

A NEW APPROACH TO EXPEDITED ARBITRATION

Workshop Arbitration Rules

*Expedited ad hoc arbitration built around a structured,
in-person workshop, delivering a binding summary award
within roughly four months.*

VERSION 1.0

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These Rules are proposed for disputes between sophisticated parties, of limited factual complexity, and in which the relationship between the parties is a considerable factor. See the Preamble overleaf for the full scope note.

WORKSHOP ARBITRATION · VERSION 1.0

Preamble

These Rules govern ad hoc-arbitration proceedings conducted as Workshop Arbitration. They are proposed for disputes between sophisticated Parties, of limited factual complexity, and in which the relationship between the Parties is a considerable factor.

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ARTICLE 1

Scope and Opt-In

- 1.1 These Rules apply where the parties have agreed in writing or text form to resolve their dispute by Workshop Arbitration, or where the parties and the arbitrator agree to adopt these Rules after the commencement of proceedings.
- 1.2 Where these Rules are silent, the parties and the arbitrator shall proceed in a manner consistent with the general principle of efficiency within the limits of due process at the seat of the arbitration.

ARTICLE 2

Commencement

- 2.1 Proceedings commence upon receipt by the respondent of a written notice of arbitration identifying the parties, the dispute, and the relief sought.
- 2.2 Within 10 days of commencement, the parties shall jointly nominate a sole arbitrator and the respondent may choose to submit an answer to the notice. Failing agreement on the arbitrator, the arbitrator shall be appointed by a mutually agreed appointing authority.
- 2.3 The arbitrator should have considerable experience as a sole arbitrator and/or presiding arbitrator. Experience in mediation can be helpful.

ARTICLE 3

Seat, Language, and Applicable Law

- 3.1 The parties shall agree on the seat of arbitration, the language of the proceedings, and the substantive law applicable to the dispute. Failing agreement, the arbitrator shall determine these matters.

ARTICLE 4**Early Scheduling**

- 4.1** Within 10 days of the transmission of the file to the arbitrator, the arbitrator shall, in consultation with the parties, block dates for:
- (a) the pre-workshop case management conference (CMC) pursuant to Article 6; and
 - (b) the workshop pursuant to Article 7.
- 4.2** The arbitrator and the parties shall treat the scheduling of these dates as a priority and shall hold them firm absent exceptional circumstances.
- 4.3** The arbitrator shall promptly issue a procedural timetable setting out the key dates following confirmation of the scheduled dates.
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ARTICLE 5**Written Submissions**

- 5.1** Within 3 weeks of the transmission of the file to the arbitrator, the claimant shall submit a summary statement of claim, not exceeding 20 pages, together with all documentary evidence relied upon and short witness statements from persons who will attend the workshop.
- 5.2** Within 3 weeks of receipt of the claimant's submission, the respondent shall submit a summary statement of defense on the same terms.
- 5.3** The submissions shall be concise and focused. Voluminous exhibits should be avoided unless strictly necessary.
- 5.4** There shall be no further written submissions unless the arbitrator so orders following the pre-workshop CMC (Article 6).
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ARTICLE 6**Pre-Workshop Case Management Conference**

- 6.1** Following receipt of both summary statements, the arbitrator shall convene the pre-workshop case management conference (CMC) with the parties at the date blocked pursuant to Article 4.
- 6.2** At the CMC, the arbitrator and the parties shall discuss:
- (a) the format, agenda, and duration of the workshop;
 - (b) whether skeleton arguments or additional evidence are required before the workshop (Article 6.3);
 - (c) the persons who will attend the workshop, including potential witnesses; and
 - (d) any other procedural matters.
- 6.3** If the arbitrator determines that skeleton arguments or additional evidence are necessary, the arbitrator shall so order shortly after the CMC, specifying the scope and the deadline for submission. Such additional submissions shall be limited to what is strictly necessary and shall not duplicate the summary statements already filed.
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- 6.4 The arbitrator shall issue a brief procedural order following the CMC confirming the workshop format and any orders made under Article 6.3.

ARTICLE 7

The Workshop

- 7.1 The workshop shall take place in person at the date blocked pursuant to Article 4. It shall last no longer than 5 days.
- 7.2 The workshop shall be structured as discussed during the CMC. The following three phases are recommended (but not binding, if the arbitrator considers a different structure as more suitable):
- (a) Phase 1: Free verbal consideration and clarification of the issues in dispute which results in a roadmap setting out which factual and legal questions must be answered in order to decide the dispute.
 - (b) Phase 2: Hearing of witnesses on factual issues and legal counsel on legal issues set out in the roadmap.
 - (c) Phase 3: Facilitation of settlement discussions (with or without assistance by the arbitrator in line with Article 8.1 below) and short oral closing statements on all issues (in line with Article 9.1 below), if no settlement is reached.
- 7.3 The arbitrator shall manage the workshop actively to ensure efficient use of time and equal treatment of the parties.
- 7.4 The workshop may be adjourned and resumed within the agreed dates at the arbitrator's discretion.

ARTICLE 8

Settlement Facilitation

- 8.1 During the workshop, the arbitrator may, with the express prior agreement of all parties, introduce settlement discussions or a dedicated settlement slot, with or without the arbitrator's assistance. If the parties agree that the arbitrator assists in settlement discussions, they shall confirm in advance and in writing that any statements by the arbitrator during settlement discussions shall not disqualify the arbitrator with a view to impartiality and/or independence.
- 8.2 If a settlement is reached, it may be recorded as a consent award upon request of the parties.
- 8.3 The arbitrator's fee shall not be reduced in the event of a settlement.

ARTICLE 9

Closing and Costs

- 9.1 If no settlement is reached, each party shall be invited to make a brief oral closing statement at the conclusion of the workshop.
- 9.2 Each party shall submit a statement of costs within 5 days of the close of the workshop.

ARTICLE 10

The Award

- 10.1 The arbitrator shall render a summary award within 3 weeks of the close of the workshop.
- 10.2 The award shall not exceed 20 pages and shall set out the arbitrator's decision and the essential reasons in a concise manner.
- 10.3 The award shall be final and binding on the parties.

ARTICLE 11

Confidentiality

- 11.1 The arbitration, all submissions, evidence, and the award shall be confidential. The parties and the arbitrator shall not disclose any information relating to the proceedings to third parties without the prior written consent of all parties, except as required by law.

ARTICLE 12

Fees and Costs

- 12.1 The arbitrator's fees shall be agreed between the parties and the arbitrator prior to the commencement of proceedings, or determined by reference to any applicable institutional fee schedule.
- 12.2 In absence of an agreement, the fee of the arbitrator shall be USD 80'000 plus reasonable expenses. If the amount in dispute is above USD 10 million, the fee of the arbitrator shall be USD 130'000 plus reasonable expenses.
- 12.3 The arbitrator shall have the power to allocate the costs of the arbitration between the parties in the award, taking into account all relevant circumstances.

ARTICLE 13

General

- 13.1 These Rules may be adopted with or without modification by agreement of the parties regarding time limits and costs. If the Parties otherwise modify these Rules, they must not use the term "Workshop Arbitration" for their proceedings.
- 13.2 The arbitrator shall have the power to decide any procedural questions not covered by these Rules.
- 13.3 These Rules shall be interpreted in a manner consistent with the objective of resolving disputes efficiently, fairly, and with a genuine opportunity for settlement.
- 13.4 The arbitrator shall not be liable vis-à-vis the Parties except for gross negligence and/or intentional misconduct.