator, each party shall appoint 1, and the SCC appoints a chair. Where a party fails to appoint an arbitrator, the SCC shall make the appointment. (13.3)

<b>Aspect of Arbitration</b>	<b>ICC</b>	<b>ICDR</b>	<b>LCIA</b>	<b>SIAC</b>	<b>SCC</b>
				by any third person including the arbitrators already appointed, shall be subject to appointment by the president in his discretion. Any appointment by the president is final and not subject to appeal. (6.2-6.5)	
<b>Are there any restrictions on the nationality of the arbitrators?</b>	Yes. A sole arbitrator or chairperson does not usually share the same nationality as one of the parties. (13.5)	No.	Yes. A sole arbitrator or chairperson does not usually share the same nationality as one of the parties. (6.1)	No	Yes. A sole arbitrator or chairperson does not usually share the same nationality as one of the parties unless the parties have agreed otherwise, or the SCC deems it appropriate. (13.5)
<b>What are the time limits for challenging the appointment of an arbitrator?</b>	30 days from notification of appointment or becoming aware of the relevant circumstances giving rise to a challenge (14.2)	15 days from notification of appointment or becoming aware of the relevant circumstances giving rise to a challenge (14.1)	14 days from formation of the tribunal or becoming aware of the relevant circumstances giving rise to a challenge (10.3)	14 days within receipt of notice of appointment or becoming aware of the relevant circumstances giving rise to a challenge (12.1)	15 days from the date on which the allegedly disqualifying circumstances became known (15.2)
<b>MULTI-PARTY / MULTI CONTRACT DISPUTES</b>					
<b>Multi-party disputes: appointment of arbitrators</b>	The ICC Court appoints the tribunal unless all the parties have previously made a joint nomination. (12.6, 12.8)	The administrator appoints the tribunal unless the parties have agreed otherwise (no later than 45 days after the commencement of the arbitration). (14.5)	The LCIA Court appoints the tribunal without regard to any party's entitlement or nomination. (8.1)	Where there are more than two parties, and three arbitrators are to be appointed, the claimant(s) shall jointly nominate one arbitrator and the respondent(s) shall jointly	The multiple claimants (jointly) and the multiple respondents (jointly) appoint an equal number of arbitrators. If either party/side fails to make an appointment, the board will

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				nominate one. In the absence of joint nominations, the president shall appoint all three arbitrators and shall designate one to act as presiding arbitrator. Where there are more than two parties, and one arbitrator to be appointed, all parties must agree to that appointment. In absence of agreement, the president shall appoint. (9.1-9.2)	appoint the entire tribunal. (13.4).
<b>Multi-party disputes: joining additional parties</b>	A party may request that an additional party be joined to the arbitration by submitting a request for joinder to the secretariat. (7) ** <i>Introduced by the ICC 2012 rules.</i>	A party wishing to join an additional party has to submit a notice of arbitration against the additional party. No additional party may be joined after the appointment of the arbitrator unless all parties, including the additional party, agree. (7) ** <i>Introduced by the ICDR 2014 rules.</i>	The tribunal, upon application of a party, has the power to allow one or more third party to be joined in the arbitration provided the third party has consented to such joinder in writing following the commencement date or (if earlier) in the arbitration agreement (22(viii)).	The tribunal, upon application of a party, may allow one or more third party to be joined in the arbitration, provided that such person is party to the arbitration agreement and has given written consent. (24(b))	N/A
<b>Multi-party disputes: claims</b>	Where there are multiple parties, claims may be made by any party against any other party subject to 6(3) - 6(7) and 9 and provided no new claims may be made after the terms of reference are signed and	N/A	A respondent can bring a cross-claim against a respondent as well as against any other respondent in the arbitration (2.1(iii)). ** <i>Under the prior</i>	N/A	N/A

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	approved by the ICC Court. (8) ** <i>Introduced by the ICC 2012 rules.</i>		<i>rules, a respondent could only initiate a counterclaim against the claimant and a claim against a co-respondent would thus have to be made in separate arbitration proceedings.</i>		
<b>Multi-party contracts: claims</b>	Claims arising out of or in connection with more than one contract may be made in a single arbitration, irrespective of whether such claims are made under more than one arbitration agreement. (9) ** <i>Introduced by the ICC 2012 rules.</i>	N/A	N/A	N/A	N/A
<b>Consolidation of arbitrations</b>	The ICC Court may, at the request of a party, consolidate two or more arbitrations pending under the rules into a single arbitration. (10) ** <i>Introduced by the ICC 2012 rules.</i>	The administrator may appoint a consolidation arbitrator who will have the power to consolidate two or more arbitrations pending under the rules, if (i) the parties have expressly agreed to consolidate; or (ii) all the claims and counterclaims are made under the same arbitration agreement; or (iii) if the claims/counterclaims are not made under one arbitration agreement, the arbitrations involve the same parties, the disputes arise in connection with the same legal relationship and the	The tribunal may order consolidation, where the parties have agreed to this in writing, and with the approval of the LCIA Court. (22.1(ix)) Further, where there are multiple arbitrations involving the same parties and only one tribunal has been appointed (or the tribunal appointed in a different arbitrations is composed of the same members), the tribunal can order	N/A	The board may, at the request of a party, decide to consolidate an arbitration involving new claims with a pending proceedings if the disputes concern the same legal relationship. The decision may only be made after consulting the parties and the tribunal. (11)

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		consolidation arbitrator finds them to be compatible (8.1) In deciding whether to consolidate, the consolidation arbitrator shall consult the parties and may consult the arbitral tribunal(s) (8.3) <i>** Introduced by the ICDR 2014 rules.</i>	consolidation. In such circumstances, while the parties' agreement is not necessary, the tribunal should still seek the parties' views and the agreement of the LCIA Court is still required (22.1 (x)). <i>** Introduced by the LCIA 2014 rules.</i>		
<b>PROCEEDINGS</b>					
<b>Seat of the arbitration and venue for hearing(s)</b>	The place of the arbitration shall be fixed by the court, unless otherwise agreed upon by the parties. (18.1) Venue for hearing(s) to be decided by the tribunal after consultation with the parties (18.2)	Failing agreement between the parties by a date established by the administrator, the administrator may initially determine the place of the arbitration, subject to the power of the tribunal to finally determine the seat within 45 days after its constitution. (17.1) Venue to be decided by the tribunal (17.2)	Failing agreement between the parties, the seat of the arbitration shall be London, unless the tribunal determines that another seat is more appropriate (16.2). Venue for hearing(s) to be decided by the tribunal in consultation with the parties(16.3)	Failing agreement between the parties, the seat of the tribunal shall be Singapore unless the tribunal orders that another seat is more appropriate. (18.1) Venue for hearing(s) to be decided by the tribunal (18.2)	Failing agreement between the parties, the board shall decide upon the seat of arbitration. (20.1) Venue for hearing(s) to be decided by the tribunal after consultation with the parties (20.2)
<b>Are proceedings confidential?</b>	Perhaps yes. The tribunal is empowered to make orders "concerning the confidentiality of the arbitration proceedings or of any other matters in connection with the arbitration" as well as to take measures to protect confidential information and trade secrets. (22.3)	Yes - duty of confidentiality imposed on the tribunal and the ICDR but not the parties (37)	Yes (30)	Yes (35.1) <i>** The SIAC 2013 rules expressly provide that SIAC may publish any award with the names of the parties and other identifying information redacted (28.10)</i>	Yes - duty of confidentiality imposed on the SCC Institute and the tribunal but not the parties (46)
<b>Expedited Procedures</b>	N/A although parties and tribunals are obligated to conduct the proceedings in	Separate international expedited procedures that	In the case of exceptional urgency, any party may apply	SIAC provides an expedited procedure for cases with a	Separate SCC Rules for expedited arbitrations

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	an expeditious manner (22)	<p>supplement the ICDR 2014 rules, Article 1(4). Unless the parties agree or the administrator determines otherwise, the international expedited procedures shall apply in any case in which no disclosed claim or counterclaim exceeds \$250,000 exclusive of interest and the costs of arbitration. The parties may also agree to use the international expedited procedures in other cases. Where no party's claim or counterclaim exceeds USD \$100,000 exclusive of interest, attorney's fees, and other arbitration costs, the dispute shall be resolved by written submissions only unless the arbitrator determines that an oral hearing is necessary (1.4 and E-1 to E-10) ** <i>Introduced by the ICDR 2014 rules.</i></p>	to the LCIA Court for expedited formation of the tribunal. (9A)	value below S\$5,000,000 or in cases of exceptional urgency (5)	(came into force 1 January 2010) developed for minor disputes regarding less complex issues and involving smaller amounts in dispute (a so-called "fast-track arbitration")
<b>Electronic Case Management</b>	The tribunal and the secretariat are able to communicate with the parties via e-mail.(3.2) Tribunals are encouraged to consider the use of video conferencing at hearings where attendance in person is not essential. (24.2 and Appendix IV(f)) ** <i>Introduced by the</i>	Unless otherwise agreed by the parties or ordered by the tribunal, all notices and written communications can be transmitted through electronic communication. (10.1) The tribunal and the parties are encouraged to consider how technology, including electronic	The request for arbitration (and all accompanying documents) may be submitted to the registrar in electronic form. (1.2) ** <i>Introduced by the 2014 rules.</i> Any written communication by the LCIA Court, the	Any notice, communication or proposal may be transmitted by any form of electronic communication. (2.1)	Notices or other communications can be delivered by electronic communication. (8.1)

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	2012 rules.	communications, could be used to increase the efficiency and economy of the proceedings. (20.2) ** <i>Introduced by the 2014 rules.</i>	registrar or any party may be delivered by email or any other electronic means that provides a record of its transmission. (4.1) ** <i>Communications directly between parties and tribunal rather than through registrar</i>		
<b>Discovery and Disclosure</b>	N/A	Disclosure shall be managed by the tribunal with a view to maintain efficiency and economy (21.1). The parties may provide their views on the appropriate level of information exchange, but the tribunal retains final authority (21.2). Parties shall exchange all documents which they intend to rely on via a schedule set by the tribunal (21.3), and the tribunal may, upon application, require a party to make available certain documents if they are relevant and material to the outcome of the case. (21.4) ** <i>Introduced by the ICDR 2014 rules</i>	The tribunal has the power to order any party to produce to the tribunal and to other parties documents or copies of documents in their possession, custody or power which the tribunal decides to be relevant (22(v))	The tribunal has the power to order any party to produce to the tribunal and to the other parties for inspection, and to supply copies of, any document in their possession or control which the tribunal considers relevant to the case and material to its outcome. (24(g))	At the request of a party, the tribunal may order a party to produce any documents or other evidence which may be relevant to the outcome of the case. (26(3))
<b>EMERGENCY ARBITRATORS &amp; INTERIM OR CONSERVATORY MEASURES</b>					
<b>Emergency Interim Relief</b>	While parties can apply for "emergency measures," the types of measures that may be obtained are not specified. (29)	A party may apply for emergency relief before the constitution of the tribunal. However, the types of emergency relief that may be	Once tribunal has been constituted, a number of interim measures (e.g. security) that may be	A party may apply for interim relief. However, the types of interim relief available are not specified. (26 and sch. 1)	Emergency interim measures may be requested prior to and after the commencement of the

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		obtained are not specified. (6)	available from a court may only be sought in "exceptional cases" with the tribunal's authorization (25) ** <i>Introduced by the 2014 rules. Previously parties were able to curtail the ability of the tribunal to issue interim conservatory measures, but this has now be foreclosed- compare Article 25.1 of the 1998 rules,</i>		arbitration, but before the referral of the case to the tribunal. However, the types of interim measures available are not specified (Appendix 11 Article 2). ** <i>Introduced by the 2010 rules.</i>
<b>Emergency Arbitrator</b>	A party which needs urgent interim or conservatory measure that cannot await the constitution of an arbitral tribunal may apply for an emergency arbitrator (29 and Appendix V) ** <i>Introduced by the ICC 2012 rules.</i>	A party may apply for emergency relief before the constitution of the tribunal by written notice. The notice shall be submitted concurrent with or following the submission of a notice of arbitration. Within one business day of receipt of the notice as provided in Article 6(1), the administrator shall appoint a single emergency arbitrator. The emergency arbitrator shall as soon as possible, and in any event within two business days of appointment, establish a schedule for consideration of the application for emergency relief. (Article 6)	The parties may apply to the LCIA for the urgent appointment of an arbitrator (always a sole arbitrator) before the formation of the arbitral tribunal. (9B) ** <i>Introduced by the LCIA 2014 rules.</i>	In the event that the president determines that SIAC should accept an application for interim relief, he/she shall seek to appoint an emergency arbitrator within 1 business day of receipt of application and payment of any required fee. (Schedule 1.2)	The SCC rules provide for the appointment of an emergency arbitrator to provide interim measures prior to the constitution of the tribunal. (Appendix II) ** <i>Introduced by the SCC 2010 rules.</i>
<b>JURISDICTIONAL &amp; OTHER CHALLENGES</b>					

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<b>Challenges to the jurisdiction of the tribunal</b>	All jurisdictional issues are determined by the tribunal unless the secretary general refers the jurisdictional issue to the ICC Court. (6.3) ** <i>Previously the ICC Court tended to make a prima facie decision on the challenge.</i>	All jurisdictional issues are determined by the tribunal. (19)	All jurisdictional issues are determined by the tribunal. (23.1) Note that any objection must be raised no later than the filing of the statement of defense. (23.3)	All jurisdictional issues are determined by the tribunal. (25.2) <i>** The 2013 rules provide, however, that the registrar will now first determine whether an objection to the existence or validity of an arbitration agreement or the competence of SIAC to administer an arbitration should be referred to the court (previously, a committee of the board of directors). If the registrar determines that the objection has sufficient merit to be considered by the court, the court will then determine if it is prima facie satisfied that a valid arbitration agreement under the SIAC rules may exist.</i>	Made to the SCC board. (9,10)
<b>COSTS</b>					
<b>Is there an administration fee, and if so how is it calculated?</b>	Yes - <i>ad valorem</i> , adjusted to take account of the complexity of the matter. (App. III)	Yes - <i>ad valorem</i> The ICDR has two administrative fee options for parties filing claims or counterclaims: the standard fee schedule and the flexible fee schedule. The standard fee	Yes - time based. (Schedule of costs)	Yes - ascertained in accordance with the schedule of fees in force at the time of commencement of the arbitration (30.1)	Yes - <i>ad valorem</i> and determined on a sliding scale and includes a registration fee (EUR 1500) (43, Appendix. II)

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		schedule has a two-payment schedule, and the flexible fee schedule has a three-payment schedule that offers lower initial filing fees but potentially higher total administrative costs if the case proceeds to hearing. The initial filing fee under the flexible fee schedule is non-refundable. (Fee Schedule)			
<b>How are the arbitrators fees calculated?</b>	Based on the amount in dispute, the scale provides a minimum and a maximum for one arbitrator. (37, App. III) By reference to the diligence of the arbitrators, the time spent, the rapidity of proceedings and complexity of the dispute	By hourly rate, set by the administrator in conjunction with the parties at the outset of the arbitration (35)	By reference to the time and rates appropriate to the particular circumstances of the case including its complexity and the special qualifications of the arbitrators (Schedule of costs)	Fixed by the registrar in accordance with the schedule of fees and the stage of the proceedings at which the arbitration ended. Alternative methods of calculating fees may be agreed by parties before the tribunal is constituted. (32.1, 30.1)	<i>Ad valorem</i> and determined on a sliding scale (43, Appendix. II)
<b>Can the successful party be awarded legal costs?</b>	Yes - at the discretion of the tribunal (37)	Yes (34)	Yes - at the discretion of the tribunal (28.3) ** <i>The LCIA 2014 rules give the tribunal an express power to take the parties' conduct into account when awarding costs. (28.4)</i>	Yes - at the discretion of the tribunal (33.1)	Yes - at the discretion of the tribunal (44)
<b>Are deposits required as advance on costs?</b>	Yes (36)	Yes (36.1)	Yes - at the discretion of the tribunal (24)	Yes (30.2) ** <i>As introduced by the 2013 rules, separate advances on costs may be fixed for the</i>	Yes (9, 45)

<b>Aspect of Arbitration</b>	<b>ICC</b>	<b>ICDR</b>	<b>LCIA</b>	<b>SIAC</b>	<b>SCC</b>
				<i>claimant and respondent when a counterclaim is filed. (30.2)</i>	
<b>Will security for the costs of the respondent be ordered?</b>	No (30)	Security for costs may be awarded by the tribunal for interim measures. (24.2)	Yes - at the discretion of the tribunal (25.2)	Yes (any party) - at the discretion of the tribunal (24.1(k))	N/A - no explicit rules on security for costs
<b>THE AWARD</b>					
<b>Is there a time limit for the making of the award?</b>	6 months from last signature by the tribunal or by the parties of the terms of reference or, in the case of application of Article 23(3), the date of the notification to the tribunal by the Secretariat of the approval of the terms of reference by the Court. The ICC Court may extend at its discretion. (30)	Unless otherwise agreed by the parties, specified by law or determined by the administrator, no later than 60 days from the date of the closing of the hearing (30.1) ** <i>Introduced by the 2014 rules.</i>	The tribunal should render the award "as soon as reasonably possible" following the last submission of the parties. Further, the tribunal should set and notify the parties, and the registrar, of a timetable for this purpose. (15.10) ** <i>Introduced by the 2014 rules.</i>	The tribunal shall submit a draft award to the registrar within 45 days from the date on which the proceedings are declared closed. (28.2)	6 months from the date on which the arbitration was referred to the tribunal (18) - the board may extend at its discretion (37)
<b>If the arbitrators fail to agree on an award, who is it made by?</b>	By a majority of the tribunal but in the absence of a majority, the president of the tribunal may make the award alone. (31.1)	By a majority of the tribunal (29.2)	By a majority of the tribunal but in the absence of a majority, the presiding arbitrator may make the award alone. (26.5)	By a majority of the tribunal but in the absence of a majority, the presiding arbitrator may make the award alone. (28.5)	By a majority of the tribunal (35.1)
<b>Is there scrutiny of the award by any other body?</b>	Yes - by the ICC Court as to form (may also, without affecting the tribunal's liberty of decision, draw its attention to points of substance) (33)	No	No However, the parties can, within 30 days of receipt of any award, request the tribunal to correct in the award any errors in computation. (27)	Yes - by the Registrar as to its form (28.2)	No However, the tribunal has the power to review and, if necessary, correct typographical or clerical errors in the award. The tribunal may also issue an additional award if it has failed to deal with a point raised in the arbitration. (41,

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					42)
<b>OTHER RELEVANT ELEMENTS</b>					
	At the time the arbitrator confirms their impartiality, they now will also need to confirm their availability. A case management conference will be convened by rule around the time the terms of reference are negotiated and issued. The rules suggest areas that may be streamlined via a case management conference, such as identification of issues that the parties agree on, bifurcating proceedings where appropriate, facilitation of settlement, or discovery limitations. (24, Appendix IV)	The 2014 ICDR rules provide that, following the time for submission of an answer, the ICDR may invite the parties to mediate. (5)	The 2014 LCIA rules provide the tribunal with the power to order the discontinuance of the arbitration if it appears that the arbitration has been abandoned by the parties or all claims and any crossclaims withdrawn by the parties-- provided that, after fixing a reasonable period of time within which the parties shall be invited to agree or to object to such discontinuance, no party has stated its written objection to such discontinuance upon the expiry of such period of time. (22.1(xi)).	Tribunals may now decide any issue expressly or impliedly raised in the parties' submissions. (24) The prohibition on post-award interest in the 2010 SIAC rules has been removed. (28.7) Subject to certain limited exception, provides that by agreeing to arbitration under these rules, the parties irrevocably waive their rights to any form of appeal, review or recourse to any state court or other judicial authority insofar as such waiver may be validly made. (28.9)	N/A